

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE  
(Through – VIRTUAL COURT)

BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT (KZ) AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील स० / ITA No.1874/PUN/2017

निर्धारण वर्ष / Assessment Year: 2012-13

The Dy. Commissioner of Income Tax,  
Circle – 14, Pune.

..... अपीलार्थी /  
Appellant.

बनाम v/s

M/s. Marigold Premises Pvt. Ltd.,  
S.No.15, Vadgaonsheri,  
Kalyani Nagar, Pune – 411014.

..... प्रत्यर्थी /  
Respondent

PAN : AABCM2608J.

Assessee by : Shri Dharmesh Shah.

Revenue by : Shri S.P. Walimbe.

सुनवाई की तारीख / Date of Hearing : 24.09.2020

घोषणा की तारीख / Date of Pronouncement : 25.09.2020

**आदेश / ORDER**

**PER SHRI PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the Revenue emanates from the order of learned Commissioner of Income Tax (Appeals) – 7, Pune dated 21.11.2016 for A.Y. 2012-13 as per the following grounds of appeal on record :

*"1. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in allowing the deduction u/s 80IA(4)(iii) of the I.T. Act, 1961, when there was no notification at the time of completion of the assessment (the notification no. 209/2007/F.NO.178/78/2007-ITA-I of CBDT has been actually issued on 03/07/2007)."*

2) *"Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in holding that the assessee is eligible for deduction u/s 80IA(4)(iii) of the I.T.Act, 1961 though the specific condition in the notification pertaining to the assessee regarding the number of units was not fulfilled."*

3. *Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in holding that the assessee is eligible for deduction u/ s 80IA(4)(iii) of the I.T.Act, 1961 while the condition that assessee should have commenced operation as on 31.03.2009, is violated.*

4. *Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in holding that the assessee is eligible for deduction u/s 80IA(4)(iii) of the I.T.Act, 1961 while the condition that no single entity or its related enterprise can occupy more than 25% of the allocable area was violated."*

5. *Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in holding that the assessee is eligible for deduction is] s 80IA(4)(iii) of the I.T.Act, 1961 while the condition that minimum number of 30 units should be operational for availing the benefit was not met since by 31.03.2010 only 16 units were operational."*

2. The issue in question in this appeal is with regard to the allowability of deduction u/s 80IA(4)(iii) of the Act.

3. The brief facts in this case are that the assessee had claimed deduction under Sec.80IA(4)(iii) of the Act for the first time in A.Y. 2003-04 and had since claimed it for all the subsequent years. The year under consideration i.e., A.Y. 2012-13 is the last year of its claim. The learned Authorised Representative submitted that the claim of the assessee was rejected in first two years i.e., 2003-04 and 2004-05. In the first year, assessee had lost the appeal before the learned Commissioner of Income Tax (Appeals), before ITAT, Pune and was in appeal before the Hon'ble Mumbai High Court and the decision is pending. The subsequent years i.e., in A.Ys. 2005-06 to 2009-10, the claim of the assessee was allowed. Again in A.Ys. 2010-11 and 2011-12,

the ACIT, Circle-11(2), Pune had rejected the claim of deduction under Sec.80IA(4)(iii) of the Act.

4. That in the relevant year, the assessee had submitted Form 10CCB and also submitted details of separate accounts being maintained for the rental income pertaining to software park and business income in respect of development activity. The detailed working of deduction claimed has been furnished before the learned Assessing Officer. The learned Assessing Officer observed that the assessee in Form 10CCB has stated that the construction was completed in phases in 2002, 2003, 2004 and 2005. Original proposed units were 30 and then revised to 105. In the application form, the proposed commencement was mentioned as December, 2003 when the assessee made a claim under Sec.80IA(4)(iii) for the first time in A.Y. 2003-04. The assessee was not entitled to deduction under Sec.80IA(4)(iii) in the first year and this was confirmed thereafter in the two appellate stages. That on this premise, the learned Assessing Officer disallowed the deduction claimed by the assessee under Sec.80IA(4)(iii) of the Act for A.Y. 2012-13.

5. That before the learned Commissioner of Income Tax (Appeals) detailed submissions were filed by the assessee and the first appellate authority after considering the assessment order and the submissions of the assessee primarily relied on the decision of Hon'ble Supreme Court in the case of DCIT Vs. Ganesh Housing Corporation Limited reported at 25 Taxmann.com 305 (SC) and held that the assessee has fulfilled all the conditions in order to claim deduction under Sec.80IA(4)(iii) of

the Act. The learned Commissioner of Income Tax (Appeals) also observed that the assessee had claimed deductions under the said provision in A.Ys. 2005-06 to 2009-10 which were allowed by the learned Assessing Officer. Further, in A.Y. 2011-12 which is the immediate preceding year, the claim of deduction under Sec.80IA(4)(iii) has been allowed by learned Commissioner of Income Tax (Appeals) and therefore, learned Commissioner of Income Tax (Appeals) for A.Y. 2012-13 also allowed deduction under Sec.80IA(4)(iii) of the Act the facts and circumstances being identical. At the time of hearing, the learned Authorised Representative apprised the Bench that for the preceding assessment year 2011-12 in assessee's own case in the appeal preferred by the Revenue before ITAT, Pune Benches, the Pune Tribunal had dismissed the appeal and sustained the relief provided by the learned Commissioner of Income Tax (Appeals) to the assessee. The learned Authorised Representative further submitted that the facts and circumstances are absolutely identical for this year also and therefore, the deduction allowed in the preceding year i.e., A.Y. 2011-12 should also be allowed in this relevant year also.

6. Per contra, the learned Departmental Representative placed strong reliance on the order of the learned Assessing Officer.

7. We have heard the rival contentions, perused the case records and analyzed the judicial pronouncements placed before us. That on recording the submissions of learned Authorised Representative and from the order of the learned Commissioner of Income Tax (Appeals), we find that in the preceding year i.e., A.Y. 2011-12, the learned Commissioner of Income Tax (Appeals) on this issue had given relief to

the assessee and on an appeal by the Revenue before the Pune Tribunal the relief was sustained. The relevant portion of the decision of Pune Tribunal in assessee's own case for A.Y. 2011-12 in I.T.A.No.1345/PUN/2016 is extracted hereunder :

*"We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the development, sale, lease and maintenance of property for residential and commercial purpose and also in the development of software park. The assessee owned two undertakings carrying on development, maintenance and operation of industrial park and development of residential and commercial complexes. The assessee had maintained separate books of account for both the undertakings. The assessee had claimed deduction under section 80IA(4)(iii) of the Act in respect of income from development, maintenance and operation of industrial park as per Industrial Park Scheme (IPS), 2002. The assessee was denied deduction under section 80IA(4) of the Act by the Tribunal in assessment year 2003-04 in ITA No.723/PN/2007, vide order dated 27.07.2011. The copy of said order is placed at pages 79 to 81 of Paper Book. The Hon'ble Bombay High Court in ITA No.484 of 2012 vide order dated 26.03.2013 has admitted the appeal of assessee, which is pending for disposal, copy of said order is placed at pages 82 and 83 of Paper Book. Thereafter, assessment for assessment year 2004-05 was completed under section 143(3) of the Act and deduction claimed was denied. The Tribunal in ITA No.536/PN/2012, vide order 26.11.2014 has upheld the addition, however, directed the Assessing Officer to follow the decision of Hon'ble Bombay High Court in view of declaration filed by the assessee under section 158A(1) of the Act. Meanwhile, the assessment order under section 143(3) of the Act was completed for assessment year 2005-06 on 28.12.2007. The copy of said order is placed at pages 112 to 118 of the Paper Book. The Assessing Officer notes that the undertaking had to be approved by the Ministry of Commerce & Industries in the Central Government. The terms and conditions of the scheme were amended and the assessee had complied with all conditions in assessment year 2005-06, relating to notification of CBDT for the first time. The Assessing Officer vide para 5 also notes the records for assessment years 2003-04 and 2004-05. Since the assessee had satisfied the requirement regarding number of units after the same was adopted at 105, the Assessing Officer held the assessee to have satisfied the conditions for assessment year 2005-06. Consequently, the Assessing Officer allowed deduction under section 80IA(4)(iii) of the Act to the assessee as per clause (6) of IPS, 2002. Thereafter, the Assessing Officer under section 143(3) of the Act, order dated 31.03.2010 for assessment year 2007-08 and vide order dated 22.10.2011 for assessment year 2009-10 allowed the deduction claimed under section 80IA(4)(iii) of the Act. The assessee for the year under consideration i.e. assessment year 2011-12 had claimed the deduction under section 80IA(4)(iii) of the Act at ₹ 62,38,339/- for which form No.10CCB was filed. The copy of the same is placed on record at pages 127 to 132 of the Paper Book. However, the Assessing Officer denied the claim of deduction to the assessee on the ground that it was not clear from the computation of income whether the assessee had derived any income from the eligible business of software park.*

7. Before the CIT(A), the assessee contended that the Assessing Officer had ignored the Profit and Loss Account relating to software business filed vide letter dated 14.02.2014. The assessee also referred to the computation of income, in which the assessee had earned income by way of rent and maintenance charges from software park amounting to ₹ 1,05,89,042/-. The assessee also filed the net rental income and business income eligible for deduction under section 80IA(4)(iii) of the Act as part of its submissions, which are reproduced at page 3 of appellate order. The CIT(A) in view of submissions of assessee and in view of allowing the claim of assessee in earlier years, allowed deduction under section 80IA(4)(iii) of the Act. The relevant findings of CIT(A) are in para 6.3 which is being referred to, but not being reproduced for the sake of brevity. In the totality of the above said facts and circumstances, where the learned Departmental Representative for the Revenue has failed to controvert the findings of CIT(A) in para 6.3 and in view of evidences filed by the assessee in audit report in form No.10CCB, we hold that the assessee is entitled to claim the aforesaid deduction under section 80IA(4)(iii) of the Act.

8. Before parting, we may also note that despite the disallowance of deduction in assessment years 2003-04 and 2004-05, the Assessing Officer himself had observed that the assessee had fulfilled all the conditions in assessment year 2005-06 and allowed the deduction to the assessee in the said year and also in subsequent years. The assessee has been allowed the aforesaid deduction by way of assessment order passed under section 143(3) of the Act for assessment years 2005-06, 2007-08 and 2009-10. ITA No.1345/PUN/2016 M/s. Marigold Premises Pvt. Ltd. 6 Consequently, we find no merit in the grounds of appeal raised by the Revenue and the same are dismissed. 9. In the result, the appeal of Revenue is dismissed.”

8. The learned Departmental Representative could not contravene these facts on record and also could not bring any material on record / evidences to show that the facts and circumstances for the relevant assessment year i.e., A.Y. 2012-13 were something different as compared to the facts for A.Y. 2011-12 which is the preceding year. When the facts and circumstances are absolutely identical, when there is no counter findings placed on record by the Department, we do not find any reason to deviate from the view taken in assessee's own case for A.Y. 2011-12 (supra) and following the same, we are of the considered view that the relief provided by the learned Commissioner of Income Tax (Appeals) to the assessee allowing the claim of deduction

under Sec.80IA(4)(iii) of the Act was done correctly and the said relief provided to the assessee is sustained.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced on 25<sup>th</sup> day of September, 2020.

**Sd/-**  
**(P.M. JAGTAP)**  
**VICE PRESIDENT**

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 25<sup>th</sup> September, 2020.  
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Appeals)-7, Pune.
4. Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,  
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.