

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.7190/Del/2019
Assessment Year: 2013-14

ACIT,
Special Range-9,
New Delhi.

Vs Tulip Infratech Pvt. Ltd.,
1201-1204, Indra Prakash Building
Barakhamba Road,
New Delhi. – 110 019.

PAN: AACCT3755E

(Appellant)

(Respondent)

Assessee by : Shri Salil Aggarwal, Sr. Advocate &
Shri Shailesh Gupta, CA
Revenue by : Ms Sapna Bhatia, CIT-DR

Date of Hearing : 28.03.2024
Date of Pronouncement : 30.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 29.07.2019 of the Commissioner of Income Tax (Appeals), New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.10082/16-17 arising out of the appeal before it against the order dated 31.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter

referred as 'the Act'), by the JCIT, Range-25, New Delhi (hereinafter referred to as the Ld. AO).

2. The return of the assessee was taken up for scrutiny. During the year under consideration, the assessee was in the business of real estate development and the AO examined the deduction claimed u/s 80IB and considering the fact that in the preceding years the assessee was denied the claim of deduction on the basis of non-availability of completion certificate, the disallowance was made. Further disallowance was made against the claim of TDS and addition on account of under valuation of closing stock was made. The AO also made a disallowance u/s 43B with regard to EDC and IDC charges which was payable under Haryana Development and Regulation of Urban Areas Act, 1975 to the State Government of Haryana.

2.1 The CIT(A) had allowed proportionate deduction u/s 80IB(10) of the Act and deleted the disallowance u/s 43B for which Revenue is in appeal before the Tribunal raising the following grounds:-

“1. Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in allowing proportional deduction under section 80IB(10) when there is no provision for allowing proportional deduction under section 80IB of Income-tax Act, 1961.

2. Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in allowing proportional deduction under section 80IB(10) despite the fact that the assessee failed to furnish the completion certificate required in accordance with sub-clause (ii) of clause (a) of sub section (10) of Section 80 IB.

3. *Whether Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 2,04,14,585/- on account of EDC not paid before the due date of filing the return.*

4. *The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Heard and perused the record.

4. The ld. DR has primarily relied the findings of the AO while the ld. AR has relied the order of the CIT(A).

5. In regard to ground No.1 of the appeal, it can be appreciated that CIT(A) has benefitted the assessee on the basis of the fact that in assessee's own case in AY 2011-12 vide ITA No.6139/Del/2014, order dated 31.10.2017 the Department's appeal was dismissed, sustaining the proportionate disallowance. In the absence of any subsequent judicial verdict in favour of revenue, the ground as raised has no substance.

6. In regard to ground No.2, it comes up that before CIT(A), on behalf of the assessee, it was submitted that:

“Ground No.4 is in regard to addition of Rs.2,04,14,585/- u/s 43B of the Act. Briefly noted from the impugned order are that on examining the details of EDC and IDC payable furnished by reply dated 29.01.2016, it was noted that EDC and labour cess to the tune of Rs.40,42,91,918 were payable. Vide order sheet entry dated 29.01.2016, the assessee was called upon to either furnish proof payment or show caused for not adding back the same to the] income returned. The assessee replied vide letter dated 24.02.2016 which was duly examined by the AO. The appellant claimed that EDC is not a tax and was not covered by provisions of section 43B The AO relied upon the decision in case of CIT vs. Travancore Sugars and Chemicals Ltd. (2015) 374 ITR 585(SC) in regard to vend fees and made disallowance of Rs.2,04,14,585/-.”

7. The ld. AR has pointed to a letter dated 13.01.2012 available at pages 10-11 of the paper book whereby Director General, Town & Country Planning, Haryana, had revised the demands and direction was given to pay the amounts in three equal instalments on monthly basis from the date of issue of the letter, i.e., 13.01.2012. Apart from that, we find substance in the contention that EDC charges and other charges under dispute are required to be paid under Haryana Development and Regulation of Urban Areas Act, 1975 to the State Government, but, the same does not fall in the definition of tax, duty or cess. The intention of these charges is for charging the developer for various civic amenities developed by the local authorities under the Zoning Plan.

8. Thus, there is no error in the findings of the CIT(A) in allowing the benefit of section 80IB(10) of the Act or deleting the disallowance u/s 43B of the Act. The grounds of the Revenue have no substance.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 30.05.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 30th May, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi