

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.838 OF 2016

The Pr.Commissioner of
Income-Tax(Central), Pune.

... Appellant

V/s.

M/s Kolte Patil Developers Ltd.

... Respondent

Mr.Tejveer Singh for the Appellant.

Mr.Percy Pardiwalla, Senior Counsel with Mr.Nitesh Joshi with
Mr. Bharat Damodar i/by M/s Kanga & Co. for the Respondent.

**CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.
DATE : FEBRUARY 11, 2019.**

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) raising following questions for our consideration:-

- "I. Whether on the facts and circumstances of the case and in law, the ITAT has erred in ignoring the provisions of section 80IA(2) while adjudicating the issue of claim of deduction u/s 80IA(4) in favour of the assessee for the impugned assessment year?"
- II. Whether on the facts and circumstances of the case and in law, the ITAT has erred in liberally interpreting the Income Tax Rule 18C and the

Industrial Parks Scheme 2008 where the word “shall” has been used to emphasize strict compliance of the conditions laid down for claiming deduction u/s 80IA(4)?”

2. The respondent-assessee is a private limited company and is engaged in Infrastructure Development Project. For the assessment year 2007-08, the assessee had filed a return of income claiming deduction of the income arising out of such activity, in terms of Section 80IA(4)(iii) of the Income Tax Act, 1961 (“the Act” for short). The Assessing Officer rejected the claim on the ground that the assessee failed to fulfill essential conditions of the scheme for grant of such benefit. He was of the opinion that a minimum 30 units were not located in the Industrial Park and further that Completion Certificate showing that a minimum of 30 units were located in the Industrial Park was not issued by the Competent Authority. When the issue reached the Tribunal, the Tribunal by the impugned judgment allowed the assessee's appeal and granted benefit of the deduction. The Tribunal noted that the assessee during the period relevant to the assessment year had already allotted 21 units to different individual industries and such units were also

located in the Industrial Park. Such units were also operational. The Tribunal also noted that the certificate from the local authority was obtained on 9th May, 2007. The Tribunal did not accept the revenue's contention that under the circumstances the date of commencement of the Industrial Park should be understood as 9th May, 2007.

3. The Tribunal recorded that admittedly the date of commencement of the Industrial Park was between the two cut-off dates of 1st April, 2006 and 31st March, 2009. Even the Assessing Officer does not dispute such position namely that the undertaking of the assessee was approved under the relevant scheme since the Assessing Officer had granted the benefit of deduction under Section 80IA of the Act for the subsequent assessment year.

4. The Tribunal referred to sub-Rule 18C of the Income Tax Rules 1962, which uses expression “undertaking shall begin to develop; develop and operate; and maintain and operate” and held that the benefit would be available to the assessee who

had admittedly begun to develop the Industrial Park. It was noted that the assessee had already sold 21 units during the relevant period which had yielded profits during the said year for which the assessee was claiming necessary deduction. The Tribunal was of the opinion that such profits would be eligible for deduction under the current year as the assessee had booked the profit in its account for the same year. The Tribunal also noted that clause 6 of the scheme authorized the Central Government to withdraw the approval granted under the scheme if the undertaking failed to comply with the conditions listed in paragraphs 4 and 5 of the scheme.

5. Having heard learned counsel for the parties and having perused the documents on record, we do not find any error in view of the Tribunal. Section 80IA(4) of the Act recognizes deductions to the assessee who is an undertaking which develops and operates or maintains and operates an Industrial Park. The assessee fulfilled the said requirement as also the other procedural requirement laid down in the scheme. Rule 18C(i) itself as noted provided that the benefit would be available to

an undertaking which begins to develop such Industrial Park. In the present case, the assessee had already developed the Industrial Park and as many as 21 units were already operational as admitted by the revenue. These units were sold during the assessment year in question. The profit arising out of such sale was accounted for in the said year and offered to tax. It was therefore, that the assessee was entitled to deduction in respect of such profit. The assessee was following Percentage Completion Method and not Project Completion Method and was therefore obliged to account for the revenue generated from the sale of the units during the year in question itself. Any other view would amount to the assessee offering the income arising out of the sale of the units to tax during the current year on which no deduction under Section 80IA of the Act would be available under the Act. Gujarat High Court in case of **Ganesh Housing Corporation Ltd. Vs. Padam Singh, Under Secretary and ors.**¹ had occasion to examine some of the provisions of the same scheme. It was observed as under:-

1 (2011) 399 ITR 441(Guj)

“33. On part of the petitioner, therefore, the requirement was to ensure that before claiming the tax benefit, units indicated in the application are located in the Industrial Park. It is not in dispute that the petitioner in addition to developing the entire park by providing infrastructure, sub divided the plots into smaller units, sold the plots to individual industries and such industries were allocated specific plots for such purpose. The requirement of ensuring that the industries, as indicated in the application approved, by the Government were located before the last date prescribed, was thus fulfilled.

34. Counsel for the respondents, however, relied on forms of declaration annexed along with the Scheme to contend that the requirement went much beyond and the petitioner was required to ensure that such industries must set up their units on the plots so allotted. To our mind, such requirement can neither be read in the Scheme nor can it be fastened on the petitioner in any other manner. The petitioner was a developer of the Industrial Park. The duty and responsibility of the petitioner, to be able to claim tax deductions, was to set-up an industrial park by providing necessary infrastructural facilities. We have seen that the development of such a park would require providing of all infrastructural facilities; sub plotting the entire plot and also ensuring that the number of units indicated in the application are sold to the intending industries. In short, the duty and responsibility of the petitioner was to ensure that the industrial activity is facilitated on the Industrial Park so developed by it. It was thereafter not responsible to ensure that

industries do in fact set-up their units and commence production activities on such units--that too before the last date envisaged in the Scheme. To our mind, such responsibility fastened on the petitioner is not borne out from the Scheme. The duty and responsibility of the petitioner was to provide infrastructural facilities which would be a catalyst for industrial growth by enabling the intending industries to set-up their industry in such a Park. Such manufacturing units or the intending industries were in no way under the control of the petitioner. There can be variety of reasons why such industries may not be able to start their units, such as, non-availability of funds for setting up of the units, pending approval and clearances from the Government and other agencies and such similar reasons which can be attributed only to the intending industries and not to the petitioner. In fact, the scheme requires that the petitioner not only fulfill but continue to fulfill all conditions of approval assessing the period when the tax benefit is available. If we accept the strict requirements insisted by the respondents, it would mean that not only number of industrial units indicated in the application for approval of Industrial Park must be operational on the last date of expiry of the Scheme, they must continue to operate till the petitioner avails of all the tax benefits. In a given situation, it may happen that the number of units, after initially coming into existence, may have to be closed down for variety of reasons such as non-availability of market for their product or non-availability of raw materials, or even labour problems. Would in such a case the petitioner be denied tax benefits? To our mind, the answer has to be empathetically in the

negative.”

6. In the result, Income Tax Appeal is dismissed.

(B.P.COLABAWALLA,J.)

(AKIL KURESHI,J.)

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