

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri TR Senthil Kumar, Judicial Member  
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 106/Ahd/2024  
Assessment Year 2018-19**

Deputy Commissioner of Income Tax, Central Circle-1(1), Ahmedabad <b>(Appellant)</b>	Vs	Venus Infrastructure and Developers Pvt. Ltd. Ahmedabad PAN: AAHCS6254J <b>(Respondent)</b>
--	----	---

**Assessee by: Shri Parimalsinh B. Parmar, A.R. &  
Shri Vijay Govani, A.R.  
Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 12-11-2024  
Date of pronouncement : 22-11-2024

**आदेश/ORDER**

**PER : TR SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 03-11-2023 passed by Commissioner of Income Tax (Appeals)-11 arising out of the assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') relating to the assessment year 2018-19.

2. The solitary ground raised by the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 2,47,27,471/- made on account of disallowance u/s. 80IB(10) of the Act without discussing the case on merits.

3. The brief facts of the case, the Assessing Officer disallowed deduction claimed u/s. 80IB(10) of the Act of Rs. 2,47,27,471/- with respect to the residential project "Venus Parkland" on the ground of non-completion of the particular project within five years i.e. on 31-03-2012, no BU certificate from AUDA of the 380 units of the project, allotment of more than one unit to one persons and non-maintenance of separate books of account of the residential project as required u/s. 80IB(10) of the Act.

4. On appeal against these issues before Ld. CIT(A) who followed Jurisdictional High Court Judgement in assessee's own case for the A.Y. 2012-13 which was confirmed by the Hon'ble Supreme Court reported in 152 taxmann.com 456 (SC) deleted the addition by observing as follows:-

*"(ii) The appellant has further stated that the disallowance of deduction u/s. 80IB of the Act with respect to the project "Venus Parkland" on the grounds as mentioned above was also made by the AO in the earlier year i.e. AY 2017-18 in the appellant's own case. In the appeal, the Id. CIT(A) in para 5 to 5.3 of the appellate order vide appeal no. CIT(A)/Ahd/CC-1(1)/10201/2019 20 dated 20.01.2021, had decided the appeal in favour of the assessee and deleted the disallowance u/s 80IB of the Act made by the AO.*

*(iii) Moreover, the appellant has also stated that similar disallowance of deduction u/s 80IB of the Act with respect to the project "Venus Parkland" on the same grounds as mentioned above was also made by the AO in the earlier year Le AY 2012-13 in the appellant's own case in the appeal, the*

ld. CIT(A) in para 8.1 to 8.12 of the appellate order vide appeal no. CIT(A)7/74/2019-20 dated 31.07.2019, had decided the ground in favour of the assessee and deleted the disallowance u/s.80IB of the Act made by the AO. Further the Department had filed an appeal before the Hon'ble ITAT and the Hon'ble ITAT. Ahmedabad vide order in ITA No. 1558/Ahd/2019 dated 17.09.2021, had dismissed the appeal of the revenue on this issue and allowed the deduction claimed u/s 80IB of the Act. Thereafter the Department has also filed an appeal before the Hon'ble Jurisdictional High Court of Gujarat on this issue against the order of the Hon'ble ITAT. The Hon'ble Jurisdictional High Court of Gujarat in the appellant's own case on the similar issue vide R/Tax Appeal No. 204 of 2022 dated 04.04.2022, had dismissed the appeal of the Revenue and allowed the deduction claimed u/s 80IB of the Act of the Act.

iv) In view of its submission and judicial pronouncement, the appellant has requested to delete the disallowance u/s. 80IB of the A.O.

6.3 In this regard it is observed that the ld Predecessor in appellant's own case on the similar issue of deduction u/s 80IB of the Act for AY 2017-18 vide appeal no. CIT(A)/Ahd/CC-1(1)/10201/2019-20 dated 20.01.2021, had decided the appeal in favour of the appellant and allowed the deduction u/s 80IB of the Act. The relevant portion of the decision is reproduced as under-

*"5.3 I have considered the facts of the case and the submission of the appellant The appellant has claimed that this issue is squarely covered by the decision of CIT(A)-7, Ahmedabad in appellants own case for AY.2012 13 and submitted the copy of the appellate order passed by the Office of CIT(A)-7, Ahmedabad for reference.*

*On going through the submission it is noticed that this issue was also involved in appellant's own case in A. Y.2012-13 and having considered all the facts and the submission the appeal was decided by the CIT(A) Ahmedabad vide appellate order in appear No CIT(A)-7/4/2019-20 dated 31.07.2019 granting the deduction of section 80IB of IT Act to the appellant. The relevant extract of the decision given by the CIT(A) in para No 81 812 have been reproduced in the appellant's submission referred above.*

*The facts of the case in the year under consideration are also similar to the preceding year le. A Y 212-13 and hence following the said decision and on merit the deduction u/s. 80IB(10) is granted to the appellant. Thus the grounds of appeal are allowed.*

6.4 Further, it is observed that the Hon'ble Jurisdictional High Court of Gujarat in the appellant's own case ld. Principal Commissioner of Income-tax (Central) vs. Venus Infrastructure and Developers (P) Ltd on the similar issue vide R/Tax Appeal No. 204 of 2022 reported in [2023] 152

*taxmann.com 45 (Gujarat) dated 04.04.2022, had dismissed the appeal of the Revenue by holding that the appellant is eligible for claiming deduction u/s.80IB. The head note of the decision of the Hon'ble High Court is as under-*

*"Section 80-IB of the Income-tax Act, 1961 - Deductions Profit and gains from industrial undertakings other than infrastructure development undertakings (Housing projects) Assessment year 2012-13 assessee claimed deduction under section 80IB with respect to do housing project which was completed between 21-3-2012-Assessing Officer disallowed said claim on ground that assessee had not gotten BU permission for entire project upto 31-3-2012 Commissioner (Appeals allowed claim of assessee on ground that delay was caused due to dispute of jurisdiction between AMC and AUDA over issuance of BU permission and after resolution of same AMC issued permission before due date of 21-3-2012 Tribunal upheld order of Commissioner (Appeal) Whether no error committed by Tribunal in affirming order passed by Commissioner (Appeals)-Held, yes [Para 13] [In favour of assessee]"*

6.5 It is also important to mention here that the Hon'ble Supreme Court has also dismissed the SLP filed by the Revenue against the said decision of the Hon'ble Jurisdictional High Court of Gujarat reported in [2023] 152 taxmann.com 456 (SC) dated 15.05.2023. The head note of Hon'ble High Court is as under-

*Section 80-IB of the Income-tax Act, 1961-Deductions Profit and gains from industrial undertakings other than infrastructure development undertakings (Housing projects) Assessment year 2012-13 Assessee claimed deduction under section 80-IB with respect to its housing project which was completed before 31-3-2012- Assessing Officer disallowed said claim on ground that assessee had not gotten BU permission for entire project upto 31-3-2012 Commissioner (Appeals) allowed claim of assessee on ground that delay was caused due to dispute of jurisdiction between AMC and AUDA over issuance of BU permission and after resolution of same AMC issued permission before due date of 31-3-2012 Tribunal upheld order of Commissioner (Appeals) High Court by impugned order held that no error was committed by Tribunal in affirming order passed by Commissioner (Appeals) Whether SLP filed against impugned order of High Court was to be dismissed. Held, yes [Para 13] [In favour of assessee]"*

6.6 Considering the above, respectfully following the judgement of the jurisdictional High Court & the Hon'ble Apex Court in appellant's own case for A.Y.2012-13 on the similar issues and also in view of the decision of Id. Predecessor in appellant's own case for A.Y.2017-18, the impugned

*disallowance w/s. 80IB(10) of Rs.2,47,27,471/- made by the AO is directed to be deleted. Thus, the grounds of appeal no. 2 to 5 are allowed.”*

5. The Ld. Sr. D.R. appearing for the Revenue could not contravert the above decision rendered by the CIT(A) following assessee's own case for the earlier assessment year which is upheld by Hon'ble Supreme Court by dismissing SLP. Thus we have no hesitation in confirming the order passed by ld CIT(A) who has followed Jurisdictional High Court Judgment and Supreme Court Judgement in assessee's own case for earlier assessment year 2012-13.

6. In the result, the grounds raised by the Revenue is devoid of merits and the same is hereby dismissed.

Order pronounced in the open court on 22-11-2024

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 22/11/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद