

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.166/NAG/2009  
निर्धारण वर्ष / Assessment Year : 2005-06

Shri Narendra Gandhi,  
40, Balaji Nagar, Manewada Road,  
Nagpur

PAN : ACIPG8340D

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-6,  
Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Manoj G. Moryani  
Revenue by : Shri G.J. Ninawe

सुनवाई की तारीख / Date of Hearing : 07-11-2022  
घोषणा की तारीख / Date of Pronouncement : 17-11-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 16-02-2009 passed by the Commissioner of Income Tax (Appeals)-II, Nagpur [‘CIT(A)’] for assessment year 2005-06.

2. We find that this appeal was filed with a delay of 41 days. To condone the said delay, the assessee filed application explaining the

reasons for delay. On perusal of the same upon hearing both the parties, the delay of 41 days is condoned.

3. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in confirming the denial of deduction u/s. 80IB(10) of the Act.

4. At the outset, we note that the assessee is an individual declared income from housing project by name Saket Dhan at Rs.30,08,447/-. The assessee claimed the said amount as exempt u/s. 80IB(10) of the Act, filed Form No. 10CCB in support of such claim. According to the AO, the assessee did not satisfy the primary condition of availability of one acre land for claiming deduction u/s. 80IB(10) of the Act and the assessee undertook his project only on 1201 sq. mtrs., by holding so the AO added an amount of Rs. 30,08,447/- to the total income of the assessee vide its order dated 18-12-2007 u/s. 143(3) of the Act. On perusal of page 6 of the impugned order, we note that the assessment order dated 27-12-2006 for A.Y. 2004-05 has been held by the CIT-III, Nagpur as erroneous and prejudicial to the interest of revenue u/s. 263 of the Act. The assessee challenged the said order before the Tribunal and the Tribunal upheld the directions of CIT-III, Nagpur in holding the assessment order for A.Y. 2004-05 is erroneous and prejudicial to the interest of revenue. On perusal of para 9 of the impugned order, there was no evidence brought on record that the assessee fulfilled the conditions as contemplated u/s. 80IB(10) of the Act in support of claiming deduction u/s. 80IB(10) of the Act for the year under consideration. The CIT(A) following the order of Tribunal for A.Y. 2004-05 confirmed the order of AO in denying deduction u/s. 80IB(10)

of the Act. The ld. AR fairly conceded that the facts and circumstances arising out of A.Y. 2004-05 is also identical to the year under consideration i.e. A.Y. 2005-06. Therefore, we find no infirmity in the order of CIT(A) in confirming the order of AO in denying the deduction u/s. 80IB(10) of the Act. Thus, the grounds raised by the assessee fails and are dismissed.

5. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 17<sup>th</sup> November, 2022.

Sd/-  
(Dr. Dipak P. Ripote)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> November, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-II, Nagpur
4. The CIT-III, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,  
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune