

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI B.R BASKARAN (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITAT No.2131/Mum/2018
(Assessment Year : 2012-13)

M/s Bharat Agri Fert & Realty Ltd Bharat Fertiliser House, 12, Nanabhai Lane, Fort, Mumbai-400 023 PAN : AAACB0681K	vs	Assistant Commissioner of Income- tax-2(1)(1), Mumbai 5 th Floor, Room No.575, Aayakar Bhavan, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee represented by	Shri M. Subramanian
Department represented by	Shri M. Raghuv eer, Sr AR

Date of hearing	06/07/2022
Date of pronouncement	04/10/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income-tax (Appeals)-6, Mumbai dated 22/01/2018 passed under section 250 of the Income Tax Act pertaining to assessment year 2012-13.

2. The solitary issue involved in this appeal is the disallowance of deduction under section 80IB(10) of the Income tax Act, 1961 from the sale proceeds of car

parking by not considering that parking charges are integral part of the housing project and that the same is part and parcel of the housing project which is also liable for deduction under section 80IB(10) of income tax Act 1961.

3. The brief facts are that the assessee company engaged in the business of construction and manufacturing of fertilisers, filed its return of income on 25/09/2012 declaring total income of Rs. 23,679,550. The assessee's case was selected for scrutiny and assessment order under section 143(3) of the IT Act dated 19/03/2015 was passed determining total income of Rs. 2,65,59,550/- by making disallowance of the entire sale proceeds from car parking of Rs. 28,80,004/- as working of deduction under section 80-IB(10) of income tax Act 1961. The assessee was in appeal before the Ld CIT (A), who confirmed the said addition made by the AO.

4. The learned AR contended that the assessee was entitled to deduction under section 80-IB(10) from the sale of car parking as the same forms integral part of the housing project and it is also part and parcel of the housing project. The learned AR relied on the decision of the coordinate bench in the case of Asst.CIT vs Vaman Estate in ITA No. 7570/Mum/2011.

5. The learned DR, on the other hand, controverted the contention of the assessee that the sale of car parking was eligible for deduction under section 80-IB (10) of the IT Act. The Ld. DR relied on the decision of the learned CIT(A).

6. We have heard the rival submissions and perused the materials on record. It is observed that the assessee company has declared income of Rs. 28,80,000/- on sale of car parking and had claimed deduction on the same under section 80IB (10). The AO had rejected the claim of the assessee on the ground that the

income earned by sale of car parking cannot be part of business income and the same has to be assessed under the head 'Income from other sources'. The learned Assessing Officer further to this has relied on the decision of the Apex Court in the case of Nahalchand Laloochand Pvt Ltd vs Panchali Cooperative Housing Society (Civil Appeal No. 2544 of 2010) which held that stilt car parking spaces are part of the common amenities and cannot be sold independently as a flat nor appurtenant or attachment to a flat. The AO disallowed the assessee's claim for deduction under section 80-IB(10) on this proposition of law laid down by the Apex Court. The learned CIT(A) has also reiterated this proposition emphasised by the AO and held that the charges of car parking are inclusive of the total consideration of the flat and had distinguished the facts of the case in M/s Vaman Estate (supra). It is observed that the Tribunal in M/s Vaman Estate (supra) has relied upon the decision of co-ordinate bench in ITA No.3016/Mum/2008 for A.Y. 2004-05 dated 28/10/2009 wherein it was held that car parking spaces are integral part of the housing project and are included for deduction under section 80-IB(10) of the Act. As there is no distinguishing feature brought on record by the Revenue in this present appeal, we are hereby deciding this issue in favour of the assessee. It is also pertinent to point out that the decision by the Apex Court in Nahalchand Laloochand Pvt Ltd vs Panchali Cooperative Housing Society (supra), the issue pertains to whether stilt / open parking space can be sold by the promoter as 'flat' within the meaning of section 2(a-1) of Maharashtra Apartment Ownership Act, 1970 was the issue before Hon'ble Supreme Court and this decision is distinguishable with the facts of the present appeal as the issue in the present appeal pertains to deduction under section 80-IB(10) of the I.T. Act, 1961.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 04th October, 2022.

Sd/-

sd/-

(B.R. BASKARAN)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 04/10/2022

Pavanan

Copy of the Order forwarded to :

1. The Applicant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai