

**आयकर अपीलीय अधिकरण, 'ई' खंडपीठ मुंबई**  
**INCOME TAX APPELLATE TRIBUNAL, MUMBAI "E" BENCH**

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाई, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Sandeep Gosain, Judicial Member

**आयकर अपील सं./ITA No.2583/M/2013, निर्धारण वर्ष/Assessment Year-2006-07**

M/s. Seaward Developers (P) Ltd. C/o., Sajid Murghey, 7/14, Bushra Park 52-Bungalow Area, Panvel-410 206 PAN:AAICS 4655 E	Vs	Income tax Officer Ward-7(2)(2) Aayakar Bhavan Maharshi Karve Marg Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**आयकर अपील सं./ITA No.2545/M/2013, निर्धारण वर्ष/Assessment Year-2009-10**

Income tax Officer Ward-7(2)(2), Mumbai.	Vs	M/s. Seaward Developers (P) Ltd. Panvel-410 206.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**निर्धारिती ओर से/Assessee by : Shri A.K. Sharma-AR**

राजस्व की ओर से/ Revenue by : S/Shri Sachidanand Dubey and Aarsi Prasad (DR)

**सुनवाई की तारीख/ Date of Hearing : 16-11-2015**

**घोषणा की तारीख / Date of Pronouncement : 01.01.2016**

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the orders of CIT(A)-13, Mumbai the assessee and the Assessing Officer (AO) have filed appeals for the above mentioned two assessment years (AY.s).

**ITA2583/M/13-AY06-07**

Assessee-company is engaged in the business of civil construction. The return was processed u/s. 143(1) of the Act. Later on it was selected for scrutiny, and assessment u/s. 143(3) of the Act was completed on 22.12.2008. The AO re-opened the matter by issuing a notice u/s. 148 and the assessment u/s. 143(3) r.w.s 147 of the Act was completed on 22.11.2011, determining the income of the assessee at Rs.18.87 lacs.

2. Effective Ground of appeal is about reopening of the assessment. During the re-assessment proceedings, the AO observed that the assessee was following project completion method, that it had claimed deduction u/s. 80IB of the Act amounting to Rs.18,87,195/-. The AO directed the assessee to substantiate its claim u/s. 80IB. After considering the submission of the assessee, filed on 11.11.2011, the AO held that the claim made by the assessee was not allowable as it had not complied with four conditions, that it was not owning the plot of land where the housing project was constructed, that the area of the plot was less than one acre, that it had not produced any evidence supporting the claim that area of the plot of land was more than one acre, that the project was not completed within the time frame stipulated under provisions of Section 80IB of the Act, that the assessee was not a developer of the project in hand, that local authorities had not given approval in the name of the assessee. Finally, he rejected the claim made by the assessee company.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that the assessment was completed u/s. 143(3) of the Act, that the AO had accepted the claim made u/s. 80IB during the original assessment proceedi -

ngs,that he had considered all the necessary documents-audit report, development agreement, that the AO had after application of mind allowed deduction u/s.80IB,that the assessee had filed various details on 3.12.2008,8.12.2008 and 15.12.2008, that details like development agreement, valuation of work in progress,expenditure incurred were made available to the AO, that the reasons recorded by the AO for re-opening of the assessment were not sufficient for invoking the provisions of section 147,that the re-opening was bad in law.

After considering the submission of the assessee and the assessment order,the FAA held that there were various conditions for allowing deduction u/s. 80IB,that one of the conditions was that the project should have been completed within four years from the approval granted by the local authorities,that during the original assessment proceedings the AO had not examined the issue of completion of project within period of four years,that considering the above fact it could not be found that the AO had formed an opinion on the issue,that the re-opening was not result of change of opinion by the AO,that the original assessment was liable to be assessed on book profit u/s. 115JB of the Act, that one of the reasons for re-opening the assessment was non-consideration of the MAT provisions.Finally, the FAA held that the assessment was validly re-opened.With regard to rejecting the claim u/s.80IB(10) of the Act,the FAA held that there was no requirement of ownership of land for claiming deduction u/s.80IB(10),that there was also no requirement that approval from the municipality should be in the name of the assessee, in the case under consideration the size of the plot of land was more than one acre,that on that plot two buildings were constructed in earlier years,that construction of third tower was undertaken in the year under consideration,that the fourth building was to be started in the subsequent years. Following the decision of Vandana Properties of the Hon'ble Bombay High Court,he held that assessee had completed the other condition also with regard to date of completion of project. The FAA observed that as per the provisions of section 80IB(10) of the Act projects approved before 1.4.2004 had to be completed by 31.3.2008,that projects approved after 1.2.2004 were to be completed within four years from the end of the Financial Year in which the housing project was approved,that the project undertaken by the assessee was not completed during the year, that the assessee had violated the mandatory condition that it was not entitled for deduction u/s. 80IB(10), on the profits of such incomplete project.Finally,upholding the order of the AO,he dismissed the appeal, filed by the assessee.

**4.**Before us,the Authorised Representative(AR)referred to page No.1 &2 of the Paper Book(PB) -specially item No.8 and 16 and contended that the same FAA had allowed the deduction while deciding the appeal for the AY.2009-10 on the same set of facts,that three wings of the project namely A,B and C were completed in the year under appeal,that D-wing was completed in the AY.09-10, that permission for development was given to the original owners on 28.1.2004 by the Panvel Municipal Corporation,that the building occupancy certificate for A,B,C wing was issued on 25.5.2006 by the local authorities,that the Municipal Corporation had issued occupancy certificate of the building for part-B(Bldg.-D)on 16.5.2008,that the project was completed on due dates,that there was no tangible material with the AO to re-open the assessment,that all the material was available on record and the AO had applied his mind while passing the original assessment, that there was no question of not filing of the Form 10CCB report, that the audited accounts were available to the AO.Departmental Representative(DR)supported the order of the FAA.

**5.**We have heard the rival submissions and perused the material before us.We find that the AO had disallowed the claim made by the assessee on four counts,that the allowed partial relief to

the assessee, that he had held that building was not completed in the year under appeal, that the AO was not justified in denying the benefits for other reasons, that assessee had constructed two portion i.e. A and B, that A portion consisted of three wings, that as per the municipal authorities three wings of portion A were constructed by 25.05.2006, that occupancy certificate was also issued for that portion, that the assessee had claimed deduction for that portion only. We have gone through the certificates issued by the municipality and the DR could not controvert the facts mentioned in those documents. In these circumstances, we are unable to endorse the stand taken by the FAA. So, reversing his order, we decide the effective ground of appeal in favour of the assessee.

**ITA 2445/Mum/13-AY.2009-10:**

**6.** Effective Ground of appeal is about deleting the addition made by the AO, u/s. 80IB of the Act. During the assessment proceedings, the AO found that the assessee had made the claim of Rs. 37.50 lacs u/s. 80IB. He held that the assessee was not entitled to the deduction claimed by it as it did not own the plot of land, that the area of plot of land was less than one acre, that the project was not completed in the previous year relevant to the AY. under consideration, that the permission for developing the project was not issued by the municipal authorities in the name of the assessee. He held that assessee was not entitled to claim deduction.

**7.** The FAA referring to his order for AY 2006-07, held that there was no violation of eligibility conditions on part of the assessee as far as first three conditions were concerned. He further held that during the year under consideration the assessee vide letters dt. 20.9.11 and 11.11.2011, had informed the AO that the project was completed during the year, that the necessary evidence in form of commencement certificate and completion certificate were also submitted, that the project was completed within four years, that it had fulfilled the conditions as envisaged by the section 80IB of the Act. He directed the AO to allow the deduction as claimed by the assessee.

**8.** Before us the Departmental Representative (DR) relied upon the order of the AO and the AR supported the order of the FAA.

We have heard the rival submissions and perused the material before us. In our opinion, the FAA had rightly held that there was no requirement of ownership of land for claiming deduction u/s. 80IB(10), that he was justified in holding that there was also no requirement that approval from the municipality should be in the name of the assessee, in the case under consideration the size of the plot of land was more than one acre. We find that the FAA has given a categorical finding of fact that the assessee had completed the project within the stipulated time and that the finding is based on documentary evidences. Therefore, in our opinion, his order does not suffer from any legal or factual infirmity. Confirming his order, we decide the effective ground of appeal against the AO.

As a result, appeal filed by the assessee is allowed and the appeal of the AO stands dismissed.

फलतः निर्धारिती की अपील मंजूर की जाती है और निर्धारिती अधिकारी अपील नामंजूर की जाती है.

Order pronounced in the open court on 1<sup>st</sup> January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 जनवरी, 2016 को की गई।

Sd/-

(संदीप गोसाईं / Sandeep Gosain)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Date: 01.01.2016.

व.नि.स. Jv.Sr.PS.

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR E Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ई खंडपीठ, आ. अ. न्यायालय मुंबई
- 6.Guard File/गार्ड फाईल

सत्यपित प्रति //True Copy//

आदेशमुसल/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.