

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 260/AHD/2021
निर्धारण वर्ष/Asstt. Years: 2015-16

Shree Narayan Enterprise 4 Amarkunj, Urmi Vaccine Road, Behind Spandan Apartment, Vadodara-390002. PAN: AAPFS6878K	Vs.	I.T.O, Ward-1(2)(1), Vadodara.
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(Applicant)		(Respondent)
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Assessee by	:	None
Revenue by	:	Shri Purshottam Kumar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **04/05/2022**
घोषणा की तारीख/**Date of Pronouncement**: **11/05/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals) National Faceless Appeal Centre(NFAC) Delhi, dated 19/08/2021 arising in the matter of assessment order passed under s. 250 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:

1. The Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in fact in not providing sufficient opportunity of being heard. The order so passed, without giving proper opportunity of being heard is bad in law and is prayed to be cancelled/quashed.

2. The Ld. CIT(A), NFAC has erred in law and in fact in passing the order, without considering the submissions uploaded from time to time and also without obtaining information from the Ld. A.O. is bad in law and is prayed to be quashed. The order so passed rejecting the claim of deduction u/s. 801B(10), which was allowed from time to time by the Ld. Appellate Authorities for the other assessment years, is bad in law and is prayed to be cancelled / quashed.

3. The Ld. CIT(A), NFAC, Delhi has erred in law and in facts in confirming the action of the Ld. A.O. in disallowing the claim of deduction u/s 80IB (10) of Rs. 58,69,540/- on the erroneous presumption that the housing project has been approved by the local authority after 31.03.2008 and accordingly the condition laid down in section 80IB(10)(a)(i) of the I.T. Act are not fulfilled. The claim of deduction is validly made considering the facts of the case and evidences furnished, is prayed to be allowed, as claimed.

4. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended.

3. The only and interconnected effective issue raised by the assessee is that the learned CIT-A erred in confirming the disallowances of deduction for Rs. 58,69,540/- under section 80IB(10) of the Act without providing proper opportunity and considering the facts available on record.

4. The brief facts are that the assessee is a partnership firm and engaged in the business as builder and developer. The assessee in the return of income claimed deduction of Rs. 58,69,540/- under the provision of section 80-IB(10) of the Act which was selected for limited scrutiny. During the assessment proceeding, the AO found that the managing partner of the assessee firm namely Shri Kartikbhai Jayantibhai Panchal entered into two different development agreement with managing director of Narayan Realty Ltd namely Shri Jayantbhai Dalskhbhai Panchal dated 27/07/2012 and 20/06/2013. The first set of agreement was entered for development of land bearing survey number 337, 538, 540, 541, 543/1, 543/2 in the name and style of "Narayan ResiCom" for which permission of development (Raja Chitthi)/ construction by local authority was given in the name of land owner dated 14/07/2008. Further the development agreement layout was approved by the local authority vide letter dated 01/03/2012. Likewise second set of agreement was entered

for development of land bearing survey number 537 in the name and style of "vaikunth-II" for which permission for development/ construction was issued in the name of the land owner vide letter dated 18/07/2008 and the development agreement layout was approved vide letter dated 01/03/2012.

5. The AO held that as per the provision of section 80-IB(10) of the Act, it is necessary to claim the deduction for the housing project that the same must be approved by the local authority on or before 31/03/2008 whereas in the case of the assessee permission for construction and development agreement was approved after 31/03/2008. Therefore the assessee is ineligible for deduction under section 80-IB(10) of the Act. Accordingly, the AO disallowed the same and added to the total income of the assessee.

6. On appeal, the National Faceless Appeal Centre (NFAC) confirmed the order of the AO.

7. Being aggrieved by the order of the NFAC, the assessee is in appeal before us.

8. When the matter was called for hearing it was noticed that there was none appeared on behalf of the assessee despite the fact that case has been listed for hearing. On perusal of grounds of appeal raised by the assessee, we find that the very first ground raised by the assessee is that there was no proper opportunity of being heard was provided by the learned NFAC. On perusal of the order of the NFAC, we note certain facts which are reproduced as under:

"The additional evidence being sought to be introduced at this stage will not be of help on account of two reasons: Firstly, the appellant has not stated why this evidence was not introduced before the AO. Secondly, in any case the assessment order clearly mentions the dates of accord of permissions (Raja Chitthi) for the said project. This is a fact that has not been refuted by the appellant either during assessment proceedings or in appeal proceedings. It therefore is not possible to differ with these undisputed findings of fact of the AO."

8.1 From the above finding of the learned NFAC, it seems that there were additional evidences filed by the assessee which were not considered by it (NFAC). At the time of

hearing the learned DR was also not able to controvert the plea taken by the assessee in the ground of appeal. Therefore, in the interest of justice and fair play we are of the opinion that the assessee should be granted opportunity to represent its case properly keeping in view of the principle of *audi alteram partem*. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. CIT (A) for reconsideration all grounds of appeal afresh after allowing proper opportunity of being heard to the assessee in accordance with law.

8.2 Nevertheless, the assessee is directed to prepare its submission and cooperate in the appeal proceedings and its failure will entail confirmation of the impugned addition/disallowance made by the AO. Hence, this ground of assessee's appeal stands allowed for statistical purpose.

9. In the result of the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 11/05/2022 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
11/05/2022