IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member

ITA No.520/Hyd/2011
(Assessment Year: 2007-08)

Sahara States – Hyderabad, Vs AOP (Jt. Venture), Saifabad Hyderabad PAN: AAAJS2519Q *(Appellant)*	Additional Commissioner of Income Tax, Range 5 Hyderabad *(Respondent)*
For Assessee :	Shri S. Rama Rao
For Revenue :	Smt. S. Praveena, DR
Date of Hearing:	04.10.2018
Date of Pronouncement:	17.10.2018

O R D E R

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2007-08 against the order of the CIT (A)-V, Hyderabad, dated 20.01.2011. The assessee has raised the following grounds of appeal:

> *" 1. That on the facts and circumstances of the case as well as in law, the learned CIT (A) is not justified in confirming the denial of claim of deduction of Rs.56,05,926 made by the appellant u/s 80IB of the I.T. Act.*
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> *2. That the learned CIT (A) has wrongly interpreted the provision of section 80IB of the I.T. Act both in respect of the provisions prior to the amendment made by the Finance Act 2004 and also post amendment and is wrong in denying the deduction u/s 80IB(10) of the appellant.*
>
> *3. That the appellant craves leaves to add, alter, amend or withdraw any or all the grounds of appeal on or before the date of hearing".*

2. Brief facts of the case are that the assessee, an AOP engaged in the business of development of land and construction of houses, filed its return of income for the A.Y 2007-08 on 17.10.2007 declaring net income of Rs.70,53,721 after claiming deduction u/s 80IB of Rs.56,05,926. The AO during the assessment proceedings u/s 143(3) of the Act, observed that as per section 80IB(10) of the Act, the assessee is supposed to obtain and furnish the completion certificate of the project for which the assessee has claimed deduction. Since the assessee failed to produce the completion certificate till the date of assessment, he disallowed the claim of deduction u/s 80IB(10). Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

3. The learned Counsel for the assessee submitted that the said project had started in the A.Y 2003-04 and the disallowance u/s 80IB(10) was made for all the A.Ys thereafter. He submitted that the issue had come up before the Coordinate Bench of the Tribunal in the assessee's own case for the A.Ys 2003-04, 2004-05 and 2005-06 and 2006-07 in ITA Nos. 1488 to 1501 and 1848 and 1886 of 2011 wherein the Tribunal has considered the issue at length and has considered that clause (d) of section 80IB(10) was amended w.e.f. 1.4.2005 and in respect of project which is approved prior to such date, the stipulation of obtaining the completion certificate for allowing the deduction u/s 80IB(10) is not applicable. He also submitted that the Tribunal has also taken note of the fact that the assessee had completed the project by 31.03.2008 and had requested the local authorities for approving the final project and if the local authorities did not

issue the project completion certificate as requested by the assessee, it is not possible to submit the same to the Revenue authorities. It was also observed that all the evidence from the records do indicate that the assessee had completed the project and therefore, the deduction cannot be denied only on the basis that the assessee could not furnish the completion certificate. Thus, the learned Counsel for the assessee submitted that this being the subsequent years of deduction u/s 80IB(10), the same cannot be denied to the assessee.

4. The learned DR, on the other hand, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that the Coordinate Bench of the Tribunal in ITA No.1498/Hyd/2012 in the assessee's own case has considered the issue at length at paras 10 to 15 and for the sake of ready reference the relevant paras are reproduced hereunder:

> "10. As far as chronological events of the housing projects are concerned, there is no dispute to the following facts:
>
> (i) In the year 1996, M/s. Sahara India Housing Ltd., M/s. Sahara Financial India Corporation Ltd., M/s. Sahara States etc., and others acquired land admeasuring 44.63 acres from Sri Mayur Kunj & others.
>
> (ii) Land use was changed from 'conservation to residential use' by Government of Andhra Pradesh. Variation in land use was published in Andhra Pradesh gazette on 19-03-1998.
>
> (iii) The Housing project has seven blocks namely, Vrindavani, Gandhar, Mallhar, New Mallhar, Bahar, New Bahar and Yaman. These block have flats as well as row houses ranging from 345.83 sq. ft to 1498 sq. ft.

