

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

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

आयकर अपील सं. / ITA Nos.454 & 1099/PUN/2018
Assessment Years: 2011-12 & 2012-13

Jaideep Sharad Kotwal, Plot No.3, Ashok Nagar CHS, Rang Hills Road, Pune- 411007. PAN : ABGPK1659J	Vs.	ITO, Ward-3 (1), Pune.
Appellant		Respondent

Assessee by : Shri Deepak Sasar
Revenue by : Shri M. G. Jasnani

Date of hearing : 28.06.2022
Date of pronouncement : 29.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the different orders of Id. Commissioner of Income Tax (Appeals)-3/13, Pune ['the CIT(A)'] dated 21.12.2017 for A.Y. 2011-12 and 05.03.2018 for A.Y. 2012-13 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.454/PUN/2018 for the assessment year 2011-12 are stated herein.

4. The appellant raised the following grounds of appeal :-

I. Disallowance of claim u/s 80IB(10) of the Income Tax Act.

- 1) *The CIT-A has erred in confirming the Ld. Assessing Officer's decision of disallowance of the deduction u/s 80IB(10) of the Income Tax Act, 1961 claimed by the assessee.*
- 2) *The CIT-A has erred in confirming the Ld. Assessing Officer's contention of treating the assessee's revised return as not east.*
- 3) *The CIT-A has erred in confirming the Ld. Assessing Officer's contention of not considered the provision of section 80AC of the Income Tax Act, 1961.*

II. Procedural Grounds

- 4) *The Appellant craves leave to add, amend, alter, or delete any or all the above grounds of appeal."*

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

The appellant is an individual deriving income under the head "business". The return of income for the assessment year 2011-12 was filed on 22.10.2011 declaring total income of Rs.1,73,58,820/-. The said return of income was revised on 31.03.2013 declaring total income of Rs.8,74,230/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward- 3(1), Pune ('the Assessing Officer') vide order dated 20.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income

of Rs.1,73,58,820/-. The disparity between the returned income and assessed income is on account of disallowing the deduction u/s 80IB in respect of income in the form of share of profits, remuneration received from the partnership firm. The factual matrix of the case is as under :

The appellant is a partner in the partnership firm, namely, M/s. Vishhram Developers registered under the Indian Partnership Act, 1932. During the previous year relevant to the assessment year under consideration, the said partnership firm undertaken the housing project at Gat No.318 to 323, Village Somatane, Tal. Maval, Dist. Pune. It is stated that the profits earned from the said housing project are eligible for deduction under the provisions of section 80IB of the Act and the same was allowed by the Id. CIT(A). The appellant claimed the exemption of income received in the form of remuneration, share of profits received from the partnership firm, contending that since the said income is paid to the appellant out of the eligible profits for deduction u/s 80IB, the same should be allowed as deduction in the hands of the appellant under the provisions of section 80IB of the Act. The said contention of the appellant had been rejected by the Assessing Officer by holding

that the appellant had not filed the return of income within the due date prescribed under the provisions of section 139(1) of the Act. Even on appeal before the ld. CIT(A), the same was rejected.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. The ld. AR submits that the appellant was paid remuneration, share of profits out of eligible profits of firm which qualifies for deduction u/s 80IB and therefore, such income in the hands of the appellant should be exempted under the provisions of section 80IB(10) of the Act. He further submitted that the deduction u/s 80IB was allowed in the hands of the partnership firm, namely, M/s. Vishhram Developers for the assessment year 2011-12 by the ld. CIT(A) though disallowed by the Assessing Officer.

8. On the other hand, ld. CIT-DR placing reliance on the orders of the lower authorities submits that the remuneration, share of profits received from partnership firm does not qualify for deduction u/s 80IB of the Act. He further submits that in view of plain provisions of section 80IB, the appellant is not even eligible for claiming deduction u/s 80IB since the return of income was not filed within the due date prescribed u/s 139(1) of the Act.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the eligibility of remuneration, share of profits received from partnership firm, whose profits are eligible for deduction u/s 80IB of the Act, admittedly, the assessee had received remuneration, share of profits received from partnership firm which derived his income from execution of eligible housing project u/s 80IB of the Act. The remuneration, share of profits received from the partnership firm does not take its colour from the income out of which is paid. The remuneration, share of profits received by the appellant from the partnership firm, inasmuch as, these two items of income, cannot be attributed to an activity of the assessee, whose profits qualifies for deduction u/s 80IB(10) of the Act. The remuneration, share of profits received from the partnership firm is derived by the appellant based on the contractual relationship between the appellant and the partnership firm. The Hon'ble Supreme Court in the case of Mrs. Bacha F. Guzdar vs. CIT, 27 ITR 1 (SC) held that a shareholder of company which carried on business of growing and manufacturing tea, the dividend income so received by assessee could not be treated as agricultural income. Same analogy can be drawn to the

facts of the present case. Therefore, the contention of the appellant is totally devoid of any merit.

10. Further, it is significant to note that the appellant had not filed the return of income within the due date prescribed under the provisions of sub-section (1) of section 139 of the Act. The provisions of section 80IB clearly stipulates that in order to claim deduction u/s 80IB, the return of income should be filed within the due date prescribed under the provisions of sub-section (1) of section 139 of the Act. Therefore, we do not find any merit in the grounds of appeal filed by the appellant. Accordingly, the grounds of appeal raised by the appellant stand dismissed.

11. In the result, the appeal filed by the assessee in ITA No.454/PUN/2018 for A.Y. 2011-12 stands dismissed.

ITA No.1099/PUN/2018, A. Y. : 2012-13:

12. Since the facts and issues involved in both the above captioned appeals are identical, therefore, our decision in ITA No.454/PUN/2018 for A.Y. 2011-12 shall apply *mutatis mutandis* to the remaining appeal of the assessee in ITA No.1099/PUN/2018

for A.Y. 2012-13 respectively. Accordingly, the appeal of the assessee in ITA No.1099/PUN/2018 for A.Y. 2012-13 is dismissed.

13. To sum up, both the appeals filed by the assessee stands dismissed.

Order pronounced on this 29th day of June, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th 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)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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