

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1444 & 2129/Chny/2024
निर्धारण वर्ष /Assessment Years: 2012-13

M/s. Ganapati Garments Ltd.,
8B, II Floor, Wellington Estate,
53, Commander in chief Road,
Egmore, Chennai-600008.
[PAN: AABCG 8141N]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Corporate Ward-2(1),
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1445 & 2128/Chny/2024
निर्धारण वर्ष /Assessment Years: 2012-13

M/s. Ganapati Leather Products
Pvt. Ltd.,
8B, II Floor, Wellington Estate,
53, Commander in chief Road,
Egmore, Chennai-600008.
[PAN: AABCG 8143Q]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Corporate Ward-2(1),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri V. Ravichandran, FCA
: Shri P.K. Senthil Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 12.11.2024

घोषणा की तारीख /Date of Pronouncement

: 07.02.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid four appeals filed by the both the assesseees for
Assessment Years (AYs) 2012-13 arises out of the identical orders of
Learned Commissioner of Income Tax (Appeals)-6, Chennai

[hereinafter "CIT(A)"] dated 19.03.2020 and the rectification orders of Ld. CIT(A), NFAC, dated 18.03.2024.

2. There is a delay of 1428 days in filing the two appeals by the assessee in respect of Ld CIT(A) orders dated 19.03.2020 passed u/s 250 of I.T Act, arising from the assessment orders u/s 143(3) dated 30.03.2015. The assessee has filed condonation petition stating the reasons that the order of Ld. CIT(A) was passed on 19.03.2020, which was a Covid period and they have filed rectification petition against the order of Ld. CIT(A) as there were many apparent mistakes. The Ld. CIT(A) has rectified all the mistakes, but has not rectified the disallowances of deduction u/s. 80IB(10) of the Act. The assessee did not file the appeals as they were pursuing the same issue before Ld CIT(A) through Section 154 petition and subsequently when relief was not granted by Ld. CIT(A), the assessee has filed appeals against the order of Ld CIT(A) u/s 250 of the Act as well as Section 154 order. Therefore, there is a sufficient cause in filing appeal belatedly.

3. We have considered the reasons stated by the assessee in filing the appeals and satisfied that there was sufficient cause for not filing the appeals within the prescribed time limit. Hence, the delay is condoned accordingly.

4. The issues in all the appeals are common hence, we proceed to pass a common order. For brevity, we shall take up the appeal in ITA No.2128/Chny/2024 in the case of M/s. Ganapati Leather Products Pvt. Ltd. against the order passed u/s 250. The grounds of appeal raised by the assessee for A.Y 2013-14 are as under:

"1. The order of the Learned CIT(A) under section 250 is erroneous and contrary to law.

2. The Learned CIT(A) erred in rejecting the claim of deduction under section 80- IB (10).

3. The Learned CIT(A) failed to appreciate that though permission was obtained including commercial block, the appellant had neither constructed commercial block nor claimed any deductions towards sale of commercial block in the return of income filed for Assessment years 2012-13 and 2013-14.

4. The Learned CIT(A) had erred in denying the deduction claimed under section 80 IA(10) in entirety of the whole project and not providing pro rata deductions.

5. The Learned CIT(A) failed to give proper opportunity given before passing of the Impugned order.

6. The learned CIT (A) erred in not following the order passed in Assessment Year 2013-14

7. The appellant seeks leave to raise additional/alternate grounds if any at the time of hearing."

5. The brief facts of the case are that the assessee company along with the other group company M/s. Ganapati Garments Ltd. has promoted a housing project in the outskirts of Chennai under the name Vandalur Park and has claimed deduction u/s. 80IB(10) of the Act for

the year is Rs.5,31,25,988/-. The project was approved by Chennai Metropolitan Development Authority (CMDA) on 27.03.2016 with five residential blocks and one commercial block. The residential blocks were completed before 31.03.2011 and the assessee has claimed deduction u/s. 80IB(10) of the Act in respect of income from residential blocks. The A.O disallowed the assessee's claim u/s. 80IB(10) of the Act on the ground that the project was not completed as work in the commercial block which was integral part of the project commenced only in FY 2013-14 and the commercial block exceeded 3% of the total project area, violating the provisions of amended section 80IB(10) of the Act . The assessee preferred appeal before Ld CIT(A)-6 Chennai, who dismissed the assessee's appeal. The assessee filled further appeal before the Hon'ble ITAT and the Hon'ble ITAT remitted matter back to Ld CIT(A) as common permission issue for commercial block was not considered by Ld CIT(A). Accordingly Ld CIT(A) passed order u/s 250 dismissing assessee's appeal vide order dated 19.03.2020. Assessee has filed a rectification application u/s. 154 of the Act, pointing out multiple mistakes in the order of Ld. CIT(A). The Ld. CIT(A) rectified all the mistakes except on the issue of claim u/s. 80IB(10) of the Act. Aggrieved, the assessee filed appeals against

both the orders of the Ld. CIT(A) before the ITAT, essentially raising the same ground of appeal of disallowance u/s. 80IB(10) of the Act.

6. The Ld. Authorized Representative (A.R) of the assessee has submitted that the residential project was completed within the prescribed time line and independently met the requirements of Section 80IB(10) of the Act and therefore, relying on the various case laws including the case of Hon'ble Madras High Court in the case of CIT v. Arun Excello Foundation (P.) Ltd. [2013] 29 Taxman 149 (Mad.) claimed that the assessee is eligible for deduction u/s. 80IB of the Act. The Ld. AR has further submitted that the A.O has disallowed the claim of deduction u/s 80IB(10) in A.Y 2013-14, and Ld CIT(A) has allowed the claim and therefore disallowance in A.Y 2012-13 is inconsistent and unjustified.

7. The Ld. Departmental Representative (DR), on the other hand, supported the findings of Ld. CIT(A) and argued that the housing projects approved after the amendment in 2005 are governed by the amended provisions. The Ld DR argued that decision of Hon'ble Madras High relied by the assessee is before amendment in Section 80 IB(10) and therefore, does not apply. The Ld DR relied on the

decision of Hon'ble Supreme Court in the case of *Sarkar Builders (P) Ltd. vs. CIT [2015] 57 Taxman 313 (SC)* in this respect.

8. We have heard the rival submissions, and perused the materials available on record. The assessee-company has taken up housing project which was approved by CMDA vide order dated 27.03.2006 with 6 blocks, block no 6 being commercial. The build-up area of the commercial block included in the housing project was more than 3% of aggregate of built up area of the project as per the plan. It is also admitted fact that the residential block 1 to 5 were completed within the prescribed time, but the commercial block has commenced only after 2013-14. Section 80IB(10) has been amended w.e.f 1-4-2010 , by putting additional conditions in order to claim deduction u/s 80IB in respect of profit derived from housing project as under:

“ Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

.....

80IB(10) *The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,-*

80IB(10) (a)(iii): *in a case where a housing project has been or is approved by the local authority on or after the 1st Day of April 2005, within five years from the end of financial year in which the housing project is approved by the local authority .*

...

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80IB(10) (d): *The build up area of the shop and other commercial establishments included in the housing project does not exceed three percent of the aggregate built up area of the housing project or five thousand square feet whichever is higher.”*

9. The Ld CIT(A) has held that assessee is not eligible for deduction u/s 80IB(10) of the Act as there was single permission granted by the authorities for whole project and assessee has not complied with the condition u/s 80IB(10)(d). The Hon'ble Supreme Court in the case of *Sarkar Builders (P) Ltd. vs. CIT*, supra, has clarified that before 1.4.2005, once the project is sanctioned by the local authority as housing project, the extent of area sanctioned shops and commercial establishment in the said housing project was immaterial and had no bearing. This position changed with the insertion of clause (d) to subsection 10 and as per the amendment even if the local authority had sanctioned larger area for shops and commercial establishment, the benefit of section 80IB(10) would not be admissible to these assessee/developers in case the area utilized exceeds the prescribed limit.

10. The Ld CIT(A) has also noted that most of the decisions which has been relied by assessee are relating to project approved before 1.4.2005 and others are superseded by the decision of Hon'ble Supreme Court . We are in complete agreement with Ld CIT(A) on this

issue. The Ld AR has argued that Ld CIT(A) in A.Y. 2013-14 on same facts has allowed the claim of deduction u/s. 80IB(10) of the Act and the disallowances in A.Y 2012-13 will be against the consistency principle. We are not in agreement with the arguments of Ld. AR as the principle of res-judicata does not apply in income tax proceedings, and each assessment year must be examined independently and we are not bound by the decision of Ld CIT(A) in A.Y 2013-14. In light above, we do not find any infirmity in the order of Ld. CIT(A) and therefore, uphold order of Ld CIT(A).

ITA No.1445/Chny/2024:

11. The assessee has filed appeal against the order under Section 154 of the Act, challenging the order of the Ld. CIT(A) in not rectifying the order passed u/s 250 of the Act disallowing deduction under Section 80IB(10) of the Act. Since, we have already decided the issue of deduction u/s 80IB of the Act, the ground raised against 154 order of CIT(A) against the order u/s. 250 of the Act is also dismissed accordingly .

ITA Nos.2129 & 1444/Chny/2024:

12. We find that the identical issue is involved in M/s. Ganapati Garments Ltd's appeals in ITA Nos. 2129 & 1444/Chny/2024 as well.

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Accordingly, our adjudication above applies *mutatis mutandis* to these appeals. Therefore, for the same reasons, we dismiss the appeals in ITA Nos. 2129 & 1444/Chny/2024.

13. In the result, all the four appeals filed by the assessee are dismissed.

Order pronounced on 07th February, 2025.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 07th February, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF