

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No. 606/PUN/2020

निर्धारण वर्ष / Assessment Year : 2012-13

Ravindra Champalal Khinvasara, 2, Rajhans Surana Nagar, Jalna Road, Aurangabad - 431 001 Maharashtra PAN : ACQPK8748P	Vs.	DCIT, Central Circle-1, Aurangabad
Appellant		Respondent

Assessee by Shri M.R. Bhagwat  
Revenue by Shri Piyush Kumar Singh Yadav

Date of hearing 30-06-2022  
Date of pronouncement 01-07-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-12, Pune on 31-08-2020 in relation to the assessment year 2012-13.

2. The Id. AR did not press Ground No.2 relating to the addition of Rs.68,950/- towards agricultural income, which is hereby dismissed as 'not pressed'.

3. Ground No.1 is against the sustenance of addition of Rs.2,99,910/- on account of deduction claimed by the assessee u/s.80IB(10) of the Income-tax Act, 1961

(hereinafter also called 'the Act') on account of 'extra work'.

4. Tersely, the facts are that the assessee is a developer and promoter in real estate. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee claimed deduction u/s.80IB(10), *inter alia*, on receipts from 'extra work' done amounting to Rs.2,99,910/-. The assessee was asked to furnish the details of such extra work, which he could not. In the absence of such details, the AO rejected the claim of deduction on it. The Id. CIT(A), too, upheld the disallowance *pro tanto*. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

5. I have heard both the sides and gone through the relevant material on record. It is an admitted position that the assessee is otherwise eligible for deduction u/s.80IB(10) in respect of one of its projects, namely, 'Khinvasara Fort'. The AO did not dispute the otherwise allowability of deduction of income from the 'Khinvasara Fort' project, but observed that the assessee could not furnish any evidence as to the nature of 'extra work' on which the deduction was

also claimed. Similar position remained before the Id. CIT(A) as well that the assessee could lead no evidence to demonstrate the nature of extra work. Here, it is relevant to note that section 80IB(10) provides deduction at 100% of profit derived from the housing project which fulfils the requisite conditions. It is only the profit from the eligible project which qualifies for deduction. If the developer also undertakes certain other works unconnected with development of project and charges separately from customers, that income cannot qualify for the deduction. Thus, the examination of nature of work done and the resultant income becomes *sine qua non* for granting or not granting of deduction u/s.80IB(10). Here is a case in which the AO did not dispute the otherwise eligibility of deduction u/s. 80IB(10) on the 'Khinvasara Fort'. The assessee himself carved out a separate figure of 'extra work' done worth Rs.2.99 lakh on which deduction was claimed. However, he failed to show the nature of 'extra work' done for examination by the AO as to whether that also qualified for the deduction. Similar position prevailed before the Id. CIT(A) as well inasmuch as the assessee could not state the

nature of `extra work`. There is no change in the factual scenario before the Tribunal as well on this score. In view of the fact that the assessee failed to lead any evidence whatsoever to show the nature of extra work done, the action taken by the authorities below cannot be taken exception to. I, therefore, uphold the impugned order on this issue.

6. The only other ground which survives in this appeal is against the sustenance of addition of Rs.11.00 lakh, being, Architect fees. The AO, on perusal of details of Legal and professional charges, observed that a sum of Rs.4.00 lakh was paid to Ms. Monali Mutha and Rs.7.00 to Mr. Sujit S. Mutha towards interior designing, drafting and consultancy charges for Resort Project "Nirvana" at Shoolibanjan, Aurangabad. Since the Nirvana project was not eligible for deduction u/s.80IB(10) and there was no revenue from the `Nirvana' project, the AO disallowed this sum. The Id. CIT(A) countenanced the view of the AO.

7. I have heard both the sides and perused the relevant material on record. The assessee has furnished a list of the projects undertaken by it along with the relevant figures of

sale/income/expenses for the year, at page 16 of the paper book. The payment under consideration is of Rs.11.00 lakh paid by the assessee to Ms. Monali Mutha and Mr. Sujit S. Mutha for interior designing. The architect has mentioned the name of 'Nirvana' project. However, the claim of the assessee has been that such Legal charges pertained to all the on-going projects. The assessee's Profit and loss account depicts figure of Legal and professional charges at Rs.14,11,415/- in total, which impliedly includes the amount of Rs.11.00 lakh under consideration. Page 16 contains allocation of Legal and professional expenses involved in these projects, with Rs.6,97,263/- having been allocated to the Fort project eligible for deduction u/s.80IB(10) of the Act. If disallowance of any expenditure from the eligible housing project is made, it means that the income from it would correspondingly increase, resulting into higher amount of deduction u/s.80IB(10) also. Out of total Legal and professional expenses incurred by the assessee at Rs.14.11 lakh, share of the expenses allocated to eligible project is Rs.6.97 lakh. Applying the same proportion to the disputed payment of Rs.11.00 lakh, the share of the Fort

project in such total amount disallowed comes to Rs.5.43 lakh. As the eligible project claimed deduction for this sum, which got disallowed by the AO, the amount of deduction u/s. 80IB(10) will accordingly have to go up by Rs.5.43 lakh. To sum up, the disallowance of Rs.11.00 lakh is sustained and the amount of deduction u/s.80IB(10) is increased by a sum of Rs.5.43 lakh.

8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 01<sup>st</sup> July, 2022.

**Sd/-**  
**(R.S.SYAL)**  
**उपाध्यक्ष/ VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 01<sup>st</sup> July, 2022  
*Satish*

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-12, Pune
4. The Pr.CIT(Central), Nagpur.
5. DR, ITAT, 'SMC' Bench, Pune
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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

		Date	
1.	Draft dictated on	30-06-2022	Sr.PS
2.	Draft placed before author	01-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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