

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.1528/AHD/2016

निर्धारण वर्ष/Assessment Year: 2003-04

The Income Tax Officer, Ward-1(3)(9), Surat	Vs .	Vastushilp Corporation F/14, Jay Complex, Anand Mahal Road, Adajan, Surat. [PAN: AACFV 3234 F]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	Shri Samir Shah – CA
राजस्वकीओर से /Revenue by	Smt. Anupama Singla – Sr.DR

सुनवाई की तारीख/ Date of hearing:	28.12.2020
उद्घोषणा की तारीख/Pronouncement on:	07.01.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal filed by the Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals)-II, Surat dated 28.03.2016 for the A.Y. 2003-04. The Revenue raised the following grounds of appeal:

- 1) *Whether ld CIT(A) was justified in giving relief to assessee by holding him beneficial land owner based on false facts presented by assessee that he has made sathakhat with land owners, while the assessee firm was non-existent at the time that sathkhat and assessee has given false date of incorporation of firm.*
- 2) *Whether ld CIT(A) was justified in holding that assessee has dominant control over project while assessee has never got possession or control on land, as land was controlled and possessed by land owners before execution of sale as clear from sathakhat and controlled and possessed by society thereafter.*

3) Whether just one of three persons who made a sathakhat with original land owners as purchasers, become one of seven partners of newly formed firm, firm can be said as beneficial owner of land.

4) Whether, ld CIT(A) was justified in relying the false English version of MOU between Rituvan Co-operative society and assessee without giving opportunity to AO to check the correctness of translation from Gujarati to English, despite the fact that assessee's English translations has been condemned by hon'ble ITAT itself in that order.

5) Whether a person who make some expenses which are reimbursable in nature can be considered a proof of development activity by assessee.

6) On the facts of circumstances of cases appearing from shathakhat, partnership deed, MOU between assessee and society, Rajachitthi issued by SMC, BUC issued by SMC, and AOs order, ld CIT(A) has erred in deleting the disallowance made by AO.

2. Brief facts of the case are that the assessee is a partnership firm.

During the relevant assessment year the assessee was engaged in the business of development of residential housing project. The assessee filed its return of income from 01.03.2006 declaring Nil income. In the computation of income, the assessee claimed deduction under section 80IB(10) of Rs.2.42 crore. Initially the return of income was accepted in the assessment order passed under section 143(3) and allowed deduction under section 80IB(10). Subsequently, the ld.CIT-1, Surat revised the assessment order under section 263 of the Act, vide order dated 26.03.2008 directing the Assessing Officer (AO) to pass the fresh assessment order after examining the fact and the claim of deduction under section 80IB(10) of the Act.

3. The AO in order giving effect to the direction of the Id.CIT, Surat, noted that during relevant period, the assessee completed housing project known as “Rutvan Apartments” consisting of Six building of seven stories each i.e. building – A to F and 20 shops. This housing project was developed on plot no.83/B, TPS No. 13 at Adajan, Surat. The assessee has shown a total sales of Rs.8.08 crores and cost of construction was shown at Rs.5.66 crore. The assessee claimed profit of Rs.2.42 crore and claimed deduction thereof under section 80IB(10) of the Act. It was further noted by the A.O. that the building of “Rutvan Apartments” Block no. A to F was promoted and developed by Rutvan Co-operative Housing Society Ltd (Society). The assessee claimed that such housing project was undertaken by it, the assessee formed an association of members, customers, purchased the said flat in the complex, the members had got their society registered. The assessee was a ‘conforming party’ in the transaction of land on which housing project was developed and that society has been floated by assessee. Accordingly, the assessee does not fulfilled all terms and conditions to be eligible for deduction under section 80IB(10) of the Act.
4. The AO further noted that during the proceedings under section 263 of the Act, the learned CIT held that AO ought to have made the enquiry with regard to three points, i.e. namely, i) under which circumstances the name of assessee appeared as “conforming party” in the transaction involving in the land for the housing complex and all the actual purchasers and to whom title land of

the documents passed, ii) what is the role of assessee in setting up the Co-operative Society, and iii) what was the correct factual position, if Rutvan Co-operative Housing Society engaged in the business of construction or not. It was further noted by the AO that during the notice under section 263 of the Act, the assessee is in its written submission before the Id. CIT contended that assessee paid a sum of Rs.14.38 lakhs as a consideration for purchase of land and further paid the stamp duty and registration fees and Rs.2.24 lakhs. Thus, the assessee paid total consideration of Rs.16.63 lakhs. The Co-operative Society was formed by the efforts of the assessee. About the contents, sale deeds, the assessee filed before the Id. CIT, the declaration of land owner who allegedly sold the land, wherein it is mentioned that land under consideration was sold by the seller to the Society and the assessee is a confirming party. However, sale deed was executed in favour of society at the instance of assessee as confirming party. This was done without availing any extra monetary consideration. The assessee on the basis of aforesaid facts claimed before the Id.CIT for entitlement of deduction under section 80IB(10) of the Act. The assessee further claimed that fees for approval of plan, development expenses, material costs, labour charges and administrative cost was borne by the assessee. The assessee also appointed various contractors for executing the project. The Id. CIT after consideration the contention of assessee held that all those aforesaid facts were not brought on record by the AO in the original assessment and as such the AO had not

examined such facts which were essential for allowing deduction under section 80IB(10) of the Act.

