

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1259/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer,
Ward – 7(1), Pune.

..... अपीलार्थी /
Appellant.

बनाम v/s

M/s. Eisha Supershwa Developments,
5, San Mahu Complex, Bund Garden
Road, Opp. Poona Club,
Pune.

..... प्रत्यर्थी /
Respondent

PAN : AACFE3247R.

Assessee by : Shri Vipin Gujarathi.

Revenue by : Shri Prashant Gudekar.

सुनवाई की तारीख / Date of Hearing : 17.07.2019	घोषणा की तारीख / Date of Pronouncement: 01.08.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A)-5, Pune dated 12.12.2016 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Partnership firm stated to be engaged in the business of Real Estate Development. Assessee filed its return of income for A.Y. 2013-14 on 29.09.2013 declaring total income at Rs.Nil after claiming deduction of Rs.2,01,05,481/- u/s 80IB(10) of the Act. The

case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.08.02.2016 and the total income was determined at Rs.2,53,31,910/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.12.12.2016 (in appeal No.PN/CIT(A)-5/ITO Ward-7(1), Pune/406/2015-16) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following effective ground :

“On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) was justified in allowing the deduction u/s 80IB(10) of the Income Tax Act, 1961 on proportionate basis in respect of the housing project “Eisha Loreal”.

3. During the course of assessment proceedings, AO noticed that assessee had claimed deduction of Rs.2,01,05,481/- u/s 80IB(10) of the Act in respect to the housing project named “Eisha Loreals” constructed on a plot of land situated at Sr.No.13, H.No.2, 3, 4/2, Kondwa Khund, Pune. AO on perusing the report of Government Registered Valuer Shri Nitin Lele, noticed that two flats bearing No.B-201 and B-504 were sold to same person. AO on the basis of aforesaid report of Registered Valuer, concluded that assessee had failed to comply with the condition namely, of allotting more than one residential unit in a housing project to one person and thereby violated the provisions of Sec.80IB(10) of the Act. He was of the view that for claiming deduction u/s 80IB(10) of the Act, all the conditions stipulated therein are required to be fulfilled in totality. He noted that since assessee has failed to comply with one of the conditions stipulated u/s 80IB(10) of the Act therefore assessee was not eligible for deduction u/s 80IB(10) of the Act. He accordingly denied the entire claim of deduction of the assessee. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who following the

decisions of Hon'ble High Court and Tribunal cited in her order held that assessee is entitled to proportionate deduction on the profits of the eligible units which complied with the provisions of Sec.80IB(10) of the Act and where there has been non compliance of provisions of Sec.80IB(10) (e) and (f), the deduction claimed on those residential units has to be disallowed. She accordingly directed the AO to work out the proportionate deduction. Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

4. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further relied on the decision of Pune Tribunal in the case of Sukhwani Chawla Combine Vs. ACIT in ITA No.697 & 900/PUN/2015 order dt.25.09.2017 for the proposition that the principle of proportionate deduction is to be allowed to the extent assessee has complied with the provisions of Sec.80IB(10) of the Act. He pointed to the relevant para 8 of the order. He thus supported the order of Ld.CIT(A).

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80IB(10) of the Act. AO had denied the entire claim of deduction for the reason that assessee had sold two flats to the single buyer, thereby violating the provisions of Sec.80IB(10)(e) of the Act. Ld.CIT(A) by following the orders of Tribunal and Hon'ble High Court cited in her order has held that the assessee cannot be denied the benefit of deduction on the entirety and the deduction can be denied only on units where there has been violation of provisions of

Sec.80IB(10). We also find that the Hon'ble Madras High Court in the case of CIT Vs. Arun Excello Foundations (P) Ltd., reported in 29 Taxman.com 149 (Mad) has approved the principal of proportionate deduction to the extent assessee has complied with the provisions of Sec.80IB(10) of the Act. Before us, Revenue has not placed any material on record to controvert the findings of Id. CIT(A) nor has placed any contrary binding decision in its support. In view of the aforesaid facts, we find no reason to interfere with the order of Id. CIT(A). **Thus, the ground of the Revenue is dismissed.**

6. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 1st day of August, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 1st August, 2019.

Yamini

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 5, Pune.
4. Pr. CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.