

आयकर अपीलीय 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.1695/PUN/2017
निर्धारण वर्ष / Assessment year : 2010-11

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

..... अपीलार्थी /
Appellant.

बनाम v/s

M/s. Skyline Developers,
D-436, Clover Center, D-436,
7, Moledina Road,
Pune – 411 001.

..... प्रत्यर्थी /
Respondent

PAN : AASFS6230J.

Assessee by : Shri Pramod Shingte.

Revenue by : Shri Shashank Deogadkar.

सुनवाई की तारीख / Date of Hearing : 05.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
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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) – Pune-5, Pune dated 28.04.2017 for the assessment year 2010-11.

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 original return of income for A.Y. 2010-11 on 15.10.2010 declaring total income at Rs. Nil after claiming deduction of Rs.24,16,16,000/- u/s 80IB(10) of the Act. Subsequently, the

assessee revised return of income on 29.03.2012 after modifying the claim of deduction u/s 80IB(10) of the Act at Rs.49,47,079/-. The return was initially processed u/s 143(1) of the Act. Thereafter, the case was re-opened by issuing notice u/s 148 of the Act. Subsequently, assessment was framed u/s 143(3) r.w.s 147 of the Act vide order dt.21.03.2014 and the total income was determined at Rs.1,64,47,607/- inter-alia by denying the claim of deduction u/s 80IB(10) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.28.04.2017 (in appeal No.PN/CIT(A)-5/ITO.Wd-4(5), Pune/382/2014-15) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now before us and has raised the following grounds :

“1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the assessee was eligible for claiming deduction u/ s.80IB(10) of the Act without appreciating that deduction u/s.80IB(10) was available to an undertaking engaged in developing and building housing project and the assessee had only provided the land to the joint venture formed i.e. Brahma Skyline JV.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the assessee had carried out its obligation as builder and developer in development of 2,40,000 sq.ft. only and did not play any role as builder and developer in respect of construction of housing project on 4,63,103 sq.ft. of land on which deduction ix] s.80IB(10) was claimed and not allowed.

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the claim of deduction u/s.80IB(10) could only be considered in the hands of AOP and as no return of income had been filed by the AOP, the same could not be considered and the revenue sharing arrangements at 32:68 was intended to compensate the two members of JV for their respective contribution and expenses incurred.”

3. All the grounds being inter-connected are considered together.
4. AO noticed that assessee has claimed deduction u/s 80IB(10) of the Act on the income from Bramha-Skyline Joint Venture (JV). AO noted that assessee is a member of Bramha-Skyline which is a JV between Bramha

Builders and Skyline Developers. He noted that the project was first commenced from 03.03.2007 and completed on 04.11.2009. He also noted that M/s. Skyline Developers had introduced land admeasuring 38200 sq.mtrs and M/.s Brahma Builders had agreed to construct on the land. Accordingly Brahma Skyline JV was formed for developing the Skyline Housing Project. AO noted that the members of the JV had decided to share the gross sale proceeds received from the sale of the units and from all saleable areas including parking, terrace, etc., in the ratio of 32:68. The AO also noted that the JV had not filed any return since its formation and according to him it was the JV which could have claimed the deduction u/s 80IB(10) of the Act. He noted that since assessee had merely introduced land and had not performed the role of Builder and Developer of a housing project, it was not entitled to claim for deduction u/s 80IB(10) of the Act. He accordingly denied the claim of deduction. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who noted that in assessee's own case, her Predecessor had decided the issue in favour of the assessee in A.Y. 2009-10. She accordingly decided the issue in favour of the assessee by observing as under :

“4.3 I have perused carefully toe material on record and toe contention of toe Appellant I find that, on the same issue regarding the claim of deduction u/s 80IB(10) and for the same project, toe CIT(A) in the Appellant's own case for AY 2009-10 has decided in favour of the Appellant by holding at Para 3.5 as under:-

“The Assessing officer has rejected the claim of deduction u/s 80IB(10) on the plea that the Appellant merely introduced the land in the JV and did not perform the role of builder and developer which is prima facie not correct as the Appellant did construct the flats for the members of the society in terms of the development agreement and, thereafter, after getting the rights to develop the balance portion of the land entered into a JV with M/s. Bramha Builders. The fact 'thus brought on record clearly indicates the Appellant to have acted as a developer and builder and not merely introduced the land. It is relevant to point out that the development of the project was carried out by the Appellant firm firstly on its own with respect to the portion of the property to be constructed and handed over to the society and; secondly in JV with M/s. Bramha Builders with respect to the portion of the property which was to be sold to outsiders and the Appellant

in the JV worked with equal risk. Further, the Appellant also satisfied all other conditions as stipulated under the provisions of section 80IB(10) and therefore, it is very much eligible to claim deduction under the said section. However, it is very much eligible to claim deduction under the said section. However, the said claim has to be restricted to Rs. 1,05,72,657/- which is the net profit arrived as per the audited account statement that clearly indicates the total gross income at Rs. 9,67,83,200/- and the expenditure of Rs. 8,62,10,542/-. Thus, in view of the existing fact and circumstances of the case and the reasoning of the judicial authorities on the subject in my considered opinion, the Appellant is entitled to claim the deduction u/s 80IB(10) of the Act."

Following judicial discipline, in view of the above order it is held that the Appellant is entitled to claim deduction u/s 80IB(10) of the I. T. Act, 1961. The AO is directed to allow the claim accordingly. Therefore, this Ground of Appeal is allowed."

Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. Before us, Ld. D.R. supported the order of lower authorities.
6. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that against the order of Ld.CIT(A) for A.Y. 2009-10, Revenue had preferred appeal before the Tribunal and the Tribunal vide order dated 10.01.2018 in ITA No.1503/PUN/2014 had dismissed the appeal of the Revenue. He also placed on record the copy of the aforesaid decision. He therefore submitted that in view of the aforesaid facts, no interference to the order of Ld.CIT(A) is called for.
7. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the denial of claim of deduction u/s 80IB(10) of the Act. We find that Ld.CIT(A) while deciding the issue in favour of the assessee had relied on her Predecessor's order in assessee's own case for A.Y. 2009-10. We further find that against the order of Ld.CIT(A) for A.Y. 2009-10, Revenue had preferred appeal before the Tribunal and the Tribunal in ITA No.1503/PUN/2014 vide order dated 10.01.2018 had dismissed the appeal of the Revenue

meaning thereby that the order of Ld.CIT(A) for A.Y. 2009-10 has attained finality. Before us, Revenue has not placed any material on to demonstrate that the order of ITAT for A.Y. 2009-10 has been set aside by higher Judicial Forum. Further, Revenue has also not pointed out any fallacy in the findings of Ld.CIT(A). In such circumstances, we find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds of the Revenue are dismissed.**

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

Order pronounced on 12th day of September, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 12th September, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune.
4. Pr. CIT-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.