5. The assessee filed its written submission dated 05.11.2008, as recorded by the ld.AO in para 3 of the assessment order. The assessee in its reply stated that they are engaged in the business of development of building and housing project. The construction activities of housing project was started after 01.10.1998 and completed the project before the 31.03.2003. For carrying out development of housing project, necessary sanction was obtained by the assessee from Surat Municipal Corporation(SMC) vide sanctioned order dated 17.08.1999 and thereafter development was commenced. Entire project was completed before 31.03.2003. Necessary building occupation certificate (BUC) issued by the local authorities. It was submitted with Audit Report under Form No.10CCB was finished. The housing project is developed on a plot having an area of more than one acre, i.e. 4050 Sq meter. The assessee developed a project on a plot admeasuring 5,770 sq. meter. Residential unit as the maximum built up area a 1500 sq. feet. The assessee also explained the fact about the formation of housing society and acquisition of land under which the project. The assessee also relied on various case laws.
6. The contention of assessee was not accepted by the AO. The AO took his view that assessee has not purchased the land in his name and only Satakhat i.e. agreement with seller to purchase the land was entered. The land was finally purchased by Co-operative Society. The owner of the land of is Society who carried out all

developmental activities. The assessee has not furnished a copy of agreement with Co-operative Society regarding its role and activities for developing the project. The AO also held that the assessee appears to be a confirming party in the transaction involved in the land of housing project and that assessee is not the real owner.

7. On the aforesaid observation, the AO held that assessee failed to substantiate the necessary criteria for claiming deduction under section 80IB(10) of the Act. The assessee simply engaged in the construction business and executed job on behalf of Co-operative Society. Thus, the assessee failed to fulfill the condition for eligibility for deduction under section 80IB(10) of the Act.
8. On appeal before the Id.CIT(A), the action of AO was reverse. The Ld. CIT(A) while granting relief to the assessee held that the assessee is a developer, the building plan was approved at the instance of the assessee, the area of development of housing project is more than one (01) acre, the project was completed before 31.03.2003. The commercial area is less than 3%. The assessee was having dominant control over the project and incurred all expenses for construction, engaged architect, book seller flats, collected revenue, got clearance certificate from authorities concerned , all risk and rewards with the assessee. The Id. CIT(A) also held that decision of Hon'ble Gujarat High Court in CIT Vs Radhe Developers in 341 ITR 403 is squarely applicable on the case of the assessee. Thus, aggrieved by the

order of ld.CIT(A), the Revenue has filed present appeal before this Tribunal.

9. We have heard submission of ld. Departmental Representative (DR) for the Revenue and Authorised Representative (AR) of the assessee and perused the material available on record.
10. The ld. DR for the Revenue supported the order of the ld.AO. The ld. DR for revenue further submitted that in para 4 of the assessment order the AO clearly held that assessee has not purchased the land in its name and having only the Satakhat [agreement with the sellers]. The land was finally purchased by the Co-operative Society. The Co-operative Society is the owner of the land on which the activities was carried out by the assessee. The assessee has not furnished any agreement with the Co-operative Society regarding its role and the activities undertaken for development of project. The assessee is merely a confirming party in the transaction of land. The reliance in case of Radhe Developers (supra) by the AR for the assessee is misplaced. The ld. DR submits that the said case has not attained the finality. The assessee also fails to demonstrate as to how much extent the assessee has obtained right and responsibility in the project allegedly undertaken. The assessee does not fulfill the requisite condition of section 80IB(10). The Ld. DR for the revenue prayed for reversing the action of Ld. CIT(A) and to restore the order passed by A.O.

11. On the other hand, the ld.AR of the assessee supported the order of the ld. CIT(A). The ld.AR for the assessee further submits that assessee firm was constituted on 19.04.1997. With the efforts of assessee 'Rutvan Co-operative Society' (Society) was formed on 22.05.1999. On 18.06.1999 a memorandum of understanding (MOU) between the society and the assessee firm was executed. The approval of plan was sanctioned on 17.08.1999 from local authority at the stance of assessee. The completion was obtained from local authorities during the F.Y. 2002-03.
12. The ld.AR for the assessee further explained that land underneath the project was agreed to the purchase by the partner of the assessee's firms vide agreement / satakat dated 24.07.1997. Subsequently, on formation of Co-operative Society on the efforts of the assessee, the land was conveyed at the instance of assessee, from land owner, vide sale deed in favour of the Co-operative Society. The entire expenses including of registration charges was paid by the assessee. In the sale deed, the fact that land was agreed to be sold to the confirming party (assessee), on the instance of assessee, the sale deed was agreed to be executed in favour of the Co-operative Society. Thus, to make a clear cut title for the land in favour of society, the assessee signed as a confirming party being a party to the sale deed. The copy of sale deed of land on which the project is completed is placed on record. To comply with the provision of Gujarat Ownership Act 1973, the assessee firm conveyed land from owner to the society. The entire sale consideration was paid by the assessee. The entire risk was of

assessee. The ld.AR for the assessee further reiterated that assessee paid the cost of land, entire expenses of registration, stamp duty were borne by assessee. The necessary fees for approval of sanction plan was paid by the assessee, entire expenses of development project wise such as material cost, labour charges, admin charges has been incurred by the assessee. Assessee firm appointed various contractors for carrying out physical construction and incidental work on the site. All other allied services were undertaken by the assessee. Thus, assessee was having full control over the project.

13. The ld.AR submits that jurisdictional High Court in case of CIT Vs. Radhe Developers (supra) held that assessee builder, developed housing project, even though neither land nor development right permission was in the name of the builder was eligible for claim under section 80IB(10) of the Act. The ld.AR for the assessee further submits that in CIT Vs Sahajanand Associates (2014) 44 taxmann.com 458 (Gujarat), the Hon'ble High Court held that section 80IB deduction is admissible to the assessee developer though development permission obtained by the land owner. It was also held that benefit of 80IB is available even though title of land had not passed to the assessee and the development permission were obtained in the name of original land owners.
14. We have considered the rival submission of both the parties and perused the order of Lower Authorities. We have also deliberated on various case laws relied by the both the parties. The AO while passing the assessment order disallowed the deduction under

section 80IB(10) of the Act by taking view that assessee has not purchased the land in its name and that land was purchased in the name of housing society. There was no agreement between assessee and housing society. The assessee was only a confirming party and that assessee failed to show as to how and why it the assessee had fulfilled requirements of provision under section 10 and 11 of Gujarat Ownership Act 1973. The assessee has not shown as to whether housing society engaged the assessee for the purpose of construction or assessee sold flat and then society was setup by the buyers of the flats.

15. Before Id.CIT(A), the assessee furnished the detailed submission as recorded in para 5 of the impugned order. We have noted that assessee has specifically stated that the land of which project was undertaken his more than one acre, flats developed by assessee is less than 1500 sq.feet. Plan was approved for residential housing project after 01.08.1998 and was completed before 31.03.2003 and all other submission as made before us was also made. The Id.CIT(A) after considering the contention of the assessee concluded that the assessee has fulfilled all the conditions as laid down under the provision of section 80IB. The assessee firm paid the cost of land purchased from the seller. Expenses for the registration of land, stamp duty were borne by the assessee. All project cost were also borne by the assessee, all the buyers have confirmed about the sales of flats by the firm. Profit on the completion of project was retained by the assessee firm on the basis of aforesaid observation the Id.CIT(A) held that assessee is a

developer who applied for approval of plan, constructed the project on more than one acre of land, construction was completed before 31.03.2003, commercial area was less than 3%. The assessee was having dominant control over the project. On the aforesaid observation, the Id.CIT(A) held that decision of Radhe Developers and other (supra) is squarely applicable on the case.

16. We have noted that in Radhe Developers (supra) the Hon'ble High Court held that neither the provision of section 80IB nor any other provisions contained in other relevant statutes were brought to demonstrate that ownership of land would be condition precedent for developing housing project. It was also held by Hon'ble High Court that it was perhaps not in the case of Revenue that under other law governing construction in Urban and Semi-urban area there was any restriction. Further the Hon'ble jurisdictional High Court in CIT vs Sahajanand Associates (supra) while relying on earlier decision of High Court in Radhe Developers (supra) held that assessee is entitled for deduction under section 80IB(10) in respect of developing the housing project even though neither land nor development permission was in the name of builder. The Hon'ble jurisdictional High Court in CIT Vs Sahajanand Associates (supra) held that even though title of land had not passed on the assessee and development permission obtained in the name of original land owner, the deduction under section 80IB is admissible to the assessee.

17. In view of the above factual and legal discussion, we do not find any illegality or infirmity in the order passed by the Id.CIT(A), which we affirm, accordingly appeal of the Revenue is dismissed.

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

Order pronounced on 07-01-2021 by placing result on notice board.

Sd/-

(Dr.ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated: 7th Jan, 2021** / S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat