

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.642/Bang/2014  
(Assessment Year : 2007-08)

M/s. Manjunatha Land Developers  
And Constructions Pvt. LTD,  
No.849, 1<sup>st</sup> floor, 12<sup>th</sup> cross,  
4<sup>th</sup> Main, 1<sup>st</sup> Stage, Indiranagar,  
Bangalore 560 038  
PAN : AADCM9356M

.. Appellant

v.

Asst. Commissioner of Income-tax,  
Circle -12(1), Bangalore

.. Respondent

I.T.A No.679/Bang/2014  
(Assessment Year : 2007-08)  
(By the Revenue)

Assessee by : Shri. Prashanth G. S, CA  
Revenue by : Shri. Sanjay Kumar, CIT -III

Heard on : 18.11.2015  
Pronounced on : 27.11.2015

**ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :**

These are cross appeals filed by assessee and Revenue respectively  
directed against an order dt.21.02.2014 of CIT (A)-III, Bengaluru.

02. Assessee's appeal is taken up first for disposal. Assessee has altogether raised 18 grounds of which grounds 1, 2, 3, 16, 17 and 18 are general needing no specific adjudication. Ground.15 is on levy of interest u/s.234B and C of the Income-tax Act, 1961 ('the Act' in short), which is consequential in nature.

03. Vide its grounds 4 to 11 assessee raises a grievance that it was not allowed the claim of deduction of Rs.1,41,62,788/- u/s.80IB(10) of the Act. Facts apropos are that assessee, a builder and developer, had filed its return for the impugned assessment year declaring income of Rs.46,18,320/-. During the course of assessment proceedings it was noted by the AO that assessee had claimed deduction of Rs.1,41,62,188/- u/s.80IB(10) of the Act, for a property constructed in Survey No.50/11, Santhamarenahalli, K R Puram, Bangalore. For verifying the claim of assessee, AO made a reference to the District Valuation Officer (DVO in short). DVO recommended disallowance of the claim made by the assessee u/s.80IB(10) of the Act noting that out of the four blocks in the land area of 3 acres and 36guntas, the three blocks which were referred to him by the AO were situated in a land area which was below one acre. Further as per the DVO, some portion of the land was developed as individual plots and disposed

off. AO put the assessee on notice on the recommendation of the DVO. Assessee thereupon stated that it had different apartments named Lake City Residence, Lake Vihar, Manju Anugraha, Lake Beauty, Lake Glacier and Lake Enclave but there were all part of one project called Lake City Residency. As per the assessee, DVO had not considered the Lake City Residence and Manju Anugraha for calculations. Assessee submitted that giving different names for each apartment was only for easy market and did not in any way effect the claim made u/s.80IB(10) of the Act. However, AO was of the opinion that assessee was unable to explain as to how it was eligible for the claim u/s.80IB(10) of the Act. He denied the claim.

04. Aggrieved assessee moved in appeal before the CIT (A). Argument of the assessee was that each project was considered as different one by the AO erroneously. According to the assessee, approved plan sanctioned by the Town Municipality of K. R. Puram, clearly mentioned that project had an area of more than one acre. As per the assessee, construction was as per the approved plan. In other words argument of the assessee was that construction having been done in an area of 3 acres 36 guntas, it had to be given the benefit of 80IB(10) of the Act. CIT (A) was however not appreciative of this contention. According to him, assessee had not

fulfilled the conditions u/s.80IB(10) of the Act. Projects were constructed on a land area which was less than 1 acre and there was deviation from the sanctioned plan. As per the CIT (A) assessee could not rebut the findings of AO and DVO. He upheld the disallowance.

05. Now before us, Ld. AR strongly assailing the orders of lower authorities submitted that the permission for construction was issued by the Town Municipality of K. R. Puram on 19.01.2006. According to him, copy of the permission is placed at pages 35 and 36 of the paper book clearly showed that the plan included therein Lake City Residence, Lake Glacier, Lake Beauty, Lake Enclave altogether known as Lake City Residential complex. As per the Ld. AR the official memorandum dt.19.10.2004 issued by the Deputy Commissioner, Bangalore District, Bangalore, had clearly stated that land in Sy.No.50/1 came to 3.36 acres. As per the Ld. AR this was the very same survey number was mentioned in the letter dt.19.01.2006 of K.R. Puram Municipality, giving approval for the project. According to him considering each of the blocks in the area of 3.36 acres as independent was incorrect. Relying on the judgment of Hon'ble Bombay High Court in the case of CIT v. Vandana properties (254 ITR 258), Ld. AR submitted that what was relevant was the area of plot of land.

According to him there could be any number of housing projects in a given area of land and if the projects were approved by the local authority then 80IB(10) of the Act could be availed provided other conditions set out therein were satisfied. According to him there was no case for the Revenue that any of the other conditions set out in 80IB(10) was not satisfied.

06. Per contra, Ld. DR strongly supported the orders of the authorities below. According to him, DVO's report clearly mentioned that assessee had deviated from the original approved plan.

07. We have perused the orders and heard the rival contentions. Report of the DVO which has been extracted in the assessment order is reproduced hereunder for brevity :

*“The assessee company has obtained an approval to construct 204 units with the land area of 3 acres and 36 guntas i.e.15782.22 sqm with the single unit whereas as per site condition there are four apartments viz., Lake city Residency, Lake beauty, Lake Glacier and Lake Enclave. However only three apartments are referred to this office viz., Lake Beauty, Lake Glacier and Lake Enclave. The land utilized for the above three apartments are as follows :*

*1 Lake Enclave  $17.90 \times 22.80 = 408.12$  Sqm or 4393 sft  
which is less than*

*2 Lake Glacier and Lake Beauty  $38.25 \times 29.25 = 1118.81$  sqm or  
12043 Sft  
which is less  
than one acre*

*Further the assessee company has not implemented the approved plans / drawings and some portion of the land has been developed as individual plots and flats and disposed. Thus there is a total deviation in the approved plan. Also the land area involved in these projects are less than one acre and hence the admissibility under 80I(B) claim of the assessee had to be disallowed / rejected.”*

08. It is an admitted position that area of land where assessee was having the projects measured 3 acres and 36 guntas. Financial statements of the assessee for the relevant previous year placed at paper book pages 3 to 34 at schedule 14, has shown income from sale of flats at Lake City Residency. Obviously assessee was having income from each of the project coming in the Lake City Residency. Approval letter mentions that the plan was sanctioned for Lake City Residency with separate blocks therein. Hon’ble Bombay High Court in the case of Vandana Properties (supra), at para 29 has observed as under :

*“29. From the aforesaid letter of CBDT, it is clear that for the purposes of Section 80IB (10) it is not the mandate of the Section that the housing project must be on a vacant plot of land having minimum area of one acre and that where a new housing project is constructed on a plot of land having minimum area of one acre but with existing housing projects would qualify for Section 80IB (10) deduction. Even otherwise, the argument of the Revenue does not stand to reason because, in the city of Mumbai where there is acute space crunch, it is difficult to find a vacant plot having*

*minimum area of one acre and even if few such plots are existing it cannot be said that Section 80IB (10) deduction was intended to give benefit only to the undertakings who construct housing projects on those few plots. Therefore, it is clear that on a plot of land having minimum area of one acre, there can be any number of housing projects and so long as those housing projects are approved by the local authority and fulfil the conditions set out under Section 80IB (10), the deduction thereunder cannot be denied to all those housing projects. Section 80IB (10) while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having minimum area of one acre. As a result, significance of the size of the plot of land is lost and, therefore, the assessee subject to fulfilling other conditions becomes entitled to Section 80IB (10) deduction on construction of a housing project on a plot having area of one acre, irrespective of the fact that there exist other housing projects or not. In these circumstances, the decision of the Tribunal in rejecting the contention of the Revenue regarding the size of the plot cannot be faulted.”*

09. Thus once a plot of land has more than one acre, the number of housing projects therein would not matter. There is no case for the Revenue that assessee had violated any conditions or not satisfied any other conditions set out u/s.80IB(10) of the Act. Though DVO has pointed out deviation from the approved project he has not stated what such deviation was and how it violated any condition set out in Section 80IB(10) of the Act. This being the case, we are of the opinion that assessee was eligible for the claim of deduction u/s.80IB(10) of the Act. Nevertheless, we find from the orders of lower authorities that no verification has been done with regard to the quantum of the claim. Denial of the claim has been made for

the sole reason that area of the land where the project was being executed was less than one acre. Though we hold that assessee is eligible for deduction u/s.80IB(10) of the Act, for quantification of such claim, we remand the issue back to the file of the AO. Orders of the lower authorities are set aside and the issue is remitted back to the AO for correctly quantifying the claim of the assessee u/s.80IB(10). Grounds 4 to 11 of the assessee is treated as allowed for statistical purpose.

10. Vide its grounds 12 to 14 grievance raised is that AO disallowed 30% of labour charges. Facts apropos are that assessee had claimed labour charges of Rs.5,25,704/- on its Manju Anugraha project, and Rs.2,55,765/- for its Lake City Residency project. AO found that above claim, were supported only by self-made vouchers and addresses of the payees were not available. According to AO, genuineness of the expenditure could not be proved by the assessee in full. He made an ad hoc disallowance of 30% of the claim. Such disallowance came to Rs.2,34,414/-.

11. Assessee's appeal before the CIT (A) on this issue was not successful. According to CIT (A), assessee could not show that the expenditure on labour claimed by it was supported by proper vouchers.

