

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 स / ITA Nos.1194 & 1195/PUN/2017  
निर्धारण वर्ष / Assessment years : 2011-12 & 2012-13.

The Dy. Commissioner of Income-Tax,  
Circle - 8.

..... अपीलार्थी /  
Appellant

बनाम v/s

M/s. Sukhwani Chawla Combine,  
208/2A Sukhwani House  
Opp. Swaminathan Clinic,  
Pimpri, Pune.

..... प्रत्यर्थी /  
Respondent.

PAN : ABDFS2457H.

Assessee by : Shri Vipin K. Gujarathi.

Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 22.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
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**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. These two appeals filed by the Revenue are emanating out of the separate orders of Commissioner of Income Tax (Appeals), 6 - Pune dated 02.01.2017 for A.Ys. 2011-12 and 2012-13.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus both the appeals can be heard together. In

view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order. We, however, proceed with the facts in ITA No.1194/PUN/2017 for A.Y. 2011-12.

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

Assessee is a partnership firm engaged as Builders and Promoters. Assessee filed its return of income for A.Y. 2011-12 on 27.09.2011 declaring total income of Rs.Nil after claiming deduction at Rs.5,04,80,033/- u/s 80IB(10) of the Act. The return of income was initially processed u/s 143(1) of the Act. Subsequently, the case was re-opened by issuing notice u/s 148 of the Act. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 18.03.2015 and the total income was determined at Rs.5,04,80,033/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 02.01.2017 (in appeal No.PN/CIT(A)-6/DCIT Cir-8/60/2015-16) 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 circumstances of the case and in law, the Ld.CIT(A) was justified in allowing deduction u/s 80IB(10) on proportionate basis when the law relating to benefit to be given u/s 80IB(10) clearly says that the project as a whole is to be considered for fulfillment of various conditions prescribed therein ?*

*2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in allowing deduction u/s 80IB(10) on proportionate basis though the provisions of clause (f) of sub section (10) of section 80IB are violated ?”*

4. Similar grounds have been raised by the Revenue in ITA No.1195/PUN/2017 for A.Y. 2012-13.

5. AO has noted that during the course of assessment proceedings for A.Y. 2010-11, AO found that assessee had violated the conditions laid down u/s 80IB(10)(f) of the Act and accordingly the claim was disallowed for A.Y. 2010-11 and subsequent years. In A.Y. 2010-11 it was noticed that assessee had sold Row House Nos. 38 & 39 of the project namely, "Sukhwani Oasis" to Smt. Jeet Kaur Rohida, Proprietor of M/s. Urvashi Enterprises and Shri Anneel Raghmal Khattrie, respectively. On further enquiries, it was revealed that Shri Anneel Raghmal Khattrie and Smt. Jeet Kaur Rohida are the husband and wife and since the sale in the project was to related persons it was in violation of conditions laid down u/s 80IB(10)(f) of the Act and accordingly the entire claim u/s 80IB(10) of the Act was denied to the assessee. For the year under consideration, AO noted that since the assessee has violated the provisions of clause (f) of Sec.80IB(10) of the Act and according to him since the assessee was required to cumulatively fulfill all the conditions stipulated and on account of failure to comply with the conditions stipulated in Clause (f) of Sec.80IB(10) of the Act, the assessee is not eligible for deduction u/s 80(B)(10) of the Act and he accordingly denied the claim of Rs.5,04,80,033/- under Sec.80IB(10) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who by following the order of his predecessor directed the AO to allow the deduction u/s 80IB(10) of the Act in respect of all the units except for the profit relating to the two units sold to Shri Anneel Raghmal Khattrie and Smt. Jeet Kaur Rohida. He thus granted substantial relief to the assessee.

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

6. 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 submitted that the issue in the present case is covered by the decision of Hon'ble Pune Tribunal in assessee's own case for A.Y. 2010-11 vide order dt.25.09.2017 in ITA Nos.697 & 900/PUN/2015. He therefore submitted that since there are no changes in the facts in the claim of assessee for the year under consideration and that of earlier year, the appeal of Revenue be dismissed.

7. We have heard the rival submissions and perused the material on record. We find that the claim of the assessee with respect to the grant of deduction u/s 80IB(10) of the Act for the year under consideration was denied in totality in view of the fact that assessee had failed to comply the conditions stipulated u/s 80IB(10)(f) of the Act. When the matter was carried before Ld.CIT(A), Ld.CIT(A) held that proportion deduction is to be allowed to the assessee and the claim of deduction u/s 80IB(10) is to be denied only with respect to the profits from units sold to Shri Anneel Raghmal Khatrrie and Smt. Jeet Kaur Rohida. We find that identical issue arose in assessee's own case in A.Y. 2010-11 where the Revenue had carried the matter before the Tribunal and the Tribunal had upheld the order of Ld.CIT(A) by observing as under :

*"8. We have heard the rival submissions and perused the material on record. On the issue of Revenue's appeal wherein Revenue is aggrieved by the order of Ld.CIT(A) whereby he has held that disallowance be restricted only with respect to parties of row houses 38 and 39, we find that Ld.CIT(A)*

while granting partial relief had relied on the decision of Income Tax Appellate Tribunal, Pune Bench in the case of Pharande Developers (ITA No.715/PN/2009). Before us, no material has been placed by Revenue to demonstrate that the aforesaid decision of Pune ITAT in the case of Pharande Developers (supra) has been set aside by higher Judicial Authority. On the issue of proportionate deduction, we also find that Hon'ble Madras High Court in the case of CIT Vs. Arun Excello Foundations (P.) Ltd [2013] 29 taxmann.com 149 (Madras) has approved the principle of proportionate deduction to the extent the assessee has complied with the provisions of Sec.80IB(10) of the Act. Following the aforesaid decision of Hon'ble Madras High Court we are of the view that the assessee cannot be denied the deduction for the complete housing project and therefore find no fault in the order of Ld.CIT(A) and thus the grounds of Revenue are dismissed.

9. On the issue of denial of deduction u/s 80IB(10) on account of non compliance of the condition stipulated in clause (f) to Sec. 80IB(10) of the Act, clauses (e) and (f) were inserted to Sec.80IB(10) by Finance (No.2) Act, 2009 w.e.f 01.04.2010. The object behind the introduction as explained by the Memorandum explaining the provisions is that the objective of the tax benefit for housing projects was to build housing stock for low and medium income households by ensuring the size of the residential unit. It was circumvented by the developers by entering into agreement to sell multiple adjacent units to a single buyer. Accordingly the new clause was inserted to provide that the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person not being an individual and where the person is an individual, no other residential unit in such housing project to spouse or minor children of such individual, to HUF in which the individual is a karta. In the present case it is an undisputed fact that row house No.38 has been sold to Shri Anneel Raghmal Khatrrie and row house no.39 has been sold to M/s Urvashi Enterprises through its proprietor/authorised signatory is Jeetkaur Rohida. The booking form which has been placed at paper book reveals that the bookings were made by two different persons whose names prima facie appeared to be not related to each other more so while booking row house number 39, the address of Jeetkaur Rohida was stated as plot no 16, Ganesh Vision, Akurdi, Pune and for booking the row house no.38 the address of the purchaser, shri Anneel Khatrrie was stated to be c/16 Sukhwani lawns, Pimpri, Pune. The agreements for both the row houses were registered with the office of Sub-Registrar on 8<sup>th</sup> June 2010. Mr Anneel Khatrrie was earlier known as Shankar Raghmal Rohida and he changed his present name for which a notification was issued in the Government of Maharashtra Gazette dated 16.11.2006. At the time of registration he furnished the copy of the PAN card which showed his old name i.e Shankar Rohida. In case of row house no.39, the agreement was signed in the name of Jeetkaur Rohida though she had got her name changed to Jeetkaur Anil Khatri vide Government of Maharashtra Gazette notification dated 16<sup>th</sup> November 2006 and the copy of the PAN card furnished also having her old name i.e. Jeetkaur Rohida. The possession letters dated 20.7.2010 signed by the respective purchasers were signed as Jeetkumar Rohida and Anneel Khatrrie respectively. We are of the view that at the time of making sale/booking a unit and for complying with the requirement of clause (e) and (f), the assessee is required to exercise normal due diligence expected of a normal businessman and proceed on the basis of the documents/information furnished by the other person and is not supposed to act like a detective and microscopically investigate and go behind the documents and verify the background of those submissions. Further no guidelines have issued by Revenue Department to show as to what and how the verification has to be conducted and therefore it is not a case of Revenue that the required guidelines issued by Revenue Department so as to check the compliance of

*clause (e) and (f) have not been followed by assessee. In view of the foregoing, we are of the view that in the present case, the assessee had prima facie exercised normal due diligence expected of a normal businessman more so when the purchasers at the time of booking had given different addresses, were having different surnames and then later on they turned out to be closely related. In such a situation, we are of the view that the assessee cannot be denied the deduction u/s 80IB(10) of the Act. We therefore hold that the claim of deduction u/s 80IB(10) be allowed **and thus the grounds of assessee are allowed.**"*

8. Before us, Revenue has not placed any material on record to demonstrate that the order of the Tribunal in assessee's own case for A.Y. 2010-11 has been set aside or stayed by Higher Judicial Authorities nor pointed out any distinguishing feature in the facts of the present case and that of earlier year. In such a situation, we find no reason to interfere with the order of Ld. CIT(A) and **thus the grounds of Revenue are dismissed.**

9. **In the result, the appeal of Revenue in ITA No.1194/PUN/2017 for A.Y. 2011-12 is dismissed.**

10. Now, we take up Revenue's appeal in ITA No.1195/PUN/2017 for A.Y. 2012-13.

10.1. As far as the grounds raised in appeal in ITA No.1195/PUN/2017 for A.Y. 2012-13 is concerned, in view of the submission of both the parties that the facts of the case in the year being identical to the facts and issue of the case in ITA No.1194/PUN/2017 for A.Y. 2011-12, we therefore for the reasons stated herein while disposing of the appeal in ITA No.1194/PUN/2017 for A.Y. 2011-12 and for similar reasons dismiss the grounds of Revenue. **Thus, the grounds of Revenue are dismissed.**

11. **In the result, the appeal of Revenue in ITA No.1195/PUN/2017 for A.Y. 2012-13 is dismissed.**

12. **To sum up, both the appeals of Revenue are dismissed.**

Order pronounced on 12<sup>th</sup> day of September, 2019.

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

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

पुणे Pune; दिनांक Dated : 12<sup>th</sup> September, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-6, Pune.
4. Pr. CIT-5, 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.