

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "B" BENCH : PUNE

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

I.T.A.No.673/PUN./2024  
AND

C.O.No.26/PUN./2024 - Assessment Year 2013-2014

The ACIT, Circle-5, 3 <sup>rd</sup> Floor, PMT Bldg., Shankarsheth Road, Swargate, Pune-411037. Maharashtra.	vs.	Surana Mutha Bhansali Developers, 236, Patil Plaza, Near Saras Baugh, Mitra Mangal Chowk, Pune - 411 009. Maharashtra. PAN ABGFS1894K
(Appellant/Respondent in C.O.)		(Respondent/Cross Objector)

For Revenue :	Shri Sourabh Nayak, Addl.CIT
For Assessee :	Shri Rajiv Thakkar

Date of Hearing :	08.08.2024
Date of Pronouncement :	28.08.2024

**ORDER**

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

This Revenue's appeal I.T.A.No.673/PUN./2024 and assessee's cross objection C.O.No.26/PUN./2024, for assessment year 2013-14, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/ 2023-24/1060625210(1), dated 07.02.2024, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. It emerges at the outset that the Revenue's sole substantive grievance in the instant appeal ITA.No.673/PUN./2024 seeks to revive the Assessing Officer's action disallowing the assessee's sec.80IB(10) deduction claim of Rs.1,55,29,089/-; made in the course of assessment dated 31.03.2016, as reversed in the CIT(A)-NFAC's order to this effect reading as follows :

*“4. DECISION*

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

*4.1. During the assessment proceedings the AO to ascertain the eligibility condition of the assessee's project u/s.801B(10) of the Act issued a commission u/s. 131(10)(d) of the Act to the Government approved valuer, Mr. Nitin Lele and to submit his report in this matter. He submitted the report and after observing the valuers report and the definition of built up area about inclusions in the built up area, it is observed that -*

- i. 40 such units where terrace is given internal exclusive to assessee. The terrace talked about here is not the rooftop terrace. It is the terrace, the access to which is through the flat of the purchaser and which is at the floor level and is the terrace of the immediately lower flat.*

- ii. In the valuer report unit in B wing 101 is measured and found that the area is 1453.66 sq. ft. also the drawing from Architect is submitted along with the submissions. The floor flats of all building are allotted along with the submissions. The floor flats of all buildings are allotted a top terrace above the flat having area same as a flat. The area such 3 BHK flats is 1453.66 sq. ft with terrace area of flat 1227.48. sq. ft. Hence total allotted area of those flats is 2681.50 sq. ft. there are 24 such flats on 11th floor of building A,B C F G & H.
- iii. The area of such 2 BHK flats is 1151.31 sq. ft with terrace area of flat 933.12 sq. ft. Hence total area allotted to those flats is 2084.83sq. ft there are 16 such flats 4 flats on 11th floor of buildings D E I & J.
- One of the conditions required u/s. 801B(10) of the Act is that the built up area of the flats should not exceed 1500 sq. ft. In assessee's project, as specified by the valuer, there are 40 such flats where the area of flats is 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-

4.2.1 The assessment order for A.Y. 2013-14 was agitated in appeal before the Hon CIT(A) for the disallowance of the claim u/s.80(B(10), who had passed the order granting proportionate claim u/s. 80IB(10).

4.2.2. *This order was agitated in appeal before the Hon. ITAT. The Hon. ITAT vide its order dated 1.10.2019 restored the appeal to the file of the CIT(A) as the CIT() had not considered the decisions cited by the assessee.*

4.2.3. *The relevant portion is contained in para 5 and 6 of the ITAT order. It may be noted that the issue before the Hon Tribunal was the erroneous inclusion of terrace area for considering the built up area of 40 units, claim for which was disallowed by the CIT(A).*

4.2.4. *The exact issue was raised in an appeal filed before the Hon. ITAT for A.Y. 2012-13 where the Hon. ITAT vide it order dated 16.10.2019 has decided the appeal in the favour of the assessee. The ratio of the said order squarely covers the case for this A.Y. 2013-14 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.16.102019 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. 80IB(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 and also relying on the decisions of Hon' Pune ITAT in the cases of DCIT Vs. Pride Purple Sheth vide ITA.No. 424/Pun/2016 for the A.Y. 2011-12 dated 20.12.2017 and NT Wadhwani V. ACIT and others, the addition made by the AO cannot be sustained and the appellant is eligible for deduction u/s.80IB(10) of the Act on the profits earned from the aforesaid housing project. The grounds of appeal are allowed.*

*6. In the result, the appeal is 'allowed'.*

3. Suffice to say, it has come on record that the Ld. CIT(A)-NFAC has followed the tribunal's order in assessee's own case for preceding assessment year 2012-2013 involving the very residential project for the purpose of treating it eligible for sec.80IB(10) deduction. The Revenue's pleadings are indeed very fair in not pinpointing any distinction on facts or law; as the case may be; in both these assessment years. We thus adopt judicial consistency to affirm the CIT(A)-NFAC's impugned findings and reject the Revenue's sole substantive ground in its appeal ITA.No.673/PUN./2024.

4. Learned counsel submits that the assessee does not wish to press of its cross objections C.O.No.26/PUN./2024. Rejected accordingly.

5. To sum-up, this Revenue's appeal ITA.No.673/PUN./2024 is dismissed in above terms and assessee's cross objection C.O.No.26/PUN./2024 is dismissed as withdrawn. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 28.08.2024.

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

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 28<sup>th</sup> August, 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.