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

INCOME TAX APPEAL NO. 82 OF 2018

The Pr. Commissioner of Income Tax- 4, Pune, 3rd Floor, Room No. 322, Bodhi Tower, Salisbury Park, Gultekdi, Pune – 411 037. .. Appellant

Versus

Kumar Builders Consortium, 10th Floor, Kumar Business Centre, Bund Garden, Opp. Pune Central, Pune-411 001. .. Respondent

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Mr. Suresh Kumar, Advocate for the Appellant.

Mr. Jitendra Jain a/w Mr. Sameer G. Dalal, Advocate for the Respondent.

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CORAM : DHIRAJ SINGH THAKUR AND ABHAY AHUJA, JJ.

RESERVED ON : 30th JUNE, 2022
PRONOUNCED ON : 18th JULY, 2022

(PER DHIRAJ SINGH THAKUR, J.):

. The present appeal has been preferred under Section 260 A of the Income Tax Act, 1961 (the Act, 1961), against the judgment and order dated 13th January, 2017, passed by the Income Tax Appellate Tribunal, Pune (for short "ITAT") relevant to the assessment year 2011-12. By virtue of the order impugned, the ITAT, while allowing the appeal of the assessee has directed the Assessing Officer (for short 'A.O.') to workout the pro rata

deduction under Section 80IB(10) of the Act, 1961.

2. Briefly stated material facts in the backdrop of which the present controversy has arisen, are as under:

The assessee is a firm engaged in the business of developing residential projects in Pune. Returns of income for the assessment year 2011-12 was filed on 30th September, 2011, declaring a total income of Rs.18,83,540/- after claiming deduction of Rs.28,49,87,583/- under Section 80IB(10) of the Act, 1961. The deduction claimed was in respect of two projects namely (A) Kumar Shantiniketan and (B) Kumar Kruti.

3. The A.O., during the course of assessment proceedings noted that in regard to the project Kumar Shantiniketan, two flats were having an area in excess of the prescribed limit of 1500 sq.ft., which was a mandatory requirement for claiming deduction under Section 80IB(10).

In regard to the project Kumar Kruti, the A.O. noted that eight flats were having an area in excess of permissible 1500 sq.ft. Besides this, the A.O. also noted that the assessee had failed to complete the project by 31st March, 2008. It held that the project Kumar Kruti was part of a larger project Kumar City, which was sanctioned on 08th August, 2003. The A.O. accordingly, disallowed the claim of deduction under Section 80IB(10) of the Act, 1961.

4. The order of the A.O. was challeged before the CIT(A) by the assessee. The appeal was allowed vide order dated 18th August, 2014, following the decision of 15th April, 2013 by the ITAT, Pune, in the case of the assessee for the assessment years 2008-9 and 2009-10, wherein the ITAT had directed the A.O. to allow the pro rata deduction in respect of eligible flats not exceeding prescribed limit of a covered area of 1500 sq.ft.

5. The order of CIT(A) was challenged by the Revenue before the ITAT, Pune, who vide order dated 13th January, 2017, dismissed the appeal by following the order of the ITAT in case of the assessee for the assessment years 2008-09 and 2009-10 and also the order dated 16th October, 2015 for the assessment year 2010-11 in case of the assessee.

In the backdrop of the aforementioned facts, the following substantial question of law is proposed.

> Whether in the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in allowing the assessee's claim of deduction under Section 80IB(10) on prorata basis considering the fact that the assessee did not comply with the limit on built-up area prescribed of Section 80IB(10)(c) of the Act in respect of eligible flats in the project 'Kumar Kruti' and 'Kumar Shantiniketan'?

6. Mr. Samir G. Dalal, learned Counsel for the Respondent, however,

stated that the issue is covered by a judgment of this Court in ***Devashri Nirman LLP V/s. Assistant Commissioner of Income Tax & Another***[1] .

What was held in Paragraph Nos. 19 and 20 of the judgment (supra) is as under:

> *"19. On the issue of proportionate deduction under Section 80IB(10) of the Income-tax Act, we are satisfied that the view taken by the Commissioner (Appeals) as well as the Income-tax Appellate Tribunal calls for no interference.*
>
> *20. The view taken by the Commissioner (Appeals) and the Income -tax Appellate Tribunal is quite consistent with the view taken by the High Court of Madras, Delhi and Karnataka. It was pointed out that even the special leave petition against the Madras High Court's decision was dismissed by the Supreme Court. Accordingly, there is no good ground to interfere with the view taken by the Commissioner (Appeals) and the Income-tax Appellate Tribunal on the issue of proportionate deduction, at the instance of the Revenue."*

7. Section 80IB(10) of the Act, 1961, allows to an undertaking developing and building housing projects, hundred percent deduction of the profits derived from such housing projects subject to the fulfillment of *inter alia* the timeline as regards approval of the project, its commencement and completion as prescribed in Sub-clause 'a' of Section 80IB(10) of the Act, 1961. The fulfillment of the condition as regards the size of the plot of land in terms of Sub-clause 'b' of Section 80IB(10) of the Act, 1961, or the

1 (2020) 429 ITR 597 (Bom).

compliance as regards the built-up area of the residential unit being not more than 1500 sq.ft. at any place other than the city of Delhi or Mumbai in terms of Sub-clause ‘c’ of Section 80IB(10) of the Act, 1961.

8. The argument advanced by the learned Counsel for the appellant was that Section 80IB(10), does not at all envisage a pro rata deduction, in respect of eligible flats. In other words, it is suggested that even if a single flat in a housing project is found to exceed the permissible maximum built-up area of 1500 sq.ft., the assessee would lose its right to claim the benefit of deduction in respect of the entire housing project under Section 80IB(10).

In our opinion, a plain reading of the said section does not support that interpretation at all. Learned Counsel for the appellant would have been perfectly justified, had the legislature in its wisdom, in clause ‘c’ used the words “each residential unit has a maximum built-up area ….”. This would then clearly indicate that the intention was to ensure that each and every residential unit in such a housing project confirms *inter alia* to the size prescribed with a view to make an assessee eligible for claiming the deduction. However, the words used in clause ‘c’ are as under:

> “(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place”

It is a well settled principle of interpretation of statutes that when the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. Reliance in this regard can be placed on the Apex Court judgment in ***Nelson Motis V/s. Union Of India And Another***[2]**.** It, therefore, becomes clear that clause 'c' only qualifies an eligible residential unit and no more and further that if there is such a residential unit, which confirms to the requirement as to size in a housing project, all other conditions being fulfilled, the benefit of deduction cannot be denied in regard to a such residential unit. Section 80IB(10), nowhere even remotely aims to deny the benefit of deduction in regard to a residential unit, which otherwise confirms the requirement of size at the cost of an ineligible residential unit with a built-up area of more than 1500 sq.ft.

9. For the reasons above, we are of the opinion that the order of the ITAT directing the A.O. to workout the pro rata deduction under Section 80IB(10) of the Act, 1961, in regard to the eligible residential units, merits no interference. The appeal is held to be without merit and is accordingly dismissed.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**

2 AIR 1992 SC 1981.