

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA Nos.527 & 528/PUN/2024
Assessment Years : 2011-12 & 2012-13**

M/s. City Corporation Limited 917/19A, City Chambers, F C Road, Pune – 411004	Vs.	DCIT, Central Circle – 1(2), Pune
PAN: AACCC2920K		
(Appellant)		(Respondent)

Assessee by : Shri Suhas P Bora & Saukhya Lakade
Department by : Shri Ramnath P Murkude
Date of hearing : 13-11-2024
Date of pronouncement : 18-12-2024

ORDER

PER R. K. PANDA, VP :

The above two appeals filed by the assessee are directed against the common order dated 04.12.2023 of the Ld. CIT(A), Pune-11 relating to assessment years 2011-12 and 2012-13, respectively. Since identical grounds have been raised by the assessee in both these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.527/PUN/2024 (A.Y. 2011-12)

2. Facts of the case in brief, are that the assessee is a Public Limited Company, engaged in the business of development of property and construction of residential and commercial buildings. It filed its return of income on 29.09.2011 declaring

total income of Rs.119,8,31,267/- after claiming deduction of Rs.1,02,32,288/- u/s 80IB(10) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The case was selected for scrutiny and accordingly, statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, in response to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of assessment proceedings the Assessing Officer noted that the construction of first phase of residential portion around 20 lac sq. ft. in four sectors named as R-2, R-4, R-5 and R-22 was started in 2007-08. He noted that Sector R-4, R-5 and R-22 are claimed as eligible for deduction u/s 80IB(10) of the Act and Sector R-2 is non 80IB(10) of the Act in progress in the year under assessment and booking was also in progress for these sectors of residential projects.

4. In order to verify the eligibility of the project of the assessee to claim deduction u/s 80IB(10) of the Act, he issued a Commission u/s 133(1)(d) of the Act to Mr. Nitin Lele, Govt. Registered Valuer, who submitted his report on 19.03.2014. The Assessing Officer provided a copy of the same to the assessee and asked the assessee to justify the claim of deduction u/s 80IB(10) of the Act in absence of the completion of the building 'A' as approved in the plan sanctioned for the project under consideration. Rejecting the various explanations given by the assessee and observing that the assessee has not obtained the completion

certificate from the Collector, Pune in respect of three projects, the Assessing Officer held that the assessee has not completed the project before the specified date i.e. 31.03.2013 and therefore, the assessee is not entitled to the deduction u/s 80IB(10) of the Act. While doing so, he further noted that the Valuer in his report has stated that the assessee has sold more than one flat to the same family and therefore, has violated the provisions of section 80IB(10)(c) of the Act. He also rejected the claim of prorata deduction for eligible units. He accordingly, disallowed the claim of deduction of Rs.1,02,32,288/-.

5. Before the Ld. CIT(A), the assessee filed certain additional evidences and requested the Ld. CIT(A) to accept the same. The Ld. CIT(A) forwarded those additional evidences to the Assessing Officer and called for a remand report from him. After considering the contents of the remand report and the rejoinder of the assessee to such remand report from the Assessing Officer, the Ld. CIT(A) upheld the action of the Assessing Officer by observing as under:

“14. As discussed above, the appellant has claimed deduction u/s 80IB(10) for three projects which have been named as R-4, R-5 and R-22. Since, these three projects are separate and the dates of approval as well as completion of each of these projects are different, therefore, eligibility of claim for each of these three projects is being discussed separately in the following paragraphs.

Project R-5

15. As per the report of approved valuer, the said project consists of 5 towers (tower no. 18 to 22) having 48 flats in each tower. Thus, the total number of flats in project R-5 is 240. The said project was first approved on 20/12/2017 as per the commencement certificate number 1945 issued by the Collector, Pune. There is no dispute on the said date. As per the appellant, the said project was completed on 15/08/2011 and it applied for issuance of completion certificate to the Collectorate, Pune on 06/07/2012. As per the additional evidences filed during the appellate proceedings, the completion certificate for tower no. 18 to 22 in R-5 project was issued on 06/02/2015. There is no dispute on the date of issuance of completion certificate as well.

16. The appellant has contended that as per the certificate given by the architect project R-5 was completed on 15/08/2010 and on the basis of this certificate, it made an application for issue of completion certificate on 06/07/2012 with the Collectorate, Pune. A copy of said application made on 06/07/2012 has also been filed by the appellant. The appellant has contended that once it has filed an application for issuance of completion certificate with the government authorities, it has little control over the date of issuance of completion certificate as the government authorities take their own time in issuing the completion certificate. The appellant has claimed that since the copy of Architect certificate was submitted to the Assessing Officer as well as to the government valuer, it should be considered that the project was completed before the stipulated date of 31/03/2013. The appellant has also contended that similar issue has been dealt by jurisdictional ITAT Pune bench wherein it has been held that once the application for issuance of Completion Certificate has been made before the local authority on the basis of the certificate issued by an architect, the benefit of deduction u/s 80IB(10) should not be denied merely because the completion certificate was finally issued after the expiry of period stipulated in section 80IB(10)(a) of the Act. The appellant has relied on the following decisions-

- M/s City Development Corporation ITA No. 1489/PUN/2009 and 1100/PUN/2010 (Pune Tribunal) dated 22/09/2012
- M/s Gera Development Pvt. Ltd. ITA No. 768/PUN/2013 for A.Y. 2009-10 (Pune Tribunal) dated 31/12/2014.
- M/s Satish Bora & Associates ITA No. 713 and 714/PUN/2010 A.Y. 2004-05 and 2005-06 (Pune Tribunal) dated 07/01/2011.

17. In this connection, it may be stated that the issue of 'date of completion of residential project for the purposes of sec. 80IB(10)(a) has been discussed in detail by the jurisdictional ITAT in its latest decision in the case of ACIT vs Vijay Tukaram Raundal (2023) 147 taxmann.com 53 (Pune Tribunal) wherein the Hon. ITAT, Pune bench after following the decision of Constitutional Bench of Hon Supreme Court in the case of Commissioner of Customs (Import) v. Dilip Kumar and Co. [2018] 95 taxmann.com 327/69 GST 239/361 ELT 577/[2018] 9 SCC 1 has held that the assessee has to strictly satisfy the conditions as prescribed in the section 80IB(10) and in case of any doubt or ambiguity, the benefit of interpretation has to be given in favour of the Revenue. The relevant portion of the said decisions of Hon. Pune Tribunal is as under-

16. At this juncture, it would be relevant to take note of the Constitution Bench judgment of the Hon'ble Supreme Court relied by the Id DR in Commissioner of Customs (Import) v Dilip Kumar and Co (2018) 95 taxmann com 327/69 GST 239/361 ELT 577/2018) 9 SCC 1. The Constitution Bench was set up to examine the correctness of the ratio in Sun Export Corpn v Collector of Customs 1997 taxmann.com 696-1997 (93) ELT 641 (SC)/(1997) 6 SCC 564 and the question posed before it was- 'What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?' The Hon'ble Constitution Bench took note of its earlier

*judgment in Tata Iron & Steel Co Lid v. State of Jharkand 2006 taxmann.com 1843/2005 (140) FLT 284 (SC)/(2005) 4 SCC 272 in which it was held that the principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, and held in the Constitution Bench judgment that such principle would have no application to construction of an exemption notification. It went on to hold that in such a case it is for the assessee to show that he comes within the purview of exemption After considering the issue in detail the Bench held that exemption notification should be interpreted strictly and "the burden of proving the applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification It further held that When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed extended to the subject/assessee and it must be interpreted in favour of the Revenue". **Going with the ratio decidendi of this Constitution Bench judgment, it is manifested that the assessee has to strictly satisfy the conditions as given in the section for availing the deduction and in case of any doubt or ambiguity, the benefit of interpretation has to be given in favour of the Revenue.***

(Emphasis supplied)

After observing above, the Hon. Jurisdictional Tribunal in the case of Vijay Tukaram Raundal (supra) has held as under

6. Clause (a) of section 80IB(10) provides that the deduction shall be allowed if the assessee, inter alia, completes such construction and then sub-clause) says- Within five years from the end of the financial year in which the housing project is approved by the local authority. This provision talks of completing the construction by such and such time Explanation (2) under section 80IB(10)(a) provides that the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate an respect of such housing project is issued by the local authority. We need to appreciate the logic behind the date of completion of construction de hors the Explanation and as definition wrt the issuance of completion certificate as per the Explanation. As there is an eligibility condition of completing the construction within a period of five years for getting the deduction, the legislature thought it prudent to thwart any attempt by the builders who erringly intimate the completion without actually completing it. With this object in mind the Parliament qualified the date of completion as the date of issuance of completion certificate. Though as per the strict language of section 80IB(10), the date of completion of construction of the housing project is the date on which the completion certificate is issued by the local authority normally it takes some time for the competent authority to verify the veracity of the intimation of completion of construction by the assessee and then issuing the certificate. For all practical purposes and taking a pragmatic view,

the actual date of completion of construction can be considered as the date on which the assessee intimates, in writing to the local authority about the completion of housing project and the competent authority, on verification, does not find anything amiss in it and issues a certificate a little later. In such situation the date of issuance of completion certificate shall relate back to the date on which the assessee finally intimated in writing about the completion of construction. If however, the authority, on verification, finds some work incomplete, then such date of intimation by the assessee will disqualify to be the date of completion of construction. In such a panorama, the assessee will have to make good the deficiencies and again intimate the completion. The crux is that when the authority, on final intimation from the assessee in writing about the completion of construction, finds the construction as having been actually completed, the date of issuance of the completion certificate shall be construed as the date on which the assessee finally intimated the factum of completion of construction.

18. Thus, the ratio of the above decision of Hon. Jurisdictional Tribunal is that merely filing an application with the government authority cannot be considered as the date of issuance of completion certificate because after receiving the application, the local authority may find certain deficiencies in the claim of the assessee regarding the completion of project and may ask the assessee to remove these deficiencies. The Hon. Pune Tribunal has held that only when the local authority after receiving the final intimation about the completion of construction finds that the construction has been actually completed, the date of such final intimation can be considered as date of issuance of completion certificate.

19. Coming to facts of the present case, the appellant has claimed that it filed a request for completion certificate vide letter dated 06/07/2012 on the basis of an architect certificate dated 11/08/2010. It is, however seen that the final completion certificate was issued by the Collector, Pune only on 06/02/2015 and the said certificate was issued in connection with the application made by the appellant on 30/08/2014 (as mentioned in the said completion certificate). It is also mentioned in the said completion certificate that the spot verification of the project was carried out by the authorities on 10/09/2014. Thus, the completion certificate dated 06/02/2015 clearly suggests that the final Intimation about the completion of project namely R-5 was given by the appellant to the Collector Pune only on 30/08/2014. Accordingly, following the decision of Hon. ITAT, Pune bench in the case of Vijay Tukaram Raundal (supra), the date of completion of project for the purpose of sec. 80IB(10) is required to be taken as 30/08/2014.

20. There is no dispute regarding the date on which the project was first approved and as per the appellant, the project R-5 was first approved on 20/12/2007 Therefore, as per the provisions of sec. 80IB(10)(a)(iii) of the Act, the project was required to be completed before 31/03/2013. Since, the project R-5 was not completed within the stipulated time therefore it is held that the appellant is not eligible for deduction u/s 80IB(10) of the Act for project R-5.

Project R-22

21. As per valuer's report, the said project consists of 3 Towers (tower no. 23, 24 and 25). Tower no 23 consists of 18 flats, tower no. 24 consists of 36 flats and the tower no. 25 has 336 flats. In this manner, the project R-22 is having total of 390 flats. The said project was first approved on 20/12/2017 as per the commencement certificate number 1946 by the Collector Pune. There is no dispute on the said date. As per the appellant, the said project was completed on 15/03/2011 and it applied for issuance of completion certificate to the mandatory condition prescribed u/s 80IB(10)(a)(iii) of the Act, the appellant is not eligible for deduction u/s 80IB(10) of the Act for these projects. The ground no 1 raised by the appellant is accordingly **DISMISSED**.

29. Other issue raised by the appellant in the grounds of appeal relates to violation of section 80IB(10)(e) and 80IB(10)(f) of the Act as pointed out by the Registered valuer and claim of pro-rata deduction u/s 80IB(10) of the Act. Since, it has been held that the appellant is not eligible for deduction u/s 80IB(10) of the Act, this issue becomes of academic nature and is not being adjudicated upon

30. To sum-up, the action of the assessing officer of disallowing the claim of deduction u/s 80IB(10) amounting to Rs.1,02,32,288/- is upheld. The appeal for AY 2011-12 is **DISMISSED**.”

6. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

The Appellant would like to object to the impugned appellate order on the following grounds of appeal, which are raised without prejudice to each other on the facts and in law

Ground No 1

1. The Learned Commissioner of Income Tax (Appeal) has erred in confirming disallowance of deduction u/s 80IB (10) of Income Tax Act, 1961 of Rs.1,02,32,288/-.

Ground No 2

2. The Learned Commissioner of Income Tax (Appeal) has erred in wrongly Interpreting the provisions of section 80 IB (10) (c) and thereby rejecting the deduction.
3. The Learned Commissioner of Income Tax (Appeal) has erred in wrongly Interpreting the provisions of section 80 IB (10) (e) and (f) and thereby rejecting the deduction.

4. *The Learned Commissioner of Income Tax (Appeal) has erred in interpreting the provisions of sec 80IB (10) pertaining to completion of the project and pertaining to final completion certificate issued by the local authority and not appreciating the facts and legal position: -*

a) that the Construction of the project is completed and

b) tenements were handed over before due date to customers and they are staying in said apartments

c) Application for completion is made by assessee company to Town Planning Department

And thereby denying the deduction to assessee firm u/s 80IB (10) of Income Tax Act, 1961.

Ground No 3

5. *Without prejudice to above Commissioner of Income Tax (Appeal) has erred on facts and in law in not allowing a pro-rata claim of section 80IB (10) with reference to the area constructed in housing project and eligible as per his opinion and interpretation of section.*

Ground No 4

6. *The appellant prays for admission of Additional grounds/ Additional evidence if any required to support its case.*

7. *The appellant craves leave to amend or alter any of the ground or grounds of appeal or add to the same, if deemed necessary.*

7. The Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) in confirming the action of the Assessing Officer in denying the claim of deduction u/s 80IB(10) of the Act. He submitted that the Assessing Officer, Ld. CIT(A) as well as the Govt. Valuer are in agreement in respect of the conditions regarding the claim of deduction u/s 80IB(10) of the Act i.e. the area of land, date of commencement, number of units, completion certificate issued by the Architecture of the building and the size of the units. The only ground on which the deduction u/s 80IB(10) of the Act was disallowed was that (a) no completion

certificate from the approved authority was obtained before the stipulated date i.e. 31.03.2013; that (b) in respect of project R-5, there are two instances wherein one person has been allotted more than one residential unit and in respect of project R-5, two flats are having similarity in the name / surname. He submitted that although the Ld. CIT(A) has upheld the action of the Assessing Officer on account of non submission of the completion certificate, however, he has not adjudicated the issue regarding the disallowance in terms of section 80IB(10)(e) and 80IB(10)(f) of the Act. On a pointed query by the Bench as to whether the application dated 06.07.2012 for project R-5, application dated 26.06.2012 for project R-22 and application dated 04.07.2012 for R-4 were filed before the Assessing Officer or not, the Ld. Counsel for the assessee fairly conceded that these are all additional evidences and were not filed before the lower authorities. Referring to the application filed before the Tribunal for acceptance of the additional evidences under rule 29 of Income Tax Appellate Tribunal Rules, 1963, he submitted that these additional evidences go to the root of the matter and should be admitted for adjudication.

8. So far as the project R-5 is concerned, referring to pages 105 to 107 of the paper book-1, the Ld. Counsel for the assessee submitted that the Architect Kakati and Associates have issued a Certificate giving details of the entire project, date of commencement and date of completion which is 15.08.2010. Referring to page 81 of the paper book-1, he drew the attention of the Bench to the Building occupancy certificate for project R-5, which has been asked from the Collector, Pune district

vide letter dated 06.07.2012 wherein all other relevant NOCs have been enclosed. Referring to pages 114 and 115 of the paper book-1 and English translation of the same at pages 23 to 25 of the paper book-2, he submitted that this is a completion certificate issued by the Town Planning Authority dated 06.02.2015 and that even the date of application mentioned is 30.08.2014 as per page 81 of the paper book-1, it is clearly evident that this application is made on 06.07.2012. Therefore, the inference drawn by the Ld. CIT(A) that the assessee has made application before the appropriate authorities after 31.03.2013 is incorrect and the date of completion as per the Architect is 15.08.2010. Referring to Rules No.7.6 and 7.7 of the DC Rules of PMC, he drew the attention of the Bench to the same and submitted that these are in respect of completion certificate and occupancy certificate. Referring to pages 114 and 115 of the paper book-1 and English translation of the same at pages 23 to 25 of the paper book-2, he submitted that it is categorically stated that the proper authority has verified 240 units and mentioned that all the buildings are completed as per approved commencement certificate. He submitted that the inference drawn by the lower authorities is legally not justified and therefore, the claim of deduction u/s 80IB(10) of the Act in respect of R-5 is not justified.

9. So far as the project R-22 is concerned, he submitted that the partial completion certificate dated 01.08.2013 issued by the Collector, Pune is only for Tower No.23 and 24 (i.e. 54 flats) and the completion certificate dated 06.02.2015 is also issued only for these two towers which means that the Collector is not satisfied about the claim for tower No.25.

10. Referring to pages 116 and 117 of the paper book-1 and the English translation of the same placed at pages 26 to 28 of the paper book-2, he drew the attention of the Bench to the same and submitted that these are partial completion certificates of buildings 23 and 24 consisting of 54 flats. Referring to pages 118 to 119 of the paper book-1 and the English translation of the same at pages 29 and 30 of the paper book-2, he drew the attention of the Bench to the same which is completion certificate dated 06.02.2015 and submitted that in this certificate completion in respect of Tower 25 consisting of 336 flats has been given. He accordingly submitted that the inference drawn by the Ld. CIT(A) that the completion certificate dated 06.02.2015 is also issued only for these two towers which means that the Collector, Pune is not satisfied about the claim for Tower 25 is incorrect and legally not justified. Referring to pages 108 to 110 of the paper book-1, he drew the attention of the Bench to the certificate given by the Architect about the date of commencement and date of completion which is 15.03.2011. Referring to page 89 of the paper book-1, he submitted that the same is the application dated 26.06.2012 made by the assessee to the Collector for issue of completion certificate. Referring to pages 127 to 131 of the paper book-1 which is the Valuation Report of the registered valuer Mr. Nitin Lele, he submitted that in the valuation report it is mentioned that "No completion certificate acquired however buildings are complete and occupied. Architect have issued the completion certificate". He accordingly submitted that the order of the Ld. CIT(A) holding that no documentary evidence has been furnished by the assessee in

respect of the completion certificate for Tower No.25 and therefore, project R-22 was not completed prior to 31.03.2013 is incorrect.

11. So far as the project R-4 is concerned, he submitted that the Ld. CIT(A) had rejected the claim of deduction u/s 80IB(10) of the Act on the ground that the assessee has not filed copy of the completion certificate issued by the Collector, Pune either before the Assessing Officer or before him. Referring to pages 120 and 121 of the paper book-1 and the English translation of the same at pages 31 to 34 of the paper book-2, he drew the attention of the Bench to the occupancy certificate dated 15.10.2016 in respect of Tower No.15, 16, and 17 consisting of 70 flats each (i.e. total 210 flats). Referring to page 101 of the paper book-1, he drew the attention of the Bench to the same and submitted that this is an application made to the Collector, Pune on 04.07.2012 for issue of occupancy certificate. Referring to Rules No.7.6 and 7.7 of the DC Rules of PMC, he submitted that occupancy certificate is issued by the appropriate authority only on receipt of completion certificate. Referring to page 138 of the paper book-1, he drew the attention of the Bench to the same which is the valuation report of the Registered Valuer Mr. Nitin Lele, wherein he has reported in respect of project R-4 that “no completion certificate acquired however buildings are complete and possessed.” Therefore, the inference drawn by the Ld. CIT(A) that the assessee has not filed any evidences in respect of the completion of the project from the competent authority either before the Assessing Officer or the Ld. CIT(A) is incorrect and legally not justified.

12. So far as the order of the Ld. CIT(A) that in absence of copy of the completion certificate for project R-4, it is not possible to find out as on which date the project was finally considered to be complete is concerned, the Ld. Counsel for the assessee drew the attention of the Bench to pages 111 to 113 of the paper book-1 and submitted that the Architect has given certificate about the date of commencement and date of completion which are dated 16.01.2008 and 15.03.2011, respectively. Therefore, the inference drawn by the Ld. CIT(A) is contrary to the facts.

13. So far as the decision of the Pune Bench of the Tribunal in the case of ACIT vs. Vijay Tukram Raundal (2023) 147 taxmann.com 53 (Pune-Trib.) relied on by the Ld. CIT(A) is concerned, he submitted that the same is not applicable to the facts of the present case since in that case the applications were filed after the specified date whereas the assessee in the instant case has filed all the relevant details in the office of the Collector, Pune before the cutoff date. Therefore, the said decision is not applicable to the facts of the present case. The Ld. Counsel for the assessee filed the following table:

<i>Project</i>	<i>Architect Certificate</i>		<i>Application for Completion Certificate / Occupancy Certificate to Collector, Pune</i>	<i>Completion Certificate / Occupancy Certificate date</i>
	<i>Commencement date</i>	<i>Completion date</i>		
<i>R5</i>	<i>20.12.2007</i>	<i>15.08.2010</i>	<i>06.07.2012</i>	<i>06.02.2015</i>
<i>R22</i>	<i>20.12.2007</i>	<i>15.03.2011</i>	<i>26.06.2012</i>	<i>06.02.2015</i>
<i>R4</i>	<i>16.01.2008</i>	<i>15.03.2011</i>	<i>04.07.2012</i>	<i>15.10.2016</i>

14. He further submitted that the issue of claim of deduction u/s 80IB(10) of the Act in respect of projects R-5, R-22 and R-4 are covered in favour of the assessee by the following decisions:

1. *M/s. City Development Corporation vs. Addl.CIT vide ITA Nos.1489/PN/2009 and 1100/PN/2010, order dated 22.09.2012*
2. *M/s Gera Development Pvt. Ltd. ITA No.768/PUN/2013 for A.Y. 2009-10 (Pune Tribunal) dated 31/12/2014.*
3. *M/s Satish Bora & Associates ITA No.713 and 714/PUN/2010 A.Y. 2004-05 and 2005-06 (Pune Tribunal) dated 07/01/2011*
4. *ACIT vs Vijay Tukaram Raundal (2023) 147 taxmann.com 53 (Pune Tribunal).*
5. *Hon. Supreme Court in the case of Commissioner of Customs (Import) v. Dilip Kumar and Co. [2018] 95 taxmann.com 327/69*
6. *The Principal Commissioner of Income Tax-5 V. G.K. Developers (2024) TaxCorp (DT) 92998 (HC-Bombay)*
7. *CIT v. Tarnetar Corporation (2014) 362 ITR 174 (Guj.)(HC) (362 ITR 174)*
8. *The Commissioner of Income Tax -I Versus M/s. Abad Constructions Pvt. Ltd. (2014) 8 TaxCorp (DT) 56998 (Kerala)*
9. *Commissioner of Income-tax v. Hindustan Samuh Awas Ltd. (2015) 377 ITR 150 (HC- Bombay)*
10. *Principal Commissioner of Income Tax-1 Vs M/s Ashtavinayak Developers TaxCorp (DT) 79108 (HC-Bombay) (2019)*

15. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A). He submitted that the Ld. CIT(A) has categorically given a finding that the completion certificate in respect of project R-22 was given by the Collector, Pune dated 06.02.2015 on the basis of the application filed by the assessee on 30.08.2014. Similarly, in respect of project R-5, the Collector had given the completion certificate on 06.02.2015 on the basis of an application dated

30.08.2014. Thus, the applications for issue of completion certificates were made after the cutoff date and therefore, the assessee has violated the conditions prescribed in section 80IB(10) of the Act. So far as the violation of the provisions of section 80IB(10)(e) and 80IB(10)(f) of the Act are concerned, he submitted that the Ld. CIT(A) has not adjudicated that issue and therefore, he has no objection if the same is restored to the file of the Ld. CIT(A) for fresh adjudication.

16. The Ld. Counsel for the assessee in his rejoinder submitted that the assessee had filed the original applications before the cutoff date and he has no control over the Collector, Pune for issue of the certificates. So far as the completion certificate issued by the Commissioner, Pune on the basis of application dated 30.08.2014 is concerned, he submitted that the same is only in continuation of the original applications dated 26.08.2012 for project R-22, application dated 04.07.2012 for project R-4 and application dated 06.07.2012 for project R-5. He submitted that the assessee has fulfilled all the conditions. So far as the denial of deduction by the Assessing Officer on account of violation of the provisions of section 80IB(10)(e) and 80IB(10)(f) of the Act are concerned, he submitted that the Act was amended w.e.f. 01.04.2010 and accordingly applicable from assessment year 2010-11 onwards and therefore, the same is not applicable, being prospective in nature. He accordingly submitted that the grounds raised by the assessee should be allowed.

17. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf

of both sides. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case denied the claim of deduction u/s 80IB(10) of the Act made by the assessee on the ground that (a) completion certificate issued by the local authority in respect of all the three projects are after the statutory deadline i.e. 31.03.2013 and (b) certain flats in the projects were sold to the same buyers in violation of the provisions of section 80IB(10)(e) of the Act. He also rejected the claim of the assessee regarding prorata deduction of the eligible projects. We find the Ld. CIT(A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the applications for issue of completion certificate / occupancy certificate were made to the competent authority, Pune much prior to the cut off date of 31.03.2013. It is his argument that the application for the project R-5 was made on 06.07.2012 (page 81 of paper book), for R-22 was on 26.06.2012 (page 89 of paper book) and for Rs-4 was on 04.07.2012 (page 101 of paper book). It is also his submission that the assessee has no control over the Collector, Pune for issue of completion certificate. According to him, after multiple applications, the Collector, Pune has issued the completion certificate / occupancy certificate on the basis of last application dated 30.08.2014. He submitted that there is no change in the contents of the application and at best it can be said that it is a kind of reminder only. It is also his submission that there is no violation on the part of the assessee regarding completion of the project.

18. In our opinion, if the assessee completes the project in all respects and makes necessary applications before the competent authority on or before the specified date and on receipt of such applications, the competent authority sits over the applications, then the assessee cannot be faulted with. In our opinion, if the competent authority gives the completion certificate / occupancy certificate on the basis of the applications made by the assessee before the specified date without any deviation, then the assessee in our opinion, is said to have fulfilled the conditions of section 80IB(10) of the Act in light of the various decisions relied on by the Ld. Counsel for the assessee. However, it has to be seen as to whether the assessee has made the applications to the competent authority before the specified date or not which in the instant case is 31.03.2013. In the instant case, admittedly, such applications made to the competent authority before the specified date were filed in the shape of additional evidences only and the same were not produced before the Assessing Officer during the course of assessment proceedings. Although it was stated before the Ld. CIT(A), however, there was no occasion on the part of the Ld. CIT(A) also to verify the same.

19. So far as the decision relied on by the Ld. CIT(A) in the case of ACIT vs Vijay Tukaram Raundal (supra) is concerned, in our opinion, the same is distinguishable and not applicable to the facts of the present case. In that case, undisputedly, the project was completed well beyond the prescribed time whereas in the instant case, the project was completed before the specified date but the

completion certificate was issued after the specified date. Therefore, the said decision in our opinion, is not applicable to the facts of the present case.

20. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to call for information from the office of the Collector, Pune i.e. the competent authority to find out as to whether the assessee has applied for completion certificate / occupancy certificate before the specified date or not and if so, whether there is any variation in the application filed earlier and subsequently on 30.08.2014. The Assessing Officer may also find out the reasons for the delay in issue of completion certificate i.e. as to whether there was any lapse on the part of the assessee in fulfilling the conditions prescribed for making the application for occupancy certificate. The Assessing Officer shall also decide the prorata deduction and the violation of provisions of section 80IB(10)(e) of the Act afresh. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No.528/PUN/2024 (A.Y. 2012-13)

21. After hearing both the sides, we find the grounds raised in ITA No.528/PUN/2024 are identical to the grounds raised in ITA No.527/PUN/2024.

We have already decided the issue and the matter has been restored to the file of the Assessing Officer with certain directions. Following similar reasonings, grounds raised by the assessee in ITA No.528/PUN/2024 are also restored to the file of the Assessing Officer for fresh adjudication.

22. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 18th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 18th December, 2024
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	13.11.2024		Sr. PS/PS
2	Draft placed before author	14.11.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			