

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.178/PUN/2019

निर्धारण वर्ष / Assessment Year : 2013-2014

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| ACIT, Circle-2, Pune | Vs. | Vijay Tukaram Raundal, Teerth Technospace, 708, C-Wing, Beside Mercedes Benz Showroom, Baner Road, Baner, Pune 411 045 PAN : AAQPR0124G |
| Appellant | | Respondent |

Cross Objection No.24/PUN/2021

(Arising out of ITA No.178/PUN/2019)

निर्धारण वर्ष / Assessment Year : 2013-2014

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| Vijay Tukaram Raundal, Teerth Technospace, 708, C-Wing, Beside Mercedes Benz Showroom, Baner Road, Baner, Pune 411 045 PAN : AAQPR0124G | Vs. | ACIT, Circle- 2, Pune |
| Appellant | | Respondent |

Assessee by
Revenue by

Shri Mihir Naniwadekar
Shri Sardar Singh Meena

Date of hearing 25-08-2022

Date of pronouncement 30-08-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the Revenue and Cross-objection by the assessee arise out of the order passed by the Id. CIT(A) on 12.11.2018 relating to the A.Y. 2013-14.

2. The only issue raised by the Revenue is against the allowing of deduction u/s.80IB(10) of the Income-tax Act, 1961 (hereinafter also called 'the Act') amounting to Rs.45,89,97,747/- despite the fact that the assessee failed to complete the project within the time stipulated as per the provisions of section 80IB(10).

3. Succinctly, the facts of the case are that the assessee is a Builder and Developer, who filed his return declaring total income of Rs.28,71,109/- , after claiming deduction u/s.80IB(10) amounting to Rs.45,84,87,519/-. The tax was however paid on the adjusted total income of Rs.8,53,51,346/- u/s.115JC of the Act. Deduction u/s.80IB(10) was claimed in respect of housing project, namely, "Teerth Towers", which consisted of 7 Buildings and Commercial shops. The assessee had been following "Project Completion Method" for recognising the income, as a result of which all the expenses incurred on the project till the immediately preceding financial year were shown as work-in-progress. During this year, the assessee showed sale of entire units of Buildings A to F for a sum of Rs.90,92,08,550/-. The Assessing Officer (AO) noticed that the assessee contravened the provisions of section 80IB(10) inasmuch as the project was not completed within 5 years from the end of the financial year in which the housing project was approved

by the local authority. He observed that the housing project was approved by the competent authority vide order dated 30-02-2007, which depicted that the assessee sought N.A. (Non-Agricultural) permission and also approval for building plan for residential use vide his application dated 21-12-2006. The housing project was completed vide the Completion certificate issued by the competent authority on 30-03-2013. Considering the period from 01-04-2007 to 30-03-2013, the AO found that the project was completed in a period of 6 years as against the requirement of 5 years, so as to qualify for deduction u/s.80IB(10). He, therefore, rejected the assessee's claim of deduction. The Id. CIT(A) overturned the assessment order by noticing that the N.A. order dt.30-02-2007 was granted subject to compliance on certain conditions and Condition No.3 made obligatory for the assessee to get demarcation of the land from the O/o. District Inspector Land Record (DILR) before commencement of the development work, which actually happened on 22-08-2007. This date, being, within a period of five years from the end of the financial year in which the housing project was approved, the Id. CIT(A) made the assessee eligible for the deduction. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. The case of the Department is that the assessee did not fulfil the condition of completing the project within five years from the end of the financial year in which the housing project was approved by the local authority, viz., The District Collector, Pune. In order to appreciate the rival contentions, it would be apposite to take note of the relevant parts of section 80IB(10), as under:

“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,—

.....

(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;

5. A bare perusal of the above provision indicates that deduction u/s.80IB(10) is allowed if the development and construction of the housing project commences on or after 01-10-1998 and the construction is completed within a period of five years from the end of the financial year in which the housing project is approved by the local authority. Thus, it can be seen that, there are three timelines relevant for claiming the deduction insofar as the dispute under consideration is concerned, viz., i) the date of start of construction; ii) the date of completion of the housing project and iii) the date of approval of the housing project by the local authority. There is no dispute regarding the first timeline, namely, the date of start of construction, which, admittedly, commenced after 1.10.1998. We will take up the other two disputed timelines for consideration *in seriatim*.

(I) Date of completion of the housing project

6. Clause (a) of section 80IB(10) provides that the deduction shall be allowed if the assessee, *inter alia*, 'completes such construction'; and then sub-clause (iii) says - 'within five years from the end of the financial year in which the housing project is approved by the local authority'. This provision talks of completing the construction by such and such time. Explanation (ii) under

section 80IB(10)(a) provides that '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'. We need to appreciate the logic behind the date of completion of construction *de hors* the Explanation and its definition w.r.t. the issuance of completion certificate as per the Explanation. As there is an eligibility condition of completing the construction within a period of five years for getting the deduction, the legislature thought it prudent to thwart any attempt by the builders who erringly intimate the completion without actually completing it. With this object in mind, the Parliament qualified the date of completion as the date of issuance of completion certificate. Though, as per the strict language of section 80IB(10), the date of completion of construction of the housing project is the date on which the completion certificate is issued by the local authority, normally, it takes some time for the competent authority to verify the veracity of the intimation of completion of construction by the assessee and then issuing the certificate. For all practical purposes and taking a pragmatic view, the actual date of completion of construction can be considered as the date on which the assessee intimates, in writing, to the local

authority about the completion of housing project and the competent authority, on verification, does not find anything amiss in it and issues a certificate a little later. In such situation, the date of issuance of completion certificate shall relate back to the date on which the assessee finally intimated in writing about the completion of construction. If, however, the authority, on verification, finds some work incomplete, then such date of intimation by the assessee will disqualify to be the date of completion of construction. In such a panorama, the assessee will have to make good the deficiencies and again intimate the completion. The crux is that when the authority, on final intimation from the assessee in writing about the completion of construction, finds the construction as having been actually completed, the date of issuance of the completion certificate shall be construed as the date on which the assessee finally intimated the factum of completion of construction.

7. Adverting to the facts of the instant case, we find that the date of completion certificate issued by the competent authority, a copy placed at page 133A of the paper book, is 30-03-2013. The assessee lodged a claim before the Tribunal that though the completion certificate was issued on this date, but the project was actually completed on 07-03-2012, when it intimated about the

completion of construction to the District Collector, Pune vide its letter, a copy placed at page 215 of the paper book. It is also claimed that another letter intimating about the completion of the project was sent to the District Collector, Pune on 24-09-2012, whose copy is available at page 217 of the paper book. The Id. AR argued that the date of completion of construction should be taken as the date when the project was actually completed, namely, 07-03-2012.

8. We proceed to examine the letters dated 7.3.2012 and 24.09.2012. Whereas the letter dated 24.09.2012 bears the stamp of the 'Lipik, Mahsool Shakha, Zila Adhikari Karyalaya, Pune' and is signed with date of 26.9.12, there is no proper acknowledgement of the receipt of the letter dated 7.9.2012 by the competent authority. The alleged letter has some cuttings/over-writings and do not bear any proper impression of the stamp. Number 13157/ (not legible) is written and struck off and thereafter a new number of 19644/13.3 is written, probably giving the receipt number and its date. Certain signature is affixed on this letter, which bears the date of 9.3.12. If the date of receipt is 13.3.12 below the receipt number, then the signature cannot be on a date prior to it. Further, the Completion certificate issued by the competent authority on 31-03-2013, refers

only to the assessee's application for completion of construction dated 24.9.2012. There is no reference to the alleged completion letter dated 7.3.2012 in such a Certificate. Further, the completion letter dated 24.9.2012 also does not refer to the alleged completion letter of 7.3.2012. Even otherwise, the letter dated 24.9.2012 also does not talk of the completion of construction in full. It says that: 'Now, the entire project is *virtually complete* on the site'. When the project was not fully complete but only virtually complete on 24.9.2012, it obviously, could not have been completed more than six months before that on 7.3.2012. We, therefore, treat the alleged earlier letter of 7.3.2012 as farce, whose even furnishing to the competent authority is unproved. Even if the letter is assumed as genuine, it does not indicate the final completion of construction, which was even not fully complete by 24.9.2012. In such a situation, we find it difficult to accept the contention of the assessee that the construction was completed on 7.3.2012 so as to qualify as the date of completion certificate. The sequitur is that the construction was completed after 24.9.2012 but before 30.3.2013, when the construction got fully completed beyond the virtual completion.

(II) Date of approval of the housing project by the local authority

9. Now we espouse the next timeline, being, the date of approval of housing project by the local authority. The AO has set up a case that the approval was given by the competent authority on 30-03-2007 pursuant to the assessee's application dated 24-12-2006 and hence, 30-03-2007 should be taken as the date of approval for commencement. On the other hand, the assessee contended and the Id. CIT(A) accepted the contention that the approval was conditional upon the demarcation and since the demarcation certificate was issued by the O/o. DILR on 22-08-2007, the same was the date of approval.

10. Sub-clause (iii) of section 80IB(10)(a) provides that the construction should be completed within five years from the end of the financial year in which the *housing project is approved by the local authority*. The stipulated period of five years has connection only with the granting of approval by the local authority and not when the construction is actually commenced. The requirement is that the construction should be commenced after the stipulated date but it has to complete within a period of five years from the end of the financial year in which the housing project is approved by the local authority. Thus, it is evident that the period of five years is

relevant only for considering the completion of the project from the end of the financial year in which the housing project is approved by the local authority. Even if the construction and development commences in the 4th year from the date of approval by the local authority and gets completed in the 5th year itself, there can be no dent to the eligibility of deduction u/s.80IB(10).

11. Explanation (i) to section 80IB(10)(a) states that 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*. The legal position which, therefore, emerges is that the crucial timeline under consideration is the date of approval of the housing project by the local authority, which in this case, is the District Collector, Pune. Thus, it is the date of approval by the District Collector, Pune, from which the period of five years is to be reckoned.

12. At this stage, we need to ascertain the logic behind the Explanation (i), which provides that where the approval in respect of the housing project is obtained more than once, the 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. The requirement for this Explanation arose to deal with certain situations requiring the assessee to seek re-approval of the housing project from the local authority. One situation could be where the approval is subject to certain conditions to be certified by some other statutory authority and some variation actually happens on such certification *vis-à-vis* the originally approved plan. In that case, the assessee again needs to get the final approval from the local authority before starting development work. To deal with such contingencies, the legislature provided that even if more than one approval is received, the period of five years will run with reference to the first approval granted by the local authority to the housing project.

13. Now we advert to the relevant facts of the case for finding out the date of approval by the competent authority. Office of the District Collector, Pune granted permission on 30-03-2007 to the assessee's application dated 21-12-2006, whose copy is available at page 125A of the paper book. Opening part of this order states that: "P.A. Vijay Tukaram Raundal. and others has requested for getting Non-Agricultural permission *and approval for building plan* for residential use on Survey No.....owned by him vide his application dated 21-12-2006". This order further records in para 2:

“As the residential construction drawings for the above location submitted by the applicant, this area being outside the limits of Municipal Corporation, were sent for examination to the Assistant Director, Urban Planning, Pune and *the Assistant Director, Town Planning, Pune has examined and conveyed vide their outward no. Drawing/NABP/M Sus/Tal Mulshi/S.No.28/2 and others/SSP/1056 dt. 30-03-2007* that on examination of planned residential use space drawings of the referred place, they generally seem to appropriate as per the existing guidelines”. This shows that the assessee applied for getting both the N.A. permission and approval for building plan of the project to the District Collector, Pune. On finding that the area was outside the limits of Municipal Corporation, the District Collector, Pune sought the opinion of the Assistant Director, Urban Planning, and the latter, vide his order dated 30-03-2007, gave a green signal on finding the drawings of the planned residential site to be appropriate. On the basis of that order, the District Collector, Pune gave permission for N.A. use and also approved the building plan for construction on that very date itself, namely, 30.3.2007 by observing that: ‘grant the non-agriculture and building plans purpose’. This permission was granted on certain terms and conditions and one of the terms, considered by the Id.

CIT(A) for deciding the issue in favour of the assessee, has been set out at Sl.No.3, which reads as under:

“This drawing will have to be marked on the ground and certified by the land records department before commencing any development work here. After marking on the ground, the minimum area of any piece of land must not be less than that shown on the drawing. Also, the area of road widening must not measure less than the approved drawings. If there is any variation, it has to be re-approved. No development be done without the final approval of a copy of such certified drawing submitted to the Hon’ble District Collector and this office.”

14. A perusal of this condition transpires that the drawings will have to be marked on the ground and certified by the Land records department as to the minimum area and the area of road widening before commencing any development work. In case of any variation, ‘it has to be re-approved’ by the District Collector before commencing development work.

15. The assessee has set up a case that the certificate as to the fulfillment of the condition No.3 was granted on 22-08-2007 and hence this date should be considered as the date of approval for considering the period of 5 years for completion of construction. We are unable to accept this contention. The *raison d’etre* is that section 80IB(10) clearly provides that the completion of construction is to be done within a period of 5 years from the end of the financial year in which the housing project is approved by the

local authority. The local authority in the instant case is District Collector, Pune, who approved the housing project by according permission on 30-03-2007. Certification by the Land record department as to the fulfillment of condition no. 3 was confined to the drawings. A copy of such certificate dated 22.8.2007 is available at page 137-A of the paper book. Condition no. 3, as reproduced above, is in the context of marking the drawing on the ground before taking up actual development work. This is a procedural requirement invariably in all the approvals of housing project by the local authority. This requirement is enshrined in approvals for ensuring that the actual development of the housing project coincides with the accorded approval. This condition is not something peculiar to the assessee, so as to put his case at a different pedestal from others, so as to assume the date of permission granted by DILR on 22-08-2007 as a starting point in contrast to the date when the approval was first granted by the District Collector, Pune on 30.3.2007. Further, one needs to draw a line of distinction between an approval and a certificate. The requirement of the section is the grant of approval and not the issuance of certificate. Approval in this case was granted to the housing project by the District Collector, Pune, whereas the office

of the land records department simply issued a certificate as to the fulfillment of the condition no. 3. When we read sub-clause (iii) to section 80IB(10(a) in juxtaposition to the Explanation (i), the position which comes to the fore is that construction of the housing project has to be completed within a period of five years from the end of the financial year in which it is approved by the local authority and where the multiple approvals are obtained, the date of the approval shall be deemed to be the date on which the building plan of such housing project is *first approved* by the local authority.

Applying this legal position to the facts of the present case, we find that the housing project has been approved only once by the District Collector, Pune on 30.3.2007. *Arguendo*, the contention of the Id. AR that the date of the certificate by the office of the Land record department should be taken as the date of approval, it would still not alter the crucial date, which, in case of multiple approvals, is when the approval was *first* granted. The date of first approval to the housing project by the District Collector, Pune is 30.3.2007, which does not get erased by the date of certificate issued by the office of land records department.

16. At this juncture, it would be relevant to take note of the Constitution Bench judgment of the Hon'ble Supreme Court, relied

by the Id. DR, in *Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company & Others (Civil Appeal No.3327/2007)* (2018) 9 SCC 1 dated 30.7.2018. The Constitution Bench was set up to examine the correctness of the *ratio* in *Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay (1997) 6 SCC 564* and the question posed before it was- 'What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?' The Hon'ble Constitution Bench took note of its earlier judgment in *Tata Iron and Steel Company Ltd. Vs. State of Jharkand (2005) 4 SCC 272* in which it was held that the principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, and held in the Constitution Bench judgment that such principle would have no application to construction of an exemption notification. It went on to hold that in such a case it is for the assessee to show that he comes within the purview of exemption. After considering the issue in detail, the Bench held that exemption notification should be interpreted strictly and: "the burden of proving the applicability would be on the assessee to show that his case comes within the

parameters of the exemption clause or exemption notification”. It further held that: “When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed extended to the subject/assessee and it must be interpreted in favour of the Revenue”. Going with the *ratio decidendi* of this Constitution Bench judgment, it is manifested that the assessee has to strictly satisfy the conditions as given in the section for availing the deduction and in case of any doubt or ambiguity, the benefit of interpretation has to be given in favour of the Revenue.

17. Extantly, we are concerned with a situation in which there is no ambiguity in the relevant language of section 80IB(10) and even on the plain interpretation of the provision, it is clear that the period of five years for completion of construction has to be reckoned from the end of the financial year in which the building plan of the housing project is first approved by the local authority.

18. The ld. AR heavily relied on the judgment of Hon’ble Bombay High Court in *Jamunabai Parmananddas Shah and others Vs. Bajirao Seetaram Kalbhor and others (1995) (1) Mh.L.J. 564*. This judgment was rendered in the context of Maharashtra Land Revenue Code and Bombay Tenancy and Agricultural Land Act. The

question before the Hon'ble Bombay High Court, as set out in the beginning, was: "When and under what circumstances can it be said that the character and definition of agricultural land stand altered to non-agricultural land pursuant to the permission being granted by the Collector for non-agricultural use". In that case, the plaintiffs purchased certain land through a registered sale deed dated 20.3.1965. Prior to that, the competent authority granted NA permission to the respondent by an order dated 09-10-1964. The issue before the Hon'ble Court was about the date of change of the character of land. The NA permission was granted u/s.65 of the Land Revenue Code subject to the condition that the applicant shall commence the non-agricultural use of this plot within a period of six months from the date of this order, failing which it shall be deemed to have been cancelled. The Hon'ble High Court held that the order granting permission u/s.65 of the Maharashtra Land Revenue Code granting permission for NA use was conditional and it did not automatically come into operation. The order would become operational and effective only on the compliance of the condition satisfied therein within the prescribed time. It can be seen from the facts of that case that the issue raised was about the date of coming into operation of the NA order, which was held to be actually

becoming operational on the fulfillment of the condition. The Id. AR sought support of this judgment for canvassing a view that the condition No.3 given in the order by the District Collector was to be considered as a condition precedent for compliance and unless that condition of marking was fulfilled, the NA order should not be considered to have come into force. In our considered opinion, this argument is far-fetched. It can be seen from the judgment itself that the question for consideration was about the date of change of the character of agricultural land to non-agricultural land pursuant to the permission granted by the Collector for non-agricultural use. *Au contraire*, we are considering the language of section 80IB(10), which requires interpretation of the financial year '*in which the housing project is approved by the local authority*'. The texts as well as contexts of both the cases are altogether different and are streets away from each other. Ergo, the reliance of the Id. AR on this judgment is of no consequence in the present case.

19. The Id. AR also relied on a decision of the Bombay Bench of the Tribunal in *Shree Krishna Sai Development Corporation Vs. ITO (2011) 130 ITD 31 (Mumbai)*. In that case, the assessment years orders under consideration were 2005-06 and 2006-07 and the assessee claimed deduction u/s.80IB(10) in earlier years which was

accepted in the assessments completed u/s.143(3). The CIT, assuming jurisdiction u/s.263, opined that deduction u/s.80IB(10) should not have been allowed by the AO without proper verification of the certificate issued by the CIDCO indicating the date of commencement as 07-04-1998. The Tribunal considered the fact that though the commencement certificate issued by the CIDCO indicated the date of commencement as 07-04-1998, the actual commencement took place only after obtaining permission from the District Collector on 19-05-1999. It was held that the date as per CIDCO certificate was irrelevant. It was only the date of District Collector which was held to be relevant. When we apply the *ratio* of this decision to the facts of the instant case, it, rather than advancing the case of the assessee, fortifies the view of the AO in considering the date of certificate issued by the District Collector as the relevant date for consideration.

20. To sum up, the housing project was approved on 30.03.2007 and a period of five years from the end of the financial year in which the housing project was approved by the local authority, came to an end on 31-03-2012. Since the actual completion of the project took place between 24-09-2012 (when the assessee intimated the factum of *virtual* completion of the project to the

District Collector) and 30.3.2013 (when the completion certificate was issued by the competent authority), the condition of completing the construction within a period of five years from the end of the financial year in which the housing project was approved, got vitiated, making the assessee ineligible for deduction u/s.80IB(10) of the Act. We, therefore, overturn the impugned order and restore the order of the AO.

21. All the grounds in the assessee's Cross Objection, except ground No.3, are in support of the order passed by the ld. CIT(A) in granting deduction u/s 80IB(10). Since we have overturned the impugned order on this issue, the assessee's grounds also get consequently dismissed.

22. Ground No.3 is a fresh ground through which the assessee has objected to the levy of tax u/s.115JC of the Act.

23. Pithily put, the assessee computed its income under the regular provisions and also the adjusted total income u/s.115JC of the Act. Since the latter was higher than the former, the assessee declared the adjusted income. No issue was raised about the non-applicability of section 115JC before the ld. CIT(A). It is for the first time that the assessee has challenged that it wrongly applied section 115JC because the housing project commenced in an earlier year.

24. Having heard both the sides and gone through the relevant material on record, it is seen that section 115JC of the Act is a special provision for payment of tax by certain persons other than a company. Sub-section (1) of section 115JC provides as under:

‘Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.’

25. This section starts with a non obstante clause and provides that where the regular income-tax “*payable for a previous year*” is less than the alternate minimum tax payable for “for such previous year, the adjusted total income shall be deemed to be the total income of that person “*for such previous year*” and he shall be liable to pay income-tax on such total income @18.5%. This section clearly refers to total income “*of the previous year*” which has to be substituted as per the mandate of this provision, in case the income under regular provisions for such previous year, is less than that provided under this section. The ld. AR contended that though this section is applicable to the year under consideration, but it should not be applied because the housing project was approved in an

earlier year, when this section was not in vogue. We do not find any logic in the interpretation of this provision as made by the Id. AR. This section applies as one unit for a previous year, when the income under the regular provisions is less than the adjusted income under it. Neither section 115JC excludes its application in respect of housing projects approved prior to its insertion nor section 80IB(10) contains any such stipulation. As this section applies to a previous year, it cannot be construed to have applicability in part *qua* the other incomes and inapplicability in respect of income from the housing projects approved u/s 80IB(1) prior to its coming into force. If the contention of the Id. AR is taken to a logical conclusion, it would mean that the section shall apply in a truncated manner, so as not to apply in respect of income from the housing projects approved earlier but apply in respect of the projects approved after the cut-off date and also other items of income, which is patently fallacious having no legal sanction.

26. The Id. AR tried to draw strength from an order passed by the Pune Bench Tribunal in the case of *M/s. Vikram Developers & Promoters Vs. DCIT (ITA Nos. 2795 & 2796/PUN/2016)*. In that case, the Tribunal recorded in para 34 that: `as on date the assessee has no project on hand and on this fact the assessee did not apply

the provision of section 115JC of the Act'. It is clear from the factual matrix of that case that the assessee did not have any project on hand. In that view of the matter, the contention of the assessee does not hold water because the assessee is seeking non-application of section 115JC on the strength of a decision, which does not have such a point raised before it. In the hue of foregoing discussion, we are satisfied that there is no merit in the ground raised by the assessee in its cross objection.

27. In the result, the appeal of the Revenue is allowed and the C.O. of the assessee is dismissed.

Order pronounced in the Open Court on 30th August, 2022.

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

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

पुणे Pune; दिनांक Dated : 30th August, 2022
सतीश

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

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

आदेशानुसार/ BY ORDER,**// True Copy //**

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

| | | Date | |
|-----|--|------------|-------|
| 1. | Draft dictated on | 25-08-2022 | Sr.PS |
| 2. | Draft placed before author | 30-08-2022 | 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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