

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

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 98/RPR/2023  
निर्धारण वर्ष / Assessment Year : 2013-14

The Deputy Commissioner of Income Tax,  
Circle-1(1), Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Rakesh Saraogi  
Prop. M/s. Madan Construction,  
Subhash Road, Gunj Para,  
Raipur (C.G.)  
PAN : AJJPS3803P

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.10.2023

घोषणा की तारीख / Date of Pronouncement : 27.10.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 06.02.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 27.03.2016 for the assessment year 2013-14. The revenue has assailed the impugned order on the following grounds of appeal:

“(1) Whether on the facts and circumstances of the case, the Ld. CIT(A), NFAC is justified in deleting the disallowance of Rs.2,36,00,651/- out of deduction claimed by the assessee under section 80IB(10) of the IT Act, 1961?

(2) Any other ground which may be adduced at the time of hearing”

2. Succinctly stated, the assessee, a builder, had filed his return of income for A.Y.2013-14 on 24.09.2013, declaring an income of Rs.2,02,97,950/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the assessment proceedings, it was, inter alia, observed by the A.O. that the assessee had sold two flats, viz. (i) Flat No. “A-101”; and (ii) Flat No. “A-102” to Smt. Usha Basant Sethi. Although it was the claim of the assessee that it had sold Flat No. “A-102” to Shri Mahendra Kumar Sethia, HUF, but the A.O. observed that the claim was factually incorrect. The assessee had, based on an “Agreement to sell,” claimed that he had sold flat No.” A-102” to Shri Mahndra Sethiya, HUF, but

the same did not find favor with the A.O. On the basis of information that was shared with him by the ITO, Ward-4(3), Raipur, before whom the case of Smt. Usha Basant Sethia (supra) was fixed for scrutiny assessment; the A.O. observed that the assessee had vide a registered sale deed sold Flat No.A-102” to Smt. Usha Basant Sethia (supra). On the basis of the aforesaid facts, the A.O. called upon the assessee to explain that as he had allotted more than one residential unit of his housing project to an individual, i.e., Smt. Usha Basant Sethia (supra), therefore, why his claim for deduction u/s.80IB(10) of the Act may not be declined. As the reply filed by the assessee did not find favor with the A.O., he declined his entire amount of claim for deduction u/s 80IB(10) of the Act of Rs.2,36,00,651/-. Accordingly, the A.O. vide his order passed u/s. 143(3) dated 27.03.2016 determined the income of the assessee at Rs.4,38,98,600/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). It was, inter alia, the claim of the assessee before the CIT(Appeals) that he had allotted Flat No. “A-102” to Shri Mahendra Sethiya, HUF, and not to Smt. Usha Basant Sethia (supra). Carrying his contention further, it was submitted by the assessee that as Shri Mahendra Sethiya, HUF had entered into a sale agreement for his Flat No. A-102 with Smt. Usha Basant Sethia (supra), therefore, it was only as per his request that he had accommodated him by executing a sale deed in the latter’s name. Referring to the fact that Smt. Usha Basant Sethiya (supra) was neither Karta of Shri Mahendra Sethiya, HUF, nor a member of the same; the CIT(Appeals) found favor with the claim of the assessee that he had not sold more

than one residential unit to Smt. Usha Basant Sethia (supra). For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:

“It is seen that out of the 55 flats, the Violation has been noted by the AO only at one instance. It is also seen that from the affidavit that Smt. Usha Basant Sethiya wife of Shri Basant Sethiya is neither the Karta of Maheridra Sethiya HUF nor a member of Mahendra Sethiya. HUF. It is also seen that the agreement between appellant and Mahendra Sethiya HUF has not been controverted by the AO as ingenuine. The affidavit by Smt. Usha Sethiya and Mr. Mahendra Sethiya HUF that Smt. Usha Sethiya is neither a member nor Karta of Mahendra Sehtia HUF has also not been challenged. Thus, Smt. Usha Basant Sethiya wife of Shri Basant Sethiya and Mahendra Sethiya HUF are two distinct legal entities. The appellant has made sale agreement for flat A102 to Mahendera Sethiya HUF. The Mahendra Sethiya HUF has executed deed with Smt. Usha Sethiya which the HUF is free to do. Thus, these are two separate sales. Appellant's appeal is therefore allowed.

4. In result, the appeal of the appellant is allowed.”

Accordingly, the CIT(Appeals), on the basis of his aforesaid deliberations, allowed the assessee's claim for deduction u/s.80IB(10) of the Act.

