

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

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

ITA No.1749/Hyd/2017		
Assessment Year:2012-13		
M/s. R.V. Nirmaan Private Limited, Hyderabad. PAN: AABCR 0774 L	Vs.	Dy. Commissioner of Income Tax, Circle-3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri A. Srinivas
Revenue by:		Sri K. Ravi Kiran, DR
Date of hearing:		04/11/2020
Date of pronouncement:		26/11/2020

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. Principal Commissioner of Income Tax-3, Hyderabad in appeal F.No.10/Pr.CIT-3/263/16-17, dated 17/02/2017 passed U/s. 263 of the Act for the A.Y. 2012-13.

2. The assessee has raised five grounds in its appeal and they are extracted herein below for reference:

- “1. *The order of the Commissioner of Income Tax is contrary to the law, facts and the circumstances of the case.*
2. *The Commissioner of Income Tax erred in coming to a conclusion that the assessment for the A.Y. 2012-13 was erroneous and prejudicial to the interest of the Revenue insofar as it related to claim of deduction U/s. 80IB(10).*
3. *The Commissioner of Income Tax ought to have seen that this is not the 1st year in which the claim for deduction U/s. 80IB(10) was claimed and the claim was allowed in earlier years also.*
4. *The Commissioner of income Tax ought not to have set aside the order of the A.O. to examine the issue of claim of deduction U/s. 80IB(10).*
5. *Any other grounds which the appellant may urge either before or at the time of hearing.”*

3. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of construction of flats and development of property filed its return of income for the AY 2012-13 20/09/2012 declaring total income of Rs. 1,26,26,320/- after claiming deduction U/s. 80IB(10) of the Acts for Rs. 7,22,28,561/- under the normal provisions and U/s. 115JB of the Act Rs. 8,65,30,697/-. Initially the return was processed U/s. 143(1) of the Act and subsequently the case was taken up for scrutiny and assessment was completed on 20/01/2015 wherein the Ld. AO granted the deduction claimed U/s. 80IB(10) of the Act, however he made certain other additions. Thereafter, the Ld. CIT, after examining the case of the assessee arrived at the conclusion that the ld. AO had granted deduction U/s. 80IB(10) of the Act without proper verification. Therefore the Ld. CIT invoking his powers U/s. 263 of the Act and set-aside the order of the Ld. AO directing him to examine the issue of deduction U/s.

80IB(10) of the Act and thereafter passed appropriate order after providing proper opportunity to the assessee of being heard. Aggrieved by the order of the Ld. CIT, the assessee is now on appeal before us.

4. The Ld. CIT while arriving his conclusion made the following observation:

- (i) The assessee had declared profit @ 23.74% with respect to the project wherein deduction U/s. 80IB(10) was claimed while as generally in the line of business profit ranges between 8 to 15%. Therefore, it is obvious that the assessee has arrived at the higher profit @ 23.74% only to claim higher deduction U/s. 80IB(10) of the Act.
- (ii) The Ld. AO has not verified the size of the flats and approvals from the Regulatory Authorities with respect to the construction activities carried out by him.
- (iii) The Ld. AO has failed to examine the claim of deduction U/s. 80IB(10) of the Act with reference to the amended clause (e) & (f) of section 80IB(10) which are brought to the Statute w.e.f. AY: 2010-11.
- (iv) During the course of Assessment proceedings the Ld. AO had not sought any information from the assessee with regard to its claim of deduction U/s. 80IB(10) of the Act and

had granted deduction only on the basis of the details furnished in Form No.10CCE of the Rules.

5. The Ld. CIT thereafter examining the detailed submissions made by the assessee which are extracted and embedded in his order and placing reliance on various decisions cited in his order, set-aside the order passed by the Ld. AO invoking his powers U/s. 263 of the Act and directed the ld. AO to examine the issue of deduction U/s. 80IB(10) of the Act in the case of the assessee and thereafter pass appropriate order after affording an opportunity to the assessee of being heard.

6. The ld. AR vehemently argued before us stating that the assessee had submitted all the requisite details required for claiming deduction U/s. 80IB(10) of the Act before the ld. AO and the Ld. AO after examining those particulars had granted deduction to the assessee. It was therefore pleaded that the order passed by the Ld. AO may be reinstated. The Ld. AR further submitted that the view of the Ld. CIT that in the line of business of the assessee the profit varies between 8 to 15% is not appropriate and the profit declared by the assessee is genuine. The Ld. DR on the other hand relied on the order of the Ld. CIT and requested for confirming the same.

7. We have heard the rival submissions and carefully perused the materials on record. Apparently, from the order of the Ld. AO we find that there are no discussions relating to the claim of deduction U/s.

80IB(10) of the Act. It is also evident from the records produced before us that the Ld. AO has not sought any information from the assessee with respect to the claim of deduction U/s. 80IB(10) of the Act. The assessee has not produced any evidence to negate the same. Further, from the order of the Ld. CIT it is clear that, he has only directed the Ld. AO to examine the issue of deduction claimed U/s. 80IB(10) of the Act and thereafter pass appropriate order in accordance with merit and law. Thus, the Ld. CIT has only kept the issue open for the Ld. AO to decide the issue after examining the claim of the assessee without passing any negative remarks on merits other than the abnormal profit declared by the assessee which appears to be justifiable. It is also pertinent to mention that where the assessee is undertaking different projects i.e., projects wherein deduction U/s. 80IB(10) is eligible and projects wherein deductions U/s. 80IB(10) is not eligible , there are possibilities to declare more profit in the projects eligible for deduction U/s. 80IB(10) of the Act and less profits in the ineligible projects by shifting of expenditure. We also make it clear that our above observation is only general in nature and not a finding in the case of the assessee. However, keeping in view of the facts and circumstances of the case before us, We do not find it necessary to interfere with the order of the Ld. CIT. Accordingly, all the grounds raised by the assessee are disposed off.

8. In the result, the appeal of the assessee is dismissed.

Pronounced in the open Court on 26th November, 2020.

Sd/-
(SMT. P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 26th November, 2020.

OKK

Copy to:-

- 1) M/s. R.V. Nirmaan Private Limited, 2-2-1130/19, 5D, Shivam Road, New Nallakunta, Hyderabad.
- 2) The DCIT, Circle-3(1), Hyderabad.
- 3) The Principal Commissioner of Income Tax-3, Hyderabad.
- 4) The Addl. CIT, Range-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File