

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

BEFORE SHRI D. KARUNAKARA RAO, AM  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos.1334, 2045 & 2046/PUN/2017

निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15

The Income Tax Officer,  
Ward – 5(3), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Shree Malhar Associates,  
S. No. 18, Sukhsagar Nagar,  
Katraj, Pune – 411046

PAN : ABFFS9981C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pratik Sandbhor

Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 10-06-2020

घोषणा की तारीख / Date of Pronouncement : 10-06-2020

**आदेश / ORDER**

**PER BENCH :**

There are three appeals under consideration. All the appeals are filed by the Revenue against the common order of CIT(A)-4, Pune dated 06-12-2016 and 05-05-2017, respectively for the Assessment Years 2012-13 to 2014-15. Since an identical issue is involved in all the appeals, therefore, these were heard together and are being disposed of by this composite order.

2. In all the appeals, the Revenue raised similar grounds which relate to the correctness of the order of the CIT(A) in deleting the disallowance of claim of deduction u/s. 80IB(10) of the Act.

**Appeal for A.Y. 2012-13**

3. Briefly stated, relevant facts for A.Y. 2012-13 include that the assessee is a partnership firm carrying out the business of Development and Construction. The assessee, in partnership under the name 'Shree Malhar Associates', has constructed the residential project called "Kamal Green Leaf" at Gat No. 571, Part Kirkatwadi, Tal. Haveli, Distt.-Pune. The assessee firm was sanctioned a residential building plan from Collector of Pune and Town Planning Department, Pune in the F.Y. 2007-08. The original plan of the project was sanctioned on 22-01-2008. The building plan was for four buildings namely A Wing, B Wing, C1 Wing and C2 Wing dated 17-12-2007. Subsequently, the plan was revised after the order of NA was received by the assessee firm on 22-01-2008. As per the revised plan, the sanction was for 5 buildings, i.e. A, B, C1, C2 and D. The said project was completed on 27-03-2013 as per the Completion certificate issued by the Gram Panchayat, Kirkatwadi. The AO observed that the Town Planning Authority has granted approval for 5 buildings whereas as per the completion certificate issued by Gram Panchayat only 4 buildings have been completed upto 31-03-2013. Since Building D is not completed before 31-03-2013, the AO disallowed the claim made u/s.80IB(10) amounting to Rs.5,06,90,983/-. Aggrieved thereby, the assessee approached the CIT(A) who allowed the claim of the assessee vide the discussion given in Para No.5.3.3 which is extracted below :

*"5.3.3 Thus, from the appraisal of the aforesaid facts, it is observed that the four buildings fulfill the criteria of the provisions stated u/s. 80IB(10). The question before me is whether the 80IB deduction for these four buildings be allowed considering the non completion of Building D as sanctioned in the original plan. Sec. 80IB a beneficial provision available to the assessee and as per the CBDT circulars issued from time to time it is observed that the beneficial provisions should be interpreted liberally. It is undisputed that the four buildings fulfill all the criteria specified u/s. 80IB(10). I have perused the decisions relied upon by the Ld AR. I*

*further observe that the construction of building D was not commenced at all. It was pending for certain approvals beyond the control of the appellant. Since there is no contravention of any provisions u/s. 80IB(10) of the Act, by the four buildings considered as standalone, I am inclined to agree with the claim of the appellant of allowing the deduction u/s. 80IB(10). Accordingly, the Ground No. 1 & 2 raised by the appellant are allowed.”*

Assailing the order of CIT(A), the Revenue has come up before the Tribunal raising the following grounds (A.Y. 2012-13) :

- “1. *Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in deleting the disallowance of claim of deduction u/s. 80IB(10) of the Act of Rs.5,06,90,983/- ?*
2. *Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in interpreting the explanation (i) and (ii) to section 80IB(10) of the IT Act by treating subsequent approval of building plan as separate approval of housing project?*
3. *Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in allowing the deduction of Rs.5,06,90,983/- claimed u/s 80IB(10) for the projects buildings A, B, C1 ,C2 & D by holding that the projects in four buildings i.e. A, B, C1, C2 has satisfied the criteria of provisions u/s 80IB(10) when it is undisputed fact that the projects of building "0" has not commenced at all?*
4. *For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.*
5. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

4. At the outset the ld. DR for the Revenue made out a case that the order of CIT(A) is not a speaking order and brought our attention to the contention of para 5.3.3 read with the note furnished by the ld. AR and mentioned that the facts relating to the correctness of the completion certificate that issued by the Planning Authority and Collector suffers from various discrepancies which are mentioned in the Note. He also submitted that the completion certificate mentioned shops which are not there at that point of time of inspection by the authority. In response to the said allegations, the ld. AR filed written submissions mentioning that the error with regard to the shops in place of the buildings is a typographical error committed by the Town Planning Authority and his office.

5. Regarding speaking order allegation of the ld. DR, the ld. AR submitted that the order of Town Planning Authority/Collector is longest with approx 80 pages and the facts and findings are discussed throughout the order of CIT(A). Para 5.3.3 cannot be read in isolation. In response, the ld. DR for the Revenue submitted that the note furnished by the ld. AR may be sent to the CIT(A) for fresh adjudication after appreciating of the facts now given by the ld. DR. On hearing the parties and going through the note submitted by the ld. AR, we deem it appropriate to remand this issue back to the file of CIT(A) for considering this issue afresh in the light of the submissions made by the parties. Accordingly, the grounds raised by the Revenue are allowed for statistical purposes.

6. In the result, the appeal of the Revenue for A.Y. 2012-13 is allowed for statistical purpose.

**Appeal for A.Ys. 2013-14 & 2014-15**

7. Since the grounds for A.Ys. 2013-14 and 2014-15 are identical to the grounds of the appeal for A.Y. 2012-13, our decision for A.Y. 2012-13 shall apply "***mutatis mutandis***" for A.Ys. 2013-14 and 2014-15, as well. Accordingly, the grounds for A.Ys. 2013-14 and 2014-15 are allowed for statistical purposes.

8. In the result, all the three appeals of the Revenue are allowed for statistical purposes.

Order pronounced on 10<sup>th</sup> day of June, 2020

**Sd/-**  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

**Sd/-**  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> June, 2020.

RK

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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