5. The Revenue, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

6. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

7. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal submitted, that there was no

justification for the A.O to have declined the assessee's claim for deduction u/s. 80IB(10) of the Act for the reason that he had allegedly sold more than one residential flat of his housing project to an individual. The Ld. AR, in support of his aforesaid claim, relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Shreenath Buildcon (2019) 267 taxman. 115 (SC) and CIT Vs. Sarkar Builders (2015) 7 SCC 579. Also, support was drawn by the Ld. AR from the judgment of the Hon'ble High Court of Chhattisgarh in the case of M/s. Kuber Developers, Tax Case No.106-107, 112 of 2017, dated 06.11.2017, and that of the order of ITAT, Raipur, in the case of ACIT-1(1) Vs. M/s. Kuber Developers, ITA No.256/RPR/2017 dated 29.08.2022.

8. Apropos the declining of the assessee's claim for deduction u/s.80IB(10)(f) with respect to Flat No. A-102, it was submitted by the Ld. AR that as the same was based on wrong facts, the CIT(Appeals) had rightly vacated the same. Elaborating on his aforesaid contention, it was averred by the Ld. AR that the assessee had executed an "Agreement to sell" for Flat No. A-102 with Shri Mahendra Sethiya, HUF. Carrying his contention further, the Ld. A.R. submitted that as the aforesaid property, viz. Flat No. A-102 was thereafter sold by Shri. Mahendra Sethiya, HUF to Shri Usha Basant Sethiya (supra), therefore, the said subsequent sale transaction could not have formed a basis for declining the assessee's claim for deduction u/s.80IB(10) of the Act. The Ld. AR submitted that as Smt. Usha Basant Sethiya (supra) was neither Karta of Mahendra Sethiya, HUF, nor a member of the same; therefore, it was incorrect for the A.O to infer any violation by the assessee of the clause (f) of sub-

section (10) of Section 80IB(10) of the Act. Based on his aforesaid submission, it was the claim of the Ld. AR that as the assessee had executed two separate sale transactions, viz. (i) sale of flat No. A-101 to Smt. Usha Basant Sethiya; and (ii) sale of Flat No.A-102 to Shri Mahendra Sethiya, HUF; therefore, there was no infraction of the provisions of Section 80IB(10) of the Act.

9. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities.

10. We have given thoughtful consideration to the aforesaid issue in hand, i.e., sustainability of the disallowance of the assessee's claim for deduction u/s.80IB(10) of the Act.

11. Apropos the claim of the Ld. A.R that the A.O had wrongly disallowed the assessee's entire claim for deduction u/s.80IB(10) of the Act for the reason that he had allegedly sold more than one residential unit of his housing project to one individual, we find substance in the same. As stated by the Ld. AR and, rightly so, the issue raised in the present appeal is no more *res-integra* and is squarely covered by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Shreenath Buildcon (2019) 267 taxman. 115 (SC)**. The Hon'ble Apex Court had observed that where the assessee had carried out any construction with respect to some of the residential units exceeding the specified built-up area of 1500 sq. ft, then deduction claimed u/s 80IB(10) of the Act could not be denied in respect of the entire housing project. Also, a similar view had been taken by the Hon'ble Apex Court in the case

of **CIT Vs. Sarkar Builders (2015) 7 SCC 579**.. Apart from that, we find that the Division Bench of this Tribunal in the case of **ACIT-1(1) Vs. M/s. Kuber Developers, ITA No.256/RPR/2017 dated 29.08.2022**, had observed that violation attributable to some residential units of a housing project would not justify the declining of the assessee's entire claim for deduction u/s. 80IB(10) of the Act, observing as under:

“9. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Id. Authorized representatives for both the parties to drive home their respective contentions.

10. After having given a thoughtful consideration to the issue in hand, we find that the issue raised in the present appeal is no more res-integra and is squarely covered by the decision of the Hon'ble Jurisdictional High Court in assessee's own case (supra), wherein the Hon'ble High Court had held as under:

“06/11/2017

1. Having perused the materials, we are satisfied that the learned Counsel for the Appellant-Revenue is justified in submitting that these appeals are covered as per the judgment of the Hon'ble supreme Court in Commissioner of Income Tax V. Sarkar Builders; (2015) 7 SCC 579 and therefore, these appeals may be permitted to be withdrawn.
2. Hence, these appeals are dismissed as withdrawn.”

