

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.2290/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle-7,
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Karia Developers & Builders,
205, Gera 77, Kalyaninagar,
Near Bishop School, Pune-411006.

PAN : AAGFK4810N

.....प्रत्यर्थी / Respondent

Revenue by : Shri Pankaj Garg
Assessee by : Shri Vipin Gujarathi

सुनवाई की तारीख / Date of Hearing : 06.02.2020

घोषणा की तारीख / Date of Pronouncement : 11.02.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue is against the order of the CIT(A)-5, Pune dated 09.06.2017 for the assessment year 2012-13.

2. The effective ground raised by the assessee is as under :-

"1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is correct in deleting the addition made u/s 80IB(10) of the Income Tax Act, 1961 holding that the housing project of the assessee was approved by the Collector Pune not as local authority defined u/s. 3(31) of the General Clauses Act?"

3. Briefly stated the relevant facts include that the assessee is a partnership firm and engaged in the business of Real Estate Development and construction of residential project. The assessee filed the return of

income declaring total income of Rs.3,63,33,330/-. During the year under consideration, the assessee developed a housing project named “Konark Exotica” situated at Wagholi, Pune. The assessee claimed deduction for the said project amounting to Rs.12,40,34,451/- u/s 80IB(10) of the Act after obtaining the requisite approval by the District Collector to the housing project. Assessing Officer held that the deduction is not possible due to violation of provisions of section 80IB(10) of the Act. As per the Assessing Officer, “Local Authority” is empowered to grant such approval and not the District Collector.

4. During the first appellate proceedings, the CIT(A) considered the submission of the assessee and following the Jurisdictional High Court’s judgement in the case of Pr.CIT vs. M/s. Swapnashilpa Developers vide ITA No.25 and 26 of 2016, granted the deduction claimed u/s 80IB(10) of the Act. The contents of para 5.18 and 5.19 of the said order of CIT(A) are relevant in this regard.

5. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before us with the ground extracted above.

6. Before us, ld. DR for the Revenue relied heavily on the order of the Assessing Officer and submitted that the order of the CIT(A) is incorrect and the same should be reversed.

7. On the other hand, ld. Counsel for the assessee reiterated the submission as made before the CIT(A). Justifying the order of the CIT(A) is reasoned one on this issue, ld. Counsel for the assessee submitted that the

Assessing Officer erred in disallowing the claim of deduction u/s 80IB(10) of the Act. The Id. Counsel further submitted that the Assessing Officer did not appreciate the facts of the case in proper prospective and disallowed the claim of the assessee. The Id. Counsel prayed to allow the claim of deduction u/s 80IB(10) of the Act in question. In this regard, the Id. Counsel filed a Paper Book containing various judgements/decisions in support of the claim of the assessee.

8. After hearing both the sides and considering the Paper Book filed before us, we find the CIT(A) took right step to allow the claim of deduction u/s 80IB(10) of the Act and the finding of the CIT(A) on this issue is justifiable. Further, we find it relevant to extract the contents of para 5.18 and 5.19 of the order of the CIT(A) and the same are extracted hereunder :-

“5.18 In fact, the jurisdictional High Court in ITA No.25 and 26 in the case of Pr.CIT Nagpur vs. M/s. Swapnashilpa Developers has held that, the approval granted by the Village Panchayat for the housing project to be as one granted by the ‘Local Authority’ in accordance with the provisions of Section 80IB(10). Similarly, as the project fell under the jurisdiction of the MRTP Act, where the Collector is authorized to grant the necessary approval through the Director Town Planning, the approval granted by the Collector to the project in the case under consideration, is taken to be one granted by the ‘Local Authority’ in accordance with the provision of Section 80IB(10).

5.19 In view of the discussions in the preceding paragraphs, the Collector is held as a ‘Local Authority’ within the meaning of Section 80IB(10) of the I.T. Act, 1961. The Appellant succeeds in this Ground of Appeal, which is accordingly allowed.”

9. Further, we examined the letter of approval by the District Collector and the relevant extracts are found necessary to incorporate the same in the order as under :-

*“Office of the Collector, Pune.
Revenue Branch.
No.:PMH/NA/SR/291/08.
Pune-1, Date:10/12/2008.*

.....

Hence the applicants have prayed that, considering recommendations made by the Assistant Director of Town Planning, Pune; I, the Collector, Pune; in pursuance of the authorities derived u/s.44 of the Maharashtra Land Revenue Code and S.18 of the Maharashtra Regional & Town Planning Act 1966, hereby give non agricultural permission for residential use and permission for construction plans in respect of the property situated at Mouje Wagholi, Tal. Haveli, bearing Gat Nos.866/1, 866/2, and 868, total area 49400 sq.mtr. out of which after deducting area under the green zone 16532, and area under the 4932 sq.mtr. to use remaining area 27936 sq.mtr. for proposed parking + 6th parking + 7th floor revised construction which is subject to the following terms and conditions :

.....

- 24) For A Class Municipal Council Byelaws as per R.18.1 the is required to provide facility of lift.*
- 25) When the developer shall make construction upto plinth level it will be binding to inform to this office. And approval of the construction by the Collector, the further construction will be made.*
- 26) The applicants shall submit certificate for structural stability with the Assistant Director, Town Planning, Pune; and also to this office.*
- 27) The completion certificate for the proposed building is required to be taken. Before obtaining completion certificate the following compliance is required to be made such as Fire Brigade Machinery, Fire Lift, Fire Escape Staircase, etc.”*

10. From the above, it is evident that the relevant Gat Numbers falls in an area controlled under Maharashtra Land Revenue Code and Maharashtra Regional & Town Planning Act (MRTP), 1966. The Collector has given approval of the permission to convert the land to non-agricultural purpose. He also issued the permission to construct of residential houses and the said property located at above cited Gat Numbers. While granting the permission, the Collector mentioned the terms and conditions in his permission letter from 1 to 33 where the conditions specify the manner of construction of the

building, post-construction of the building, obtaining of the completion certificate etc.

11. Considering the above finding of the CIT(A) on the issue of allowing of deduction u/s 80IB(10) of the Act, we are of the opinion that the order of the CIT(A) is fair and reasonable and it does not call for any interference. Thus, the ground raised by the Revenue is dismissed.

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

Order pronounced on this 11th day of February, 2020.

Sd/-

(LALIET KUMAR)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 11th February, 2020.

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, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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