

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 1228/CHD/2012

निर्धारणवर्ष / Assessment Year : 2009-10

M/s Motia Construction Limited, Chandigarh Delhi Highway, Royal Estate, NAC Zirakpur	बनाम	The DCIT, Central Circle, Patiala
स्थायीलेखासं./PAN NO: AADCM6576B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्वकीओरसे/ Revenue by : Shri G. S. Phani Kishore, CIT DR

सुनवाईकीतारीख/Date of Hearing : 31.10.2019

उद्घोषणाकीतारीख/Date of Pronouncement : 27.12.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.09.2012 of the Commissioner of Income Tax (Appeals)-1, Ludhiana [hereinafter referred to as 'CIT (A)']

2. The brief facts of the case are that the assessee company is involved in the real estate business. A search action u/s 132 of the Income Tax Act, 1961 (in short 'the Act') was carried out at the premises of one Shri R.M.Singla in Ludhiana on 7.5.2008, who was having

business relation with the then Director of the Company Shri Pawan Bansal. During search action, cash worth Rs. 62,75,000/- was found at his premises. Apart from that, certain incriminating documents evidencing unaccounted transactions of Assessee Company in respect of difference in construction / sale of flats were also found. The statement of Shri R.M. Singla was recorded during the search action and in his statement recorded on 7.5.2008, he stated that out of the cash found at his premises, Rs. 40 lacs belonged to the assessee company. Summons were also issued u/s 131 of the Act to Shri Pawan Bansal, the then director of the assessee company, whose statement was also recorded on 10.5.2008, wherein, he confirmed that cash of Rs. 40 lacs found at the premises of Shri R.M. Singla belonged to the assessee company. When confronted with other documents found, Shri Pawan Bansal, surrendered a sum of Rs. 150 lacs as additional income of the company which included cash of Rs. 40 lacs owned up by Shri Pawan Bansal on behalf of the assessee company. Therefore, total surrender by Shri Pawan Bansal, on behalf of the assessee was at Rs. 150 lacs i.e. Rs. 40 lacs found cash with Shri R.M. Singla plus Rs. 110 lacs on account of unexplained transactions relating to the construction and sale of flats. Thereafter, a search action was carried out at the premises of the assessee company also on 25.2.2009 during which the assessee company again surrendered the additional sum of Rs. 85 lacs on account of difference in sale and construction of flats. Thereafter, the assessee

company filed return of income for the assessment year under consideration and disclosed the surrendered amount at Rs. 1.95 crores instead of total surrender of Rs. 2.35 crores. The assessee company did not add amount of Rs. 40 lacs which was found at the premises of Shri R.M. Singha but owned by the assessee company through its director. The assessee company further claimed deduction u/s 80IB in respect of the surrendered income of Rs. 1.95 crores reflected in the Profit & Loss account.

3. On being asked to explain by the Assessing Officer in this respect, the assessee explained that the cash given to Shri R.M. Singla was out of the cash available in the books of the company. That the assessee never changed its stand that the cash of Rs. 40 lacs was given to Shri R.M.Singla by the assessee company, however, the same was inadvertently surrendered as unaccounted, whereas, the same was duly accounted for in the account books of the company. In respect of the claim of deduction u/s 80IB of the Act, it was submitted that the surrendered income represented the business income of the assessee. That since the assessee was involved in housing development business and the said income was derived from business of developing housing project, hence, the assessee was entitled to claim deduction u/s 80IB(1) of the Act on the said surrendered income. The Assessing Officer, however, did not agree with the aforesaid contention raised by the

assessee. The Assessing Officer observed that the director of the assessee in his statement had admitted that the aforesaid amount for Rs. 40 lacs found from the premises of Shri R.M. Singla, was unaccounted income of the assessee company. Further, in respect of claim of deduction u/s 80IB, the Assessing Officer rejected the contention of the assessee on the ground that unless the assessee establishes a clear link between unaccounted income and its housing project, the same would not be eligible for deduction u/s 80IB of the Act.

4. Being aggrieved by the above order of the Assessing Officer, the assessee preferred appeal before the CIT(A), however, the CIT(A) dismissed the appeal of the assessee by upholding the findings of the Assessing Officer. The assessee, thus, has come in appeal before us, with the following grounds of appeal:-

1. *a) That the Ld. CIT (A) is not justified in confirming addition of Rs. 40 Lacs under the facts & circumstances of the case.*

b) That the Ld. CIT (A) is not justified in not accepting the book results in which entries of such cash of Rs. 40 lacss was duly recorded.

c) Without prejudice to above,

(i) The appellant disputes the quantum of addition.

(ii) That the Ld. CIT (A) is not justified in not allowing the deduction u/s. 80-IB (10) on addition of Rs. 40 Lacs being eligible for deduction.

2. a) *That the Ld. CIT (A) is not justified in confirming the disallowance of deduction u/s. 80-IB (10) on the surrendered amount of Rs. 195 Lacs.*

b) That the Id. CIT (A) is not justified in not treating the surrendered amount of Rs. 195 Lacs as income from Housing Project being eligible for deduction u/s. 80-IB (1) .

c) Without prejudice to above, the appellant disputes the quantum of deduction u/s. 80-IB (10).

3. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

5. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have gone through the record.

6. **Ground No.1:** Vide this ground, the assessee has contested the addition of Rs. 40 lacs which was found in cash from the premises of one Shri R.M. Singla and further owned up by the assessee company through its director. The Ld. Counsel for the assessee in this respect has invited our attention to page 10 of the paper book which is copy of the reply filed to the Assessing Officer during the assessment proceedings. In para 2 of the said reply, it has been stated that after search, the assessee company reconciled the amount of cash found with Shri R.M. Singla and noted that the said amount was duly recorded as an 'imprest' given to Shri Pawan Bansal, the then Managing Director of the company in the books of account of the company and the surrender

of Rs. 40 lacs was wrongly made as the same was duly verifiable and explainable. The Ld. counsel in this respect has submitted that the said amount of Rs. 40 lacs was further given by Shri Pawan Bansal to Shri R.M. Singla for purchase of the property. That there was no discrepancy between the statements of Shri R.M.Singla and Shri Pawan Bansal recorded during the course of search and investigation proceedings. During the course of search of proceedings on 7.5.2008, Shri R.M. Singla stated that cash of Rs. 40 lacs belonged to the assessee company which was given to him by Shri Pawan Bansal. When Shri Pawan Bansal was confronted, he duly admitted that he had paid Rs. 40 lacs to Shri R.M. Singla, on behalf the company. However, Shri Pawan Bansal surrendered the said amount as 'unexplained income' but later on when the accounts were reconciled, it was found that the said amount of cash was duly recorded in the books of account of the company and shown to be paid to Shri Pawan Bansal and had never been used for other purposes. However, the same has not been received back till date as the same was seized by the Department. It, has therefore, been submitted that only because during the statement of Shri Pawan Bansal, he inadvertently under the wrong impression without consulting the accounts had offered the said amount addition income of the assessee, however, the source of the said amount had been duly explained by the assessee company from its books of account / cash book.

7. The Ld. DR on the other hand, has submitted that there is no allegation that the statement of Shri Pawan Bansal recorded in the course of post survey action / proceedings was recorded under any threat or coercion. That he himself had surrendered the said amount as 'unaccounted income' of the company. He therefore, has relied upon the findings of the lower authorities.

8. We have heard the rival contentions and gone through the record. In this case, there is no discrepancy or contradiction in the statement of Shri R.M. Singla and Shri Pawan Bansal, the then Managing Director of the company. Shri R.M.Singla during the search action stated that amount for Rs. 40 lacs belonged to the assessee company which was promptly confirmed by Shri Pawan Bansal that the said amount belonged to the assessee company. However, when the accounts of the company were consulted, it was found that the said amount of cash was duly recorded as an 'imprest' given to Shri Pawan Bansal which was further handed over by Shri Pawan Bansal to Shri R.M.Singla. Search action later on was also conducted at the premises of the assessee company and no other cash was found during the course of search action. There is no evidence that the cash amount of Rs. 40 lacs given as an 'imprest' to Shri Pawan Bansal has been used for some other purposes. Shri Pawan Bansal on the date of search, during the search action at the premises of Shri R.M.Singla promptly admitted that the cash of Rs. 40

lacs has been given by him to Shri R.M. Singla on behalf of the assessee company. All the facts relating to the aforesaid cash of Rs. 40 lacs have been duly explained and further the explanation given by the assessee in this respect inspires confidence as neither there is any difference in respect of the amount in question nor in respect of the source of the same. The books of account of the assessee are dully audited by the auditor and no defect has been found in the same by the Revenue authorities.

In view of this, the assessee rightly did not offer the said amount of Rs. 40 lacs as its additional income. The addition made / confirmed by the lower authorities in respect of the aforesaid amount, therefore, is not sustainable in the eyes of law and the same is accordingly ordered to be deleted.

9. **Ground No.2:** In this ground, the assessee has agitated the action of the lower authorities in not allowing deduction u/s 80IB (10) of the Act in respect of the surrendered amount of Rs. 195 lacs . It is undisputed fact that the surrendered amount of Rs. 195 lacs was not on account of any cash or other valuable article or thing found at the premises of the assessee company, rather, the said surrendered was made on account of certain documents found showing unaccounted construction / sales of flats. It has also not been disputed that the assessee has been constructing a housing project which was eligible for

deduction u/s 80IB of the Act. The documents found during search action clearly revealed that the same related to the business activity / business profits of the assessee company. There is no evidence to link the aforesaid surrender with any other income from any other source of the assessee, as the nature of the income / surrender is duly revealed from the documents found and seized during the search action. The Ld. counsel for the assessee has also invited our attention to the page 6 of the paper book, which is a letter of surrender, wherein, it has been clearly stated that Rs. 85 lacs have been surrendered to cover up discrepancy found during the course of search including the difference in sale of flats / construction.

The facts on the file itself speaks that the aforesaid surrender was out of the unexplained profits of the assessee company from its housing projects. There is no allegation that the said income is belonging to any other project or activity of the assessee. The discrepancy, if any, found was in respect of the accounts of the housing project of the assessee because of which the aforesaid surrender was made. Hence, the said income can safely be said to be belonged to the housing project business of the assessee. Having held so, the assessee is accordingly eligible to claim exemption u/s 80IB of the Act on the said income. We, therefore, do not find any justification on the part of the lower authorities for denying deduction of the assessee in respect of the aforesaid income. The impugned order of the CIT(A) on this issue is set

aside and the Assessing Officer is accordingly directed to allow deduction u/s 80IB of the Act to the assessee on the aforesaid amount of Rs. 195 lacs.

10. **Ground No.3** : Ground No.3 is general in nature and does not require any specific adjudication.

In view of our discussion made above, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 27.12.2019.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 27.12.2019
“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar