

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 594/KOL/2024
Assessment Year: 2012-2013**

***Bengal Shelter Housing Development
Limited,.....Appellant
CB-63, Salt Lake City, Salt Lake,
Kolkata-700064
[PAN:AACCB4289R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-2(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Siddharth Agarwal, Advocate, appeared on behalf of
the assessee*

*Shri Subhendu Datta, CIT(DR), appeared on behalf of
the Revenue*

Date of concluding the hearing: September 02, 2024

Date of pronouncing the order: September 02, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 7th February, 2024 passed for Assessment Year 2012-13.

2. The assessee has taken four grounds of appeal, out of which Ground No. 4 is the substantial ground of appeal. In brief, its grievance is that ld. CIT(Appeals) has erred in confirming the action of ld. Assessing Officer vide which claim of the assessee under section 80IB was disallowed by the ld. Assessing Officer. It has been further pleaded in Grounds No. 1 & 2 that ld. CIT(Appeals) has erred in dismissing the appeal for want of prosecution instead of deciding it on merit.

3. Brief facts of the case are that the assessee has filed its return of income on 29.09.2012 declaring NIL income after claiming deduction under section 80IB of the Income Tax Act. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. It emerges out from the record that the assessee has developed the following projects:-

(i)	Akankha Project
(ii)	Sisir Kunja Projects
(iii)	Teenkanya Projects

It claimed deduction under section 80IB(10) of the Income Tax Act. This deduction was disallowed to the assessee by the ld. Assessing Officer.

4. Dissatisfied with the action of ld. Assessing Officer, the assessee carried the matter in appeal.

5. The ld. CIT(Appeals) has dismissed the appeal and the impugned order is running into only one page, where the ld. CIT(Appeals) has narrated the dates of hearing upon which notice was issued to the assessee. The observation of the ld. CIT(Appeals) reads as under:-

“The aforesaid mentioned circumstances show that the appellant is not interested in pursuing its appeal. The maxim ‘vigilantibus non-dormientibus jura subveniunt’ i.e. the law assists those who are vigilant and not those who sleep over their right, is applicable in this case.

Hon’ble ITAT in ITA No. 1025-1027/CHD/2005 for the AY 2002-03 in the case of M/s. Chhabra Lane & Housing Ltd. after following the decision of Hon’ble Supreme Court in the case of B.N. Bhattacharjee & Other 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing the same.

Considering the above facts and material on record, it is held that the then assessing officer has made the addition on merits considering facts of the case and no infirmity is noticed in the order of the Assessing Officer. Hence the appeal of the assessee is dismissed.

In the result, appeal of the assessee is dismissed”.

6. With the assistance of ld. Representatives, we have gone through the record carefully. Sub-clause (6) of section 250 contemplates that ld. CIT(Appeals) would determine the points in dispute and thereafter record reasons on those points. A perusal of the impugned order would reveal that it is not in consonance with the mandate of sub-clause (6) of section 250. It appears that ld. CIT(Appeals) has not called for the assessment record for deciding the appeal on merit. It is also more painful for the reason that this appeal remained pending in the Office of ld. CIT(Appeals) for almost nine years. It was instituted on 27th March, 2015 and it has been decided on 7th February, 2024. Therefore, we are of the

view that the impugned order is not sustainable. We set aside the order of Id. CIT(Appeals) and restore the issues to the file of Id. 1st Appellate Authority for deciding it on merit. The Id. CIT(Appeals) would give due opportunity of hearing to the assessee before adjudicating the appeal on merit.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 02/09/2024.

Sd/-

Sd/-

(Sanjay Awasthi)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 2nd day of September, 2024

*Copies to :(1) Bengal Shelter Housing Development Limited,
CB-63, Salt Lake City, Salt Lake,
Kolkata-700064*

- (2) Income Tax Officer,
Ward-2(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*
- (3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) CIT - , Kolkata;*
- (5) The Departmental Representative;*
- (6) Guard File*
- TRUE COPY**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.