



BEFORE HON'BLE SMT ASTHA CHANDRA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No. 103, 107 to 109/PUN/2024

Assessment Year : 2018-19, 2019-20 & 2021-22

Vijay Tukaram Raundal

C-708, Teerth Technospace,

Next to Mercedes Showroom,

Baner, Pune-411005

PAN: AAQPR0124G

. . . . .

. *Appellant*

V/s

Dy. Commissioner of Income Tax

Circle-1(2), Pune.

. . . . .

. *Respondent*

**Appearances**

Assessee by: Mr NK Rander ['Ld. AR']

Revenue by: Mr Sourabh Nayak ['Ld. DR']

Date of conclusive Hearing : 15/05/2021

Date of Pronouncement : 07/06/2021

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

This bunch of four appeals instituted by the assessee are directed against the consolidated first appellate order dt. 20/11/2023 passed u/s 250 of Income Tax Act, 1961 [hereinafter 'the Act'] by the Commissioner of Income Tax, Appeals- (11), Pune [hereinafter 'CIT(A)'] which in turn confirmed the respective orders of rectification / regular & summary assessment passed u/s 154/143(3)/143(1) of the Act for the assessment years 2018-19 to 2021-22 [hereinafter 'AY']



2. Since the facts and threadbare solitary issue involved in this bunch of appeals are common & identical, on the request from the rival parties, for the sake of brevity these appeals are heard together for a common and consolidated order.

**3. Briefly stated common facts brought on records are that;**

3.1 The assessee is a Builder and Developer, who had undertaken a housing project called 'Teerth Tower' wherefrom he derived certain profits which qualifies for deduction u/c VI-A of the Act. The assessee filed his returns of income after claiming 100% of such profit as deductible u/s 80IB(10) of the Act. The said deduction however denied by the Ld. AO/NeAC/CPC on the foundation that the assessee contravened the provisions of section 80IB(10) inasmuch as the approved housing project against which the said deduction was claimed in the return/s were not completed by 31/03/2012 i.e. within the prescribed period of five years from the end of the financial year in which the said housing project was first approved by the competent/local authority on 30/03/2007.

3.2 Aggrieved assessee for all three assessment years unsuccessfully assailed the denial of deduction in separate appeals before the first appellate forum. Further aggrieved, the assessee set-up this bunch of appeals before the Tribunal.

4. We have heard the rival common contentions and arguments of both the parties and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records and case laws pressed into service which were also forewarned.



5. The solitary issue in these appeals hinges around denial of claim made u/s 80IB(10) of the Act for not completing the project within time frame allowed.

6. Before riding the cycle of adjudication, let us deal with the provision & settled position of the law first; the section 80-IB(10) of the Act, provides for hundred per cent deduction of profit derived from an undertaking engaged in the business of development or construction of housing projects subject to fulfilment of certain conditions viz; **(a) completion of the project within the prescribed period** (b) size of plot of land which has a minimum area of one acre, (c) maximum built-up area of residential unit up to 1,000sq.ft. for Delhi and Mumbai and its outskirts within 25 Kms from its municipal limits and 1,500sq.ft. for other areas, (d) built up area of shops & commercial establishment does not exceed higher of 3% of project size or 5000sq.ft. (e) not more than one residential unit in the housing project is allotted to any person not being an individual. (f) non-allotment of unit to the spouse or minor children of an individual to whom unit is allotted in the housing project, etc. The violation of any of the former conditions squarely disentitles the assessee from claiming deduction u/s 80IB(10) of the Act. In context of present one of the conditions that, the approved housing project if completed within the stipulated time period as prescribed u/c (a-iii) of s/s 10 of section 80IB of the Act; then only profits derived from such project are tax deductible thereunder & not otherwise. This position finds settled through catena of judicial precedents including assessee's own case for AY 2013-14 in ITA No. 178/PUN/2019 dt. 30/08/2022.



7. In this background returning to the present dispute, we note that,

7.1 For the assessment years under consideration there is much less dispute that (a) the assessee was engaged in the business of developing and building solitary housing project called 'Teerth Tower' (b) the said project was first approved by the competent authority on 30/03/2007 & was commenced thereafter (c) from which the assessee derived certain profits which qualifies for deduction u/c VI of the Act (d) hundred per cent of such derived profits were claimed as deduction u/s 80IB(10) of the Act in return of income filed and (e) the competent/local authority issued the completion certification on 31/03/2013.

7.2 The case of the assessee is that, the completion certificate although was issued on 31/03/2013 the project under consideration however was completed within the period of five years from the end of financial year in which it was finally approved by the order DILR dt. 22/08/2007, therefore the assessee is eligible for 100% deduction of profit derived therefrom u/s 80IB(10) of the Act. It is averred that, since the first approval dt. 30/03/2007 granted was conditional hence the time clock of five year for completion was to kick start from 22/08/2007 i.e. from the order of DILR. *Per contra* on the basis of completion certificate dt. 31/03/2023 issued by competent/local authority the Revenue denied the claim of deduction for not completing approved housing project within the stipulated time frame in terms of s/c clause (iii) of clause (a) of s/s (10) of section 80IB of the Act which prescribes a period of five years for completion of project in all cases where such project is approved on or after 01/04/2005.



8. The issue of assessee's eligibility for a claim of deduction u/s 80IB(10) of the Act in relation to aforesaid approved housing project 'Teerth Tower' arose first time in AY 2013-14 wherein the assessing officer denied the claim for violating one of the conditions viz; non-completion of project within the stipulated period of five years. In first appeal, the assessee successfully contested the denial of deduction of 80IB(10) claim, however when the matter travelled in second appeal, the co-ordinate bench in ITA No. 178/PUN/2019 dt. 30/08/2022 [*ACIT Vs Vijay Tukaram Raundal* reported in 2023, 147 Taxmann.com 53] settled the dispute establishing on record conclusively that the assessee violated the provisions of s/c clause (iii) of clause (a) of s/s (10) of section 80IB of the Act and consequently upheld the action of Ld. AO in denying the claim of deduction vide para 20 of its order holding as under;

*'20.To sum up, the housing project was approved on 30.03.2007 and a period of five years from the end of the financial year in which the housing project was approved by the local authority, came to an end on 31-03-2012. Since the actual completion of the project took place between 24-09-2012 (when the assessee intimated the factum of virtual completion of the project to the District Collector) and 30.3.2013 (when the completion certificate was issued by the competent authority), **the condition of completing the construction within a period of five years from the end of the financial year in which the housing project was approved, got vitiated, making the assessee ineligible for deduction u/s. 80IB(10) of the Act.** We, therefore, overturn impugned order and restore the order of the AO.'*

**(Emphasis supplied)**



## **9. ITA No 107/PUN/2024 AY 2018-19**

9.1 For the year under consideration the return of income filed by the assessee was in first place processed summarily u/s 143(1) of the Act and then subsequently subjected to scrutiny, wherein the Ld. AO maintaining the parity with earlier year assessment denied the claim of 80IB(10) deduction to the assessee on equi-reasons vide his assessment order dt. 25/03/2021. When matter travelled before first appellate forum, placing reliance on co-ordinate bench's decision in assessee's own case for AY 2013-14 the Ld. CIT(A) vide para 8-10 of the impugned order countenanced the denial as the facts were indifferent.

9.2 Since the facts relating to violation of first and foremost condition prescribed u/c (a-iii) of s/s (10) of section 80IB of the Act in relation to housing project under consideration have already attained finality, and further in the absence of anything contrary brought to our notice *vis-à-vis* change in law, we find no reasons to interfere with the aforestated denial on the basis of '*ACIT Vs Vijay Tukaram Raundal*' (supra). In consequence all the contentions/argument raised in support of grounds raised in Form 36 rendered meritless, ergo stands dismissed.

## **10. ITA No. 103/PUN/2024 AY 2019-20 & ITA No. 109/PUN/2024 AY 2021-22;**

For the year under consideration the deduction claimed u/s 80IB(10) of the Act was denied while processing the return summarily u/s 143(1) of the Act on the



basis of Form No. 10CCB i.e. report of chartered accountant filed in support of return of income *vis-à-vis* claim made in the said return. On an appeal by the assessee, the Ld. CIT(A) elaborating the incorrect reporting of date of first approval of housing project as '03/04/2007' as against the correct dt '30/03/2007' and after placing reliance on co-ordinate bench decision (supra) confirmed the denial of deduction exercising his co-terminus power. The assessee agitates this impugned order in separate appeals.

#### **11. ITA No. 108/PUN/2024 AY 2019-20**

For the year under consideration the deduction claimed u/s 80IB(10) of the Act was denied while processing the return summarily u/s 143(1) of the Act on the basis of Form No. 10CCB i.e. report of chartered accountant filed in support of return of income *vis-à-vis* claim made in the said return. Against the said denial the assessee u/s 154 of the Act filed an application dt. 01/04/2021 for rectification, which was rejected vide order dt. 23/06/2021 thus could yield no result. The said rejection was also assailed before the Ld. CIT(A) unsuccessfully. The assessee set-up a separate appeal/challenge against this order too.

12. Insofar as the ITA No. 107, 108 & 109/PUN/2024 is concerned, the assessee raised two common contentions viz; (1) denial of 80IB(10) deduction through *prima-facie* adjustment u/s 143(1)(a)(iv) of the Act is impermissible (2) the issue of allowability of claim is debatable, hence falls outside the purview of *prima-facie* adjustment u/s 143(1) of the Act.



13. The denial of deduction claimed u/s 80IB(10) of the Act in these cases primarily were on the basis of information contained Form No 10CCB i.e. audit report issued by chartered accountant' which was accompanied/filed with the return of income in support of claim for deduction. The variation relating to date of approval of housing project as initially reported by the assessee was cross verified with the subsequent year reporting and based on which the violation of s/c (iii) of clause (a) of s/s 10 of section 80IB of the Act was identified. However, before carrying out any *prima-facie* adjustment u/c (iv) of clause (a) of s/s (1) of section 143 of the Act on such account, the assessee was put to notice in accordance with law.

14. The appellant assertion that, the impugned addition by way of *prima-facie* adjustment in terms of section 143(1)(a)(iv) of the Act is impermissible in law finds negated by the decision of Hon'ble Jurisdictional Bombay High Court rendered in '*Khatau Junkar Ltd. Vs DCIT*' [1992, 196 ITR 55 (Bom)], wherein their Hon'ble Lordships have held that, the *prima-facie* adjustment u/s 143(1) is permissible where on the face of the return and the documents/accounts accompanying it, the claim is found inadmissible.

15. In relation to ITA No. 109/PUN/2024 in addition to former two contentions the appellant additionally contented that, the claim for deduction u/s 80IB(10) of the Act was denied thorough *prima-facie* adjustment without even proposing the variation while processing the return u/s 143(1) of the Act. Thus violated the well accepted principle of natural justice hence deserves to be set-aside. This the Ld. DR could hardly dismantle by proving otherwise.



16. We note that, Hon'ble Bombay High Court in case of '*Bajaj Auto Finance Ltd. Vs CIT*' [2018, 93 taxmann.com 63] has observed that, where a ***claim has been made which requires further inquiry***, it cannot be disallowed without hearing the parties and/or giving the party an opportunity to submit proof in support of its claim. In the absence of section 143(1)(a) being read in the above manner i.e. ***debatable issues cannot be adjusted*** by way of intimation under section 143(1)(a), would lead to arbitrary and unreasonable intimations being issued, leading to chaos.

17. In view of factual position that variation was not put the notice of the assessee before it was carried out u/s 143(1)(a)(iv) of the Act at the outset appears to be carried out arbitrary, hence it render the adjustment irregular and therefore in view of the former judicial precedents deserving to be set-aside.

18. However, the denial through *prima-facie* adjustment was exclusively based on violation of s/c (iii) of section clause (a) of s/s 10 of section 80IB of the Act, which has been solidified by rival parties. The issue of appellant's eligibility for claim of deduction owing to non-completion of project within the stipulated period of five years was iron casted & no-more debatable, rather attained finality in view of '*ACIT Vs Vijay Tukaram Raundal*' (supra). Therefore remanding the same for granting an opportunity to the assessee who could represent no different than settled position of law on conclusive facts, would only become an academic exercise hence in the larger interest of justice deemed unfit.



19. Going a step further in 'Rohan Korgaonkar Vs DCIT' [2024, 159 taxmann.com 321] their Hon'ble lordships have recently held that, once the principle involved in matter of claim i.e. taxability, non-taxability of income, allowability & non-allowability of deduction is settled by binding judicial precedents, the circumstance that the adjustment is carried out u/s 143(1)(a) through *prima-facie* adjustment makes no difference. In the instant case, since the impugned item/claim of 80IB(10) deduction is settled by binding judicial precedents [ACIT Vs Vijay Tukaram Raundal' (supra)] as not deductible in relation to housing project under challenge, then disallowance of such claim carried out u/s 143(1)(a)(iv) of the Act in view of 'Rohan Korgaonkar' (supra) cannot be faulted with. Therefore, respectfully following the same we find no infirmity with the orders of tax authorities below in denying the deduction through *prima-facie* adjustment u/c (iv) of section 143(1)(a) of the Act. The grounds representing all the contentions accordingly stands dismissed.

**20. This bunch of four appeals in result stands **DISMISSED** on above terms.**

u/r 34 of ITAT Rules, order pronounced in open court on this Friday, 07<sup>th</sup> day of June, 2024

-S/d-

**ASTHA CHANDRA**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE; दिनांक / Dated : 07<sup>th</sup> day of June, 2024.

**आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

- 1.अपीलार्थी / The Appellant.      2. प्रत्यर्थी / The Respondent.  
4. The NFAC / CIT(A) Concerned      5. DR, ITAT, Bench 'B', Pune

3. The Pr. CIT, Concerned Pune  
6.गार्डफाइल / Guard File.

आदेशानुसार / By Order  
वरिष्ठनिजीसचिव / Sr. Private Secretary  
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.