

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

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

आयकर अपील स० / ITA No.568/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Surana Mutha Bhansali,  
Developers, 236, Patil Plaza,  
Nr. Saras Baug, Pune – 411009.  
Pune – 411 009.

..... अपीलार्थी /  
Appellant

PAN : ABGFS1894K.

बनाम v/s

The Income Tax Officer,  
Ward 5(2), Pune.

..... प्रत्यर्थी /  
Respondent

आयकर अपील स० / ITA No.1216/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Dy.Commissioner of Income Tax,  
Circle – 5, Pune.

..... अपीलार्थी /  
Appellant

बनाम v/s

M/s. Surana Mutha Bhansali,  
Developers, 236, Patil Plaza,  
Nr. Saras Baug, Pune – 411009.  
Pune – 411 009.

..... प्रत्यर्थी /  
Respondent

PAN : ABGFS1894K.

Assessee by : Shri V.L. Jain.

Revenue by : Ms. Nandita Kanchan.

सुनवाई की तारीख / Date of Hearing : 22.08.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
---------------------------------------------------	-------------------------------------------------------

**आदेश / ORDER****PER ANIL CHATURVEDI, AM :**

1. These cross-appeals filed by assessee and Revenue emanate out of the order of Commissioner of Income-Tax (A) – 4, Pune dated 01.12.2016 for A.Y. 2012-13.

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

Assessee is a partnership firm stated to be engaged as Promoters and Builders. Assessee electronically filed its return of income for A.Y. 2012-13 on 03.09.2012 declaring total income of Rs.53,12,627/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.31.03.2015 and the total income was determined at Rs.11,67,11,331/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.01.12.2016 (in appeal No.PN/CIT(A)-4/ITO, Wd-5(2), Pune/32/2015-16) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee and Revenue are now in appeal before us.

3. The ground raised by the assessee in ITA No.568/PUN/2017 for A.Y. 2012-13 reads as under :

*“The Ld.CIT(A) has erred in law and on facts in confirming the proportionate disallowance under Section 80IB(10) for the reason that the built-up area of some of the units exceeded 1500 Sq.Ft if and when the area of Open Terrace is included in measuring the built up area, inspite of the fact that the issue is fully covered by the decisions of the Madras High Court in Ceebros Hotels Pvt. Ltd. and of the Pune Tribunal in the case of N.T. Wadhwani.”*

4. On the other hand, the grounds raised by the Revenue in ITA No.1216/PUN/2017 reads as under :

*“1. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) is correct in allowing assessee’s claim of deduction u/s 80IB(10) of the IT Act, 1961 on pro-rata basis, when the built up area of 40 units have exceeded 1500 sq. ft and there is no provision in the IT Act for claiming proportionate deduction u/s 80IB(10) of the IT Act, 1961 ?*

*2.For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) be vacated and that of the Assessing Officer be restored.”*

5. We first proceed to decide the assessee’s appeal in ITA No.568/PUN/2017 for A.Y. 2012-13.

5.1. During the course of assessment proceedings AO noticed that assessee had constructed a residential housing project known as “Shree Shantinagar” at S.No.63, Kondhwa Bruduk, Pune and the net profit of Rs.11,13,98,704/- earned from the project was claimed to be as exempt income u/s 80IB(10) of the Act. To verify as to whether the assessee’s project has satisfied the required conditions u/s 80IB(10) of the Act for claiming the deduction, commission to the Approved Valuer Shri Nitin M. Lele was given and he was asked to submit the report on the matter. On the basis of the report submitted by him, AO noted that one of the conditions stipulated u/s 80IB(10) of the Act was that the built up area of the flats should not exceed 1500 Sq. ft. AO on the basis of the valuation report noted that out of 176 flats constructed by the assessee, in respect of 40 flats, projected terrace (open to sky) was given exclusively to the assessee and thus the area of flats was in excess of 1500 Sq. ft. in those 40 flats. He noted that if the area of the flat and the terrace are considered together, the total area of the flat exceeds 1500 Sq. Ft. The assessee was asked to show cause as to why the deduction u/s 80IB(10) of the Act not be granted in view of the contravention of the provisions about the area stipulated as per the Act.

The submissions made by the assessee were not found acceptable to the AO. The alternate submission of the assessee of allowing deduction on proportionate basis was also not found acceptable to the AO. AO thereafter denied the claim of deduction u/s 80IB(10) in entirety. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who granted partial relief to the assessee.

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

6. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that for the purpose of computing built-up area, the area of the projected terrace (open to sky) is to be excluded as held by the decision of Pune Tribunal in the case of Shri Naresh T. Wadhvani Vs. DCIT (ITA Nos.18, 19 & 20/PN/2013 order dated 28.10.2014). He submitted that if the aforesaid area of open terrace is excluded, then the area of the 40 flats will be within 1500 Sq. ft. He placed on record the copy of the aforesaid decision and pointed to the observations of the Tribunal wherein it has held that the area of the projected terrace needs to be excluded for the purpose of computing the built-up area while examining the condition prescribed under Clause (c) of Sec.80IB(10) of the Act. He therefore submitted that the order of AO be set aside. Ld. D.R. on the other hand, supported the order of lower authorities.

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. It is the case of the Revenue that the area of the 40 flats exceeds 1500 Sq. ft. which is the

maximum area stipulated under the provisions of the Act. Revenue has concluded that the area of the 40 flats exceed 1500 Sq. ft. by including the area of the open terrace which is available to those 40 flat owners. The assessee's contention is that if the area of open terrace is excluded then the area of each of the 40 flats is within the prescribed limit of 1500 Sq.ft. stipulated under the provisions of the Act. We find that the Co-ordinate Bench of the Tribunal in the case of Naresh T. Wadhvani (supra) after considering various decisions cited in the order has concluded that the area of the projected terrace (open to sky) is not to be included for the purpose of computing the built-up area while examining the condition prescribed in clause (c) of Section 80IB(10) of the Act. Before us, Revenue has not controverted the submissions of the assessee that if the area of projected terrace (open to sky) is excluded, the size of each of the flat is within the prescribed limit of 1500 Sq.ft. stipulated under the provisions of Sec.80IB(10) of the Act. Further, Revenue has also not placed any material on record to demonstrate that the order of the Co-ordinate Bench of the Tribunal in the case of Naresh T. Wadhvani (supra) has been set aside or stayed by Higher Judicial Authorities nor has brought on record any contrary binding decision in its support. In view of the aforesaid facts, we are of the view that the assessee is eligible for deduction u/s 80IB(10) of the Act on the profits earned from the aforesaid housing project. We therefore direct the AO to grant the deduction. **Thus, the ground of the assessee is allowed.**

8. **In the result, the appeal of assessee is allowed.**

9. Now we take up the appeal of Revenue in ITA No.1216/PUN/2017 for A.Y. 2012-3.

9.1. Revenue is aggrieved by the order of Ld.CIT(A) as he had granted the deduction u/s 80IB(10) of the Act on proportionate basis. Ld.CIT(A) had held that since assessee has failed to comply the conditions stipulated u/s 80IB(10) of the Act for claim of deduction in respect of only 40 flats where the permissible area had exceeded 1500 Sq. ft. then the assessee cannot be denied the benefit of deduction in totality and therefore the deduction is to be denied only with respect to profits earned from those 40 flats. He accordingly directed the AO to grant proportionate deduction u/s 80IB(10) of the Act. Revenue is aggrieved with those directions of Ld.CIT(A).

10. 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 also relied on the decisions placed before Ld.CIT(A). He thus supported the order of Ld.CIT(A).

11. We have heard the rival submissions and perused the material on record. We find that Ld.CIT(A) while granting partial relief to the assessee u/s 80IB(10) has noted that since assessee has violated the conditions for claim of deduction u/s 80IB(10) with respect to only 40 units which had exceeded the permissible area, the deduction has to be denied only for those 40 flats meaning thereby that the assessee was granted deduction on proportionate basis. For arriving at such conclusion, Ld.CIT(A) had relied on the decisions cited in his order. Before us, Revenue has not pointed out any fallacy in the findings of Ld.CIT(A) nor has brought on record any contrary binding decision in its support. We therefore do not find any reason to interfere with the findings of Ld.CIT(A). **Thus, the grounds of Revenue are dismissed.**

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

13. **To sum up, the appeal of assessee is allowed and the appeal of Revenue is dismissed.**

Order pronounced on 16<sup>th</sup> day of October, 2019.

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

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

पुणे Pune; दिनांक Dated : 16<sup>th</sup> October, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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