

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

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.929 & 1159/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

DCIT, Circle-5,  
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Arun Pitamber Seth,  
150-A, Mukund Nagar,  
Sunita Bungalow,  
Daulatram Mandir Path,  
Pune-411037.

PAN : ACGPS6044Q

.....प्रत्यर्थी / Respondent

Revenue by : Shri S. B. Prasad  
Assessee by : Shri M. K. Kulkarni

सुनवाई की तारीख / Date of Hearing : 20.11.2019

घोषणा की तारीख / Date of Pronouncement : 21.11.2019

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

There are **two appeals** under consideration. Both the appeals filed by the Revenue are against the separate order of CIT(A)-4/5, Pune dated 21.11.2016 and 29.12.2016 for the Assessment Years 2010-11 to 2011-12 respectively.

2. Since the issues and facts are common in both the appeals, therefore, both the appeals were heard together and are being disposed of by this composite order.

3. The solitary issue raised by the Revenue in both the appeals relates to the disallowance of claim of deduction u/s 80IB(10) of the Act.

4. Briefly stated the relevant facts include that the assessee is engaged in the business of Developers and Building Contractors. The assessee filed the return of income declaring total income of Rs.39,42,490/- for the assessment year 2010-11 and Rs.1,09,53,012/- for the assessment year 2011-12. The assessment was completed u/s 143(3) of the Act and the Assessing Officer disallowed the claim of deduction u/s 80IB(10) amounting to Rs.15,32,76,240/- and Rs.12,34,35,113/- for the assessment years 2010-11 and 2011-12 respectively. The operational para 4.5 of the assessment order for A.Y. 2010-11 is relevant in this regard. For the sake of completeness, the said para 4.5 of the assessment order for A.Y. 2010-11 is extracted hereunder :-

*“4.5 The project plan as revised on 28/3/2007 shows 6 buildings viz. A,B,C,D,E and G. The completion certificates for the buildings A,B and C were obtained as late as 31/3/2011. Not even Occupation certificates are produced by the assessee for these buildings which form part of the said project and should have been completed by 31/3/2009. It is to be noted here that the plan as revised on 28/3/2007 shows 6 buildings viz. A,B,C,D,E and G is amendment of the original plan itself dt. 24/4/2004. So the project is of at least 6 buildings (event if building F is left out) and not 3 and all should have been completed by 31/3/2009.”*

5. Before the CIT(A), the assessee reiterated the submissions as made before the Assessing Officer. The CIT(A), as per discussion given in para 5.5.5 of his order for the assessment year 2010-11, the claim of deduction u/s 80IB(10) of the Act is allowed in favour of the assessee. Similar view taken by the CIT(A) in the assessment year 2011-12. For the sake of completeness, the relevant para 5.5.5 of the order of the CIT(A) for the assessment year 2010-11 is extracted hereunder :-

*“5.5.5 It is thus seen that, from the facts of the Appellant's case, the layout plan though commenced on 21.04.2004 and which showed the construction plan of Building 'D', 'E' and 'G', the Commencement Certificate*

*for buildings 'A', 'B' and 'C' was granted on 28.03.2007. In between both these sanctions, the Appellant purchased the lands mentioned above and as seen from the amalgamation plan the buildings 'A', 'B' and 'C' were sanctioned on the lands purchased after the layout plan was approved. In view of this and following judicial discipline, the date of commencement for buildings under consideration i.e. 'A', 'B' and 'C' would be the date of the commencement of the building plan on 28.03.2007. As the AO has denied the deduction only on the ground of non-completion of the buildings during the stipulated time frame by holding the date of commencement to be that of the Commencement Certificate of the layout on 21.04.2004 and not that of the building plan for buildings 'A', 'B' and 'C', in view of the discussions in the preceding paragraphs, the AO, is directed to take the date of commencement to be 28.03.2007 for the buildings 'A', 'B' and 'C' and allow deduction claimed u/s 80IB(10) for these buildings for the year under consideration. The Appellant succeeds in Ground No. 1 and 3 which are accordingly, allowed."*

6. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before the Tribunal.

7. Before us, at the outset, ld. Counsel for the assessee reiterated the submissions as made before the Assessing Officer and the CIT(A). The ld. Counsel submitted that the CIT(A) rightly deleted the disallowance as made by the Assessing Officer and prayed for upholding the order of the CIT(A).

8. On the other hand, ld. DR for the Revenue relied on the order of the Assessing Officer and submitted that the order of the CIT(A) is not a speaking order and it should be reversed.

9. After hearing both the sides and perusing the orders of the revenue authorities, we find the Assessing Officer made the disallowance u/s 80IB(10) of the Act on the ground that non-completion of the buildings during the stipulated time frame by holding the date of commencement to be that of the commencement certificate of the layout on 21.04.2004 and not that of the building plant for buildings A, B and C. The CIT(A), after following the various judicial discipline, deleted the disallowance of

deduction claimed by the assessee u/s 80IB(10) of the Act on the ground that the date of commencement for buildings under consideration i.e. A, B and C would be the date of commencement of the building plant on 28.03.2007.

10. Considering the above, we are of the opinion that the finding of the CIT(A) on this issue is reasoned one and the same does not go beyond the law. Therefore, we are of the considered view, the order of the CIT(A) is fair and reasonable and it does not call for any interference. We uphold the same. Thus, the relevant grounds raised by the Revenue are dismissed.

11. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 21<sup>st</sup> day of November, 2019.

Sd/-  
(विकास अवस्थी /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(डी. करुणाकरा राव/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> November, 2019.

*Sujeet*

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.