

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.1849/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2008-09)

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आयकर अपील सं/ I.T.A. No.1850/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2009-10)

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आयकर अपील सं/ I.T.A. No. 1851/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं/ I.T.A. No.1852/Mum/2020

(निर्धारण वर्ष / Assessment Year:2011-12)

Silver Land Developers Pvt. Ltd. 401, Sai Heritage, Above Axis Bank, Tilak Road, Ghatkopar (E), Mumbai-400077.	बनाम / Vs.	ITO, Ward-10(2) Room No. 430A, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400077.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCS9765H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Subodh Ratnaparkhi
Revenue by:	Smt. Nilu Jaggi (DR)

सुनवाई की तारीख / Date of Hearing: 25/01/2023

घोषणा की तारीख /Date of Pronouncement: 24/02/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are four (4) appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-22, Mumbai dated 29.07.2020 for AY. 2008-09 to AY. 2010-11 and against order dated 31.07.2020 for AY. 2011-12.

2. The main grievance of the assessee in all the captioned appeals are against the action of the Ld. CIT(A) dismissing the appeal of the assessee (ex-parte) in the midst of Covid-19 Pandemic, without hearing the assessee. Since the assessee's grievance is the same for all



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the captioned appeals, AY. 2008-09 is taken as the lead case and the decision in AY. 2008-09 will be followed in other assessment years. The grounds of appeal preferred by the assessee for AY. 2008-09 reads as under: -

- “1. The Hon. CIT(A) erred in deciding the appeal *ex parte*, rejecting the appellants request to keep the proceedings in abeyance till the decision of the Hon. Supreme Court on the SLP filed against the decision of the Hon, Bombay High Court, which had quashed and set aside the order of the empowered committee dated 21.02.2011, thereby denying the appellant fair opportunity to support the appeal with arguments and for this reason, the appeal be set aside to the file of the Hon CIT(A) to decide the appeal afresh after granting the appellant reasonable Opportunity to attend and argue the appeal.
2. The Hon. CIT(A) erred in upholding the addition of Rs.38,52,79,993/- made by disallowing the deduction claimed by the appellant w/s 80 IA (4) (iii) of the LT. Act 1961, in respect of profit derived from industrial park, Silver Metropolis Goregaon, Mumbai, holding that the appellant did not comply with the conditions laid down under the said section and was accordingly not eligible the said claim, which action being not as per law, the addition may kindly deleted.
3. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal/relief claimed at any time before the decision of the appeal.”

3. Brief facts in nutshell is that the assessee company has developed an Industrial Park named “Silver Metropolis” at Goregaon, Mumbai. The assessee has claimed deduction u/s 80IA(4) of the Income Tax Act, 1961 (hereinafter “the Act”). According to assessee it



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was developing an Industrial Park named 'Silver Metropolis' and had filed an application viz, application dated 27.12.2005 before the Ministry of Commerce and Industry, Government of India; and pursuant to it the assessee received approval vide letter dated 24.07.2006 wherein the Industrial Park named as "Silver Metropolis" was included/covered under the Industrial Park Scheme, 2002. Subsequently, the Ministry of Commerce and Industry, Government of India vide letter dated 06.01.2009 *inter alia* on account of some controversy with regards to the date of completion of the project, concluded that the said Industrial Park (Silver Metropolis) was not covered under the Industrial Park Scheme, 2002. Aggrieved, the assessee filed writ petition before the Hon'ble Bombay High Court (writ petition no. 453 of 2009); and the Hon'ble Bombay High Court vide order dated 16.06.2009 set aside the order of the Ministry of Commerce and Industry, Government of India dated 06.01.2009 and referred back to the matter to the Empowered Committee to hear the case of the assessee and pass appropriate order.

4. Pursuant to the direction of the Hon'ble High Court dated 16.06.2009, the Empowered Committee had to decide two issues for grant of approval under the Industrial Park Scheme, 2002 (i) the date of completion and (ii) the number of units. The Empower Committee vide order dated 07.07.2010 decided against the assessee by holding that assessee should not be granted the benefit of Industrial Park Scheme, 2002. This order of Empowered Committee was again challenged by assessee before the Hon'ble Bombay High Court; and



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the Hon'ble High Court was pleased to set aside the order of the Empower Committee vide order dated 18.10.2010.

5. Pursuant to the Hon'ble Bombay High Court order against the Empower Committee convened fresh hearings and again vide order dated 21.02.2011 rejected the application of the assessee on the grounds that the Industrial Park developed by the assessee was not completed on or before 31.03.2006. And therefore held it to be not eligible for the approval under the Industrial Park Scheme, 2002.

6. Aggrieved, the assessee again filed writ petition before the Hon'ble Bombay High Court and again vide order dated 16.11.2011, the Hon'ble High Court held that (a) Section 80IA(4)(iii) did not contain a condition to the effect that Industrial Park must commence operation by 31.03.2006 and therefore the view adopted by the Empowered Committee was erroneous. (b) That reduction in number of units, without there being any corresponding change in the area declared earlier, will not adversely affect the claim of the appellant. And the Hon'ble Bombay High Court (writ petition no. 744 of 2011) was pleased to quash the Empowered Committee order dated 21.02.2011. Aggrieved by the aforesaid action of the Hon'ble Bombay High Court quashing/setting aside the order of the Empowered Committee, the respondent/UOI have preferred Special Leave Petition (SLP) before the Hon'ble Supreme Court. Thus, according to the Ld. AR, therefore the matter (deduction u/s 80IA (4) (iii) of the Act) is sub-judice before the Hon'ble Supreme Court.



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7. Further it was brought to our notice that the Hon'ble Bombay High Court vide order dated 17.11.2011 in respect of writ petition no. 736 of 2011 had granted continue of stay in respect of outstanding demand for AY. 2008-09 until the Empowered Committee takes a final decision in the matter; and even if the Empower Committee taken an adverse view, stay would be in force for a further period of six (6) weeks from the date of order, which order Hon'ble High Court is found placed at page no. 68 to 70 of PB. Thus, we note that the assessee's main grievance before the Ld. CIT(A) was against the action of the AO not granting deduction u/s 80IA(4)(iii) of the Act in respect of Industrial Park "Silver Metropolis". As stated above, the main ground in all the above captioned appeals pertain to claim for deduction u/s 80IA(4)(iii) of the Act in respect of the Industrial Park "Silver Metropolis" at Goregoan, Mumbai developed by the appellant company. The deduction claimed and denied by the AO/Ld. CIT(A) in respect of the relevant assessment year and other AY's are as under:

Sr. No.	Asst. yr.	Amount (Rs.)
1	2008-09	38,52,593/-
2	2009-10	16,09,58,394/-
3	2010-11	30,16,04,133/-
4	2011-12	19,40,91,326/-

8. As we have noted (supra), initially letter of approval dated 24.07.2006 (refer page no. 9 to 11 of PB) was granted to the "Silver Metropolis" to be included as Industrial Park under the Industrial Park Scheme, 2002. And thereafter, it was withdrawn/application returned back with an advise to apply before the appropriate authority under the Industrial Park Scheme, 2008 (refer page no. 27-28 of PB) which



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action of the Empowered Committee was challenged several times by the assessee before the Hon'ble Bombay High Court and was quashed/set aside as discussed (supra). It has been brought to our notice that the Empowered Committee has preferred an appeal (Special Leave Petition) before the Hon'ble Supreme Court against the order of the Hon'ble Bombay High Court and its pending before the Hon'ble Supreme Court. So at present, the main grievance/Lis of the assessee is sub-judice/lis pendence before the Apex Court. And even though, the aforesaid facts were brought to the notice of Ld. CIT(A) according to assessee, still the Ld. CIT(A) hurriedly has passed the impugned order in the month of July, 2020 [which was in the midst of Pandemic Covid-19]. Taking into consideration, the aforesaid facts as discussed, the action of the Ld. CIT(A) dismissing the appeal of the assessee ex-parte cannot be countenanced. Therefore, we set aside the order of the Ld. CIT(A) and direct him to keep the aforesaid appeals pending until the decision is given by the Hon'ble Supreme Court on the lis as discussed (supra). And the Ld. AR/assessee/AO/department is directed to file the order of the Hon'ble Supreme Court as when it is delivered in the SLP/CA filed by Empowered Committee as discussed (supra) without any delay before the Ld. CIT(A); and bring it to his notice the order of Hon'ble Supreme Court and request for hearing of the appeals thereafter. In the light of the discussion/direction made supra, therefore, we restore the appeals back to the file of Ld. CIT(A) and direct him to decide the grounds of appeal raised by the assessee, after hearing the assessee in accordance to the law.



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9. The aforesaid direction/decision of ours would apply *mutatis mutandis* to all the other captioned appeals for AY. 2009-10 to AY. 2011-12.

10. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 24/02/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/02/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai