आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'' B'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./**ITA Nos. 523-524/AHD/2019**
निर्धारण वर्ष/Asstt. Years: (2012-13 to 2013-14)

Jt. CIT(OSD), Circle-4(1)(1), Ahmedabad.	Vs.	Sheetal Infrastructure Pvt. Ltd., 25, 4th Floor, Shukan Mall, Nr. Rajahthan Hospital, Sahibaug, Ahmedabad. **PAN: AAICS9312A**

(Applicant)		**(Respondent)**

Revenue by :	Shri Sudhendu Das, Sr. D.R with Shri Rakesh Jha, Sr. D.R
Assessee by :	Shri S.N. Soparkar, Sr. Advocate with Shri Parin S. Shah, A.R

सुनवाई की तारीख/**Date of Hearing : 16/11/2022**
घोषणा की तारीख /**Date of Pronouncement: 08/02/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned two appeals have been filed at the instance of the Revenue against the separate orders of the Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad, of even dated 25/09/2018 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2012-2013 & 2013-14.

ITA 523/AHD/2018 for the AY 2012-13

2. The Revenue has raised the following grounds of appeal:

1. that the Ld.CIT(Appeals) has erred in law and on facts in deleting the disallowance of deduction u/s.80IB(10) of the Income Tax Act, 1961 of Rs.4,54,86,974/-

2. That the Ld.CIT(Appeals) has erred in law and on facts in deleing other alternative addition made by the AO of Rs.1,77,54,552/-

3. That the Ld.CIT(Appeals) has erred in law and on facts in deleting other alternative addition made by the AO of Rs.4,51,16,680/-

4. that the Ld.CIT(Appeals) has erred in law and on facts in allowing the adjustment of relief granted by the CIT(A) of Rs.18,04,810/-

3. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of deduction under section 80-IB(10) of the Act for Rs. 4,54,86,974/- only.

4. The facts in brief are that the assessee is a private company and engaged in the business of real estate developer and builder. During the year under consideration, the assessee was having five different housing projects. The assessee with respect to one project namely "Vedika E-Series" claimed that its profit is eligible for deduction under section 80IB(10) of the Act. As such, the assessee claimed deduction of Rs. 4,54,86,974/- being 100% of profit derived from such eligible project. The assessee submitted that the project "Vedika E-Series" met all the condition prescribed under section 80IB(10) of the Act.

4.1 However, the AO found that as per the provision of section 80IB(10) of the Act if a housing project is approved by the local authority during the period 1st April 2005 to 31st March 2008, then to avail the benefit of deduction, such project must be completed within 5 years form the end of the F.Y. in which the project was first approved by the local authority. In the case of the assesse, the construction permission for the project in dispute, was given by the "Kudasan Gram Panchayat" vide Raja Chitthi dated 16-03-2005 whereas the assessee claimed that plan was

approved by Gandhi Nagar Urban Development Authority (GUDA) as on 06-02-2008. As per the AO, the approval granted by the GUDA was representing the revised approval which was decipherable from the impugned approval 6th February 2008. Hence, the project was 1st approved by "Kudasan Gram Panchayat" vide Raja Chitthi dated 16-03-2005 and the assessee could not complete the project within the time limit allowed under the provisions of section 80 IB(10) of the Act. Therefore, the assessee cannot claim the deduction under the provisions of section 80 IB(10) of the Act. Hence, the deduction claimed was added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT-A.

6. The assessee before the learned CIT-A submitted that Shri Paras Pandit proprietor of M/s Sheetal Developer acquired right in the property located at 529/A kudasan village admeasuring 32,941 Sq mtr wherein 59 plots were developed vide approval dated 29-05-2004 which was subsequently revised on 8-02-2005 along with road sewage plan etc in the name of vedika-1 project. All these plots were sold in entirety in the financial years 2004-05 & 2005-06 to different persons through power of attorney. The income generated by the Shri Paras Pandit proprietor of M/s Sheetal Developer was offered to tax in the respective assessment years. Shri Paras Pandit proprietor of M/s Sheetal Developer while developing the plots has taken permission from the Panchayat Kudasan for office construction dated 16-03-2005.

6.1 In the meantime, the assessee company was incorporated dated 11-01-2005 which acquired all 59 plots admeasuring 32942 sq mtr in the financial year 2006-07. Subsequently, the assessee came up with a housing project with the name M/s Vedika e series on 8080 sq mtr of land out of the total area admeasuring 32942 Sq. Meters which was allotted plot no. 89 under the town planning scheme approved by GUDA dated 6th of February 2008. Thus, according to the assessee the 1st approval was granted by GUDA dated 6 February 2008 for the housing project which was completed with the BU permission dated 30 March 2012 which is well within the time prescribed

under the provisions of law. Thus, it was contended by the assessee that its project is eligible for deduction under the provisions of section 80 IB(10) of the Act.

7. The learned CIT-A after considering the assessment order and submission of the assessee observed that the right in the property was purchased initially by Shri Paras Pandit proprietor of M/s Sheetal Developer wherein the plots were developed and sold. The transaction of developing plots by Shri Paras Pandit proprietor of M/s Sheetal Developer and the development of the housing project are different and independent to each other. Even, the AO in his remand report has admitted that the 1st approval was granted by GUDA dated 6th February 2008 and the BU permission was obtained dated 30 March 2012 which is within the time prescribed under the provisions of law. However, the remand report of the AO was objected by the additional CIT who sought clarification about the 1st approval dated 16 March 2005 granted by Panchayat Kudasan. In the next remand report dated 23rd of March 2017, it was submitted that there was no record available for the 1st approval and therefore the relevant date for the approval of the impugned housing project was not ascertainable.

7.1 The learned CIT-A based on the remand report sought clarification from the GUDA vide letter dated 1 May 2017. In response to such letter, it was replied by the GUDA that the 1st approval for the project under consideration was granted vide letter dated 6th February 2008. In view of the above, the learned CIT-A allowed the ground of appeal of the assessee by holding that the assessee is eligible for its project for the deduction of its profit under the provisions of section 80IB(10) of the Act.

8. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

9. The learned DR before us submitted that the conditions as specified under section 80IB(10) of the Act have not been satisfied by the assessee as the project was not completed within stipulated time.

10. On the other hand, the learned AR before us filed a paper book running from pages 1 to 296 and contended that the approval was granted 1st time by the GUDA vide letter dated 6th February 2008 and the project was completed on or before 30 March 2012 as evident from the BU permission. As such, all the requisite conditions as specified under section 80IB(10) of the Act have been duly complied with.

11. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee company was incorporated dated 11 January 2005 and the plots being 59 in numbers admeasuring 3294 2 Sq. meters were acquired in the financial year 2006-07. In other words, there was no piece of land available with the assessee as on 16 March 2005. Accordingly, the question of taking the permission for the project in dispute does not arise. Furthermore, on perusal of the permission given by the Panchayat Kudasan dated 16 March 2005, it is revealed that such permission was given for the construction of the office premises and it has nothing to do with the housing project of the assessee. Accordingly, no credence can be given to such permission as given by Panchayat Kudasan in the context of the housing project in dispute.

12.1 At this juncture, it is also important to note that Shri Paras Pandit proprietor of M/s Sheetal Developer has already taken permission from the GUDA in the financial year 2004-05 while developing the plots on the same piece of land. Maybe for that reason, the GUDA has also written the revised approval in the letter dated 6 February 2008 as on earlier occasion, the permission for the development of the plots was

granted on the same piece of land. Be that as it may be, GUDA vide letter dated 1 May 2017 has categorically stated that the 1st approval for the housing project was granted as on 6th February 2008. The relevant contents of the letter read as under:

> *Subject:Regarding information of Final Plot No.89, Original Plot No.89 of Town Planning Scheme No.03 (Kobra-Kudasan) of Revenue Survey No.529/A/Paiki of Mouje Kudasan.*
>
> *Ref: Letter No.CIT(A)-8/Misc./2017-18/55 dated 20/04/2017 of your Goodself.*
> *Respected Sir,*
>
> *It is submitted with regard to the above subject that Cedika E-Series Projects of M/s.Shital Infrastrucuture Pvt. Ltd. situated in Final Plot No.89, Original Plot No.89 of Town planning Scheme No.03 (Koba-Kudasan) of Revenue Survey No.529/A/Paiki of Mouje Kudasan has been approved by this office first on dated 06/022008 which may please be noted.*
>
> *Yours faithfully,*
> *Sd/- Illegible,*
> *Senior Town Planner,*
> *Gandhinagar Urban Development*
> *Authority, Gandhinagar*

12.2 Without prejudice to the above, the AO in his remand report has not passed any negative remark with respect to the permission granted by the Panchayat Kudasan dated 16 March 2005 whether it was related to the housing project which is in dispute.

12.3 At this juncture, it is also important to note that the Revenue in the earlier year has allowed the deduction under section 80IB(10) of the Act to the assesse with respect to the same project which has been disputed in the year under consideration. The Hon'ble Gujarat High Court in the case of Principal Commissioner of Income Tax 2 Vs Maps Enzymes Limited in R/tax appeal No. 82 of 2019 has held as under:

> *20. One another important aspect which Mr. Soparkar brought to our notice is that the claim towards deduction for the A.Ys. 2004-05, 2005-06, 2006-07 and 2007-08 came to be It is only with respect to the fifth and the last A. Y. 2008-09 that this issue was raised by _the department. According to Mr. Soparkar, having allowed the deduction under section 80JJA for four consecutive years, the department could not have raised the objection^ with respect to the last and the fifth year of the assessment i.e., 2008-09. Mr. Soparkar, in support of his aforesaid submission, has placed reliance_on two orders. One order passed by this Court in the case of* ***Principal Commissioner of Income Taxj/s. Quality BPO Services Pvt. Ltd.,*** *Tax Appeal No.439 of 2016, decided on 14th June, 2016 and the judgment of the Bombay High Court in the case of* ***Simple Food Products (P.) Ltd. vs. Commissioner of Income-Tax-ll, Nagpur,*** *reported in (2017) taxmann.com 239 (Bombay).*

21. 21. We take notice of the fact that the decision of this Court in the case of Quality BPO Services Pvt. Ltd. (supra) was one with respect to disallowance of deduction as claimed under Section 10B of the Act, 1961, whereas in the Bombay High Court decision in the case of Simple Food Products (P.) Ltd. (supra), the subject matter of deduction under Section 80IB of the Act. However, the ratio of both the decisions is that where the deduction is granted for an initial assessment year, the same cannot be rejected for the subsequent assessment years unless the relief for the initial year has withdrawn.-3.We may quote the relevant observations made by the Bombay High Court in Simple Food Products (supra).
"According to us. the entire issue is no longer res-Integra. The impugned order of the Tribunal has. after recording that the appellant Assessee relies upon the decision of this Court in Paul Brothers (supra) has not dealt with the same. It gives no finding as to why and in what manner it would not apply to the present facts. Further, we find that distinction which has been made in the impugned order of the Tribunal with regard to Dinshaw Frozen Foods Ltd. (supra) viz. that the assessment in that case has been completed under Section 143(3) of the Act in initial year and it is only in such cases that the Revenue be barred from denying the claim for deduction in the subsequent Assessment Years, unless the claim for deduction has been withdrawn in the initial year when deduction was claimed and allowed unlike an assessment which is completed under Section 143(1) of the Act. We have perused the decision of this Court in Dinshaw Frozen Food Ltd. Nagpur (supra) which in turn has followed the decision Paul Brothers (supra). We note that there is no finding in the two orders to the effect that the in the initial year the claim under Section 8OIA/IB of the Act was granted by virtue of an order passed under Section 143(3) of the Act. Nothing has been brought on record to indicate that there has been some change in manufacturing process from that existing when the claim was allowed in the initial year i.e. Assessment Year 1996-1997 and subject Assessments. The intent/object of the deduction under Section 8OIA/1B of the Act is to encourage setting up of industries to manufacture goods which are not specified in the Eleventh Schedule to the Act.

(k) The distinction sought to be made by Mr. Bhattad learned counsel for the Revenue that the claim for deduction in Paul Brothers (supra) the deduction was an investment based deduction, while in the present case, we are concerned with the performance base deduction. This is in fact no distinction. In absence of the Revenue being able to establish that for the subject Assessment Years, the facts with regard to the performance were different from facts with regard to the performance in which the claim for deduction in initial year was allowed, the grant of deduction in the subsequent subject Assessment Year cannot be withheld. The other issue raised by Mr. Bhattad that merely because a claim was allowed in an earlier year would not prohibit the revenue from disallowing the claim in subsequent assessment years is no longer res-integra as this Court in Paul Brothers (supra) as it is categorically held that in absence of deduction granted in the initial Assessment Years being withdrawn, the relief for subsequent Assessment Years could not be withheld. The basis for the same is found in sub-clause (3) under Section 801 A/IB of the Act which gives deduction for 10 consecutive years to the profit and gains of an Industrial undertaking from initial year of assessment when the deduction was allowed, subject to the condition laid down therein. It is not the Revenue's contention that the condition in clause (3) of Section 8013 of the Act has not been fulfilled. Therefore, once deduction is granted in the initial Assessment Year, the same would continue for the period of 10 consecutive year unless the relief for initial year is also withdrawn at the time of withholding the relief under Section 80IA/IB of the Act

