

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.1292/Hyd/2016		
Assessment Year:2012-13		
Modi Shelters Private Limited, Hyderabad. PAN: AADCM 8355 N (Appellant)	Vs.	Deputy Commissioner of Income Tax, Circle-16(1), Hyderabad. (Respondent)
Assessee by:	Shri S. Rama Rao	
Revenue by:	Shri Rajat Mitra, DR	
Date of hearing:	17/09/2020	
Date of pronouncement:	28/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-4, Hyderabad in appeal No.0157/DCIT, Circle-16(1)/15-16/CIT(A)-4/HYd/2016-17, dated 18/07/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2012-13.

2. The assessee has raised six grounds in its appeal which are extracted herein below for reference:-

1. *The order of the Ld. CIT (A) is erroneous both on facts and in law.*
2. *The Ld. CIT (A) erred in confirming disallowance of deduction claimed U/s. 80IB of Rs. 1,45,81,384/- in respect of Housing Project "Emerald Park" and "Emerald Park Annex".*
3. *The Ld. CIT (A) erred in holding that the built up area of each house in "Emerald Park" and "Emerald park Annex" is more than 1500 sq. ft., when all the houses are of the area of less than 1500 sq ft.*
4. *The Ld CIT (A) ought to have seen that the open terrace and open portico cannot form part of the built up area for the purpose of Section 80IB(10) and if the open terrace were to be excluded, the built up area is less than 1500 sq ft each and the appellant is entitled for deduction U/s. 80IB of the Act.*
5. *The Ld. CIT (A) erred in confirming the disallowance of deduction claimed U/s. 80IB of Rs. 45,06,930/- in respect of Housing Project "Palm Springs Phase-II" (Apartments) on the ground that considered apartment project as Villa Project.*
6. *Any other ground that may be urged at the time of hearing."*

3. At the outset, Ld. AR submitted before us that there is a delay of 2 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought our attention towards the affidavit filed by the assessee seeking condonation of delay wherein the reason for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

".....The said order was served on 5/8/2016. The period of 60 days ended on 4/10/2016. In this regard it is submitted that the Manager (Accounts) of the appellant company Sri Laxmikanth Reddy and the Accounts staff were preoccupied with the audit of accounts for assessment year 2016-17 the last date for which was 30/09/2016 and the date was extended later. The manager accounts was contemplating to consult the Advocate on 4/10/2016 for clarification and filing of the appeal. The Advocate Sri S. Rama Rao was sick and could not attend the office on 4/10/2016 & 5/10/2016. Therefore, the appeal is got

prepared on 6/10/2016 and is being filed before the hon'ble ITAT on the same day. There is a delay of 2 days in filing the appeal."

4. After hearing the submissions of the Ld. AR and on perusal of the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before the Tribunal, We find merit in the submissions of the assessee because it is apparent that the assessee was not able to file the appeal before the Tribunal within the stipulated time due to the ill health of his Counsel. Hence, in the interest of justice, We hereby condone the delay of 2 days in the filing the appeal before the Tribunal and proceed to dispose off the appeal on merits.

5. The Ld. AR further submitted before us that the entire issue in the appeal is with respect to the denial of deduction U/s. 80IB of the Act towards the following projects:-

Sl No	Name of the Project	Area	No. of Houses
1.	Emerald Park	Annojiguda	148
2.	Emerald Park Annexe	Annojiguda	104
3.	Palm Springs Phase-II	Kompally	63

The Id. AR further submitted that in regard to the issue of the projects Emerald Park and Emerald Park Annexe, the Hon'ble Tribunal had held the matter against the assessee for the earlier assessment years.

Therefore, those relevant grounds raised before the Tribunal may be dismissed. The ld. AR further pleaded that as regards to the third project viz., Palm Springs Phase-II the matter may be remitted back to the file of Ld. AO because the assessee had complied with the provisions of the Act subsequently. The Ld. DR could not seriously controvert to the submissions of the ld. AR.

6. After hearing both sides, we hereby dismiss the relevant grounds raised by the assessee towards the claim of deduction U/s. 80IB of the Act for the projects viz., Emerald Park and Emerald Park Annexe. Further, as requested by the Ld.AR in the interest of justice, with respect to the claim of deduction U/s. 80IB of the Act for the project Palm Springs Phase-II, We hereby remit the matter back to the file of Ld. AO for de-novo consideration.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open Court on 28th September, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th September, 2020.

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Copy to:-

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2.	Deputy Commissioner of Income Tax, Circle-16(1), Income Tax Towers, AC Guards, Hyderabad.
3.	The Commissioner of Income Tax (Appels)-4, Hyderabad.
4.	The Principal Commissioner of Income Tax-4, Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard File