

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 2616/KOL/2019
Assessment Year: 2011-2012**

M/s. Satern Griha Nirman Pvt. Limited,.....Appellant
C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor, Kolkata-700072
[PAN: AAICS0875L]

-Vs.-

Income Tax Officer,.....Respondent
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri S. Jhajharia, C.A., for the Appellant
Shri Sandeep Lakra, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : February 17, 2020
Date of pronouncing the order : May 04, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 25.10.2019.

2. The issue involved in Ground No. 1 of this appeal relates to the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of assessee's claim for deduction under section 80IB(10) of the Income Tax Act, 1961 in respect of interest received amounting to Rs.11,10,810/- and other income amounting to Rs.6,36,746/-.

3. The assessee in the present case is a Company, which is engaged in the business of Builders and Property Developers. The return of income

for the year under consideration was filed by it on 17.09.2011 declaring total income at 'NIL'. During the year under consideration, the assessee-company had developed a housing project namely "Salarpuria Symphony" in Bangalore, Karnataka and the entire profit of the said project was claimed to be exempt under section 80IB(10) of the Act. During the course of assessment proceedings, it was noticed by the Assessing Officer that interest income of Rs.11,10,810/- received on Bank deposits, etc. as well as other income of Rs.6,36,476/- earned during the year under consideration was also included by the assessee in the profit earned from developing of a housing project, which was claimed to be eligible for deduction under section 80IB(10). According to the Assessing Officer, the said income was not derived by the assessee from the business of development of housing project and the same, therefore, was not eligible for deduction under section 80IB(10). He accordingly disallowed the claim of the assessee for deduction under section 80IB(10) in respect of interest income of Rs.11,10,810 and other income amounting to Rs.6,86,476/-. On appeal, the Id. CIT(Appeals) confirmed the said disallowance made by the Assessing Officer.

4. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As per the provisions of section 80IB(10), the income derived from the business of developing housing project is eligible for deduction and as held in the various judicial pronouncements, the expression "derived from" in section 80IB(10) envisages a direct or first degree connection of the income eligible for deduction with the corresponding business of the assessee of developing a housing project. It means the immediate source of the income should be the business of the assessee of developing a housing project in order to make it eligible for deduction under section 80IB(10). If this well settled test is applied in the present case, I find that the interest of Rs.11,10,810/- earned by the assessee during the year under consideration on Bank deposits etc. cannot be held to be eligible for

deduction under section 80IB(10) as the immediate source of the said interest income was not the business of the assessee of developing housing project and it was the investment made by the assessee in Bank deposits, etc. As regards the other income amounting to Rs.6,36,476/-, the details of which are placed at page no. 7 of the assessee's paper book, I find that the income by way of transfer fees received by the assessee for Apartment Booking amounting to Rs.4,10,892/- and interest received for delay in payment against Flat amounting to Rs.1,61,674/- had a direct or first degree connection with the business of the assessee of developing a housing project and the same, therefore, was eligible for deduction under section 80IB(10). The immediate source of the said income, in my opinion, was the business of the assessee of developing a housing project and therefore, the said income was eligible for deduction under section 80IB(10). Regarding the balance amount of other income to the extent of Rs.63,910/-, the assessee has not been able to furnish any details of the same to show that the said amount was eligible for deduction under section 80IB(10). I accordingly allow partly Ground No. 1 of the assessee's appeal.

5. As regards the Ground No. 2 raised by the assessee in this appeal relating to its alternative claim that the disallowance of deduction under section 80IB(10) in respect of interest income should be restricted to net interest and not gross interest as done by the authorities below, I find that this alternative claim of the assessee is duly supported by the decision of the Hon'ble Supreme Court in the case of ACG Associated Capsules Pvt. Limited -vs.- CIT (343 ITR 89), wherein it was held in the context of assessee's claim for deduction under section 80HHC that 90% of not the gross interest but only the net interest which had been included in the profits of business of the assessee, as computed under the head "profits and gains of business or profession" should be deducted for determining the profits of the business eligible for deduction. Keeping in view the said decision of the Hon'ble Supreme Court, I direct the

assessing Officer to verify the amount of net interest keeping in view the direct nexus theory and allow appropriate relief to the assessee on this issue. Ground No. 2 of the assessee's appeal is accordingly treated as allowed.

6. As regards the issue involved in Ground No. 3 relating to the disallowance of Rs.17,765/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 43B on account of ESI payable, it is observed that the ESI shown as payable amounting to Rs.17,765/- was disallowed by the Assessing Officer under section 43B of the Act as the assessee failed to produce any evidence to show that the same was deposited before furnishing its return of income for the year under consideration. Even at the time of hearing before the Tribunal, no such evidence has been brought on record on behalf of the assessee to show that the ESI payable amounting to Rs.17,765/- was paid before the due date of filing of the return of income for the year under consideration. I, therefore, find no justifiable reason to interfere with the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on this issue and upholding the same, I dismiss Ground No. 3 of the assessee's appeal.

7. At the time of hearing before the Tribunal, the Id. Counsel for the assessee has not pressed Ground No. 4 involving the issue relating to the disallowance of Rs.13,811/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of interest on TDS and penalty on professional tax. The same is accordingly dismissed as not pressed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on May 04, 2020.

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 4th day of May, 2020

- Copies to :
- (1) **M/s. Satern Griha Nirman Pvt. Limited,
C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor, Kolkata-700072**
 - (2) **Income Tax Officer,
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor, P-7, Chowringhee Square,
Kolkata-700069**
 - (3) *Commissioner of Income Tax (Appeals)-1, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.