

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2825/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Surana Mutha Bhasali Developers 236, Patil Plaza, Nr. Saras Baug, Pune -411009 PAN: ABGFS1894K	Vs.	ACIT, Circle 11(2), Pune
Appellant		Respondent

Assessee by

Shri Vardhaman Jain

Revenue by

Shri Vitthal Bhosale

Date of hearing

01-07-2021

Date of pronouncement

02-07-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the ld. CIT(A) on 19.05.2017 in relation to the A.Y. 2010-11.

2. The only issue raised herein is against the denial of deduction u/s 80IB(10) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on certain on-money received by the assessee which was also declared as income.

3. Briefly stated, the factual matrix of the case is that the assessee is a builder, promoter and developer. A survey was

conducted on 04.02.2010, during which it transpired that it received on-money amounting to Rs.5.57 crores on flat bookings in Sri Shantisagar Project, which was not recorded in the books of account. Such a sum was offered for taxation and the return was accordingly filed declaring total income at Rs.5,30,50,000 including the amount surrendered at Rs.5.57 crores. Later on, the assessee filed a revised return on 31.03.2012 declaring total income at Rs.2,79,640 by claiming deduction u/s 80IB(10) of the Act amounting to Rs.5,27,70,356 which was not claimed in the original return of income. The AO called upon the assessee to submit details of Rs.5.57 crores with name and address of the persons who allegedly gave on-money along with their address etc. The assessee complied with the same and furnished a list of such 42 persons. Thereafter, the AO required the assessee to produce the persons, for which the assessee expressed its inability. The AO issued notices u/s 133(6) of the Act and also recorded statement of 12 persons u/s 131 of the Act, all of whom denied having given any on-money to the assessee. In view of these facts, the AO came to the

conclusion that the assessee could not prove that the sum of Rs.5.57 crores was received as on-money on flat bookings and hence such an amount was not eligible for deduction u/s 80IB(10) of the Act. The ld. CIT(A) echoed the assessment order, against which the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides through Virtual Court and gone through the relevant material on record. The AO has denied the benefit of deduction u/s 80IB(10) of the Act on Rs.5.57 crores simply on the ground that the assessee could not prove that such an income was from the sale of flats. But for that there, no dent has been found on the otherwise eligibility of the deduction. We have gone through the statement of the assessee recorded at the time of survey u/s 133A, whose copy has been given at page 1 onwards of the paper book. In response to question No.35 and other related questions about the mention of certain amounts on the back side of flat booking receipts, the assessee conceded that such sums, over and above the amount as per registered deeds, were on-money. In response to question Nos. 40/41, the assessee surrendered the entire on-money recorded on the back side of flat booking receipts as its

income from other sources, by stating that '*.... I have also submitted a letter to this effect. The total income declared from other sources in respect of Sri Shanti Nagar Project i.e. on money collection works out to Rs.5.57 crores*'. In view of the above, it is clear that the assessee received a sum of Rs.5.57 crores as 'on-money' which was not declared in the books of account but offered as additional income during the course of survey in respect of its otherwise eligible housing project. The said money was duly accounted for in the total income at the time of filing of the return. However, when the issue of allowing the deduction cropped up, the AO came to hold that the said amount could not be considered as 'business income' as the buyers denied having given such on-money. We are at loss to comprehend as to how the sum of Rs.5.57 crores, admittedly received as on-money on the booking of flats, can be construed as not arising from the same source when the question of granting deduction u/s 80IB(10) thereon surfaced.

5. The doctrine of approbate and reprobate does not allow the Department to blow hot and cold in the same breath, thereby accepting one consequence arising from the statement of the assessee while rejecting the other one. When the assessee made a

surrender with the clear backdrop of having received 'on money' and the Revenue accepted the same while including it in the total income, it cannot later on claim that no deduction u/s 80IB(10) can be granted on the same as the assessee failed to prove that the flat bookers gave such on-money. If we accept the view point of the Revenue that source of the income is unexplained and does not pertain to the housing project, then, in the given facts, when there is no positive material other than the assessee's statement of receiving such an amount as 'on money', then there is no income in the first instance calling for its inclusion in the total income. Once it is agreed to be 'on-money' from the flats-bookings at the time of its inclusion in the total income, a fortiori, such an income, being from sale of flats albeit received as on-money, qualifies for the deduction as well. We, therefore, overturn the impugned order on this score and order to allow deduction u/s 80IB(10) on such amount.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 2nd July, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 2nd July, 2021
GCVSR

Sd/-
(R.S.SYAL)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

- 1. अपीलार्थी / The Appellant;
- 2. प्रत्यर्थी / The Respondent;
- 3. The CIT(A)-4, Pune
- 4. The Pr.CIT-3, Pune
- 5. DR, ITAT, ‘A’ Bench, Pune
- 6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-07-2021	Sr.PS
2.	Draft placed before author	02-07-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		
