

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 256/RPR/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Kuber Developers
42/3, Nehru Nagar (East)
Bhilai (C.G.)
PAN : AAJFK1971B

.....प्रत्यर्थी / Respondent

Assessee by :Shri Moolchand Jain, AR
Revenue by :Shri P.K Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing :29.07.2022

घोषणा की तारीख / Date of Pronouncement :29.08.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the department is directed against the order passed by the CIT(Appeals)-II, Raipur, dated 28.07.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 30.03.2016 for assessment year 2013-14. Before us the department has assailed the impugned order on the following grounds of appeal:

"1. Whether on points of law and on facts & circumstances of the case, the Ld.CIT(A) was justified in holding that the assessee would be entitled for deduction u/s.80IB(10) of the Act proportionately with respect to profit on sale of excluding flats measuring more than 1500 sq. ft. limit when all the flats are forming part of a single project as per the provisions of Section 80IB(10) of the Act?"

2. "Whether on points of law and facts and circumstances of the case, the Hon'ble ITAT has erred by giving a finding which is contrary to the ratio of the judgement of the Hon'ble apex court in the case of Novopan India Ltd. Vs CCE in Civil Appeal No. 3556 of 1984"?

3. "Whether on points of law and facts & circumstances of the case, the Hon'ble ITAT was justified in ignoring the violations of Section 80IB(10)(c), Section 80IB(10)(e) and Section 80IB(10)(f) of the Act, in the process of ongoing sale of several flats in this housing project by the assessee, which is developing and building housing projects as a-going concern over the years?"

4. "Whether on points of law and facts & circumstances of the case, the Hon'ble ITAT was justified in giving a finding which is contrary to the legal provisions of the Act, as the Hon'ble ITAT has held that the claim of the assessee u/s 80IB of the Act cannot be dismissed in its entirety and proportionate disallowance is justified, more so in the

light of the fact on record aligned with the legal provisions of the Act that the entire project becomes ineligible for exemption u/s 80IB(10) of the Act as the conditions prescribed under clause (a) to (f) of Section 80IB(10) are violated, which is legally not tenable, thereby rendering the decision, which is perverse?"

5. "The order of the Ld. CIT(A) is erroneous both in law and on facts."

6. "Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee firm which is engaged in the business of developer and builder under the name and style of Kuber Enclave on its plot at Junwani, had e-filed its return of income for AY 2013-14 on 31.10.2013, declaring an income of Rs.32,44,430/- (i.e after claim of deduction under Sec. 80IB(10) of Rs. 7,09,83,027/-). Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of the assessment proceedings, the assessee on being queried as regards its entitlement for deduction under Sec. 80IB of the Act submitted, that as it had duly satisfied all the requisite conditions contemplated in the aforesaid statutory provision, therefore, its claim for deduction was well in order.

4. Observing that as the assessee in the earlier two assessment years had not satisfied the requisite conditions provided in clauses (c), (e) and (f) of sub-section (10) of Sec. 80IB, therefore, the then AO had while framing the assessment in its case for the said preceding years declined its claim of deduction under the said statutory provision, which thereafter was confirmed by the CIT(Appeals)-2, Raipur vide his order passed in Appeal No.35 & 36/14-15/2015-16, dated 17.02.2016, the AO disallowed the assessee's claim of deduction under Sec. 80IB(10) of Rs. 7,09,83,027/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals), who after relying on the order of the ITAT, Raipur in the assessee's own case for the preceding years i.e in ITA No.154/RPR/2013 for the assessment year 2010-11 and in ITA Nos. 43 & 44/RPR/2016 for the assessment years 2011-12 & 2012-13 granted partial relief to the assessee by observing as under:

"I have considered the grounds of appeal and the written submissions made by the Id. Counsel appearing on behalf of the appellant. The appellant brought to my notice the order of the hon'ble Raipur

Tribunal in the appellant's own case in appeal no. ITA No. 154/RPR/2013 (AY 2010-11) and ITA Nos. 43 & 44/RPR/2016 (AY 2011-12 & 2012-13) dated 17.1.2017 wherein on the same material facts and legal issues the tribunal held as under:

Since both the rival representatives agreed that the facts and circumstances for AY 2011-12 and 2012-13 are identical therefore we further hold that our conclusion noted for AY 2010-11 is applied to AYs 2011-12 and 2012-13 mutatis mutandis and the AO is directed to make proportionate disallowance in respect of the units allotted and sold during this period keeping in view the amendments in section 80IB(10) of the Act which are applicable w.e.f 1.4.2010. Accordingly, the claim of the assessee for these AYs is also partly allowed with the directions as given above.

In the result appeals of the revenue as well as the assessee are partly allowed.

In view of the above observations of the Tribunal, the A.O directed to restrict the disallowance proportionally in respect of allotment of sales transactions which are not complied with the conditions of sec.80IB(10) of the Act and allow the remaining deduction as claimed by the appellant as held by the Tribunal in their order cited above. This ground of appeal is disposed of with the above directions.”

6. Aggrieved with the order of the CIT(Appeals) the department has carried the matter in appeal before us.

7. The Ld. Departmental Representative (for short 'DR') submitted that as the conditions prescribed under clause (a) to (f) of Section 80IB(10) have been violated by the assessee, therefore, the entire project of the assessee was rendered as ineligible for deduction contemplated u/s.80IB(10) of the Act. It was further submitted by him that the findings given by the Tribunal in earlier years were contrary to the ratio laid down by

the Hon'ble Apex Court in the case of Novopan India Ltd. Vs. CCE, Civil Appeal No.3556 of 1984.

8. Per Contra, the Ld. Authorized Representative (for short 'AR) for the assessee submitted that the issue raised in the present appeal by the department was squarely covered by the decision of the Hon'ble High Court of Chhattisgarh in the assessee's own case in Tax Case No.106-107,112 of 2017, dated 06.11.2017 for AY 2010-11, AY 2011-12 and AY 2012-13. It was averred by the Ld. AR that the decision relied upon by the department in the case of Novopan India Ltd. (supra) regarding interpretation of an exemption notification would be of no help since the controversy in hand had been specifically decided by the Hon'ble Supreme Court in the case of Pr. CIT Vs. Shreenath Buildcon (2019) 267 taxman 115 (SC) and CIT Vs. Sarkar Builders (2015) 7 SCC 579.

9. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial

pronouncements that have been pressed into service by the Id. Authorized representatives for both the parties to drive home their respective contentions.

10. After having given a thoughtful consideration to the issue in hand, we find that the issue raised in the present appeal is no more res-integra and is squarely covered by the decision of the Hon'ble Jurisdictional High Court in assessee's own case (supra), wherein the Hon'ble High Court had held as under:

"06/11/2017

1. Having perused the materials, we are satisfied that the learned Counsel for the Appellant-Revenue is justified in submitting that these appeals are covered as per the judgment of the Hon'ble supreme Court in Commissioner of Income Tax V. Sarkar Builders; (2015) 7 SCC 579 and therefore, these appeals may be permitted to be withdrawn.
2. Hence, these appeals are dismissed as withdrawn."

Further, we find that the Hon'ble Supreme Court in the case of Commissioner of Income Tax V. Shreenath Buildcon (2019) 267 taxman 115 (SC), had held, that where the constructed area of some residential units exceeded the specified built up area of 1500 sq. ft, then, deduction claimed could not be denied in respect of the entire housing project.

11. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who had rightly directed the A.O to restrict the disallowance of the assessee's claim for deduction under Sec. 80IB(10) proportionately in respect of allotment of sales transactions which do not comply with the conditions of section 80IB(10) of the Act and, allow the remaining deduction as claimed by the assessee, thus, uphold the same. Thus, the grounds of appeal raised by the department are dismissed in terms of our aforesaid observations.

12. In the result, appeal of the department is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANTMEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th August, 2022

***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	29.07.2022	Sr.PS/PS
2	Draft placed before author	03.08.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		