

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1870/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,
Ward – 2(3), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Laxman Sopanrao Nimhan,
Row House No. 10, Shree Bhagwati Nagar,
Pashan Road, Pune – 411021

PAN : ACDPN9016G

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Navin Gupta

सुनवाई की तारीख / Date of Hearing : 08-09-2020

घोषणा की तारीख / Date of Pronouncement : 23-09-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 30-03-2017 passed by the Commissioner of Income Tax (Appeals)-3, Pune [‘CIT(A)'] for assessment year 2012-13.

2. Ground Nos. 1 to 4 raised by the Revenue challenging the action of CIT(A) in granting deduction u/s. 80IB(10) of the Act on pro-rata basis in the facts and circumstances of the case.

3. The brief facts relating to the case on hand are that the assessee is an individual engaged in the business of Promoter and Builders. The assessee declared total income of Rs.2,58,249/- and on scrutiny, notices u/s. 143(2) and 142(1) of the Act were issued, in response to which the assessee filed certain details and explanations. According to AO, the assessee carried out a project by name "Platinum Tower" in Wakad, Pune and shown the net profit at Rs.7,70,20,867/- and claimed deduction of Rs.6,36,65,139/- u/s. 80IB(10) of the Act. The AO was of the opinion that the assessee constructed 86 flats but however the built up area of 8 flats was exceeded 1500 sq. ft. He held that a project cannot be approved in piecemeal for exceeding 1500 sq. ft. for 8 such flats. He denied entire deduction vide its order dated 30-03-2015 passed u/s. 143(3) of the Act. We note that before the CIT(A), the assessee placed reliance on case laws and contended that the assessee is entitled to pro-rata deduction in respect of profits earned for the eligible units. Considering the same the CIT(A) granted pro-rata deduction to 78 flats u/s. 80IB(10) of the Act. The relevant portion of which in paras 7.3.3.7 to 7.3.3.9 are reproduced here-in-below :

"7.3.3.7 The appellant also has referred to the case of DS Kulkarni Developers Vs ACIT, ITA nos. 1428 & 1429/Pn/2008 dated 8-8-2012 (Pune Trib). In the said case, the Hon'ble Pune Tribunal held, that the assessee was entitled to pro-rata deduction in respect of the profits earned for the eligible units/buildings which complied with the conditions of Section 80IB (10) of the Act. A number of other decisions have been cited by the appellant in the written submission, which have decided the issue relating to proportionate deduction and/ or on pro-rata basis for the completion of part of the project for various reasons. The same are not being discussed here in detail for the sake of brevity and have been already discussed by the appellant in its written submission during appellate proceedings. The cases are mentioned only herein below:-

- a. *Bramha Builders (Bom H.C.)*
- b. *Kumar Builders Consortium (ITA No.1164/PN/2012)*
- c. *Rohan Homes (ITA No.423/PN/2011)*
- d. *Ankit Enterprises Developers Ltd. (ITA No. 156 & 172/Pn/2011)*
- e. *Ekta Housing Pvt. Ltd. (ITA No. 3649/Mum/2009)*
- f. *Air Developers [122 ITD 125 (Nag)]*
- g. *Sheth Developers Pvt. Ltd. [33 SOT 277 (Mum)]*
- h. *Sanghvi & Doshi Enterprises [131 ITD 151 (Dhennai)(TM)]*
- i. *SJR Builders [3 ITR (Trib) 569 (Mum)]*

7.3.3.8 In this connection, the decision of the Hon'ble Supreme Court regarding interpretation of the Legal status may be cited. The Hon'ble Supreme Court in the case Bajaj Tempo Ltd Vs CIT (1992) 196 ITR 188 (SC) held that the

interpretation of the legal statutes are required to be made on the basis of beneficial interpretation to the assessee. In the said case, it was held by the Apex Court that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the section and not to frustrate it. Reference may further be made to the cases of CIT Vs Gwalior Rayon Silk Mfg Co. Ltd (1992) 196 ITR 149 (SC) and CIT Vs Straw Board Mfg. Ltd. (1989) 177 ITR 431 (SC) wherein, the Hon'ble Supreme Court held that it is the settled law that the expression used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative intention, which is to be interpreted beneficially to the assessee. In another case the Hon'ble Pune Tribunal viz. BK pate Enterprises Vs DCIT (supra) had held that section 80IB(10) prescribe deductions in respect of category of profit being earned from the housing project. The said section is not pari-materia with the charging sections or a section prescribing the method of computation of profits. Therefore, section 80IB(10) cannot be said to be governed by Section 4 or Section 145. The purpose of granting this incentive is to promote the growth of housing project, hence otherwise also the section is to be construed liberally.

7.3.3.9 My view, regarding the misconstrued interpretation by the AO, in the case of Brahma Associates & Others (supra) is fortified further by the above judicial pronouncements and thus, denying the appellant deduction u/s 80IB(10) is not justified. These judicial decisions have given categorical findings, that, for a housing project, if all the conditions as laid down in section 80IB(10) of the Act are fulfilled the assessee is entitled to proportionate deduction and/or deduction on pro-rata basis for the part completed by them within the prescribed time limit. In the case of the appellant, it has been seen, that the appellant's project "Platinum Tower" consisted of 86 flats in Buildings "A" & "B" were completed and completion certificate to that effect was issued by the PCMC. Therefore, for the said 86 Units if otherwise for deduction u/s. 80IB(10) the conditions were fulfilled, the appellant was entitled to deduction u/s. 80IB(10). I find that in respect of 8 flats /units of first floor in the aforesaid buildings, the conditions regarding the limit below 1,500 Sq.ft of each flat was not fulfill for the detailed reason given above and, accordingly, the appellant cannot be allowed the deduction u/s. 80IB(10) for the said 8 units. But in respect of all other 78 flats, the appellant fulfilled the conditions and, therefore, entitled to deduction under the said section for the said 78 units. I, therefore, direct the AO to allow the pro-rata deduction on the profit earned by the appellant in respect of sale of 78 units of residential flats u/s. 80IB(10) of the Act and deny the same benefit in respect of 8 units of residential flats of Buildings "A" & "B" for the A.Y. 2012-13. The re-computation of the total income to be made by the AO as indicated above. Ground nos. 2, 3 & 4 raised by the appellant are accordingly **partly allowed.**"

4. On perusal of the above, we find that the Pune Bench of Tribunal in the case of DS Kulkarni Developers Vs. ACIT in ITA Nos. 1428 & 1429/PN/2008 vide its order dated 08-08-2012 held that the assessee is entitled to claim pro-rata deduction u/s. 80IB(10) of the Act in respect of profits earned to eligible units. In the present case, the facts remains admitted out of 86 flats, 78 flats are eligible units to which the CIT(A) granted pro-rata deduction and denied the benefit in respect of remaining 8 flats. We also note that the Hon'ble High Court of Bombay consistently upheld the deductions claimed on pro-rata basis. In view of the same, we

find no infirmity in the impugned order and the order of CIT(A) is justified.
Thus, ground Nos. 1 to 4 raised by the Revenue are dismissed.

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

Order pronounced in the open court on 23rd September, 2020.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd September, 2020.
RK

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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