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

INCOME TAX APPEAL NO. 1313 OF 2017

The Pr. Commissioner of Income Tax-2 .... Appellant
V/s.
M/s Prathamesh Constructions .... Respondent

Mr. Vineet Sawant a/w Ms. Lizna Namawati i/b Mr. Charanjeet Chanderpal for appellant.
Mr. Aniket Malu i/b Mr. Akshay Petkar for respondent.

CORAM : K.R.SHRIRAM & R.I. CHAGLA JJ.

DATED : 1st OCTOBER, 2021

P.C. :

1 Respondent carried on business as builders and developers and developed a project named "Amrut Kalash" consisting of 7 buildings 'A', 'B', 'C', 'D', 'E', 'H' and 'I' and parking slab of building 'G' having total 174 flats and 4 shops. No residential flats were planned at plot 'G'. For assessment year 2008-2009 Respondent claimed deduction of Rs.3,89,07,405/-under Section 80IB (10). The project was first approved on 31.03.2001 and as per the provisions of Section 80IB (10) the same should have been completed on or before 31.03.2008. The assessee – Respondent, as recorded in the order of CIT(A), submitted a completion certificate dated 28.03.2008. Even on

28.03.2008, the building ‘G’ was marked to be parking only is undisputed. Therefore, upto 31.03.2008, respondent had not contemplated any residential units in the building ‘G’. Subsequently, on 19.04.2011 respondent got the plan approved after purchase of TDR whereby the plan for said building ‘G’, which contemplated parking only, was revised and the same was approved as a building with ground plus 6 floors comprising of 48 residential units. According to appellant as the completion certificate issued on 29.03.2008 did not show building ‘G’ with ground plus 6 floors, the certificate issued by the Pune Municipal Corporation was a part completion certificate and hence, respondent was not entitled to the deductions under Section 80IB (10). The Assessing Officer rejected the deduction claimed and passed the assessment order dated 28.03.2013. Aggrieved by this order, respondent preferred an appeal before Commissioner of Income Tax (Appeals). The CIT (A) allowed respondent’s appeal relying on his own decision in the case of respondent for asessment year 2009-2010 as identical issues were involved and held that respondent qualifies for deduction under Section 80IB (10). Aggrieved by this order, appellant preferred an appeal before the Income Tax Appellate Tribunal (ITAT). ITAT dismissed the appeal of the appellant and confirmed the conclusions arrived at by CIT (A). Shri Sawant, the learned counsel for appellant submitted that the tribunal erred in allowing the deduction under Section 80IB (10) of the Act without appreciating that since the housing project was approved on 31.03.2001, it was liable to be completed by 30.03.2008 and the assessee had not completed the entire project by 30.03.2008. Shri Sawant further submitted that the stipulated completion certificate issued by the Pune Municipal Corporation was also in respect of only buildings 'A', 'B', 'C', 'D', 'E', 'H' and 'I' and not in respect of building 'G'. Even though the sanctioned project was for buildings 'A', 'B', 'C', 'D', 'E', 'H' and 'I' and 'G' as parking slab, Shri Sawant submitted that the plan which got sanctioned in 2001, ought to be seen as a whole and it had contemplated building 'G' to be parking. Shri Sawant submitted that respondent had taken part completion certificate only before 31.03.2008 and the completion certificate of building 'G' was obtained from respondent in which it clearly mentioned that building 'G' was completed on 12.05.2011 along with the parking. Shri Sawant submitted that as per the provisions under Section 80IB (10), the amount of deduction in the case of an undertaking developing and building housing projects approved before 31.03.2008 by a local authority shall be 100% of the profits derived in the previous year from such housing project if, the housing project has been approved by the local authority before 01.04.2004 and the assessee completes such construction of housing project on or before 31.03.2008. Shri Sawant submitted that the date of completion of the housing project shall be taken to be the date on which the completion certificate in respect of housing project is issued by the local authority and as respondent had only a part completion certificate on 20.03.2008 and the completion certificate for building 'G' was only issued much later, respondent was not entitled to claim deduction under Section 80IB (10).

2 Shri Malu for respondent opposed the appeal and submitted that the plan for constructing building 'G' was itself conceived much later after 31.03.2008. Shri Malu submitted that when the original plan was sanctioned in 2001 only the 7 buildings 'A', 'B', 'C', 'D', 'E', 'H' and 'I' were under reckoning and only after the purchase of TDR on 19.04.2011, a fresh plan for building 'G' was prepared as a building with ground plus 6 floors comprising of 48 residential units. Relying upon the judgment of this Court in the matter of ***CIT vs. Vandana Properties***[1], Shri Malu submitted that building 'G' constituted a separate project and cannot be considered as an extension of the original project.

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1 2012 SCC OnLine Bom 474

3 We have heard learned counsel and in our view the appeal requires to be rejected.

4 The substantial questions of law proposed are as under :

> *(i) "Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing the deduction u/s 80IB(10) of the Act, without appreciating that since the housing project was approved on 31.03.2001, it was liable to be completed by 31.03.2008, whereas, the assessee had not completed the entire project by the stipulated date, i.e. 31.03.2008 and the stipulated completion certificate issued by the Pune Municipal Corporation was also in respect of only Buildings A, B, C, D, E, H and I and not in respect of Building 'G', even though the sanctioned project was for Buildings A, B, C, D, E, G, H and I ?*
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> *(ii) "Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing the deduction u/s 80IB(10) of the Act without appreciating the ratio of the decision of the Hon'ble Apex Court in Sarkar Builders which envisages deduction u/s 80IB(10) in respect of the entire project as a whole ?"*

5 In our view whether the assessee had not completed the entire project by the stipulated date as observed by the Assessing Officer or whether the assessee had completed the stipulated project as held by CIT (A), are questions of fact.

6 In any event, we would agree with the view expressed by CIT (A) and ITAT. This is because the original plan that was sanctioned in 2001 had contemplated building 'G' to be only parking slab and the revised plan dated 20.3.2008 also showed building 'G' to be parking only. Therefore, upto 31.03.2008, respondent had not even contemplated any residential units in the said building 'G'. It was only subsequently that respondent got the plan approved after the purchase of TDR on 19.04.2011 whereby the plan for said building 'G' which contemplated only parking was revised and the same was approved as a building with ground plus 6 floors comprising of 48 residential units. What is pertinent to also note is that respondent has not claimed any deduction under Section 80IB (10) on the said building 'G'. A question that was considered was whether the housing project should be considered to be completed without the parking of building 'G' as approved by the local authority. Undisputably the entire project excluding building 'G' has been completed within the stipulated period and the completion/ occupancy certificate was also

received within the time limit prescribed under Section 80IB (10). As TDR for building 'G' was not available upto 2011, appellant could not have constructed the said building. As held in *Vandana Properties (supra),* the expression housing project is not defined under the Act and the expression housing project in common parlance should be accepted, which would mean constructing a building or group of buildings consisting of several residential units.

7 In our view, the building 'G' cannot be part and parcel of the housing project because the TDR for constructing building 'G' itself was purchased on 19.04.2011. Consequently, in our view, respondent was entitled to claim of deduction under Section 80IB (10) of the Act.

8 In our view, ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

9 The appeal is devoid of merits and it is dismissed with no order as to costs.

(R.I. CHAGLA, J.) **(K.R. SHRIRAM, J.)**