

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.634/PUN/2023
(A.Y. 2009-10)

Shree Gajanana Developers, S.No. 80/1, Wadmukhwadi, Alandi Road, Charoli, Pune. PAN: ABDFS 1862 L	vs	ITO, Ward-8(4), Pune.
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Ganesh Budruk, DR
Date of hearing	:	04/09/2023
Date of pronouncement	:	20/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 25.03.2023 for A.Y.2009-10 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. The submissions of the Id.DR are recorded and the case was heard on merits considering the documents/materials on record.

3. The grievance of the assessee in the present appeal is the disallowance of Rs.18,23,653/- deduction claimed u/sec. 80IB(10) of the Income Tax Act, 1961 (for short, 'the Act').

4. We have perused the assessment order as well as the order of

NFAC. The main reason for denial of deduction u/sec. 80IB(10) by the Department is that assessee had developed a residential project with commercial built up area of 11 shops bearing built up area of more than 2000 sq.ft. (as per the Act in the year 2009-10). The contention of the Department is that the benefit of sec.80IB has to be given for development of housing projects. The object of this provision is to encourage residential projects, however, along with housing projects, there can be certain commercial establishments also, but should not exceed the prescribed limit as given in the concerned provision of the Act itself. That, from perusal of para 4 of the NFAC's order, it appears that assessee had not submitted the details about the residential units. Therefore, when no details have been submitted regarding the total residential units, in that case it cannot be said that the Revenue is correct in denying the deduction u/sec. 80IB(10) for the said violation, because only when it is categorically identified as to what is the area of housing project and what is the area of commercial project and whether it is in compliance with sec. 80IB(10) or not, then only it can be decided whether there is any violation. Since the assessee has not submitted any details about the residential units, in the interest of justice, we are of the considered view that the matter may be restored to the file of the NFAC for adjudication as per law and the assessee is directed to submit the details of residential units and considering these details, the NFAC shall come out with a speaking order. We order accordingly.

5. Before parting, we observe in sec. 80IB(10) that the word used is 'housing project', therefore the entire deduction shall revolve around the allowability of deduction for developing/construction of such housing projects which is in fact the object for this provision. The commercial establishments constructed if any, within the said housing project has to comply with the requirements of the said provision of the Act. With these observations and as per our aforesaid direction, the grounds of appeal stands allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 20th September, 2023.

Sd/-
(G.D. PADMAHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 20th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "SMC" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.