

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1531/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

DCIT, Circle-5, Pune	Vs.	Manav Realty, 304 to 306, D-Wing, Business Court, Mukund Nagar, Pune 411 037 PAN : AANFM5564C
Appellant		Respondent

Assessee by Shri Prateek Jha
Revenue by Smt. Kesang Y. Sherpa

Date of hearing 30-09-2020
Date of pronouncement 01-10-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the CIT(A)-8, Pune on 28-02-2017 in relation to the assessment year 2009-10.

2. The first two grounds deal with initiation of reassessment. The first ground is against the decision of Id. CIT(A) in holding the reassessment order to be bad in law despite the fact that no objection was raised by the assessee in the course of reassessment

proceedings; and the second ground is against the decision of Id. CIT(A) that the reopening was based on mere change of opinion and hence, the order was bad in law.

3. Succinctly, the facts of the case are that scrutiny assessment was done u/s.143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 14-12-2011 determining total income at Rs.2,27,120/- wherein deduction u/s.80IB(10) was allowed at Rs.10,79,27,366/-. There was change of jurisdiction and change of incumbent. The new AO initiated reassessment proceedings by means of a notice u/s.148 dated 10-03-2014. As per the reassessment order, the assessee did not raise any objection against the reassessment proceedings and vide letter dated 27-05-2014 requested the AO to treat the original return filed on 07-10-2009 as return in response to notice u/s.148. Eventually assessment was completed u/s 143(3) read with section 147 denying the benefit of deduction u/s.80IB(10) at Rs.10.79 crore. The assessee challenged initiation of reassessment proceedings before the Id. CIT(A) as well merits of the action of the AO. The Id. CIT(A) held that the reassessment was invalid and also decided the issue on merits in

favour of the assessee. Aggrieved thereby, the Revenue is in appeal before the Tribunal.

4. Insofar as the first ground is concerned, by which the Revenue has challenged the decision of the Id. CIT(A) on the ground that no objection was raised by the assessee in the course of reassessment proceedings, we find that the Id. CIT(A) has held the reassessment as bad in law on the basis of the factual and legal position obtaining in the case. Merely because the assessee did not raise any objection against the reassessment proceedings before the AO, does not mean that question of validity of reassessment has attained finality and hence cannot be challenged before the appellate forums. The quintessence of the matter is to examine as to whether or not the reassessment is valid and not whether or not any objection was taken by the assessee before the AO. It will be seen hereinafter that the Id. CIT(A) rightly quashed the reassessment as having been initiated on the basis of change of opinion only. This ground is, therefore, dismissed.

5. The second ground is about the quashing of reassessment on the basis of change of opinion. The case was taken up under scrutiny under Computer Aided Scrutiny Selection (CASS) to

examine the claim of deduction under Chapter VI-A of the Act. The AO proceeded accordingly to examine the claim of deduction u/s.80IB(10) in the original assessment proceedings by obtaining necessary documents from the assessee. The documents that specifically find mention in the assessment order are the Audit Report in Form No.10CCB, Commencement Certificate, Completion Certificate along with Ledger, Cash Book, Bank Book, Bills and Vouchers etc. From the Commencement Certificate, the AO observed that the date of approval by the competent authority was 30-09-2006 and the required date of completion of the project was mentioned as “*before 31-03-2012*”. The ld. CIT(A) found a further recording in the assessment order that the assessee completed the project on 20-03-2009 and also filed Completion Certificate from the local authority in support of the same.

6. At this juncture, it would be relevant to have a look at the reasons for reassessment, a copy of which has been placed at page 1 of the paper book, reading as under :

“In this case assessment were completed on 14-12-2011 accepting the returned income of Rs.2,27,120/-. The assessee has claimed deduction u/s.80IB(10) of the Income-tax Act, 1961 of Rs.10,77,48,506/-. The assessee has stated that he

has obtained permission for construction of the housing project from the Collector, Pune because prior to the year 2010 the said land was out of the jurisdiction of Pune Chinchwad Municipal Corporation (PCMC). As per the records, it reveals that the Collector, Pune vide his order dated 30-9-2006 had converted the said land from “Agricultural to non agricultural”. Thereafter, vide the second order of the Collector dated 4-2-2008 the layout plan of the assessee for construction of building was passed. The third order of the Collector dated 21-11-2008 a revised plan was sanctioned and in this order the Collector wrote that this revised plan is “Sudharit Samooh Grihbandhani” (i.e. revised plan for several buildings).

Thus it is seen that the first order of the collector is conversion of land into non agricultural. In the second order, there was no plan for several buildings and hence it was the third plan dated 21-11-2008 which is relevant to the claim of deduction u/s.80IB(10) of the Income-tax Act.

Further on verification of the Form No.10CCB it is seen that the date of commencement of the building is given as 13-04-2006 on this date the land was agricultural land on which housing project could not be started.

In view of the above it is clear that the assessee has violated the provisions of section 80IB(10) of the Income tax Act and therefore, I have reasons to believe that income of

Rs.10,77,48,506/- has escaped assessment within the meaning of section 147 of the Income tax Act. Therefore, notice u/s.148 should be issued in this case for re-opening the assessment for AY 2009-10.”

7. It is evident from the reasons recorded by the AO that the initiation of reassessment proceedings was premised on the fact that the commencement took place at a date in variance with the one stated by the assessee in the original assessment proceedings. The Id. CIT(A) has aptly recorded that the AO in the original assessment proceedings thoroughly examined the issue of date of commencement of the project, as supported by the reproduction from the assessment order. Thus, it is manifest that the reassessment came to be initiated by the AO on the basis of no fresh material coming to his possession after the completion of the original assessment, which was, in fact, made only for the verification of claim of the deduction under the CASS. Rather it is a case of change of incumbent who reviewed the material existing on record and took a contrary view. Such *change of opinion* is strictly impermissible in the light of judgment of Hon’ble Supreme Court in the case of *CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)*. As such, we do not find any reason to disturb the

finding recorded by the Id. CIT(A) in coming to the conclusion that the reassessment proceedings were bad in law. The impugned order is countenanced to this extent.

8. In view of our decision on upholding the quashing of reassessment proceedings, there is no need to go into the merits of the issue.

9. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 01st October, 2020.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 01st October, 2020
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-8, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, 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	30-09-2020	Sr.PS
2.	Draft placed before author	01-10-2020	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.		

*