Further, we find that the Hon'ble Supreme Court in the case of Commissioner of Income Tax V. Shreenath Buildcon (2019) 267 taxman 115 (SC), had held, that where the constructed area of some residential units exceeded the specified built up area of 1500 sq. ft, then, deduction claimed could not be denied in respect of the entire housing project.

11. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who had rightly directed the A.O to restrict the disallowance of the assessee's claim for deduction under Sec. 80IB(10) proportionately in respect of

allotment of sales transactions which do not comply with the conditions of section 80IB(10) of the Act and, allow the remaining deduction as claimed by the assessee, thus, uphold the same. Thus, the grounds of appeal raised by the department are dismissed in terms of our aforesaid observations.”

12. We, thus, in terms of our aforesaid observations, concur with the view taken by the CIT(Appeals), who had impliedly approved the claim of the assessee that there was no justification for the A.O to have declined the entire claim of deduction u/s.80IB(10) of the Act for the reason that he had sold more than one unit of his housing project to one individual.

13. Apropos, the claim of the assessee that he had not sold more than one residential unit to Smt. Usha Basant Sethiya (supra), we are unable to bring ourselves to agree with the said claim. Before proceeding any further, it would be relevant to cull out Section 80IB(10) of the Act, which reads as under (relevant extract):

“80IB(10)

(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

*Explanation.*—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

**Provided** that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place;

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher;

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

**(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—**

**(i) the individual or the spouse or the minor children of such individual,**

**(ii) the Hindu undivided family in which such individual is the karta,**

**(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.**

*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).”

As is discernible from the aforesaid statutory provision, the same, inter alia, states that where more than one residential unit in the housing project is allotted to one individual, then the same would fall within the sweep of the violation contemplated in clause (f) of sub-section (10) of Section 80IB of the Act.

14. Backed by the aforesaid mandate of law, we shall now look into the fact as to whether or not the assessee had violated the aforesaid statutory provision with respect to residential units sold to Smt. Usha Basant Sethiya (supra). As the assessee had vide, registered sale deed sold Flat No. A-102 to Smt. Usha Basant Sethiya (supra), therefore, it can safely be concluded that the residential unit in his housing project was allotted to the said person. Although, it is the claim of the assessee that he had as regards the aforesaid property, viz. Flat No. A-102 executed the agreement to sell in favor of Shri Mahendra Sethiya, HUF, but the same, in our considered view, would not take his case beyond the realm of the infraction contemplated in clause (f) of sub-Section (10) of Section 80IB of the Act. We, say so, for the reason that as Smt. Usha Basant Sethiya (supra) vide a registered deed executed in her favor by the assessee got vested with both the rights and title as that of an allottee for Flat No.A-102; therefore, there is no merit in the claim of the assessee that he had transferred the said property to Shri Mahendra Sethiya, HUF. Also, the claim of the Ld. AR that Mahendra Sethiya, HUF, had signed as a consenting party in the aforesaid registered deed executed by the assessee in favor of Smt. Usha Basant Sethiya (supra) would by no means come to his rescue. Our

conviction that the aforesaid property, viz. Flat No. A-102 was allotted by the assessee to Smt. Usha Basant Sethiya (supra) can also be gathered from the fact that the profit/income accruing on the transfer of the same had been recognized by the assessee only pursuant to the execution of the aforesaid registered sale deed by him.

15. Backed by our aforesaid observations, we are unable to bring ourselves to agree with the view taken by the CIT(Appeals), who held a conviction that as Smt. Usha Basant Sethiya (supra) was neither Karta nor a member of Mahendra Sethiya, HUF; therefore, the assessee had carried out independent sale transactions of Flat No. "A-101" & "A-102" to two different entities. We, thus, in terms of our aforesaid deliberations, set aside the order of the CIT(Appeals) to the extent he had vacated the disallowance u/s.80IB(10) of the Act w.r.t the Flat No. "A-101" and A-102" sold by the assessee to one individual, viz. Smt. Usha Basant Sethiya (supra). Thus, the **Ground of appeal No.1** raised by the revenue is partly allowed in terms of our aforesaid observations.

16. **Ground of appeal No. 2**, being general, is dismissed as not pressed.

17. In the result, the appeal of the revenue is partly allowed in terms of our aforesaid observations.

Order pronounced in open court on 27<sup>th</sup> day of October, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

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

रायपुर/ RAIPUR ; दिनांक / Dated : 27<sup>th</sup> October, 2023

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.