

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 432 & 433/Srt/2023  
(Assessment Years: 2011-12 & 2012-13)  
(Virtual hearing)

D.C.I.T., Circle- 2(1)(1), Surat.	Vs.	M/s K G Developers, 2/312 "Gonawala House", Moto Mohollo, Near-Udhna Darwaja Rustompura, Surat-395003. <b>PAN No. AAIFK 9749 C</b>
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri Vinod Kumar, Sr.DR
Assessee represented by	Shri Dhruvang Diwan, C.A.
Date of Institution of Appeals	30/062023
Date of hearing	29/08/2023
Date of pronouncement	30/08/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by the Revenue are directed against the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) both dated 02/05/2023 for the Assessment years (AY) 2011-12 and 2012-13 respectively. In both these appeals, the revenue has raised certain common grounds of appeal. Facts in both these years are almost similar, therefore, with the consent of parties, both these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the

appeal being ITA No. 432/Srt/2023 for the A.Y. 2011-12 is treated as a "lead case". In this appeal, the revenue has raised following grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to delete the penalty imposed on noneligible deduction u/s.80IB(10) of the Act amounting to Rs.. 79,56,949/- u/s. 271(1)(c) of the I.T.Act.*
- 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the Assessee has not furnished inaccurate particulars of income to impose penalty us 271(1)(c) of the Act.*
- 3. On the facts and circumstances of case and in law, the Ld. CIT(A) failed to appreciate the fact that the approval for the housing project, undertaken by the assessee, was received on 16.03.2009, and no deduction was admissible u/s 80IB(10) of the Act, being later than 31.03.2008.*
- 4. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*
- 5. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*
- 6. The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee is a partnership firm, engaged in the business of builder and developers. The assessee while filing return of income for this assessment year, in its computation of income claimed deduction under Section 80IB of the Income Tax Act, 1961 (In short, the Act). The claim of assessee was denied by Assessing Officer on the ground that the approval of project was granted by the local authority/Surat Municipal Corporation (SMC) after cut of date prescribed in Section 80IB(10) of the Act. Though, the assessee has set up its case that initial approval was granted on

19/07/2006 which should be considered as an approval of the project. The Assessing Officer was of the view that the initial approval was granted for construction of row house, however, the assessee has claimed deduction under Section 80IB(10) against high rise building. The initial approval was granted to Shri Devendra M Jariwala and not to the assessee. The assessee was not owner of the land at the time of initial approval. Revised approval was granted by local authority on 16.03.2009, which was after cut of date prescribed under section 80IB(10). On the basis of such observation, the Assessing Officer disallowed the entire deduction under Section 80IB of the Act. The disallowance was upheld by the Id. CIT(A). On receipt of order of Id. CIT(A) in quantum assessment, the Assessing Officer levied penalty under Section 271(1)(c) of the Act. The assessee claimed deduction of Rs. 2.34 crores for A.Y. 2011-12. The Assessing Officer levied minimum penalty @ 100% of tax sought to be evaded. The Assessing Officer before levying penalty issued show cause notice. The assessee contested the penalty proceedings by filing detailed reply. The reply of assessee is recorded in para 5 of penalty order dated 27/03/2017. The assessee in its detailed reply, highlighted various facts including obtaining initial approval, thereafter approval was revived and submitted that for the purpose of claiming deduction under Section 80IB of the Act, approval granted initially should have been

considered. Such explanation of assessee was not accepted. The Assessing Officer thereby levied penalty for furnishing inaccurate particulars of income.

3. Aggrieved by the penalty under Section 271(1)(c) of the Act, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee again filed detailed written submissions dated 22/03/2023 running into eight pages and relied on number of decisions of superior courts and Tribunal. The assessee also stated that they have already filed appeal in quantum assessment before the Hon'ble Jurisdictional High Court. The assessee further stated that similar penalty on identical facts was levied in A.Y. 2010-11 and the same has been deleted by the Tribunal in order dated 13/06/2017 in ITA No. 3288/Ahd/2015.
4. The Id. CIT(A) on considering assessment order and the submission of assessee and order for A.Y. 2010-11, deleted the entire penalty. The Id. CIT(A) while passing the order, deleted the similar penalty for A.Y. 2012-13 and 2013-14 as well. The Id. CIT(A) while granting relief to the assessee followed the order of Tribunal wherein it was held that mere denial of deduction in quantum proceedings and confirmation thereof in quantum appeal would not *ipso facto* means to attract the penalty and that the penalty is not automatic consequence of quantum proceedings. The assessee has given detailed explanation for its

justification of its claim which is in realm of bonafide. Aggrieved by the order of Id. CIT(A), the Revenue has filed appeal before the Tribunal.

5. We have heard the submissions of learned Senior Departmental Representative (Id. Sr. DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee. The Id. Sr. DR for the revenue supports the findings of Assessing Officer in assessment order as well as the action in levying penalty. The Id. Sr. DR for the revenue submits that the order of Id. CIT(A) is not acceptable on merit as the approval of project was granted by the local authority after cut of date prescribed under Section 80IB(10) of the Act at the time of initial approval, the ownership was with third party. The initial approval lapsed on 18/07/2007 and which was not removed by local authority, thus the Assessing Officer was right and justified in levying penalty and he fully support the order of assessing officer.
6. On the other hand, the Id.AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that all the submissions of the revenue was considered by the Tribunal while allowing similar appeal of assessee for A.Y. 201-11 in ITA No. 3288/Ahd/2015 dated 13/06/2017. The Id. CIT(A) followed the order of Tribunal in AY 20101-11, wherein similar penalty was levied by the assessing officer, however, on appeal before Tribunal entire penalty was delated. The Id.

AR of the assessee submits that the grounds of appeal raised by revenue are in fact covered in favour of assessee.

7. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We find that similar penalty was levied by assessing officer on the basis of similar disallowances under section 80IB(10) in A.Y. 2010-11, however, on appeal before the Tribunal, entire penalty was deleted vide order dated 13/06/2017 passed in ITA No. 3288/Ahd/2015. We find that the Id. CIT(A) while granting relief to the assessee, followed the order of Tribunal. Thus, respectfully, following the order of Tribunal in appeal for A.Y. 2010-11 wherein on almost all contention of both the parties were considered while granting relief to the assessee. Thus, in our view, the grounds of appeal raised by the revenue are covered in favour of assessee and against the revenue.
8. In the result, this appeal of revenue is dismissed.
9. Now we take appeal in ITA No. 433/Srt/2023 for the A.Y. 2012-13 wherein the revenue has raised similar grounds of appeal as raised in appeal in ITA No. 432/Srt/2023 for A.Y. 2011-12, except variation of amount of disallowance/addition. Considering the fact that we have dismissed the appeal of revenue in ITA No. 432/Srt/2023 for A.Y. 2011-12, therefore, considering the principle of consistency, the appeal of ITA

No. 433/Srt/2023 for the A.Y. 2012-13 is also dismissed with similar findings.

10. In the result, both these appeals of the revenue are dismissed.

Order pronounced in the open court on 30<sup>th</sup> August, 2023.

**Sd/-**  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 30/08/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr.Private Secretary, ITAT, Surat