

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI MAHAVIR PRASAD (JM) AND  
SHRI S. RIFAUR RAHMAN (AM)**

**ITA No. 6593/MUM/2018  
Assessment Year: 2013-14**

The Assistant Commissioner of Income Tax-24(1), Mumbai	<b>Vs.</b>	M/s. Abode Builders 03, Bilquis Apts. Mahakali Caves Road Andheri(W), Mumbai- 400093 PAN: AAB FA2 111 K
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri S. Michael Jerald (DR)  
Revenue by : Shri Bhupendra Shah

Date of Hearing: 05/11/2019  
Date of Pronouncement: 07/11/2019

**ORDER**

**PER MAHAVIR PRASAD, JM**

This appeal has been preferred by the Revenue against the order of Ld. CIT(A)-36/IT-65/ACIT-24(1)/2016-17 dated 24.07.2018 arising out of assessment order dated 22.03.2016 and Revenue has taken following grounds of appeal:-

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that there was no objective manner in which the amount given to the assessee at the time of retirement was determined and in directing the AO to delete the addition made on account of difference between the capital account and the sum received on retirement from a firm, amounting to Rs. 5,06,55,000/- under the head "Income from other sources".*

*a) The Ld. CIT(A) failed appreciate and consider the implication of the fact that the amount of Rs. 5.07 crores received over and above the capital contribution of M/s. Abode Builders was on account of stated compensation which was mutually agreed upon between the parties, and before the Assessing Officer the assessee had not shown any scientific basis on which the amount was derived.*

b) The Ld. CIT(A) has failed to appreciate the fact that since its inception, M/s. Atul Real Estate Holding had not conducted much business activities, and if valuation of the assessee's share in the Partnership Firm at the time of retirement on 11.04.2012 is done in terms of net assets of the partnership which remain after meeting the debts and liabilities, then the share comes to around of Rs. 9.28 crores, which is almost the same as the amount of capital introduced five years back.

c) The Ld. CIT(A) failed to appreciate the fact that either Net Asset Method or Discounted Cash Flow method is the accepted way of valuing the shares, and the Assessing Officer adopted the net asset method for valuation of shares and the value of shares of the assessee of Rs. 9.28 crores is lesser than the contribution of Rs. 9.35 crores.

d) The Ld. CIT(A) failed to appreciate the fact that adopting the Ready Reckoner value for valuation of assets without deducting the debts and liabilities is not accepted method of valuation of shares and the assessee had submitted the above mentioned method of valuation only at the time of appellate proceedings and not before the Assessing Officer.

e) The Ld. CIT(A) failed to appreciate the fact that at the time of assessment proceedings neither the assessee nor partnership firm M/s. Atul Real Estate Holdings could furnish any basis for arrival of payment of Rs. 14.35 crores which includes compensation of Rs. 5.45 crores.

f) The Ld. CIT(A) failed to appreciate the fact that the assessee submitted valuation based on Ready Reckoner value which was not submitted before the Assessing Officer, and the same was accepted by the CIT(A) without calling for remand report from the assessing officer, which is in contravention to Rule 46A.

g) The Ld. CIT(A) failed to appreciate the fact that the compensation of Rs. 5.45 crores was not paid for transfer of shares which was not valued either by the firm M/s. Atul Real Estate Holdings or by the assessee, and the payment received by the assessee was by way of compensation, and the share valuation was done by the Assessing Officer as on the date of retirement, which is lesser than the initial capital contribution and the assessee could not have claimed any long term capital loss.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to allow deduction u/s. 80IB(10) of the Income Tax Act, 1961, amounting to Rs. 38,75,1407- and treating the assessee as the Developer of the Project.

a) The Ld. CIT(A) had ignored the fact that as per the Joint Venture Agreement between the assessee and M/s. Varnan Estate, the development and construction of the building has to be done by M/s. Vaman Estate at its own cost, and the assessee did neither invest any money nor developed/constructed the building.

*b) The Ld. CIT(A) ignored the fact that after the Joint Venture Agreement, the status of the assessee changed from the Developer to mere facilitators and M/s. Vaman Estate became the Developer.*

*c) The Ld. CIT(A) had ignored the fact that the Joint Venture Agreement between the assessee and M/s. Vaman Estate is not in nature of sub-contracting but M/s. Vaman Estate was made 'Developer' as agreement was on principal to principal basis.*

*d) The Ld. CIT(A) had ignored the fact that the development of property started somewhere after 1991 and layout plans were sanctioned by BMC as early as 21.09.1996 and the commencement certificate was issued on 07.11.1996.*

*3. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.*

*4. The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary."*

2. Facts of the case are that during the course of assessment proceeding it has been observed that assessee has claimed long-term capital gain amounting to Rs. 9,64,319/-. It has been observed that on 02.04.2007 M/s. Abode Builders became partner with 36% shares in M/s. Atul Real Estate holding capital of Rs. 9,28,45,000/-. On 11.04.2012 retirement of the partners of assessee from M/s. Atul Real Estate, assessee got Rs. 14,35,00,000/-. In his return of income the assessee has treated Rs. 14,35,00,000/- as sales consideration of partnership firm land sold and assessee got his share and taken indexation on Rs. 9,28,45,000/- thereby incurring long-term capital loss of Rs. 9,64,319/- during A.Y. 2013-14. But Ld. AO was not agree with the contention of the assessee and hold that when in 2012, M/s. Abode Builders decided to retire and its share in terms of net assets of the partnership which remain after meeting the debts and liabilities, was same amount of Rs. 9.28 crores which was introduced five years back then M/s. Abode Builders would have been required to be

compensated at least with the interest foregone at Rs. 9.28 crores which it would have earned in five years.

3. In view of the above findings and material evidences the amount of Rs. 5,06,55,000/- paid over and above Rs. 9,28,45,000/- was treated as income from other sources.

4. Thereafter, assessee preferred first statutory appeal before the Ld. CIT(A) who revisited the issue and gone through the working of value of land after indexation and thereafter partly allowed the appeal of the assessee.

5. Now Revenue has come before us against the order of Ld. CIT(A) and filed second statutory appeal in this case assessee entered into partnership of 36% with M/s. Atul Real Estate and acquired development right in the years of 2007 @ Rs. 23,00,00,000/- thereafter in the year of 2012 same right were sold @ Rs. 35.87 crores and assessee got his share and retired from the partnership firm after received an amount of Rs. 14.35 crores.

6. The Ld. CIT(A) is having co-terminus power under Income Tax Act and he made detailed queries from the assessee and checked the value of the land on the basis of Ready Reckoner of 2012 and Ld. CIT(A) has also gone through the all relevant documents.

7. Ld. DR relied on the order passed by the Ld. AO.

8. Thus, in our considered opinion Ld. CIT(A) has passed reasoned order and same does not require any kind of interference at our end. In the result, this ground of assessee is allowed.

9. The assessee has claimed deduction under section 80IB(10) of the Act of Rs. 38,75,140/- for the year under consideration. It has been noticed from the earlier years that on the same issue of deduction under section 80IB(10) for A.Y. 2007-08, A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13. The AO has taken the opinion that assessee is not eligible for deduction under section 80IB(10) rejected the claim of 80IB(10) and made addition of Rs. 38,75,140/- as income from business and profession.

10. Thereafter, the assessee preferred first statutory appeal before the Ld. CIT(A) who revisited all the issues and query raised from the assessee with regard to claim of long-term capital gain or income from other sources and assessee satisfactorily reply to the Ld. CIT(A) who hold that assessee was eligible for long-term capital gain. So far, second ground is concerned Ld. CIT(A) granted relief to the assessee stating that issue of claim of assessee under section 80IB(10) of the Act amounting to Rs. 38,75,140/- is similar facts and circumstances relief was granted by the Department in earlier year and thereafter relief was also granted in favour of the assessee by ITAT.

11. Now Revenue has come before us and filed second statutory appeal stating therein that CIT(A) ought not to have given relief to the assessee.

12. Accordingly, the appellant received the amount of Rs. 14,35,00,000/- as its share from M/s. Atul Real Estate Holding in the net partnership assets.

13. We are aware that partnership firm has done meagre hardly business the partnership business during these 5 years since the partnership firm was constituted. The land cost of the Thane project has been appreciated and only appreciated value as per the shares in the partnership firm assessee received Rs. 14,35,00,000/- and assessee has also paid long-term capital gain tax to the revenue.

14. In our considered opinion, we do not find any reason into interfere in the order passed by the Ld. CIT(A) and we are reluctant to accept pleas of the revenue. Therefore, we dismiss this ground of appeal of the Revenue.

15. Now, we come to next ground with regard to allowing deduction u/s. 80IB(10) of the Income Tax Act amounting to Rs. 38,75,140/-. In this case assessee has claimed deduction under section 80IB(10) of Rs. 38,75,140/- for the year under consideration. It has been noticed that in earlier years on the same issue of deduction under 80IB(10) for A.Y. 2007-08, A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13 claim of the assessee was allowed by the Ld. CIT(A). Thus, at the principle of consistency we dismiss this ground of appeal of the Revenue.

16. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 07/11/2019.

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 07/11/2019

TANMAY, SR. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**