

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1241 of 2011

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COMMISSIONER OF INCOME TAX-IV - Appellant(s)

Versus

TARNETAR CORPORATION - Opponent(s)

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Appearance :

MS PAURAMI B SHETH for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 12/09/2012

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Revenue is in appeal against the judgment of the Tribunal dated 24.5.2011 raising following question for our consideration :

"Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of deduction of Rs.1,02,69,964/- made u/s.80IB(10) of the Act ?"

The issue pertains to deduction claimed by the assessee under section 80IB(10) of the Act on development of housing project. The Assessing Officer was of the opinion that such deduction was not justified. Revenue's stand appears to be that the assessee was not a developer and that therefore, would

not be qualified for deduction under section 80IB(10) of the Act. Additional contention of the Revenue was that the assessee did not fulfill one of the essential conditions required for claiming deduction under section 80IB(10) of the Act. With respect to the first contention, the learned counsel for the Revenue candidly agree that such issue was discussed by this Court at considerable length in the case of **CIT v. Radhe Developers**, (2012) 341 ITR 403 (Guj.) and under similar circumstances held that the assessee cannot be denied the benefit of deduction. Without further elaboration, therefore, such contention is turned down.

With respect to the second contention, we may record that the contention of the Revenue is that the assessee did not complete the housing project within the statutory time frame. Under sub-clause (i) of clause (a) of section 80IB(10), the assessee since had got approval for the housing project from the local authority before 1st April 2004 was required to complete the construction latest by 31st March 2008. Relying on explanation (ii) to clause (i), Revenue contends that since BU permission was granted after March 2008, the construction must be deemed to have been completed after such date. Explanation (ii) reads as under:

"(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority."

CIT (Appeals) as well as the Tribunal after detailed discussion came to the conclusion that such requirement was not mandatory in nature. In the present case, the assessee had completed the construction well before the last date, namely, 31st March 2008 and had also sold several units which was completed and actually occupied, and it also applied for BU permission to the local authority. The local authority, however, for technical reasons, at one stage rejected such application in the year 2006 and thereafter upon revised efforts from the assessee granted the same by order dated 19th March 2009.

We have perused the detailed discussion of the CIT (Appeals) as well as the Tribunal on the issue. In particular, the Tribunal noted that the construction was completed in 2006. Application for BU permission to the Municipal authorities was filed on 15.2.2006 which was rejected on 1.7.06. Several residential units were occupied since the same was done without necessary permission. The assessee had also paid penalty and got such occupation regularized. Several tenements were sold long before the last date.

In the present case, therefore, the fact that the assessee had completed the construction well before 31st March 2008 is not in doubt. It is, of course, true that formally BU permission was not granted by the Municipal Authority by such date. It is equally true that explanation to clause (a) to

section 80IB(10) links the completion of the construction to the BU permission being granted by the local authority. However, not every condition of the statute can be seen as mandatory. If substantial compliance thereof is established on record, in a given case, the court may take the view that minor deviation thereof would not vitiate the very purpose for which deduction was being made available.

In the present case, the facts are peculiar. The assessee had not only completed the construction two years before the final date and had applied for BU permission. Such BU permission was not rejected on the ground that construction was not completed, but the some other technical ground. In that view of the matter, granting benefit of deduction cannot be held to be illegal.

In the result, the Tax Appeal is dismissed.

(Akil Kureshi, J.)

(Harsha Devani, J.)

(vjn)