

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHANDIGARH

PHYSICAL HEARING

**BEFORE HON'BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपीलसं./ ITA No.598/CHANDI/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)**

&

**2. आयकरअपीलसं./ ITA No.599/CHANDI/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)**

M/s Bee Gee Construction Co. SCO-1 Neelkanth Shopping Plaza Chandigarh Road NAC Zirakpur-140603	<u>बनाम/</u> Vs.	DCIT Circle 3 (1) Aaykar Bhawan Chandigarh
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHFB-1882-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Parikshit Aggarwal (CA) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Vivek Vardhan (Addl.CIT) – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	26-05-2025
घोषणाकीतारीख / Date of Pronouncement	:	17-06-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. These are quantum appeal as well as penalty appeal by the assessee for Assessment Year (AY) 2012-13. First, we take up quantum appeal ITA No.598/Chandi/2024 which arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless

Appeal Centre (NFAC), Delhi [CIT(A)] dated 18-03-2024 in the matter of an assessment framed by Ld. AO u/s 143(3) r.w.s.144 of the Act on 18-03-2015. The assessee is aggrieved by denial of deduction u/s 80-IB(10).

2. The Ld. AR advanced arguments in support of impugned claim whereas Ld. Sr. DR has supported the orders of lower authorities. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under. The assessee being resident partnership firm is stated to be engaged in construction of residential flats.

Proceedings before lower authorities

3.1 The assessment has been framed on *best judgment* basis since the assessee failed to make any effective representation therein. The assessee claimed deduction u/s 80-IB(10) for Rs.173.68 Lacs in respect of housing project which was denied by Ld. AO since the assessee failed to file supporting evidences.

3.2 The assessee filed detailed written submissions / documents during first appeal. The same was subjected to remand proceedings wherein Ld. AO opposed admission of additional evidences and doubted on the composition of the partners. No finding was rendered on merits. It was observed by Ld. CIT(A) that the assessee carried out a project in the name of *Unicity Mystic Homes* and Zirakpur. The approval of the project was received from local authority on 24-05-2006 and therefore, the assessee was required to complete the construction on or before 31-03-2012 which was not done. In AY 2009-10, the

assessee was found to be confirming to the conditions of project size and area of flats. The assessee did not claim such deduction in AYs 2008-09 and 2009-10 since the assessee had no profits. This deduction was claimed in AY 2010-11 wherein this claim was not examined since the return was not scrutinized. In AY 2011-12, this deduction was denied in second reassessment proceedings. The assessee failed to file the completion certificate. In terms of Explanation (ii) to sub-section (10) of Sec. 80(IB), the date of completion of construction of housing project shall be taken to be the date on which the completion certification was issued by the local authority. This condition was a mandatory requirement which was not fulfilled by the assessee. Accordingly, the deduction was denied against which the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the project under consideration was approved by local authority on 24-05-2006 and the assessee was required to complete the construction within 5 years from the end of the financial year in which the project was approved by the local authority. Accordingly, the construction was to be completed by 31-03-2012. The Ld. AR has stated that this being the 6th year of claiming this deduction, the same would be allowable to the assessee. However, the assessee has not claimed this deduction in AYs 2007-08 to 2009-10 since there was no profit in these years. The return for AY 2010-11 was processed u/s 143(1). The impugned deduction was denied in AY 2011-12 in second reassessment proceedings which reached up-to Tribunal vide

cross-appeals ITA Nos.572 & 597/Chandi/2024 wherein the assessment has been quashed in legal grounds alone without going into the merits of the case. On these facts, it could not be said that this claim was allowed on merits after due examination & verification in earlier years. Therefore, this plea of Ld. AR could not be accepted.

5. On merits, Ld. AR has relied on the decision of Hon'ble Supreme Court in the case of **PCIT vs. Majestic Developers (125 Taxmann.com 82)** confirming the decision of Hon'ble Karnataka High Court (reported as 122 Taxmann.com 123). The adjudication of Hon'ble High Court was as under: -

4. Having heard the learned advocates appearing for parties and on perusal of order under challenge, it would clearly indicate that claim of the assessee was under section 80-IB(10) of the Act. The expression found in second explanation to clause 3(a) of Sub-section (10) of Section 80-IB would indicate that for claiming said deduction, assessee will have to establish the date of completion of construction of housing project and said period has to be reckoned or should be taken to be the date on which completion certificate in respect of such housing project is issued by the local Authority. It would be apt and appropriate to note at this juncture itself that, expression 'completion certificate' is not defined under the Karnataka Municipal Corporations Act, 1976 ('KMC Act' for short). However, Sri. Sanmati has relied upon section 310 of the KMC Act to contend that completion certificate referred to in second Explanation to clause (3) of sub-section (10) of section 80IB is same as found in section 310 of KMC Act. However, we are not inclined to accept said contention for reasons more than one.

5. A Certificate is issued in terms of Schedule-VIII of Building Bye-laws certifying that the erection/re erection/material alteration of buildings, which is subject matter of the plan sanction has been supervised by such registered architect/engineer/supervisor and has been completed in accordance with the plan sanctioned. Person issuing such certificate has to further state that work has been completed to the best of his satisfaction, the workmanship and materials used are strictly in accordance with the general and detailed specifications, that no provision of the Building Byelaws, sanctioned plan and conditions prescribed or orders issued thereunder have been transgressed in the course of work and thereby certifying that the building is fit for use for which it has been erected/re-erected or altered and while doing so, the concerned registered architect/engineer/supervisor would request for issuance of occupancy certificate for the premises. It is this completion certificate as contained in schedule-VIII referred to in Bylaw No. 5.6.1 of the Building Byelaws which is referred under section 310 of the KMC Act. It is this completion certificate which accompanies the intimation to be given by every person within one month after completion of erection of building or execution of any work to be delivered or sent to the Commissioner, in writing, of such completion accompanied by a certificate in the form prescribed under building bye-laws, which form has to be signed and subscribed in the manner as prescribed and same should be given to the Commissioner, who would thereafter conduct inspection of such building or such work and grant permission to occupy the building by issuing

occupancy certificate. The extant bye-laws is referable to Bengaluru Mahanagara Palike Building Bye-laws 2003 whereunder an occupancy certificate is to be issued under bye-law No. 5.6 by the Commissioner after certificate issued by the registered architect, engineer or supervisor, as the case may be. Thus, completion certificate which is referred to in Section 310 of KMC Act is completion certificate which is required to be issued by Architect, engineer or supervisor, as the case may be, factum of completion of building or project to the Commissioner. It is only after such completion certificate being furnished and inspection conducted by the Commissioner, occupancy certificate would be issued by Commissioner of BBMP. Hence, contention of Revenue that completion certificate is required to be issued by local Authority as prescribed under Second Explanation to sub-clause (3) of sub-section (10) of Section 80-IB of the Act cannot be accepted. However, if the contention of the revenue that the completion certificate referred to under sub-clause (3) of Sub-Section (10) of Section of 80-IB of the Act is to be accepted, then, in that event, Authorities under the Act cannot insist for a completion certificate to be issued by the Municipal Corporation, when, in fact the said certificate contemplated under the KMC Act and the Building Bye-laws is to be issued by registered architect/engineer/supervisor.

6. Even on facts, it is noticed in the instant case, that a completion certificate came to be issued by registered architect on 27-2-2008 certifying that the project in question had been completed on 25-2-2008. Needless to say, this certificate has admittedly been issued in terms of Section 310 of the KMC Act r/w Rule 5.6(1) of the Building Bye-laws in the format prescribed under Schedule-VIII of building bye-laws. It is on enclosing this completion certificate issued by the registered architect that letters dated 5-3-2008 and 7-5-2008 were written to the Commissioner, BBMP by the assessee to issue occupancy certificate, the copies of which were also made available to the Assessing Officer during assessment proceedings under section 148 of the Act. Though said material evidence being available, same had been ignored by Assessing Officer and same was taken note of by CIT (Appeals) to allow the deduction claimed under section 80-IB of the Act by the assessee. As such, we are not inclined to accept contention raised by Revenue. There being no substantial questions of law involved in this appeal for being formulated, adjudicated and answered admitting the appeal does not arise. We have also noticed that under similar circumstances, Co-ordinate Bench in ITA Nos.478/2015 and 641/2015 disposed of on 29-2-2016 had noticed in said cases that no certificate of completion had been issued and as such, it was held that neither under the Local Authorities Act nor under KMC Act there being any provision for issuance of completion certificate, revenue ought not to have insisted for production of such certificate for getting benefit under 80-IB (10) of IT Act. Hence, by reiterating the conclusion arrived at by the coordinate Bench in Ittina Properties (P.) Ltd.'s case (supra), referred to supra, whereunder it came to be held that distinction drawn to be put forward by the Revenue with regard to completion certificate vis-à-vis occupancy certificate would not dilute the legal position, we dismiss these appeals.

7. A finding of fact is also recorded by Tribunal that assessee had furnished certificate of the registered certified Architect dated 27-2-2008 before Assessing Officer to demonstrate/establish that project in question had been completed within the period stipulated under section 80-IB of the Act.

8. We do not find any other in good ground to entertain this appeal. 9. For reasons aforesaid, we pass the following: ORDER

i. Appeal is dismissed.

ii. The order of the Tribunal passed in ITA No. 1629/Bangalore/2016 dated 20-10-2017 Assessment Year 2008-09 is hereby affirmed.

The Ld. AR has stated that the assessee is similarly placed and it is in possession of Architect's certificate which would show that the project

was completed within the stipulated time period. The Ld. AR also asserted that the provisions of Punjab Municipal Corporation Act, 1976 are on similar lines and therefore, the said decision would be applicable to the assessee.

6. We find that the assessment was framed on best judgment basis and even in the remand report, Ld. AO did not render any such finding on merits and merely opposed admission of additional evidences. The arguments as advanced before us are new arguments and the submissions made before us has not been dealt with by any of the lower authorities. The plea involves factual verification and re-examination of impugned claim of the assessee. The Explanation mandate issue of certificate by local authority whereas Ld. AR has stated that the said certificate is to be issued by an Architect which would be sufficient compliance under the relevant law. Considering all these facts, we remit the impugned issue back to the file of Ld. AO for fresh adjudication with a direction to the assessee to plead and prove its case. No other ground has been urged in the appeal. The appeal stand partly allowed for statistical purposes.

ITA No.599/Chandi/2024

7. This is penalty appeal assailing levy of penalty u/s 271(1)(c) for Rs.53.66 Lacs for wrong claim made by the assessee u/s 80-IB(10). The Ld. CIT(A) has confirmed the same. Since this is consequential penalty against quantum addition which has already been restored back by us to Ld. AO, the matter of penalty also stand restored back to

Ld. AO for fresh adjudication in the light of quantum appeal. This appeal stand allowed for statistical purposes.

Conclusion

8. The appeal in ITA No.598/Chandi/2024 stands partly allowed for statistical purposes whereas the appeal in ITA No.599/Chandi/2024 stands allowed for statistical purposes.

Order pronounced on 17-06-2025.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 17-06-2025.

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH