
(2013) 04 GUJ CK 0103
In the Gujarat High Court
Case No : Tax Appeal No. 874 of 2012

Commissioner of Income Tax-I	Vs	APPELLANT
Pratham Developers		RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Income Tax Act, 1961 — Section 80I, 80IB(1), 80IB(10)

Citation : (2013) 355 ITR 507 : (2013) 215 TAXMAN 570

Hon'ble Judges : S.G. Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : K.M. Parikh, for the Appellant;

Judgement

Akil Kureshi, J.—Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 31.5.2012 raising following questions for our consideration:

(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the decision of the CIT(A) and thereby deleting the disallowance u/s 80-IB(1) without appreciating that the legal relationship between the assessee firm and the end users of the unit was that of "work contract"?

(B) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the decision of the CIT(A) and thereby deleting disallowance u/s 80-IB(10) on the income received as interest on delayed payments and income by way of amount written off out of payments to contracts/suppliers and employees which was not directly derived from the sale of residential units or part of cost of the unit and was shown by the assessee himself as "other income"?

Insofar as question (A) is concerned, same is possible of summary disposal. It pertains to Revenue's stand that assessee cannot claim deduction u/s 80-IB(10) of the income tax Act, 1961 since the land on which the housing project was

developed by the assessee did not belong to him. Tribunal relied on the decision in case of Radhe Developers. By a detailed judgment this Court had upheld the Tribunal's judgment in case of The Commissioner of Income Tax-I Vs. Radhe Developers, , making following observations:

36. We have noted at some length, the relevant terms and conditions of the development agreements between the assessee and the land owners in case of Radhe Developers. We also noted the terms of the agreement of sale entered into between the parties. Such conditions would immediately reveal that the owner of the land had received part of sale consideration. In lieu thereof he had granted development permission to the assessee. He had also parted with the possession of the land. The development of the land was to be done entirely by the assessee by constructing residential units thereon as per the plans approved by the local authority. It was specified that the assessee would bring in technical knowledge and skill required for execution of such project. The assessee had to pay the fees to the Architects and Engineers. Additionally, assessee was also authorized to appoint any other Architect or Engineer, legal adviser and other professionals. He would appoint Sub-contractor or labour contractor for execution of the work. The assessee was authorized to admit the persons willing to join the scheme. The assessee was authorised to receive the contributions and other deposits and also raise demands from the members for dues and execute such demands through legal procedure. In case, for some reason, the member already admitted is deleted, the assessee would have the full right to include new member in place of outgoing member. He had to make necessary financial arrangements for which purpose he could raise funds from the financial institutions, banks etc. The land owners agreed to give necessary signatures, agreements, and even power of attorney to facilitate the work of the developer. In short, the assessee had undertaken the entire task of development, construction and sale of the housing units to be located on the land belonging to the original land owners. It was also agreed between the parties that the assessee would be entitled to use the full FSI as per the existing rules and regulations. However, in future, rules be amended and additional FSI be available, the assessee would have the full right to use the same also. The sale proceeds of the units allotted by the assessee in favour of the members enrolled would be appropriated towards the land price. Eventually after paying off the land owner and the erstwhile proposed purchasers, the surplus amount would remain with the assessee. Such terms and conditions under which the assessee undertook the development project and took over the possession of the land from the original owner, leaves little doubt in our mind that the assessee had total and complete control over the land in question. The assessee could put the land to use as agreed between the parties. The assessee had full authority and also responsibility to develop the housing project by not only putting up the construction but by carrying out various other activities including enrolling members, accepting members, carrying out modifications engaging professional agencies and so on. Most significantly, the risk element was entirely that of the

assessee. The land owner agreed to accept only a fixed price for the land in question. The assessee agreed to pay off the land owner first before appropriating any part of the sale consideration of the housing units for his benefit. In short, assessee took the full risk of executing the housing project and thereby making profit or loss as the case may be. The assessee invested its own funds in the cost of construction and engagement of several agencies. Land owner would receive a fix predetermined amount towards the price of land and was thus insulated against any risk.

37. By no stretch of imagination can it be said that the assessee acted only as a works contractor...

2. Such a question is therefore, not required to be considered.

3. Coming to question (B), Revenue's stand is that a total sum of Rs. 11,05,556/- did not represent the assessee's claim from development of housing project and such amount therefore, was not eligible for deduction u/s 80-IB(10) of the Act. Such amount included a sum of Rs. 4.36 lakhs (rounded off) towards interest received from the purchases on delayed payments and a sum of Rs. 8.70 lakhs (rounded off) towards balances written off in case of contractors and suppliers. CIT (Appeals) however, deleted such addition on the ground that both the amounts were part of the assessee's income derived from development of housing project. Revenue carried the said issue in appeal before the Tribunal. Tribunal by impugned judgment confirmed the decision of CIT (Appeals), making following observations:

7. After taking into consideration these submission of the assessee Id. CIT(A) deleted this addition by observing as under:-

I have considered the submissions of the learned Authorised Representative and the order of the Assessing Officer. In view of the details submitted above the nature of these "other income" and case laws cited, the contention of the Authorised Representative is accepted with respect to Sundry Balances written off Rs. 8,70,077/- and interest received on delayed payment Rs. 4,36,561/-. However, with respect to income from sale of scrap Rs. 1,72,829/-, Ms. Nikita Brahmhatt stated vide order sheet entry dated 26.08.2011 that the nature of scrap is the same as in assessment year 2006-07, when the deduction u/s. 80-IB(10) for this item was not allowed by CIT(A)-II, Baroda. Following that decision by my predecessor, income from sale of scrap Rs. 1,72,829/- included in "Pratham Upvan" project is not considered eligible for deduction u/s. 80-IB(10). Hence, the deduction u/s. 80-IB(10) allowed to Pratham Upvan Project is restricted to Rs. 4,16,33,619/- (Rs. 4,18,06,448-Rs. 1,72,829). The disallowance of Rs. 11,05,056/- made by the Assessing Officer is directed to be deleted.

Since Id. CIT(A) has given relief to the assessee as the issues involved in this ground were either covered by the decisions of Hon''ble ITAT, Ahmedabad Bench or of the jurisdictional High Court and earlier decision of Id. CIT(A) which were not appealed against by the Revenue, we feel no need to interfere with the order

of Id. CIT(A) and the same is hereby upheld. This ground of the Revenue is also dismissed.

4. Insofar as interest received on delayed payments by the purchaser, we find that a similar issue had come up before this Court in case of Nirma Industries Limited Vs. Deputy Commissioner of Income Tax, in context of deduction u/s 80-I of the Act. The Court held and observed that:

However, the parties having made elaborate submissions the matter may be examined from a slightly different angle. When the assessee enters into a contract for sale of its products it could either stipulate (a) that interest at the specified rate would be charged on the unpaid sale price and added to the outstanding till the point of time of realisation, or (b) that in case of delay the payment for sale of products worth Rs. 1007/- to carry the sale price of Rs. 102/- for first month's delay, Rs. 104/- for second month's delay, Rs. 106/- for third month's delay and so on. If the contention of revenue is accepted, merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration (b) above, if the payment is described as sale price it would be profits derived from the industrial undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale proceeds. In other words, this is a converse situation to offering of cash discount. Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds. It is not the assessee's business to lend funds and earn interest. The distinction drawn by revenue is artificial in nature and is neither in consonance with law nor commercial practice.

5. With respect to the remaining amount covered under the discussion, balance written off out of the payments to contractors and suppliers, we notice that assessee had consistently taken a stand that:

The amounts have been generated during the course of business. In case of supplier payments sometimes the Appellant deducts some amounts and pays the bills. Since the amounts are generated during the course of business the same are eligible for deduction u/s. 80-IB(10) of the Act.

6. It would thus emerge that during the course of business in developing housing project, assessee had made payments to the suppliers towards various purchases made. On such payments, the assessee would occasionally deduct some amounts and pay the bill. Difference between the bill amount and payment actually made would be the amount generated during the course of business. Assessee therefore, contended that same should form part of eligible deduction u/s 80-IB(10) of the Act. We have no hesitation in upholding the view of the CIT (Appeals) as well as Tribunal. Assessee following mercantile system of accounting

may have debited claim in the bill amount raised by the suppliers or contractors. However, as is likely to happen in any business of similar nature, the supply of material may be found wanting at a later stage. They may either be defective or sometimes minor unintentional short supply. This could be the reason why assessee instead of making full payment, deducts a portion of the supplier's bill. There may be other reasons such as late supply of the material etc. why such eventuality, may arise. Essentially in all such cases, what would happen is that assessee would actually expend less amount than what the bill amount would be indicating. In essence, therefore, such margin would go to reduce the assessee's cost of acquisition of the supply. Such amount therefore, cannot be dissociated or divested from assessee's business. Such receipt therefore, cannot be stated to be not arising out of the assessee's business of development of housing project. In view of the above discussion, we find no merits in appeal. Tax Appeal is therefore, dismissed.