(iv) The Hyderabad Urban Development Authority (HUDA), sanctioned building plans in respect of blocks Vrindavani, Gandhar and Mallhar vide letter dated 07-07-1999 in respect of Bahar building plans were sanctioned on 15-02-2002 and building plan for remaining blocks were sanctioned on 25-06-2003.

(v) L B Nagar Municipality granted approval for entire land of 44.63 acres on 25-08-1999.

(vi) Development and construction of housing project was started w.e.f. 10-07-1999 i.e., immediately after sanction of building plans.

11. The above chronological events were not disputed by the either of the parties. It was only the contention of the later AO that since assessee has purchased the land as early as 1996, the project was to be deemed to have started then and the same was prior to 01-10-1998. Therefore, the assessee is not eligible for deduction. This contention cannot be accepted as the project was not even approved by the local authorities. Not even by 01-10-1998, as can be seen from the approvals stated above. Therefore, the project has started after 01-10-1998 and therefore, the contention of the AO that the project started before that date is not factually correct. Moreover, claim of assessee that assessee has entered into joint venture agreement and all the parties have started the project in their individual capacity. As per record, members contributed their land as capital, whereas the project was conceived and constructed by the AOP and the claim was accordingly made in the hands of the AOP. Since these aspects were examined by the AOs at the time of original assessment, the opinion of the subsequent AO that AOP continued the project cannot be accepted. Lastly, with reference to the 'project completion' which was one of the reasons for reopening assessments and also for denying the deduction in AY. 2006-07 (which was upheld by the CIT(A)), this was on the basis of subsequent amendment to Sub-Section 10 of Section 80IB(10) w.e.f. 01-04-2005. Furnishing of 'Project Completion Certificate' was not even stipulated in AYs. 2003-04 and 2004-05, therefore, that cannot be the basis for reopening the assessments. Therefore, AO's stand on this regard cannot be accepted.

12. As far as AY. 2005-06 and 2006-07 are concerned, this condition has come up for the first time by the amendment to the Act for all the projects which are approved before 01-04-2004, but on or after 01-04-1998. This issue of stipulation for completion of project by 31-03-2008 is subject matter of litigation, as various assessees have been denied deduction based on the amended provisions of the Act. The matter has ultimately reached Hon'ble Supreme Court and by the judgment in the case of CIT-19, Mumbai Vs. M/s. Sarkar Builders (supra), this issue was set at rest by the Hon'ble Supreme Court, while examining the amended provisions of the Section 80IB. (extracts)

"We are concerned with the amendment to the said sub-section carried out by Finance No.2, Act, 2004 w.e.f. 01-04-2005. In all these cases, though the housing projects were sanctioned much before the

said amendment but have been completed after 01-04-2005 when amended provision has come into operation. It is also not in dispute that the amendment is prospective in nature. Interestingly, when the housing project was approved by a local authority, which is the requirement under sub-section (10) of Section 80IB, as on that date, the conditions stipulated in the said sub-section were met by the assessees. However, condition in clause (d) which was laid down for the first time by the amendment made effective from 01-04-2005 is not fulfilled. In this scenario, the question is as to whether the new conditions mentioned in the amended provision have also to be fulfilled only because the housing projects in question, though started before 01-04-2005, were completed after the said date. The question of law, that arises for discussion that needs to be answered is thus common in all these appeals and can be formulated as under:

"Whether Section 80IB(10)(d) of the Income Tax Act, 1961 applies to a housing project approved before 31-03-2005 but completed on or after 01-04-2005?"

13. Even though the Hon'ble Supreme Court was mainly concerned with Clause - (d) of Section 80IB(10) as amended, the Hon'ble Supreme Court dealt with the entire provision and approved the Hon'ble Bombay High Court judgment in the case of CIT Vs. M/s. Brahma Associates [333 ITR 289]. Hon'ble Supreme Court vide para 12 has held as under:

"12. The issues dealt with from paras 21 to 25 by the High Court already stands approved by this Court. In para 29, the High Court has held that clause (d) has prospective operation, viz., with effect from 01-04-2005, and this legal position is not disputed by the Revenue before us. Wheat follows from the above is that prior to 01-04-2005, these developers/assessees who had got their projects sanctioned from the local authorities as 'housing projects' even with commercial user, though limited to the extent permitted under the DC Rules, were convinced that they would be getting the benefit of 100% deduction of their income from such projects under Section 80IB of the Act. Their projects were sanctioned much before 01-04-2005. As per the permissible commercial user on which the project was sanctioned, they started the projects and the date of commencing such project is also before 01-04-2005. All these assessees were made known of the provision by which these projects are to be completed as those dates have been specified from time to time by successive Finance Acts in the same provision Section 80IB. In these cases, completion dates were after 01-04-2005. Once they arrange their affairs in this manner, the Revenue cannot deny the benefit of this section applying the principle of retroactivity even when the provision has no retrospectivity. Take for example, a case where under the extant DC Rules, for shops and commercial activity construction permitted was, say, 10% and the project was also sanctioned allowing a particular assessee to construct 10% of the area for commercial purposes. The said developer started with its project much prior to 01-04-2005 with the aforesaid permissible use

and the construction was at a very advanced stage as on 01-04-2005. Can it be argued by that Revenue that he is to demolish the extra coverage meant for commercial purpose and bring the same within the limits prescribed by the new provision if he wanted to avail the benefit of deduction under section 80IB(10) of the Act, only because of the reason that the project was not complete as on 01-04-2005? As in such a case he filed his return for an assessment year after 01-04-2005 and for the purpose of assessment of the said return, law prevailing as on that date would be applicable? Answer has to be in the negative on the principle that with the aforesaid planning as per the law prevailing prior to 01-04- 2005, these assessees acted and acquired vested right thereby which cannot be taken away. It is ludicrous on the part of the Revenue authorities to expect the assessees to do something which is almost impossible".

Respectfully following the same, we are of the opinion that assessee cannot be compelled to comply with the condition or fulfill the condition which was not stipulated at the time of sanction of the project. The case law relied on by Ld. DR does not apply on facts and also in view of judgment of Hon'ble Supreme Court cited above..

14. Apart from the judicial principles as stated by the Hon'ble Supreme Court, even on facts also the deduction cannot be denied. Assessee has completed its project by 31-03-2008 and has requested the local authorities for approving the final project. If the local authorities did not issue the 'Project Completion Certificate' as requested by assessee, it is not possible to furnish the said certificate to the Revenue authorities. All the evidences on record do indicate that assessee has completed the project, therefore, just because assessee could not furnish the 'Project Completion Certificate', the deduction cannot be denied on that basis. the eligible deduction cannot be denied to the assessee.

15. In view of the above, we uphold the orders of the CIT(A) setting aside the reassessment proceedings in AYs. 2003-04, 2004-05 and 2005-06. Revenue appeals have no merit and accordingly they are dismissed".

6, Further, as rightly observed by the Tribunal, though the assessee has completed the project by 31.03.2008 and had requested the local authorities for issuance of completion certificate since there was no provision under the GHMC Act of 1985 for issuance of completion certificate, the same was not furnished by the assessee. However, as per section 455 of the GHMC Act and sub section (2) thereof, no person shall occupy or

permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until:

(a) Permission has been received from the Commissioner in this behalf ; or

(b) The Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.

7. As seen from the above, if the Commissioner does not intimate refusal to give the occupancy certificate, then it is deemed to have been given. In these circumstances also, we hold that the assessee is eligible for deduction u/s 80IB(10) of the Act as the relevant A.Y before us i.e. A.Y 2007-08 which is subsequent to the initial A.Y of the claim and the Tribunal has already allowed the deduction in the earlier A.Ys.

8. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 17th October, 2018.

Sd/-	**Sd/-**
(S.Rifaur Rahman)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 17th October, 2018.

Vinodan/sps

Copy to:

1 Sahara States – Hyderabad, AOP (Joint Venture) Sahara States, Sahara Manzil, Saifabad, Hyderabad
2 Addl. CIT, Range-5, IT Towers, Hyderabad
3 CIT (A)-V Hyderabad
4 Pr. CIT –IV Hyderabad
5 The DR, ITAT Hyderabad
6 Guard File

By Order