

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

BEFORE SHRI D. KARUNAKARA RAO, AM
AND
SHRI LALIET KUMAR, JM

आयकर अपील सं. / ITA No.2287/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

The Dy. Commissioner of Income-tax,
Circle – 7, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Aaiji Surobhi Group
B-201, Runwal Regency,
Sadhu Vaswani Chowk,
Camp, Pune – 411001

PAN : AAAAA4551B

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 06.02.2020

घोषणा की तारीख / Date of Pronouncement : 07.02.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal filed by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Pune-5, Pune, dated 15.06.2017 for the Assessment Year 2009-10.

2. Briefly stated the relevant facts include that the assessee is an AOP consisting of two members viz. Aaijee Group and Sukanto Roy Construction. The assessee filed the return of income declaring total income of Rs.6,73,658/- after claiming deduction of Rs.2,00,61,092/- u/s 80IB(10) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The case was selected for scrutiny and notice was duly issued and served on the assessee. During the assessment proceedings, the Assessing Officer noticed that the assessee has developed a project at Dhanori and has claimed the said project as an eligible project for claiming deduction u/s 80IB(10) of the Act. The Assessing Officer on perusing the facts of the case, the assessee was asked to justify its claim. In response thereto, the assessee filed detailed submission. The Assessing Officer after considering the submissions of assessee held that since the project was approved in F.Y. 2003-04 and subsequently revised on 09.05.2008, the project was not completed by stipulated date i.e. by 31.03.2008. Thus, the project which the assessee claimed as an eligible project, failed to comply with the mandatory provisions as provided in section 80IB(10) of the Act. The Assessing Officer accordingly, disallowed an amount of Rs.2,00,61,092/- and added back to the total income of the assessee.

3. In the first appellate proceedings, the ld. CIT(A) allowed the claim of assessee by relying on the decision of Pune Bench of Tribunal in assessee's own case relating to assessment year 2010-11 in ITA No.687/PUN/2014, order dated 03.03.2017.

4. Aggrieved with the order of the CIT(A), the Revenue is in appeal before us.

5. On perusal of material on record, we find that the CIT(A) granted relief to the assessee (para 6.3) relying on the decision of Pune Bench of Tribunal in assessee's own case in ITA No.687/PUN/2014, relating to A.Y. 2010-11, order dated 03.03.2017. The relevant findings of Tribunal are in para 12 of the order and the same read as under :-

“12. The second phase of plan which was sanctioned on 09.05.2008 materialized only because of additional FSI available with the assessee after 31.03.2008. Once, additional FSI was available to the assessee, it sought permission of PMC to build additional flats in one of the existing buildings and to construct building G. The assessee has not considered the said additional flats to be part of the eligible project but since, the flats were in building which was part of the earlier project, the Assessing Officer and the Commissioner of Income Tax (Appeals) held that the project was not completed by 31.03.2008. While interpreting beneficial provisions of the Act i.e. u/s. 80IB(10) of the Act, the authorities below are required to take a pragmatic view of the matter. In the present case, when the assessee envisaged the construction of project phase 1 then he had permissible area to a certain extent, under which he could only construct 148 flats, which he constructed and completed by the stipulated date. The assessee had claimed deduction u/s. 80IB(10) of the Act in respect of those 148 flats only in the respective years. However, since, the assessee is a business man and on later date, because of the additional FSI available, the assessee constructed additional space, does not mean that the additional flats constructed by the assessee were part of the eligible project, which was sanctioned to the assessee in 2003; because in 2003 the additional FSI was not available to the assessee. Hence, the situation which arises in future cannot be dated back to deny the claim of deduction to the assessee. Accordingly, we hold so. In other words, the project phase 2 is an independent project which was sanctioned on 09.05.2008 and was constructed thereafter and its non-completion cannot deny the claim of deduction made by the assessee in respect of project phase 1. The assessee admittedly has not claimed any deduction u/s. 80IB(10) of the Act on the additional flats. In any case and without prejudice to our order, the assessee is entitled to prorata deduction u/s. 80IB(10) of the Act in respect of completed flats. Accordingly, we direct the Assessing Officer to allow the claim of deduction u/s. 80IB(10) of the Act on the profits of the part of eligible project comprising of 148 flats. The grounds of appeal raised by the assessee are thus, allowed.”

(underline provided by us for emphasis)

6. Considering the above, we find the order of the CIT(A) is fair and reasonable on this issue and the same does not call for any interference. Thus, the grounds raised by the Revenue are dismissed.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open Court on 7th February, 2020.

Sd/-
LALIET KUMAR
JUDICIAL MEMBER

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 7th February, 2020.
GCVSR

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

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

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

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