

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "B" BENCH : PUNE  
[THROUGH VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.1359/PUN./2023 [E-APPEAL]  
Assessment Year 2014-2015

The DCIT, Circle-5, 3 <sup>rd</sup> Floor, PMT Bldg., Shankar Sheth Road, Swargate, Pune – 411 037. Maharashtra.	vs.	Surana Mutha Bhansali Developers, 236, Patil Plaza, Near Saras Baugh, Mitra Mangal Chowk, Pune – 411009 Maharashtra. PAN ABGFS1894K
(Appellant)		(Respondent)

For Revenue :	Shri Abdhesh Kumar Jha
For Assessee :	Shri Rajiv Thakkar

Date of Hearing :	12.04.2024
Date of Pronouncement :	16.04.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This Revenue's appeal for assessment year 2014-2015, rises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1057118954(1), dated 17.10.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *"On the facts and in the circumstances of the case and in law, the ld. CIT(A) was not justified in holding that the assessee was*

*eligible for deduction of Rs.2,48,05,458/- u/s 80-IB(10) of the Income-tax Act, 1961, on pro-rata basis when the built-up area of 40 Flats have exceeded the area of 1500 S. Ft., thereby violating the provisions contained in clause (c) of Section 80-1B of the Income-tax Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the ld.CIT(A) was not justified in holding that the area of terrace (open to sky), which was sold with flat and having private access is not to be included in computation of built-up area for calculating the built-up area for the purpose of clause (c) of Sec 80-IB(10) of I.T. Act, 1961.*

*3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was not justified in holding that the assessee was eligible for deduction of Rs.2,48,05,458/- u/s 80-IB(10) of the Income-tax Act, 1961, ignoring the fact that the assessee has violated the provisions of the Section 80-IB(10) of the Income-tax Act, 1961 in respect of the Residential housing project known as "Shree Shantinagar" at S.No. 63, Hissa No. 1/3A, ¼, 1/5, 1/6, 1/7, Kondhawa Budnik, Pune-48.*

*4. The appellant craves leave to add, amend, or alter any ground(s) of appeal at the time of hearing before the Hon'ble Tribunal."*

3. Both the learned representatives next invited our attention to the CIT(A)'s detailed discussion upholding the

assessee's sec.80IB(10) proportionate deduction claim confined to the eligible residential units only reading as under :

4.0 Ground Nos 1 is raised with regard to the disallowance of deduction under sec. 80IB(10) of the I T Act.

4.1 In the assessment order, the AO held that one of the condition required under sec. 80IB(10) is that the built up area of the flats should not increase 1500 sq. ft. In assessee's project as specified by the valuer there are 40 such flats where the area of flats is beyond 1500 sq. ft. i.e. they are more than 1500 sq. ft. Therefore, the assessee's project does not qualify for 80IB(10) deduction.

4.2 The appellant during the course of appellate proceedings submitted that attention is invited to the decision of the Hon. ITAT PUNE in the appellant's own case for A.Y. 2012-13 vide ITA No. 568/Pun/2017 dated 16.10.2019 where the similar claim has been allowed. The ratio of the said order squarely covers the case for this A.Y. 2014-15 as the facts are identical and relate to the same project.

4.3. I have considered the assessment order, facts of the case, grounds of appeal, statement of facts and the submissions made by the appellant during the appeal proceedings. The Hon'ble ITAT vide order in ITA No 568/Pune/2017 dtd. 16.10.2019 in the appellant's own case for the A.Y. 2012-13 as held as under :

*"We have heard the rival submissions and perused the material on record. We find that Id CIT(A) while granting partial relief to the assessee u/s 80IB(10) has noted that since assessee has violated the conditions for claim of deduction u/s. 80 IB(10) with respect to only 40 units which had exceeded the permissible area, the deduction has to be denied only for those 40 flats meaning thereby that the assessee was granted deduction on proportionate basis. For arriving at such conclusion, Id. CIT(A) had relied on the decisions cited in his order. Before us, Revenue has not pointed out any fallacy in the findings of the Id.CIT(A) nor has brought on record any contrary binding decision in its support. We therefore do not find any reason to interfere with the findings of Ld. CIT(A). Thus, the grounds of Revenue are dismissed"*

4.3.1 Respectfully following the decisions as cited above, the addition made by the AO cannot be sustained in appeal and is directed to grant the deduction on proportionate basis. Assessee gets partial relief. **The grounds of appeal are partly allowed.**

4. Suffice to say, the clinching fact which has emerged during the course of hearing is that the instant sole issue of sec.80IB(10) deduction on proportionate basis, is no more *res integra* as the earlier learned coordinate bench's order dated 16.10.2019 ITA.No.568/PUN./2017 pertaining to the very residential housing project viz., "Shree Shantinagar" has already rejected the Revenue's very contentions.

5. Faced with the situation, learned DR vehemently argued that the Revenue is in appeal before the hon'ble jurisdictional high court against the above order. Be that as it may, the fact remains that there is no exception evident *qua* the instant sole issue of sec.80IB(10) deduction on proportionate basis in assessment year 2012-13 vis-à-vis the assessment year 2014-15 before us. We thus adopt judicial consistency to uphold the CIT(A)'s detailed discussion partly accepting the assessee's impugned claim in above terms.

7. Mr. Abdhesh Jha next took us to the Revenue's 2<sup>nd</sup> to 4<sup>th</sup> substantive grounds that the CIT(A) has erred in law and on facts in deciding "open terrace" issue in assessee's favour. We do not see any such adjudication in the CIT(A)'s detailed discussion which could leave the Revenue aggrieved. Its 2<sup>nd</sup> to 4<sup>th</sup> substantive grounds stand rejected in very terms.

No other argument or ground has been pressed/raised before us.

8. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 16.04.2024.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 16<sup>th</sup> April, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.