

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE
(Through - VIRTUAL COURT)

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

आयकर अपील स० / ITA No.2446/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

The Dy.Commissioner of Income-Tax,
Circle - 14, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Shree Venkatesh Associates,
S.No.227, Matru Smruti Gadital,
Hadapsar, Pune - 411028.

..... प्रत्यर्थी /
Respondent

PAN : ABHFS2539Q.

Assessee by : Shri Sunil Ganoo

Revenue by : Shri Deepak Garg.

सुनवाई की तारीख / Date of Hearing : 25.09.2020

घोषणा की तारीख / Date of Pronouncement : 28.09.2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM

This appeal is filed by the Revenue against the order dt.03.07.2017 passed by the learned Commissioner of Income Tax (Appeals)-7, Pune for A.Y. 2011-12.

2. The only issue to be decided is as to whether the learned Commissioner of Income Tax (Appeals) is justified in allowing proportionate deduction u/s 80IB(10) of the Act in the facts and circumstances of the case.

3. Heard both parties and perused the material available on record. Assessee is a partnership firm engaged in the business of developing housing projects. We note that during the year under consideration assessee had developed housing project by name "Marvilla" at Hadapsar. The assessee claimed an amount of Rs.11,36,15,109/- as deduction u/s 80IB(10) of the Act. To verify the claim of the assessee, the learned Assessing Officer referred the matter to the Valuation Officer. According to the learned Assessing Officer, the Valuation Officer reported the built-up area of the Bungalows / Row Houses are more than 1500 sq.ft and accordingly, the said report has been confronted to the assessee. We note that apart from the objections raised therein before the learned Assessing Officer which is reflecting from Page Nos.2 to 4 of his order, assessee also raised an alternative plea in granting the deduction on proportionate basis. The learned Assessing Officer found the submissions made by the assessee including the alternative plea not acceptable and held the assessee is not entitled to claim deduction u/s 80IB(10) of the Act for the violations made in construction of Bungalow / Row Houses exceeding 1500 sq.ft. Thereby, he disallowed Rs.11,36,15,409/- and added to the total income of the assessee.

4. We note that before learned Commissioner of Income Tax (Appeals) also, assessee raised an alternative plea in granting deduction under Sec.80IB(10) of the Act relating to eligible units and placed reliance on the orders of this Tribunal in the case of M/s. D.S. Kulkarni Developers Limited in ITA Nos.723 to 725/PUN/2013 order dt.31.07.2014. The learned Commissioner of Income Tax (Appeals) considering submissions of the assessee and decision of this Tribunal held that assessee is entitled to

claim proportionate deduction under Sec.80IB(10) of the Act relating to eligible units. It is needless to mention that the learned Commissioner of Income Tax (Appeals) denied the claim under Sec.80IB(10) of the Act relating to Bungalows / Row Houses. The relevant portion in allowing the proportionate deduction from the order of learned Commissioner of Income Tax (Appeals) is reproduced herein below for ready reference.

“9.3 I have carefully considered the facts of the case and law apparent from the records. The issue of pro-rata deduction u/s. 80IB(10) for eligible units has been considered by the jurisdictional ITAT, Pune in case of Ramsukh Properties (supra) and M/s D.S. Kulkarni Developers Ltd (supra) and IT AT, Nagpur in case of AIR Developers(supra) and allowed such pro-rata deduction. The ITAT, Mumbai in case of Mudhit Madanlal Gupta vs. CIT reported in 9 taxmann.com 235 has held (hat in depend residential unit had to be treated as separate housing projects for the purpose of deduction u/s. 8018(10) if other conditions are satisfied. Therefore, the row houses in C wing are to be treated as separate residential projects. Respectfully, following the jurisdictional ITAT, Pune in case of Ramsukh Properties (supra) and M/s D.S. Kulkarni Developers Ltd (supra) and ITAT, Murnbai in case of Mudhit Madanlal Gupta (supra) and ITAT, Nagpur in case of AIR Developers(supra) pro-rata deduction u/s. 8018(10) is allowable for eligible units of the appellant.”

5. We note that the learned Commissioner of Income Tax (Appeals) in Para 5.4.3 of his order discussed the issue taking the reference to the decision of this Tribunal in the case of M/s. D.S.Kulkarni Developers Ltd., (supra), wherein we note that in the claim of the assessee therein, on proportionate basis was allowed relating to eligible units. Therefore, in the light of discussion made by us hereinabove and in view of the findings recorded by the learned Commissioner of Income Tax (Appeals), we are of the view that there is no infirmity in the order of learned Commissioner of Income Tax (Appeals) and it is justified. Thus, the only ground raised by the Revenue is dismissed.

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

Order pronounced on 28th day of September, 2020.

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

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 28th September, 2020.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-7, Pune.
4. Prl.CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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