

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

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**  
**AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.208/RPR/2017**  
**निर्धारण वर्ष / Assessment Year : 2013-14**

Baldev Infra Projects Pvt Ltd., BMS House, Motitalab Para, Jagdapur (C.G.)  PAN: AADCB 2123 R	V s	The Dy.Commissioner of Income Tax-2(1), Raipur.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri R.B.Doshi – AR
Revenue by	Shri G.N.Singh – Sr.DR
Date of hearing	24/11/2022
Date of pronouncement	27/12/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee i.e. Baldev Infra Projects Pvt. Ltd., for the A.Y.2013-14 against the order of Id.CIT(A)-1, Raipur emanating from the assessment order under section 143(3) of the Income Tax Act, 1961 dated 01.03.2016. The Assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeal)-1, Raipur erred in not deleting the disallowance of deduction claimed u/s 80IB(10) of the Income-tax of Rs.62,46,481/-.*
2. *The order of the learned Commissioner of Income Tax*

*(Appeal)-1, Raipur is bad in law and on facts.”*

2. Brief facts of the case: The Assessee had filed Return of Income showing Nil income for A.Y.2013-14 on 26.09.2013. The assessee is in the business of Civil Contract and assessee has also developed housing project. Assessee's turnover from Civil Contract business was Rs.37,76,76,279/- and from housing project Rs.3,12,00,000/-. The assessee had claimed profit from housing project of Rs.93,78,038/-. The assessee claimed deduction under section 80IB(10) of the Act for the profit of Rs.93,78,038/- earned from housing project. Before the Assessing Officer(AO) submitted that no separate books of accounts are maintained for contract business and housing business. The AO calculated the profit for 80IB(10) project in the proportion of profit earned by the assessee.

The calculation of the AO as under:

<i>Total receipts from building sale as well as contract</i>	<i>Rs.40,88,76,279/-</i>
<i>Amount of building sale therein</i>	<i>Rs.3,12,00,000/-</i>
<i>Percentage of building sale</i>	<i>7.63%</i>
<i>Profit as per P &amp; L A/c</i>	<i>Rs.67,62,456/-</i>
<i>7.63% of the profit of Rs.67,62,456/-</i>	<i>Rs.5,15,975/-</i>

3. Therefore, AO restricted the assessee's claim for deduction under section 80IB(10) only to Rs.5,15,975/- and added the remaining amount. The ld.CIT(A) confirmed the addition.

4. Before us, the Id.Authorised Representative(Id.AR) of the assessee filed copy of the Balance Sheet, Profit & Loss Account, Form 10CCB. The Id.AR submitted that for A.Y. 2012-13, similar kind of calculation was done by assessee and it has been accepted by the Department. The Id.AR submitted that the housing building project was already completed and therefore, there was no major expenditure. The assessee has followed scientific method and books of accounts of the assessee are audited. Therefore, assessee has made the correct claim of deduction.

5. The Id.Departmental Representative(Id.DR) for the Revenue relied on the orders of the Lower Authorities.

6. We have heard both the parties and perused the records. The facts are as under:

<i>Sale of housing project</i>	<i>Rs.3,12,00,000/-</i>
<i>Contract Receipts</i>	<i><u>Rs.37,76,76,279/-</u></i>
<i>Total</i>	<i><u>Rs.40,88,76,279/-</u></i>

7. The assessee considered following common expenses:

<i>Total common administrative Expenses</i>	<i>Rs.1,76,17,564/-</i>
<i>Total common finance Expenses</i>	<i>Rs.1,52,53,399/-</i>
<i>Total common administrative depreciation</i>	<i><u>Rs.66,19,745/-</u></i>
<i>Total</i>	<i><u>Rs.3,94,90,708/-</u></i>

8. The assessee allocated the common expenses as under:

$$\frac{3,94,90,708 \times 3,12,00,000}{40,88,76,279} = *30,13,406/-$$

9. The assessee arrived at eligible profit under section 80IB(10) at Rs.93,78,038/-.

We have perused the Income & Expenditure Account filed by the assessee in the paper book. There are following heads which have not been considered by the assessee while allocating the expenditure.

10. Employee Benefit Expenses/Work Contract/Construction Expenses.

Work Contract/Construction Expenses	Rs.196,980,296/-
Employee Benefit Expenses	Rs.140,686,481/-

11. The ld.AR has not given any reason for not considering these expenses. It was merely submitted that the project was already complete. As per the audit report, the company has maintained proper records showing full particulars including quantitative details and situation of fixed assets. If as claimed in the Audit Report, the company has maintained full particulars including quantitative details and situation of fixed assets, then what prevented assessee from submitting these details either before the AO or before the ld.CIT(A) or before this Tribunal! No details have been submitted before any of the Authorities. Rather assessee claimed before AO that no separate books of accounts maintained.

12. The Employee Benefit Expenses of Rs.14,06,86,481/- contains Director's Remuneration of Rs.15 lakhs. Director is common for all projects, therefore, Director's Remuneration has to be allocated to the 80IB project also, but assessee has not allocated the same. The assessee has admitted that there was sale of housing project during the year, it means certain employees were engaged in the marketing and sale activity of the housing project, but no expenditure has been allocated for eligible project. The details of employee expenditure as per schedule are as under:

<u>Employee Benefits</u>	2012-13	(Amount in Rs.) 2011-12
<i>Salaries, Wages, Payment To Contractors &amp; Other Benefits to Employees</i>	138,080,170.00	97,963,744.00
<i>Contribution to Provident Fund and ESIC</i>	1,10,6311.00	636,529.00
<i>Directors Remuneration</i>	1,500,000.00	360,000.00

13. This shows that the apportionment formulae used by assessee is defective. Similarly, in Schedule 19 following expenditures are seen were auditor has given the heads as under:

<u>Work Contract/Construction Expenses</u>	2012-13	(Amount in Rs.) 2011-12
<i>Borewell &amp; Motor Pump</i>	49,250.00	-
<i>Lift Equipments</i>	642,600.00	-
<i>Labour Tax</i>	274,297/-	-
<i>Bricks &amp; Pipes</i>	8,684,240.00	11,966,760.00
<i>Cement</i>	23,068,403.52	18,067,035.29
<i>Electrical Fittings &amp; Installations &amp; Other Charges</i>	4,703,092.69	1,439,037.94
<i>General Contract Expenses</i>	843,673.36	4,609,006.71
<i>Metal &amp; Sand</i>	43,802,214.25	26,313,648.75
<i>Repairs &amp; Maintenance</i>	7,62,7268.43	4,215,337.41
<i>Steel &amp; Sheets</i>	32,968,627.92	63,579,363.13
<i>Suffering Plates &amp; Expansion Joint Sheets</i>	545,113.00	1,936,3243.93

<i>Transportation of Stores &amp; Materials</i>	<i>13,239,201.57</i>	<i>16,575,798.63</i>
<i>Tiles Expenses</i>	<i>10,111,147.96</i>	<i>6,756,437.20</i>
<i>Plumbing, Sanitary &amp; General Hardware Items</i>	<i>9,075,996.02</i>	<i>4,703,346.61</i>
<i>Whitewash &amp; Paints</i>	<i>2,424,375.24</i>	<i>58,809.96</i>
<i>Windows, Doors, Wood &amp; Channel Gates, Railing</i>	<i>10,747,031.74</i>	<i>9,446,620.74</i>
<i>Vehicle Charges</i>	<i>22,3742,713.96</i>	<i>14,177,689.03</i>
<i>Hire charges</i>	<i>665,500.00</i>	<i>2,861,540.00</i>
<i>Security Charges Safety Equipment</i>	<i>1,466,314.00</i>	<i>1,073,890.64</i>
<i>Anti Termite Treatment</i>	<i>689,880.00</i>	<i>137,600.00</i>
<i>Royalty</i>	<i>1,571,504.00</i>	<i>1,259,262.00</i>
<i>Transformer</i>	<i>-</i>	<i>114,000.00</i>
<i>Architect Fees</i>	<i>319,934.00</i>	<i>425,749.00</i>
<i>Entry Tax</i>	<i>1,334,935.35</i>	<i>-</i>
<b><i>Total Work Contract/Construction Expenses</i></b>	<b><i>196,980,296.01</i></b>	<b><i>190,239,257.97</i></b>

14. Since assessee claims that quantitative details have been maintained, nothing prevented assessee from submitting these details before the AO or Id.CIT(A) or ITAT. However, assessee has not filed any details.

Similar is the fact that assessee has not provided depreciation details.

15. Therefore, on the facts and circumstances, we are of the opinion that assessee failed to explain the reasons for not allocating certain expenditures which ought to have been allocated. The onus was on the assessee to prove that there is no diversion. However, in this case as we have mentioned in the earlier para, assessee failed to apportion the expenditures and also assessee failed to submit quantitative details of those expenditures. In these circumstances, the AO has rightly apportioned the expenditure based on the profit

earned by the assessee. Hence, we uphold the addition made by the AO. Accordingly, the grounds of appeal raised by the assessee are dismissed.

16. In the result, appeal of the Assessee is Dismissed.

Order pronounced under Rule 34(4) of Appellate Tribunal Rules, 1963.

**Sd/-**  
**(RAVISH SOOD)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> Dec, 2022 / SGR\*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Applicant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Raipur.
4. The Pr. CIT-I, Raipur.
5. DR, ITAT, "Raipur" Bench.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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