

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.867/PUN/2019
निर्धारण वर्ष / Assessment Year: 2012-13

ITO, Ward- 14(2), Pune.	Vs.	M/s. Kamdhenu Real Estate Pvt. Ltd., 320, Mutha Commerce House, Shankarseth Road, Pune- 411042. PAN : AAACK8823E
Appellant		Respondent

Revenue by : Shri S. P. Walimbe
Assessee by : Shri Krishna V. Gujarathi

Date of hearing : 18.05.2022
Date of pronouncement : 08.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 9, Pune. [‘the CIT(A)’] dated 05.03.2019 for the assessment year 2012-13.

2. The Revenue raised the following grounds of appeal :-

“1) On facts and circumstances of the case, the learned CIT(A)-9,Pune has erred in deleting the disallowance of Rs.3,05,53,176/- i.e erred in allowing the deduction u/s 80IB(10) of the IT Act, 1961, without appreciating the fact that the project was not completed before the due date of 31st March 2012 since the occupancy certificate was

received by the Assessee on 21-01-2012 due to the fact that the assessee has fulfilled the condition to receive completion certificate of handing over of the amenity space to the PMC only on 22-05-2012.

2) On facts and circumstances of the case, the learned CIT(A)-9, Pune has erred in allowing the deduction u/s 80IB(10) of the IT Act, 1961, relying upon the decision of Hon'ble High Court in the case of CIT vs. Hindustan Samuh Awas Limited (2015) 377 ITR 150(Bom.) without appreciating the fact that the facts in the said case are different from the facts in the assessee's case.

3) On the facts and circumstances of the case, the learned CIT(A)-9, Pune erred in not appreciating the fact that the delay in issuing the completion certificate by the Municipal Corporation in the case of Hindustan Samuh Awas Limited relied upon by the CIT(A) was not held as attributable to the assessee, whereas in assessee's case the delay in issuing the completion certificate by Pune Municipal Corporation is attributable to the assessee i.e. the amenity space was handed over to the Municipal Corporation only on 22-05-2012.

4) The appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.

5) It is prayed that the order of Commissioner of Income tax (A)-9, Pune be set aside and that of assessing officer be restored."

3. Briefly, the facts of the case are as under :

The respondent-assessee is a private limited company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of Builders, Promoters and Real Estate Developers. The return of income for the assessment year 2012-13 was filed on 29.09.2012 declaring total income of Rs.1,11,25,250/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-14(1), Pune ('the Assessing Officer') vide order dated 20.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.4,16,78,426/- after

disallowing the claim for deduction u/s 80IB of Rs.3,05,53,176/-. The Assessing Officer denied the claim for deduction u/s 80IB on the ground that the final completion certificate was granted by the Pune Municipal Corporation, Pune (PMC) on 21.07.2012 which is beyond the prescribed dated 31.03.2012 for completion of the housing project rejecting the contention of the appellant that the application for completion certificate was made on 27.03.2012 before the PMC. The Assessing Officer also declined to follow the decision of ITAT, Pune Benches in assessee's own case vide ITA No.142/PUN/2015 for A.Y. 2011-12, order dated 18.08.2017 as the Department is contending the correctness of the decision before the Hon'ble Bombay High Court.

4. Being aggrieved by the above disallowance, an appeal was preferred before the Id. CIT(A), who vide impugned order allowed the appeal of the respondent-assessee following the decision of the of the Tribunal in assessee's own case for earlier assessment year 2011-12 wherein, the Tribunal following the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Hindustan Samuh Awas Limited (2015) 377 ITR 150 (Bom.) held that once the application was moved before the prescribed date seeking

completion certificate from PMC that would be deemed to be sufficient compliance of provisions of Act.

5. Being aggrieved by the above decision of the Id. CIT(A), the Revenue is in appeal before us with the above extracted grounds of appeal.

6. The Id. Sr. DR contended that the profits of the respondent-assessee is not eligible for deduction u/s 80IB, as the completion certificate was issued by PMC on 21.07.2012 which is beyond the prescribed date i.e. 31.03.2012. It is submitted that the delay in issue of completion certificate was attributable to the respondent-assessee as the amenity space is handed over to the PMC by the respondent-assessee only 22.05.2012. It is further submitted that the ratio of the decision of the Hon'ble Bombay High Court in the case of Hindustan Samuh Awas Limited (supra) is not applicable to the facts of the present case as the delay in issuing of completion certificate by PMC was attributable to the respondent-assessee.

7. On the other hand, Id. AR for the assessee submitted that the assessee vide letter dated 27.02.2007 submitted to the Assistant Engineer, Land & Estate Department (Bhumi & Jindgi Vibhag), Pune Municipal Corporation for taking the possession of amenity

space and the application was made by the respondent-assessee to the PMC seeking the completion certificate, is complete in all aspects and no defects were pointed out in the application moved by the respondent-assessee. It is also submitted that the Architect also certified the completion certificate before due date. Thus, it is submitted that the ratio of the Hon'ble Bombay High Court in the case of Hindustan Samuh Awas Limited (supra) is squarely applicable to the facts of the present case.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the allowance of deduction under the provisions of section 80IB in respect of the profits derived from the housing project. The respondent-assessee is a developer company, had undertaken housing project, namely, "Kamdhenu Siddhi" at Kothrud, Pune. The respondent-assessee had commenced the housing project during the financial year 2006-07. The respondent-assessee company completed a part of the project during the financial year 2009-10 in respect of 46 flats claimed deduction, which was disallowed, but allowed on appeal before the Id. CIT(A) and affirmed by ITAT. In respect of 15 flats, the respondent-assessee made an application before the PMC on

27.03.2012 seeking the completion certificate which was granted by the PMC on 21.07.2012. The respondent-assessee had sought the exemption of profits u/s 80IB(10) of the Act. The claim was denied by the Assessing Officer on the ground that the completion certificate was issued by PMC only 21.07.2012 after due date for completion of project. On appeal before the Id. CIT(A), the claim was allowed following the decision of the ITAT, Pune Benches in assessee's own case for the immediate preceding year. The relevant provisions of section 80IB(10) reads as under :-

“80-IB.

.....

(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place;

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher;

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

(i) the individual or the spouse or the minor children of such individual,

(ii) the Hindu undivided family in which such individual is the karta,

(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works

contract awarded by any person (including the Central or State Government).”

9. We have carefully gone through the Explanation 2 appended to clause (iii) of sub-section (10) of section 80IB of the Act. The said Explanation 2 appended to clause (iii) of sub-section (10) of section 80IB states that the date of completion of the housing project shall be the date on which the completion certificate is issued by the local authorities. This Explanation has come up for interpretation before the Hon’ble Bombay High Court in the case of Hindustan Samuh Awas Limited (supra) wherein the Hon’ble Bombay High Court placing reliance on the judgement of the Hon’ble Gujarat High Court in the case of CIT vs. Tarnetar Corporation, 362 ITR 174 held as follows :-

“11. The question we raise here is whether the explanation introduced an element of harshness to such an extent that it rendered the main provision nugatory? In our view, the explanation is introduced recently to put an end to a controversy, which might arise before the Assessing Officer about the date of completion. The intention of the legislature in providing explanation to fix the date of completion of a project is quite helpful when this provision is utilized in practice. In our view the explanation has introduced an unnecessarily strictness in the provision which is in the nature of exemption and not in the nature of charging. Sub-section (10) mentions that a housing project should be complete before 31.03.2008 so as to get the exemption. Completion of housing project is a physical act. It can be demonstrated on the spot and also through a certificate issued by an architect who is appointed for supervising the construction work. He is a professional who would declare that the project is complete. Unfortunately, Sub-section (10) and the explanation do not give any importance to the issuance of such Completion Certificate by the concerned architect. It gives importance

only to the certificate of Municipal authority. It is common knowledge that an application for Completion Certificate submitted to the Municipal Authorities is accompanied by a Completion Certificate issued by the concerned architect. No doubt, the Municipal authorities then cause inspection of the site and verify the claim. Thereafter, they issue Completion Certificate. But, if a project is really complete before 31.03.2008 and an application is moved quite in time, for seeking Completion Certificate from the Municipal authorities, and if they do not take steps urgently and delay the issuance of Completion Certificate from their side, can it be said that such certificate would alone decide the date of completion of the project? The answer is in negative.”

10. Thus, the Hon'ble Bombay High Court held that if the application is moved well in time for seeking the completion certificate from the Municipal Corporation and delay in issuance of completion certificate is not attributable to the assessee. It should be deemed that the project is completed as on date of application. Applying the ratio of this judgement to the facts of the present case, we find the application seeking the completion certificate was moved by the respondent-assessee on 27.03.2012. The said application was accompanied by the Architect's certificate there was no material on record indicating that the PMC had pointed out any mistakes in the application moved by the respondent-assessee. In the circumstances, we are of the considered opinion that the ratio of the judgement of the Hon'ble Bombay High Court in the case of Hindustan Samuh Awas Limited (supra) is squarely applicable to the facts of the present case and the contention raised by the

Department are devoid of any merits. Thus, we do not find any perversity and illegality in the order of the ld. CIT(A). Therefore, the grounds raised by the Revenue stands dismissed.

11. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 08th day of June, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 08th June, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.