12. Now before us, Ld. AR strongly assailing the order of lower authorities submitted that labour charges could be supported only by self-made vouchers. According to him, labourers could be expected to give bills for the services rendered by them.

13. Per contra, Ld. DR supported the orders of lower authorities.

14. We have perused the orders and heard the rival contentions. Disallowance of 30% of labour charges was made for a reason that self-made vouchers did not carry the addresses of the payees. May be it is true that only self-made vouchers can be maintained in support of labour expenditure. However nothing can stop the assessee from giving full address of the recipients. Having failed to do we cannot say that assessee had discharged its onus for supporting its claim. We are of the opinion that lower authorities were justified in making a disallowance of 30%. No interference is required. Grounds 12 to 14 of the assessee are dismissed.

15. Now we take up the appeal of Revenue. Sole issue raised by the Revenue is that CIT (A) deleted the disallowance u/s.40(a)(ia) of the Act, considering that Finance Act, 2010, amendment to Section 40(a)(ia) of the Act, through Finance Act, 2010 had to be construed retrospectively.

16. Before us Ld. DR submitted that assessee had deducted tax at source on the claim of expenditure of Rs.4,83,79,766/-, but had remitted it to the exchequer with substantial delay. Payments effected were for sub-contracts. Therefore according to him, AO was justified in invoking section 40(a)(ia) of the Act.

17. Per contra, Ld. AR supported the order of CIT (A). Reliance was placed on judgment of Hon'ble jurisdictional High Court in Anil Kumar & Co., V. ITO (354 ITR 170).

18. We have perused the orders and heard the rival contentions. There is no dispute that tax was deducted by the assessee and remitted by it before the due date of filing the return of income. As per the AO, amendment to Section 40(a)(ia) made through Finance Act, 2010, was applicable only prospectively. We find that this issue had come up before the Hon'ble jurisdictional High Court in the case of Anil Kumar & Co (supra). Their Lordships had held as under at para 3 to 6 of its judgment dt.01.02.2013 :

*“3. The Tribunal, after explaining the effect of the amendment by the Finance Act, 2008, held that the tax deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139, if they are credited within the time specified in sub-section (1) of section 139, disallowance cannot be made. Therefore, it upheld the order by the appellate authority and granted relief to the*

*assessee. Aggrieved by the said order, the present appeal is filed. At the time of admission, this court has framed the following substantial questions of law :*

*"(i) Whether the amendment to section 40(a)(ia), as amended by the Finance Act, 2010, with effect from April 1, 2010, is retrospectively applicable to the assessment year 2005-06 as held by the Income-tax Appellate Tribunal in the present case ?*

*(ii) Whether the assessee who has credited the pressing and ginning charges to the contractors from April 1, 2004, to February 28, 2005, is entitled to the deduction under section 40(a)(ia) although the tax at source is not deducted as required under section 194C and not paid within the stipulated time as required under section 200(1) read with rule 30(b)(i)(2) of the Income-tax Rules ?"*

*4. Learned counsel appearing for the parties fairly submitted that the substantial questions of law requires to be modified and those questions do not arise for consideration.*

*5. The substantial question of law which arises for consideration is :*

*"Whether the assessee by virtue of the amendment to the Finance Act, 2008, is entitled to the benefit of the same ?"*

*6. It is not in dispute that on the date the assessee deducted the tax, he had to pay/remit the money within seven days from that date and if the amount is actually paid when the credit is given, then the tax is payable within two months. Admittedly, in the instant case, the assessee did not comply with the legal requirement. However, the assessing authority was justified in making the disallowance, but on the date the appeal was filed, the section came to be amended, giving retrospective benefit. Therefore, the appellate authority extended the benefit of the amended provision and held that the disallowance is paid and the order has been upheld by the Tribunal. Therefore, by the Finance Act, 2008, which is given retrospective effect from April 1, 2005, the benefit of that provision had been extended to the assessee, though the assessment order passed initially cannot be found fault. With the change of law, when the effect of the amendment is to give*

*benefit to the assessee, the appellate authority and the Tribunal were justified in extending the said benefit. In that view of the matter, the order passed by the Tribunal is in accordance with law and does not call for interference. Therefore, the substantial question of law is answered in favour of the assessee and against the Revenue. The appeal is dismissed. Parties to bear their own costs.”*

We are therefore of the view that CIT (A) was in consonance with the above judgment of Hon’ble jurisdictional High Court. He was justified in deleting the disallowance made u/s.40(a)(ia) of the Act. No interference is required.

19. In the result, appeal filed by the assessee is partly allowed for statistical purpose, whereas appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th day of November, 2015.

Sd/-

(VIJAYPAL RAO)  
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)  
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order  
Assistant Registrar