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Dcit Vs. Ansal Properties and Industries

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-15-2008

Judge : P Jagtap, G Mathan

Appellant : Dcit

Respondent : Ansal Properties and Industries

Judgement :

1. This appeal is preferred by the Revenue against the order of ld.CIT(A)-I, New Delhi dated 15-9-2003 and its grievance is projected in the following grounds raised therein: a) On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting addition of Rs. 3,89,47,635/- made on account of additional notional letting value of flats.

b) On the facts and circumstances of the case, the ld. CIT(A) has erred in allowing relief of Rs. 12,35,19,715/- on account of provision of expenses for completion of project.

c) On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting disallowance of Rs. 1,81,37,291/- on account of expenses on completed project.

d) On the facts and circumstances of the case, the ld. CIT(A) has erred in granting relief of Rs. 1,64,38,558/- on account of deduction Under Section 80IB(10) of the I.T. Act, 1961.

2. As regards ground No. 1, the facts relevant to the issue raised therein relating to the addition on account of ALV of flats added on notional basis are that the assessee is a company which is engaged in the business of development of mini-townships, construction of house property, villas, commercial complexes etc. In the assessment completed for the year under consideration, the assessing officer assessed the ALV of flats which the assessee had constructed and which were lying unsold under the head "Income from house property". The stand of the assessee in this regard was that the said flats were its stock-in-trade and therefore the ALV thereof could not be brought to tax under the head "Income from house property". It was also pointed out by the assessee that similar additions made in its assessments for earlier years have already been deleted by the appellate authorities. The AO however did not accept the stand of the assessee. He noted that the Department has not accepted the orders of the appellate authorities in assessee's own case on the similar issue for the earlier years and the matter is pending for consideration before the Hon'ble Delhi High Court. He, therefore, added the notional value of unsold flats to the total income of the assessee. On appeal by the assessee, the ld. CIT(A) however deleted the said addition made by the AO following the order of the ITAT in assessee's own case for earlier years.

3. At the time of hearing before us, the ld. Representatives of both the sides have agreed that this issue is squarely covered by the orders of the Tribunal in assessee's own case for earlier years including the latest order dated 19-1-2007 passed in ITA No. 3922/Del/2004 for AY 2001-02 wherein it has been held following the earlier years orders that the buildings under completion stage were stock-in-trade of the assessee from which no income could be derived by it. It was held that the addition made to the total income of the assessee by estimating the ALV of the said property thus was not proper. Since the issue involved in the year under consideration as well as all the facts relevant thereto are admittedly similar to that of AY 2001-02, we respectfully follow the order of the Tribunal for AY 2001-02 and uphold the impugned order of the ld. CIT(A) deleting the addition made by the AO on account of additional notional ALV of unsold flats. Ground No. 1 of the assessee's appeal is accordingly allowed.

4. As regards ground No. 2 and 3, the facts relevant to the issues raised therein are that certain expenses incurred by the assessee company in respect of projects already completed in the earlier years were claimed in the year under consideration. According to the AO, the said expenses having been incurred on the projects already completed in the earlier years could not be allowed in the year under consideration.

He, therefore, rejected the assessee's stand that the said expenses were allowable in the year under consideration in accordance with the method of accounting consistently followed by it. He also noted that even though a relief was allowed to the assessee company on similar issue by the appellate authorities in the earlier years, the matter is pending for adjudication before the Hon'ble Delhi High Court. He, therefore, disallowed the assessee's claim for deduction on account of the expenses in question. On appeal by the assessee, the ld. CIT(A) however deleted the said disallowance made by the AO following the appellate orders of his predecessors in assessee's own case for earlier years.

5. At the time of hearing before us, the ld. Representatives of both the sides have agreed that a similar issue has been decided by the Tribunal in assessee's own case for AY 1998-99 vide an order passed in ITA No. 2122/Del/2002 wherein it was held that as per the method of accounting regularly followed, the assessee company was treating the projects as completed on their reaching 90% or more of the work and the expenses incurred for the remaining work of the projects so completed were being claimed in the subsequent year when the same had been actually incurred. Following the said order of the Tribunal for AY 1998-99, a similar issue has been decided by the Tribunal in assessee's own case for AY 2001-02 also vide its order dated 19-1-2007 in ITA No.3922/Del/2004. Since the issue involved in the year under consideration as well as all the facts relevant thereto are admittedly similar to that of AY 2001-02, we respectfully follow the order of the Tribunal for AY 2001-02 and uphold the impugned order of the ld. CIT(A) deleting the additions made by the AO on these issues. Ground No. 2 and 3 of the assessee's appeal are accordingly allowed.

6. As regards ground No. 4 relating to the assessee's claim for deduction Under Section 80IB(10), the facts relevant to this issue are that in its return of income filed for the year under consideration deduction Under Section 80IB(10) was claimed by the assessee at Rs. 1,64,38,558/- in respect of profits derived from Tower 1 and Tower 5 of residential housing project viz. Sushant Estates in Sushant Lok, Gurgaon. During the course of assessment proceedings, the assessee was called upon by the AO to explain as to whether all the conditions have been fulfilled by it as required for claiming the said deduction Under Section 80IB(10). After consideration the submissions made on behalf of the assessee company in this regard, it was noted by the AO that in order to be eligible for deduction Under Section 80IB(10), the concerned housing project was required to be completed by the assessee by 31-3-2003. Since the completion certificate in respect of the said project issued by the concerned local authority prior to 31-3-2003 could not be produced by the assessee company it was held by the AO that the assessee company was not entitled for deduction Under Section 80IB(10) as claimed. He, therefore, disallowed the said deduction claimed by the assessee which resulted in the addition of Rs. 1,64,38,558/- to the total income of the assessee. The matter was carried before the ld. CIT(A) and during the course of appellate proceedings before him, an application under Rule 46A was filed by the assessee seeking production of additional evidence in the form of Occupation Certificate dated 25-4-2003 issued by Director, Town and Country Planning, Haryana. A copy of NOC granted by Fire Station Officer for the concerned buildings was also sought to be produced by the assessee as additional evidence. This documentary evidence filed by the assessee as additional evidence was forwarded by the ld. CIT(A) to the AO for his comments and in his remand report dated 29-8-2003 submitted to the ld. CIT(A), it was pleaded by the AO that the occupation certificate sought to be filed by the assessee could not be considered as evidence as the same had been issued after the date of assessment. It was also submitted by the AO that the NOC from the Fire Department was not sufficient to prove that the concerned housing project had been completed prior to 31-3-2003. When the remand report received by the AO was confronted by the ld. CIT(A) to the assessee, it was submitted on its behalf that the application for occupation certificate was submitted to the Director, Town and Country Planning

Haryana on 25-2-2003 itself and the said authority having issued the occupation certificate with reference tot the said application, the claim of the assessee for having completed the said project as claimed in the application was accepted. The ld. CIT(A) found the stand of the assessee to be acceptable and after admitting the fresh evidence filed by the assessee as well as relying thereon, he held that the requisite condition for grant of deduction Under Section 80IB(10) was duly satisfied by the assessee company. Accordingly he deleted the disallowance made by the AO on account of assessee's claim for deduction Under Section 80IB(10).

7. At he time of hearing before us, the ld. DR has not made any submissions to challenge the finding given by the ld. CIT(A) on the basis of additional evidence produced by the assessee in the form of occupation certificate that the projects for which the deduction Under Section 80IB(10) was claimed by the assessee company had been completed before 31-3-2003. He however has raised a new plea to challenge the allowability of assessee's claim for deduction Under Section 80IB(10) in respect of the relevant projects by submitting that the date of completion of project as earlier prescribed in Section 80IB(10) as 31-3-2001 was extended to 31-3-2003 by the Finance Act, 2000 only w.e.f. 1-4-2001 and since the said amendment was made applicable from AY 2001-02, the benefit of extended date for completion of project in order to make it eligible for deduction Under Section 80IB was not available to the assessee in the present case involving AY 2000-01. In support of this contention he has relied on the explanatory note to the Finance Bill, 2000 wherein it has been clarified that the amendment made in Section 80IB(10) will take effect from 1-4-2001 and will accordingly apply in relation to the AY 2001-02 and subsequent years.

He has contended that although neither the AO nor the ld. CIT(A) have considered this vital aspect of the matter, the provisions of the Statute which are clearly applicable to the issue cannot be ignored especially when the same are squarely applicable to the issue involved in this appeal filed before the Tribunal.

8. The ld. Counsel for the assessee on the other hand contended that an altogether new case cannot be made out by the ld. DR at this stage before the

Tribunal and, therefore, the fresh plea raised by him for the first time before the Tribunal in an attempt to change the complexion of the case should not be entertained. In support of this contention, he relied on the decision of Hon'ble Calcutta High Court in the case of Indian Steel & Wire Products Ltd. reported in 208 ITR 740.

Without prejudice to his preliminary objection, the ld. Counsel for the assessee submitted that the plea of the DR is not acceptable even on merits also. In this regard, he contended that by the amendment made by Finance Act, 2000 in the provisions of Section 801B(10), the date of completion of project was extended upto 31-3-2003 and this new date was substituted in the Statute w.e.f. 1-4-2001 just because the period available for completion of project prior to that was upto 31-3-2001.

He contended that it cannot be concluded on the basis of the said date that the benefit of extended date was available to the assessee only for an from assessment year 2001-02 as sought to be contended by the ld. DR especially when the Legislative intention was to extend the benefits available under the provisions of Section 80IB(10) even to the projects completed within the extended period. He also contended that the interpretation sought to be given by the ld. DR to the amendment made by the Finance Act, 2000 thus is not logical and the same is likely to result in absurdity.

9. We have considered the rival submissions and also perused the relevant material on record. Insofar as the new plea sought to be raised by the ld. DR for the first time before us, it is observed that the same is based on the relevant provisions of the Statute as amended from time to time and since the issue involved before us in this appeal of the Revenue is liable to be decided by applying the said provisions, we find it difficult to sustain the objection raised by the ld. Counsel for the assessee for entertaining the said plea. As rightly contended by the ld. DR, the provisions of law which are applicable to the year involved in the case cannot be overlooked especially when the said provisions are directly applicable to the issue specifically involved in an appeal. It is also well-settled that if a particular disallowance made on one basis by the AO which is a subject matter

of appeal can be sustained on the basis of other provisions not invoked by him, the Tribunal can invoke the said provisions to sustain the said disallowance. In the case of Indian Steel & Wire Products Ltd. v. CIT (Supra) cited by the ld. Counsel for the assessee, there were two issues involved before the Hon'ble Calcutta High Court. The first was relating to the admission of an alternative plea sought to be urged on behalf of the assessee for the first time before the Tribunal, which was duly accepted by the Tribunal. The other issue was relating to the admission of additional ground sought to be raised by the assessee which was not accepted by the Tribunal observing that such additional plea which altogether changes the complexion of the case as originally brought before the ld. CIT(A) is not permissible in second appeal. It is thus clear that the alternative plea raised on behalf of the assessee for the first time was entertained by the Tribunal in the said case whereas the additional plea changing the complexion of the case was not permitted. In the present case, what the ld. DR has sought to raise for the first time before the Tribunal is an alternative plea and not the additional plea and since the same cannot be said to change altogether the complexion of the case, we are of the view that he can be allowed to raise the same for the first time before the Tribunal especially when the same involves legal issue which is based on the relevant provisions of law. The decision of Hon'ble Calcutta High Court in the case of Indian Steel & Wire Products Ltd. (Supra) cited by the ld. Counsel for the assessee thus cannot be of any help to the assessee's case. On the other hand, the same supports the Revenue's case. The decision of Hon'ble Madras High Court in the case of CIT v.Indian Auto Stores, 129 ITR 544 also further supports this stand wherein it was held that the Tribunal can uphold the order of first appellate authority on ground not raised or argued before it if the said ground involves a pure question of law.

10. It is no doubt true that the Tribunal's jurisdiction in an appeal before it is restricted only to passing orders on the subject matter of the appeal. However, the words "as it thinks fit" in Section 254(1) even then will have to observe the prohibitions of the I.T. Act and do not mean that the Tribunal can think "fit" to disregard the clear mandates of the Statute. The Tribunal as such as any other authority has to carry out the dictates of the Statute. As clarified and explained by the Hon'ble Supreme Court in the case of Hukumchand Mills Ltd., 63 ITR 232, the

rule is that the subject matter of the appeal must be ascertained and a claim sought to be raised before the Tribunal for the first time is to be permitted if it relates to the same subject matter. In the case of J.S. Parker v. V.B. Palekar 94 ITR 616, it was held by the Hon'ble Bombay High Court that the Tribunal was under statutory obligation to entertain a plea involving a pure question of law and decide the same, no matter at what stage it was taken. In the case of CIT v. Ice Suppliers Corp. 64 ITR 195, the order of the Tribunal accepting an alternative case of the Department after giving leave to the assessee in that regard was upheld by Hon'ble Punjab High Court. We, therefore, overrule the objection raised by the ld. Counsel for the assessee for entertaining the new plea sought to be raised by the ld. DR and proceed to consider and decide the same on merits now.

11. It is observed that various amendments were proposed to be made in the provisions of Sub-section (3) (4) (5) and (10) of Section 80IB simultaneously by Clause 36 of Finance Bill, 2000 which read as under: 36. Amendment to Section 80-IB - In Section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2001: a) in Sub-section (3), in Clause (ii), for the figures, letters and words "31st day of March, 2000", the figures, letters and words "31st day of March, 2002" shall be substituted; b) in Sub-section (4), in the first proviso, for the figures, letters and words "31st day of March, 2000", the figures, letters and words "31st day of March, 2002" shall be substituted; c) In Sub-section (5) in the second proviso to Clauses (i) and (ii), for the figures, letters and words, 31st day of March, 2000", the figures, letters and words "31st day of March, 2002" shall be substituted; i. In the opening portion, for the words "approved by a local authority", in words, letters and figures "approved before the 31st day of March, 2001 by a local authority" shall be substituted; ii. In Clause (a), for the figures, letters and words, "31st day of March, 2001", the figures, letters and words "31st day of March, 2003" shall be substituted.

12. As submitted by the ld. Counsel for the assessee before us, the amendment in the provisions of Section 80IB(10) extending the period for completion of eligible projects was made w.e.f. 1-4-2001 apparently because as per the pre-amended provisions, such period was prescribed up to 31-3-2001. According to him, the date of 1-4-2001 given as an effective date for the said amendment therefore

cannot be read in a manner to say that the same was applicable only for AY 2001-02 and the subsequent years. The ld. DR however has contended that the said amendment was specifically made applicable only to the assessment year 2001-02 and subsequent years. In support of this contention, he has relied on the Explanatory note reported in 242 ITR Page 100-101 (Statute) explaining the Legislative intention behind the aforesaid amendments made in Section 80IB(10) which reads as under: Clause 36 seeks to amend Section 80-IB of the Income-tax Act relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Under the existing provisions contained in Sub-section (10), hundred per cent, deduction of the profits of an undertaking developing and building housing projects approved by a local authority is allowed, if such undertaking has commenced or commences development and construction of the housing project on or after 1st October, 1998, and completes the same before 31st March, 2001.

Sub-clause (d) proposes to provide that the housing project approved by a local authority before 31st March, 2001, and completed before 31st March, 2003, will be allowed deduction under this sub-section.

These amendments will take effect from the 1st April, 2001, and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent years.

13. As is apparent from the aforesaid explanatory note, the amendments made inter alia in the provisions of Sub-section (10) of Section 80IB were made effective from 1-4-2001 and it was also stated that the same would accordingly apply in relation to the assessment year 2001-02 and subsequent years. Relying thereon, the ld. DR has contended before us that the amendments made in Section 80IB(10) by the Finance Act, 2000 extending the date of completion of project up to 31-3-2003 were applicable to AY 2001-02 and subsequent years and the assessee in the present case involving AY 2000-01 was not eligible to avail the benefit of the said amendments. We, however, find it difficult to agree with this contention of the ld. DR keeping in view the Legislative intention behind making the said amendments as well as the absurd results it is likely to lead to. As is clearly evident from the Explanatory note reproduced above, the purpose of

amendments made by the Finance Act, 2000 in the provisions of Section 80IB(10) was to extend the benefit available under the said provisions even to the housing projects which would be completed up to 31-3-2003 as against the period up to 31-3-2001 specified earlier. It is pertinent to note here that the period of commencement of the said projects in order to become eligible for benefits of Section 80IB(10) was also simultaneously specified as up to 31-3-2001 as against the period earlier prescribed as on or after 1-10-1998 which clearly means that the intention of the Legislature was to give the benefit of extended period of completion to all the projects which had already commenced on or after 1-10-1998. In this backdrop, if the interpretation to the said amendments as sought to be given by the ld. DR is accepted, the housing project commenced on or after 1-10-1998 but before 31-3-2001 and completed after 31-3-2001 would not be eligible for the benefits of Section 80IB especially in respect of profits derived from the said projects during the previous year relevant to AY 1999-2000 and 2000-01 which is not certainly in consonance with the Legislative intention. Moreover, the profits derived from the same project for AY 2001-02 and subsequent years would be eligible for the said benefits which cannot be accepted as logical interpretation going by the common sense. It may also lead to absurd results even in the cases of assessee's following two different methods of accounting to recognize the income derived from the projects eligible for benefits Under Section 80IB. In a case where the assessee follows a project completion method, he will be able to avail the benefit of Section 80IB in respect of entire profits of the projects completed after 31-3-2001 but before 31-3-2003 whereas the assessee following percentage completion method (WIP method) will be able to avail the said benefits in respect of profits of the project completed after 31-3-2001 but before 31-3-2003 only to the extent of profit declared on percentage completion method in AY 2001-02 and subsequent year and loose that benefit on the profits of the very same project declared on percentage completion method in AY 1999-2002 and 2000-01.

The interpretation sought to be given by the ld. DR thus not only will defeat the Legislative intention clearly spelt out in the Explanatory Note to give the benefit of extended period of completion to all the projects which had already commenced but shall also lead to absurd results.

14. There cannot be a dispute that the provisions of Section 80IB(10) offering benefits in respect of certain eligible housing projects are the beneficial provisions. It is a well settled canon of construction that in construing the provisions of beneficial Legislation, the Court should adopt the construction, which advances, fulfills and furthers the object of the Act rather than the one, which would defeat the same and render the benefit illusory. It is also equally well settled that, without doing violence to the language used, a beneficial provision shall receive fair, liberal and progressive construction so that its true objects might be promoted. In the case of Gurcharan Singh v. Kamla Singh , Hon. Apex Court has held that interpretation of social-economic legislation should further the object and purpose of the legislation. Beneficial provisions should not be construed too rigidly as the same are for giving benefits to certain class of persons and the intention of the Legislature and the policy underlying it has to be kept in mind. Beneficial legislation should receive liberal construction with a view to implementing the legislative intention and as held in the case of State of UP v. L.J. Johnson and Anr. 1983 AWC 789 (S.C.), it is well settled that the language of beneficial Statute must be construed so as to suppress the mischief and advance its object.

15. Keeping in view the above well settled principles of interpretation, we find it difficult to accept the interpretation sought to be given by the ld. DR to the amendments made in the provisions of Section 80IB(10), which admittedly are beneficial provisions as the same, because if the same is accepted, it will not only defeat the legislative intention clearly spelt out in the Explanatory note to give the benefit of extended period of completion to all the projects which had already commenced, but shall also lead to the absurd results as discussed above. Accordingly, we reject the same and uphold the impugned order of the ld. CIT(A) holding that the assessee having completed the residential project in question before 31-3-2003, it was entitled to the benefit of Section 80IB(10). Ground No. 4 of the Revenue's appeal is accordingly dismissed.

Order signed, dated and pronounced in the Court on 15th February, 2008.

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