

(2015) 05 GUJ CK 0038
In the Gujarat High Court
Case No : Tax Appeal No. 107 of 2015

Income Tax Officer

APPELLANT

Vs

Saket Corporation

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Income Tax Act, 1961 — Section 80IB, 80IB(10), 80IB(10)(a)(i)

Citation : (2015) 234 TAXMAN 435

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : K.M. Parikh, for the Appellant; B.S. Soparkar, Advocates for the Respondent

Judgement

M.R. Shah, J.

1.00. Feeling aggrieved and dissatisfied with the impugned Judgement and Order passed by the learned Income Tax Appellate Tribunal, Bench "D", Ahmedabad (hereinafter referred to as "the learned tribunal" for convenience in ITA No. 3377/Ahd/2010 for the Assessment Year 2007-2008 (hereinafter referred to as "A.Y. 2007-2008" for short), the revenue has preferred the present Tax Appeal with the following proposed substantial questions of law :--

"(A). Whether the order of the ITAT is perverse in law in holding that provision of Section 80IB is not applicable to projects approved in 2004 completely ignoring the provisions of Section 80IB(10)(a)(i) of the IT Act?

(B). Whether the ITAT has erred in law and on facts in relying on the decision of Hon'ble Delhi High Court in the case of Commissioner Income Tax-I Vs. CHD Developers Ltd., (2014) 3 AD 165 : (2014) 266 CTR 360 : (2014) 362 ITR 177 , where the facts in that case was different in so far as, in that case the assessee had applied for completion certificate within time, while in the instant case, no completion certificate has been applied for?

(C). Whether the ITAT has erred in law and on facts in completely ignoring the

facts and law discussed by the CIT(A) and thereby passed a perverse order?"

2.00. That the assessee, engaged in the business of development and construction of residential housing project, filed return of income for the A.Y. 2007-2008 declaring total income at Rs. 2,930/- after claiming deduction of Rs. 52,82,915/- under section 80IB of the Income Tax Act, 1961 (hereinafter shall be referred to as "the Act" for short). That the assessee claimed deduction under section 80IB(10) of the Act with respect to housing project with respect to 43 units.

2.01. That the Assessing Officer (hereinafter referred to as "the A.O.") disallowed deduction claimed under section 80IB(10) of the Act on the ground that the Building Use Permission (hereinafter referred to as "the BU Permission") and/or Completion Certificate was granted by the local authority only with respect to 20 units within a period of four years from the date of approval of the project by the local authority and not with respect to the entire housing project consisting of 43 units.

2.02. That feeling aggrieved and dissatisfied with the order passed by the A.O. disallowing the deduction claimed under section 80IB(10) of the Act, the assessee preferred an appeal before the learned CIT(A) and the learned CIT(A) dismissed the said appeal confirming the disallowance made by the A.O. with respect to deduction claimed under section 80IB(10) of the Act.

2.03. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), the assessee preferred a further appeal before the learned tribunal and by the impugned Judgement and Order, relying upon the decision of the Delhi High Court in the case of Commissioner Income Tax-I Vs. CHD Developers Ltd., (2014) 3 AD 165 : (2014) 266 CTR 360 : (2014) 362 ITR 177, the learned tribunal has allowed the appeal preferred by the assessee and has held that, as the housing project was approved on 10/3/2004 by the competent authority, condition for obtaining Completion Certificate within a period of four years from the date of approval being eligible for deduction under section 80IB(10) of the Act, is not applicable. Consequently, it is held that the assessee shall be entitled to deduction under section 80IB(10) of the Act.

2.04. Feeling aggrieved and dissatisfied with the impugned Judgement and Order passed by the learned tribunal, the revenue has preferred the present Tax Appeal to consider the following substantial questions of law:--

"(A). Whether the order of the ITAT is perverse in law in holding that provision of Section 80IB is not applicable to projects approved in 2004 completely ignoring the provisions of Section 80IB(10)(a)(i) of the IT Act?

(B). Whether the ITAT has erred in law and on facts in relying on the decision of Hon'ble Delhi High Court in the case of CHD Developers Ltd., (2014) 43 taxmann.com 249 (Delhi), where the facts in that case were different in so far as, in that case the assessee had applied for completion certificate within time, while

in the instant case, no completion certificate has been applied for?

(C). Whether the ITAT has erred in law and on facts in completely ignoring the facts and law discussed by the CIT(A) and thereby passed a perverse order?"

2.05. We have heard Mr. KM Parikh, learned advocate appearing on behalf of the revenue at length.

2.06. At the outset, it is required to be noted that the Housing Project for 43 units came to be approved by the local authority and the assessee claimed deduction under section 80IB(10) of the Act, however, the assessee has not obtained completion certificate within a period of four years from the date of approval by the competent authority with respect to all 43 units though entire housing project consisting of 43 units was completed and the assessee could obtain Completion Certificate in respect to 20 units only and could not obtain Completion Certificate in respect of remaining 23 units, though the construction of the same were completed and though the assessee applied for Completion Certificate within a period of four years from the date of approval by the competent authority, Completion Certificate was not issued for the reasons best known to the authority. Therefore, both, A.O. as well as the learned CIT(A) disallowed the deduction claimed under section 80IB(10) of the Act. However, the learned ITAT deleted the disallowance made by the A.O. and held that the assessee shall be entitled to the deduction claimed under section 80IB(10) of the Act and while holding so in para 6, the learned tribunal has observed and held as under :--

"6. We find that in the instant case, the housing project was approved on 10.03.2004 by the competent authority. The above fact is not in dispute. On the above fact, as per the decision of the Hon"ble Delhi High Court in the case of CIT v. CHD Developers (supra), the condition for obtaining completion certificate within four years of the date of approval for being eligible for deduction u/s. 80IB(10) is not applicable. The Departmental Representative could not point out any good reason as to why the aforesaid decision of the Hon"ble Delhi High Court should not be followed in the instant case."

2.07. In the case of Adobe Systems Software Ireland Ltd. Vs. Assistant Director of Income Tax, (2014) 268 CTR 173 : (2014) 363 ITR 174 : (2014) 225 TAXMAN 347 , the Division Bench of this Court has allowed deduction under section 80IB(10) of the Act by holding that if the assessee has completed construction within the prescribed time limit and applied for B.U. Permission, however, for some technical ground, B.U. Permission was not granted and the B.U. Permission was not rejected on the ground that construction was not completed, the assessee shall be entitled to claim deduction under section 80IB(10) of the Act.

2.08. Considering the aforesaid decision of the Division Bench of this Court and the facts of the case on hand, as the assessee completed project/construction of all 43 units within 4 years from the date of approval by the competent authority and also applied for B.U. Permission within a period of four years with respect to

all 43 units, however, could obtain B.U. Permission with respect to 20 units only and for whatever reasons, with respect to remaining 23 units, B.U. Permission was not issued by the authority and as observed hereinabove, construction of all 43 units was completed, the assessee is entitled to deduction under section 80IB(10) of the Act, no error has been committed by the learned tribunal in holding that the assessee shall be entitled to deduction claimed under section 80IB(10) of the Act.

3.00. No substantial question of law arise in the present Tax Appeal, as proposed and suggested by the appellant - revenue. Hence, present Tax Appeal deserves to be dismissed and is accordingly dismissed.