IN THE INCOME TAX APPELLATE TRIBUNAL
"D"BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBERAND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.3826/Mum./2018
(Assessment Year : 2014–15)

Asstt. Commissioner of Income Tax
Circle–18(3), Mumbai ……………. Appellant

v/s

Rattanchand Rikhabdas
Jain Chemicals Works
428, Kalbaevi Road
2nd Floor, Abhay House
Mumbai 400 052
PAN – AAJFR7028L ……………. Respondent

Revenue by : Shri Manjunatha Swamy
Assessee by : Shri Nitesh Joshi

Date of Hearing – 03.08.2020	Date of Order – 10.08.2020

O R D E R

PER SAKTIJIT DEY. J.M.

Instant appeal has been filed by the Revenue challenging the order dated 27th March 2018, passed by the learned Commissioner of Income Tax (Appeals)–29, Mumbai, pertaining to the assessment year 2014–15.

2. The only ground raise by the Revenue reads as under:–

"On the facts and in the circumstances of the case and in law, whether the learned CIT(A) was justified in allowing the

> *assessee deduction under section 80IB of the Act, when the project was not completed within time limit."*

2. Brief facts relating to the disputed issue are, the assessee, a partnership firm, filed its return of income for the impugned assessment year on 27th September 2015, declaring total income of ₹ 65,05,630, after claiming deduction under section 80IB(10) of the Income Tax Act, 1961 (for short *"the Act"*). The aforesaid deduction was claimed for the development of a housing project named as Mayuresh Residency, at Bhandup (West), Mumbai. In the course of assessment proceedings, the Assessing Officer while examining assessee's claim of deduction under section 80IB(10) of the Act in respect of the said housing project found that similar deduction claimed by the assessee in the assessment years 2010–11, 2011–12, 2012–13 and 2013–14 have been disallowed by the Assessing Officer alleging violation of conditions mentioned in section 80IB(10) of the Act. In consonance with the view taken in the preceding assessment years, the Assessing Officer disallowed assessee's claim of deduction in the impugned assessment year as well. Being aggrieved with the disallowance of deduction claimed under section 80IB(10) of the Act, the assessee preferred appeal before the first appellate authority.

3. After considering the submissions of the assessee and also taking note of the fact that the Tribunal while deciding assessee's appeals for the assessment years 2010–11, 2011–12, 2012–13 and

2013–14 allowed assessee's claim of deduction under section 80IB(10) of the Act in respect of the subject housing project, followed the decisions of the Tribunal and allowed assessee's claim of deduction under section 80IB(10) of the Act, thereby, deleting the disallowance made by the Assessing Officer. Being aggrieved with the aforesaid decision of learned Commissioner (Appeals), the Revenue is in appeal before us.

4. We have considered rival submissions and perused the material on record. At the very outset, Shri Nitesh Joshi, learned Counsel for the assessee submitted that the issue is squarely covered by the decisions of the Tribunal in assessee's own case in assessment years 2010–11, 2011–12, 2012–13 and 2013–14. He submitted, the decisions of the Tribunal in assessment years 2010–11 and 2011–12 have also been confirmed by the Hon'ble Jurisdictional High Court while dismissing Revenue's appeals. Further, he submitted, the housing project in respect of which the assessee had claimed deduction under section 80IB(10) of the Act commenced on 10th September 2007, and was completed on 18th March 2013. Thus, he submitted, the condition of section 80IB(10)(a)(iii) of the Act stands fulfilled. Thus, he submitted, the decision of learned Commissioner (Appeals) should be upheld.

5. Shri Manjunatha Swamy, the learned Departmental Representative, though, agreed that the issue in dispute is covered by the decisions of the Tribunal and Hon'ble Jurisdictional High Court in assessee's own case, however, he relied upon the observations of the Assessing Officer.

6. Having considered rival submissions, we find from record that the assessee developed a housing project in the name and style of Mayuresh Residency. According to the assessee, the construction of the housing project commenced on 10th September 2007 and completed on 18th March 2013, i.e., prior to 31st March 2013, the cut off date as per section 80IB(10)(a)(iii) of the Act. Therefore, assessee has claimed that it is entitled to avail deduction under section 80IB(10) of the Act in respect of the said housing project. It is apparent from a reading of the impugned assessment order, the Assessing Officer has denied assessee's claim of deduction simply on the reasoning that similar deduction claimed by the assessee in assessment years 2010–11 to 2013–14 has been denied. On further scrutiny, it is found that the denial of deduction under section 80IB(10) of the Act in the preceding assessment years was primarily on the allegation that the assessee failed to submit the completion certificate issued by the Municipal Authorities before the Assessing Officer. It is further evident, against the disallowance of deduction

claimed under section 80IB(10) of the Act in assessment year 2010–11 and 2011–12, the assessee had preferred appeals before the Tribunal. In the course of hearing of appeal before the Tribunal, the assessee had furnished completion certificate issued by the competent authority as additional evidences. The Tribunal having found the completion certificate to be in order and being convinced with the fact that the conditions of section 80IB(10) of the Act have been fulfilled in all respect, allowed assessee's claim of deduction under the said provision while disposing off the appeals being ITA no.1531–1532/Mum./2014, vide order dated 3rd November 2016. It is worth mentioning, the aforesaid decision of the Tribunal was brought to the notice of the Assessing Officer in the course of the assessment proceedings for the impugned assessment year. However, the Assessing Officer has declined to follow the decision of the Tribunal on the flimsy grounds that he has not received a copy of the said order officially and further, that the Revenue reserves its right to contest the decision before the High Court. It is worth mentioning, the Revenue's appeal challenging the decision of the Tribunal in assessment years 2010–11 and 2011–12, in the meanwhile, were dismissed by the Hon'ble Jurisdictional High Court vide order dated 30th September 2019, in ITA no.421/2017 and order dated 3rd March 2020, in ITA no.1271/2017. In fact, while dismissing the Revenue's appeal in assessment year 2011–12, reported in CIT v/s Rattanchand Rikhabdas

Jain Chemical Works, [2020] 117 taxmann.com 709 (Bom.), the Hon'ble Jurisdictional High Court taking note of the factual finding of the Tribunal that the project was completed within the stipulated time on or before 31st March 2013, has upheld assessee's claim of deduction 80IB(10) of the Act. In fact, identical view was taken by the Tribunal while deciding assessee's appeals for assessment year 2012–13 in ITA no.3251/Mum./2017, dated 5th December 2018, and for the assessment year 2013–14 in ITA no.3252/Mum./2017, dated 24th October 2018. Thus, once the Tribunal, being the last fact finding authority, has recorded a factual finding that the housing project was completed within the stipulated time frame and such finding of fact has also been upheld by the Hon'ble Jurisdictional High Court in assessee's own case, there is no scope for the Assessing Officer to deny assessee's claim of deduction under section 80IB(10) of the Act. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) in allowing assessee's claim of deduction under section 80IB(10) of the Act. Ground raised is dismissed.

7. In the result, Revenue's appeal is dismissed.

Order pronounced by placing in the notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 10.08.2020

Sd/-	**Sd/-**
G. MANJUNATHA	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 10.08.2020

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai