

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.18 to 21/PAN/2023
निर्धारण वर्ष / Assessment Years : 2013-14 to 2016-17

Shanti Hospital, TP No.166/A/1A, Ward No.10, Extension Area 587101, Karnataka- 587101. PAN : ABLFS7115E	Vs.	DCIT, Central Circle, Belagavi.
Appellant		Respondent

Assessee by : Shri Rahul Hakani
Revenue by : Shri Sridhar Dora

Date of hearing : 15.12.2023
Date of pronouncement : 19.12.2023

आदेश / ORDER

PER BENCH :

These are the appeals filed by assessee against the separate orders of Id. Commissioner of Income Tax (Appeals)-2, Panaji [‘the CIT(A)’] dated 02.12.2022 for the assessment years 2013-14 to 2016-17 respectively.

2. Since the identical facts and common issues are involved in all the above captioned four appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.18/PAN/2023 for the assessment year 2013-14 are stated herein.

ITA No.18/PAN/2023, A.Y. 2013-14 :

4. Briefly, the facts of the case are that the appellant is a partnership firm engaged in the business of running a nursing home under the name and style of “M/s. Shanti Hospital”. The Return of Income for the assessment year 2013-14 was filed on 31.10.2013 disclosing total income of Rs.10,84,950/- after claiming deduction u/s 80IB(11C) of the Income Tax Act, 1961 (‘the Act’). The survey operations u/s 133A of the Act were conducted in the business premises of the appellant on 25.09.2019. During the course of survey operations, the Inspector of the Income Tax Department had submitted a report stating that the basement of the building was used for running a diagnostic centre instead of parking as per the sanctioned plan approved by the local municipal authority. Therefore, the Assessing Officer had come to the conclusion that the building was not constructed in accordance with the approval sanctioned by the local municipal authority, accordingly, denied the deduction u/s 80IB(11C) of the Act.

Even on appeal before the ld. CIT(A), the ld. CIT(A) had confirmed the disallowance of deduction u/s 80IB(11C) by taking the note of the fact that the appellant firm had constructed clinical laboratory in the space earmarked for parking and thereby infringed the plan approved by the local municipal authority.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. It is submitted before us that the construction of the hospital building was in accordance with approved plan is different from the use of the building and, therefore, the deduction 80IB(11C) cannot be denied merely on the fact that the space of building was not used for the purpose of earmarked for parking purposes. He further submitted that in the initial assessment year i.e. A.Y. 2012-13, the Assessing Officer himself had allowed the deduction u/s 80IB(11C) in the assessment made u/s 143(3) of the Act.

7. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that no interference is called for.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the allowability of deduction under the provisions of section 80IB(11C) of the Act. The provisions of section 80IB(11C) provides that 100% profits

derived from the business of operating and maintaining a hospital in the rural areas as defined under the said section for a period of five consecutive assessment years, subject to the following conditions :-

- (i) The hospital should be constructed between 01st April and 31st March, 2008.
- (ii) The hospital should have at least one hundred beds for patients.
- (iii) The construction of the hospital is in accordance with the regulations or bye-laws of the local authority.
- (iv) The audit report should be furnished in the prescribed form along with the return of income.

9. On mere perusal of the assessment order, it would reveal that the Assessing Officer had disallowed the deduction of the profits derived from the hospital u/s 80IB(11C) on the ground that the basement of the hospital building is used for the purpose of running a diagnostic centre based on the report submitted by the Inspector of the Income Tax Department. On mere perusal of provisions of section 80IB(11C), it would be clear that the restriction is only with regard to the construction of the hospital building and there are no restriction, as to the use of the building, as long as the building is constructed in accordance with the approval accorded by the local authorities, therefore, denial of deduction u/s 80IB(11C) is

unjustifiable. In the present case, from perusal of page no.5 of the Paper Book i.e. the report/certificate issued by the Commissioner of City Municipal Council, Bagalkot, it is clear that the building was constructed in accordance with the permission granted by the municipality and the Building Regulation Act, there is no violation of plan approved by local authority. The learned lower authorities merely swayed by the fact that the basement of the building was used for the diagnostic purpose instead of parking use. The lower authorities failed to take the cognizance of difference between the “construction” and “use” of the building. Therefore, it can safely be concluded that the appellant had fulfilled all the conditions necessary for availing the deduction u/s 80IB(11C) of the Act. Furthermore, we are informed at the bar that in initial year of assessment, the deduction u/s 80IB(11C) was allowed by the Assessing Officer in the assessment made u/s 143(3) of the Act. Therefore, in the absence of any change in the facts and law, even on the principle of consistency, the appellant is entitled for deduction u/s 80IB(11C) of the Act. Accordingly, we direct the Assessing Officer to allow the deduction u/s 80IB(11C) of the Act.

10. In the result, the appeal filed by the assessee in ITA No.18/PAN/2023 for A.Y. 2013-14 stands allowed.

ITA Nos.19 to 21/PAN/2023, A.Ys. 2014-15 to 2016-17 :

11. Since the facts and issues involved in remaining three appeals of the assessee are identical, therefore, our decision in ITA No.18/PAN/2023 for A.Y. 2013-14 shall apply *mutatis mutandis* to the remaining three appeals of the assessee in ITA Nos.19 to 21/PAN/2023 for A.Ys. 2014-16 to 2016-17 respectively. Accordingly, the remaining three appeals of the assessee in ITA Nos.19 to 21/PAN/2023 for A.Ys. 2014-16 to 2016-17 stands allowed.

12. To sum up, all the above captioned four appeals of the assessee stands allowed.

Order pronounced on this 19th day of December, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th December, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Panaji.
4. The Pr. CIT (Central), Bangalore.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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