(I) Mr. Bhattad also points out that under the Act, there is distinction between assessment which has been completed under Section 143(3) of the Act and intimation given to Assessee under Section 143(1) of the Act. In support of, he places reliance in Rajesh jhaveri Stock Brokers, (supra) which brings out the distinction, by pointing out that an intimation under Section 143(1) of the Act is only a ministerial act and no examination of the claim is made by the Assessing Officer. However, one must recognize the fact that the aforesaid decision in case

of Rajesh jhaveri Stock Brokers (supra) was rendered in the context of reopening of assessments. As against that the decisions of this Court in Paul Brothers (supra) and Dinshaw Frozen Food Ltd. Nagpur (supra) were while dealing with deduction under Chapter VI-A of the Act. This Court in the above two cases has very categorically held that in absence of relief/deduction for the initial year being withdrawn, the relief under Chapter Vl-A of the Act (Section 801 A/801 B of the Act) in case of Dinshaw Frozen Food Ltd, Nagpur (supra) cannot be withheld for the subsequent years. The manner in which the relief has been granted in the initial Assessment Year is not determinative for withholding the relief in the subsequent Assessment Years. In-fact, in Paul Brothers (supra), our Court had occasion to observe the deduction allowed in the initial year i.e. Assessment Year, 1980-198] was without any discussion.

(m) According to us, the decision of this Court in Paul Brothers (supra) and the Dinshaw Frozen Food Ltd. Nagpur (supra), conclude the issue in favour of the appellant Assessee and against the Revenue.

(n) Thus, the substantial questions of at No.l is answered in the affirmative i.e. in favour of the appellant-Assessee and against the Revenue,

5. Regarding Question No.2::-

(a) Mr. Thakar, learned counsel for the appellant Assessee states that in view of our answer to question No.l above, he does not press this question.

(b) Therefore, no occasion to examine question No.2 arises

6. Accordingly, appeal allowed. No order as to costs."

22. We may also quote the relevant observations made by this Court in Quality BPO Services Pvt. Ltd. (supra).

"2, The issue pertains to the assessment year 2008-09 and concerns the respondent-assessee's deduction of Rs. 67.08 lacs (rounded off) claimed under Section 10B of the Income Tax Act, 1961 ['the Act' for short]. The contention of the Revenue is that, the assessee had not produced the approval by the Board appointed for suchpurpose by the Central Government in exercise of powers conferred under Section 14 of the Industries (Development and Regulation) Act, 1951, as required under Explanation 2 Clause (iv) to Section 1 OB of the Act.
3. Learned counsel Mr. Patel for the Revenue vehemently contended that the assessee had obtained such approval certificate from the Director, Software Technology Park of India, which may be a Government of India Authority cannot substitute the authority prescribed in Clause (iv) to the said explanation.
4. This contention we are not inclined to examine in view of the fact that, admittedly, in the first year of claim of the assessee under Section 10B of the Act i.e. the assessment year 2007-08, such claim was granted. In the subsequent assessment years also, i.e. in the assessment years 2010-11 and 2011-12, such claim was made and accepted by the Department. We may notice that Section 10B pertains to special provisions in respect of newly established hundred per cent export-oriented undertakings. Sub-section (1) of Section 10B provides for deduction of profits and gains derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive years beginning with assessment relevant to the previous year in which the undertaking begins to manufacturer, produce articles or things or computer software from the total income of the assessee. Thus, the provision envisaged is for a period of ten consecutive years commencing from the first year during which the undertaking begins to manufacture or produce articles, things or computer

software, as the case may be. When the Revenue therefore, did not question the certification by the Director, Software Technology Park of India, in the initial year of the claim made by the assessee as well as in the subsequent years, it would not be open for the Revenue to pick one year out of a total of ten consecutive years for different treatment that too without offering any explanation for the same. We would refer to Gujarat High Court Judgement in case of Saurashtra Cement & Chemical Industries Ltd. vs. Commissioner of Income Tax, Gujarat-V reported in 123 ITR 669 and a later judgement in Tax Appeal No. 1367 of 2010 dated 14.09.2011 in case of Commissioner of Income Tax vs. M/s. TJ.Agro Fertilizers Pvt. Ltd.

5. In the result, tax appeal is dismissed."

23. The Delhi High Court, in ***Commissioner of Income-Tax] vs. Rio Tinto India (P.) Ltd.,*** *reported in (2012) taxmann.com 259 (Delhi), observed as under:*

> *"This Court is of the opinion that reasoning given by the AO in his order for the assessment year 1998-99 is clear and conclusive. It accepted the assessee's contentions with regard to having commenced business with effect from 01.01.1997. It was only on the basis of such a fundamental premise that income was assessed and certain disallowances were made. In these circumstances, it would be unfair for the revenue to contend for each successive assessment year that the assessee had to establish that it "commenced business." The evidence on record clearly shows that substantial services were being rendered and salaries etc. were disbursed even though on reimbursement basis. The mere fact that other service charges are meagre in nature would not, in any way, influence the decision as to whether business was commenced. Furthermore, in line with the decision of this Court in E5PN (supra) the question of date of commencement of business is one of fact. Having regard to these circumstances, it is held that the findings of the Tribunal in the impugned common judgment and order are sound and do not call for interference. The question of law is accordingly answered in favour of the assessee and against the revenue."*

24. We are of the view that the Appellate Tribunal committed no error, not to speak of any error of law in passing the impugned order. When the department thought fit to grant the deduction for four consecutive years, there was no reason to raise any objection with regard to admissibility of such deduction under Section 80JJA in the fifth and the final assessment year 2008-09.

12.4 In view of the above, we hold that the assesse cannot be denied the benefit of the exemption claimed under section 80IB (10) of the Act as deduction was allowed by the revenue in the initial assessment year. Accordingly, we do not find any merit in the appeal filed by the Revenue. Hence, the ground of appeal of the revenue is hereby dismissed.

13. The next issue raised by the revenue is that the learned CIT-A erred in not allocating the common expenses to the eligible and non-eligible units based on the turnover which has resulted higher amount of deduction to the assessee under the provisions of section 80IB(10) of the Act.

14. The AO in his order also observed that the common expenses has not been allocated by the assessee in eligible and non-eligible project properly. This observation was made by the AO alternatively and without prejudice to the fact that the assessee is not eligible for deduction under the provisions of section 80IB (10) of the Act. As per the AO, the assessee has shown identical gross profit ratio for its eligible and non-eligible projects i.e. 44.13% and 43.79% of the turnover whereas there was vast difference in the net profit declared by the assessee for its eligible and non-eligible projects i.e. 33.42% and 10.48% of the turnover which was mainly on account of improper allocation of common indirect expenses. As such, the assessee has allocated 81.20% of the common expenses being administrative, selling, finance and other expenses to the taxable projects whereas the assessee has allocated such common expenses to the tune of 21.80% to the eligible projects. It was submitted by the assessee that the common expenses have been allocated based on the saleable area of the eligible and non-eligible project i.e. 19% and 81% of the total common expenses. This method/ basis was also adopted in the earlier and later years which was accepted by the Revenue. According to the assessee, the expenses have to be incurred in relation to the size of the projects irrespective of the sales which is recognized over a period of the project. It was also contended by the assessee that the total cost of the eligible project was of ₹20.47 crores against the amount received from the customers/members of ₹22.40 crores. As such, no borrowed fund was utilized towards the eligible project and accordingly the question of allocating the finance cost does not arise. Yet the assessee, has allocated the interest expenses to the eligible project based on the area of construction.

14.1 However, the AO was not satisfied with the contention of the assessee and allocated the common expenses in the ratio of turnover. As such the assessee has allocated the sum of Rs. 1,77,54,552.00 on the basis of the turnover being 42.16% to the eligible projects. Thus, the AO made the alternate addition of Rs. 1,77,54,552.00 to the total income of the assessee.

15. Aggrieved assessee preferred an appeal to the learned CIT-A who has allowed the ground of appeal of the assessee by observing as under:

> *7.4 There is no prescribed formula for allocation of common expenses in different projects having different tax treatments as is the case with the appellant. The test of the formula adopted by any assessee depend so the reasonableness and consistency. An assessee cannot change the method to suit the requirement or with purpose to reduce the income of a particular project. Also, the AO cannot adopt or change the formula just for the purpose of increasing the profits of taxable projects. In the case at hand appellant has allocated the expenses on the basis of saleable area of all. projects consistently and in the earlier years as well as in the subsequent year the same has not been disputed by ihe department. Out of 6 projects appellant has one project namely Vedica E series the profits of which are eligible for deduction u/s.80lB(10) of the Act. As per the AO the correct criteria should be the turnover of each project. As per the appellant the turnover is not the most scientific method in their case for the reasons that (a) they have followed the method of allocation on the basis of saleable area consistently , (b) if the method is now changed it has to be changed • for all the years in which the income is recognized of any project, and in some years including the year under consideration after considering the specific allocation of finance cost the profits of eligible project would / increase and fc) the appellant follows percentage of completion method (POCM) and the actual profit of the project can only be ascertained when the project is completed; the turnover on the basis of sales reflected in the earlier years before the final completion may not be a true indicator of the work carried out in the project as in some projects even after fully completing the project there may not be enough sales whereas in some projects not fully completed there may be more sales than the percentage of area constructed. I find that appellant has been following the method of allocation of common expense on the basis of saleable area of a particular project till the project is completed and BU permission is received which has been accepted in the earlier years by the Department also, I also find force in the arguments of the appellant that no part of finance cost can be attributed to the eligible project for the reasons that the realization of revenue of the eligible project is higher than the expense thereon. As mentioned earlier there is no prescribed method to allocate the common expenses and in the case at hand on the method deployed by the appellant to allocate the common expense on the basis of total saleable area consistently is a reasonable method as in a particular year the turnover realized may not be in commensurate with the construction work carried out and expense laid out. Moreover, merely, because the allocation of common expenses on the basis of turnover results into higher income in any one project in comparison to the other projects is not a reason for discarding the otherwise reasonable , consistently followed and accepted method. For these reasons I do not find any merit in the action of AO and accordingly, the alternate disallowance amounting to Rs.1,77,54,552/- is not sustainable and directed to be deleted.* ***Ground No.3 of the appeal is allowed.***

16. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

17. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

18. We have heard the rival contentions of both the parties and perused the materials available on record. In the case on hand, the assessee has allocated the common expenses between the eligible and non-eligible project based on the area of construction which was also accepted by the Revenue in the later and the earlier years. Accordingly, we are of the view that the principle of consistency has to be adopted as held by the Hon'ble Supreme Court in the case of CIT versus Excel Industries Ltd reported in 358 ITR 295 wherein it was held as under:

> ***"28.*** *Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.*
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> ***29.*** *In Radhasoami Satsang Saomi Bagh v. CIT [1992] 193 ITR 321/60 Taxman 248 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from Hoystead v. Commissioner of Taxation, 1926 AC 155 (PC) wherein it was said:*
>
> > *"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."*

18.1 Furthermore, we note that there is a defect in adopting the basis of allocating the common expenses between eligible and non-eligible projects on turnover ground. It is for the reason that, there can be a situation where the sale of a particular project is of negligible value in a particular year whereas the cost of construction has already been incurred by the assessee. In that eventuality, the financial positions of the assessee will represent distorted position if the common expenses are allocated based on turnover. Thus, we are of the view that the assessee has rightly adopted the basis of allocating the common expenses based on the area of construction of eligible and

non-eligible projects. Hence, we do not find any merit in the ground of appeal raised by the revenue. Thus, the ground of appeal of the revenue is hereby dismissed.

19. The next issue raised by the revenue is that the learned CIT-A erred in deleting the alternate addition made by the AO for Rs. 4,51,16,680.00 only.

20. The AO further on alternate basis observed that if the contention of the assessee is presumed to be correct that the allocation of common expenses between the eligible and non-eligible projects based on the turnover will portray distorted financial position, then also the cost of the common expenses as allocated by the assessee should be apportioned in the work in progress shown by the assessee for its eligible and non-eligible projects. Accordingly, the AO allocated the common expenses between the sales of all the projects and working progress shown of all the projects being eligible and non-eligible projects and made the addition of Rs. 4,51,16,680.00 in the manner as discussed below:

	Taxable	*80IB*
Total expenses incurred during the year	*42,59,10,774/-*	*11,94,80,474/-*
Cost of Sales accounted during the year (COS)	*10,51, 29, 172/-*	*7,60,84,708/-*
CWIP of the year	*32,07,81,601*	*4,33,95,766*
Ratio of COS:CWIP	*24.68 : 75.32*	*63.68 : 36.32*
Expenditure allocated by the assessee (7.79cr)	*5.99cr*	*1.80cr*
Expenditure related to sales	*1,47,83,320*	*1,14,62,400*
Expenditure related to CWIP	*4,51,16,680*	*65,37,600*

Therefore, as a result of apportionment of the common expenditure between the sales and the CWIP, there is increase of Rs, 5,16,54,280 in Closing WIP of the company. This increase will go to increase of profit of the company in P&L account. Therefore Rs. 5,16,54,280 needs to be added to gross total income admitted. On account of allocation of common expenses the deduction u/s 80IB also gets increased by Rs.65,37,600 which is allowed from Gross Total income. The total income for the year is worked out as under:

Gross total income as per working of the assessee 7,13,68,873
Add: Increase in revised CWIP 5,16,54,280
12,30,23,153

Revised working of 80IB deduction
Deduction worked out by assessee 4,54,86,974
Add: increase in CWIP of 80IB project 65,37,600
5,20,24,574

Revised total income [before working other deductions] 12,30,23,153
Ch VI A deduction 5,20,24,574
Donation 25.000 5,20,49,574
5,20,49,574/- 7,09,73,479
(Alternate addition Rs. 4,51,16,680)
(51654280-6537600)

21. Aggrieved assessee preferred an appeal to the learned CIT-A who deleted the addition made by the AO by observing as under:

> ***8. Ground No. 4*** *of the appeal is relating to the alternative addition of Rs.4,51,16,680/- by the AO by taking the selling, administrative expense and finance cost to closing Work in Progress (WIP). The reason given by the AO is that since as per the admission of the appellant, in the real estate project the sales are not indicator of the actual work carried out or the stage of completion, hence, these expenses were apportioned by the AO between the WIP and the sales in their proportion to the total of both.*
> *8.1 in the course of appellate proceedings as well as in the grounds of appeal the appellant vehemently contended that the alternate disallowance made by the AO is in utter disregard the accepted accounting principle as well as the method followed by the appellant in recognizing the income on the basis of percentage of completion method as per AS-7, AS-16 & revenue recognition guidance note issued by ICAI in this regard which has been widely accepted in the cases of real estate by the Department. Appellant further contended that the appellant was not at all given any opportunity of being heard by the AO and AO by way of a general discussion on the sales vis-a-vis the stage of completion allocated these expenses to WIP. in fact the appellant contended that by this corollary the income of the eligible project for deduction u/s.80IB(10) would increase as a part of the expense allocated to that project would form a part of WIP as the sales part has not been questioned by the AO. Further, in the subsequent year(s) the AO has accepted the appellant's accounts and not' allocated such expenses to WIP in the assessment made u/s.143(3) of the Act. Copy of the order was filed by the appellant.*
>
> *8.2 Appellant follows percentage of completion method (PCOM) to recognize the income of various projects consistently, which has been accepted by the Department year after year in the earlier years as well in the subsequent years. PCOM is being followed according to the Accounting Standard(AS) - 7 and the Guidance Notes issued by Institute of Chartered Accountants of India (ICA) in this regard. As per the AS-7 and Guidance Note, according to PCOM revenue is recognized when sales of 25% or more are received and the construction is carried out to this extent. The expenses relating to construction and directly attributable to a particular project is also recognized to the extent of sales by matching principle taken out from WIP. The finance cost, selling and administrative expenses and selling and marketing expense are not part of WIP as per PCOM according to AS-7, AS-16 and Guidance Notes. Para 17 of AS-7 states as below:*
>
> > *" I7. Costs that may be attributable to contract activity in general and can be allocated to specific contracts include: (a) insurance; (b) costs of design and technical assistance that is not directly related to a specific contract; and (c) construction overheads. Such*

costs are allocated using methods that am systematic and rational and are applied, consistently to all costs having similar characteristics. The allocation is based on the normal level of construction activity. Construction overheads include cost such as the preparation and processing of construction personnel payroll. Costs that may be attributable to contract activity in general and can be allocated to specific contracts also include borrowing costs as per Accounting Standard (AS) 16. Ben-owing Costs."

Pare 19 of AS-15 states as below:
"Cessation of Capitalization 19: Capitalization of borrowing costs should cease when substantially ail the activities necessary to prepare the qualifying asset for its intended use or sale are complete."

In the case of the appellant the Vedica- E series has actually been completed during the year and Building Use (BU) Permission is also received on 30.U3.2012 as also noted by the AO. Further, section 36f1)(iii; of the Act allows the finance cost to be charged to revenue once and asset is put to use and income is recognized., in the case at hand the appellant has been following PCOM consistently =md which has also been accepted by Hie department in other years including in the assessments made u/s. i.e in A.Y. 2013-14 & 2011-12. In view of these facts and the legal position the allocation of expenses towards finance, administrative and selling expense to WIP made by AO is not sustainable and accordingly the alternate disallowance of Rs.4,51,16,680/- is deleted. Ground no.4 of the appeal is allowed.

22. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

23. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

24. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the Revenue in the earlier year has not allocated any common expenses incurred by the assessee on projects in the ratio of the units sold and the units shown as work in progress. Accordingly, we are of the view that the principle of consistency has to be adopted as held by the Hon'ble Supreme Court in the case of Excel Industries *(supra)*.

24.1 Furthermore, in the long run, there will not be any impact on the income of the assessee. It is for the reason that if any addition is made to the work-in-progress shown at the end of the financial year which will certainly enhance the income of the year in dispute but this closing work in progress will become the opening work-in-progress in the subsequent year and the profit of the subsequent year will be reduced

by the same amount of addition made in the year under consideration. Accordingly, in the given facts and circumstances, we do not find any reason to interfere in the finding of the learned CIT-A. Hence, we direct the AO to delete the addition made by him. Thus, the ground of appeal of the revenue is hereby dismissed.

24.2 In the result the appeal filed by the revenue is hereby dismissed.

Now Coming to the ITA No. 524/Ahd/2019 for A.Y. 2013-14.

25. The first issue raised by the Revenue is that the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of deduction u/s 80IB(10) of the Income Tax Act, 1961 of Rs. 2,95,62,785/-

26. At the outset, we note that the issues raised by the Revenue in its grounds of appeal for the A.Y 2013-14 are identical to the issues raised by the Revenue in ITA No. 523/Ahd/2018 for the assessment year 2012-13. Therefore, the findings given in 523/Ahd/2018 shall also be applicable for the year under consideration i.e. AY 2013-14. The ground appeal of the Revenue for the assessment 2012-13 has been decided by us vide paragraph No. 12 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2012-13 shall also be applied for the year under consideration i.e. AY 2013-14. Hence, the ground of appeal filed by the Revenue is hereby dismissed.

26.1 In the result, the ground of appeal of the Revenue is dismissed.

27. The second issue raised by the Revenue is that the ld. CIT(Appeals) has erred in law and on facts in deleting other alternative addition made by the AO of Rs. 1,31,97,925/- only.

28. At the outset, we note that the issues raised by the Revenue in its grounds of appeal for the AY 2013-14 are identical to the issues raised by the Revenue in ITA No. 523/Ahd/2018 for the assessment year 2012-13. Therefore, the findings given in 523/Ahd/2018 shall also be applicable for the year under consideration i.e. AY 2013-14. The ground of appeal of the Revenue for the assessment 2012-13 has been decided by us vide paragraph No. 24 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2012-13 shall also be applied for the year under consideration i.e. AY 2013-14. Hence, the ground of appeal filed by the Revenue is hereby dismissed.

29. The issue raised by the revenue is that the learned CIT-A erred in deleting the addition made by the AO for ₹11,41,532.00 relying on the order of the earlier year.

30. There were certain expenses towards the purchase of land incurred by the assessee in the assessment year 2009-10 amounting to ₹82,60,000.00 only. The assessee part of such expenses claimed as deduction amounting to Rs. 11,41,532.00 based on the construction cost. However, the AO disallowed the same by observing as under:

> *The claim of the assessee is not acceptable for the following reasons.*
> *(a) The assessee has made claim in the revised return of income on the basis of order of Id. CIT(A). However, the revenue has not accepted the decision of the Id. CIT(A) and further appeal has been filed before the Hon'ble ITAT.*
>
> *(b) The assessee incurred the said expenditure of Rs.82,60,000/- in cash. Therefore, as per the provisions of section 40A(3) of the Act, the expenditure incurred in cash cannot be allowed as an expenditure.*
>
> *(c) As per the direction of Id. CIT(A), the assessee should have added the expenditure of Rs.82,60,000/- in the closing WIP of the corresponding scheme in the year of expenditure i.e. A.Y. 2009-10. Since, the assessee did not claim the said expenditure by way of addition in WIP in A.Y. 2009-10, the said expenditure cannot be claimed- As held in the assessment order of A.Y. 2009-10, the assessee failed to establish the genuineness of expenses.*
>
> *8.6 Accordingly, the claim of expenditure of Rs. 11,41,532/- is hereby rejected and the same is added to the total income of the assessee. Penalty proceedings u/s. 271(1)(c) are initiated for furnishing inaccurate particulars of income.*

31. Aggrieved assessee carried the matter before the learned CIT-A who deleted the addition made by the AO by observing as under:

8.1 In the course of appellate proceedings, appellant furnished copies of the order of Hon'ble ITAT on this issue in ITA No.17/Ahd/2014 dated 14.06.2017 pertaining to A.Y.2010-11 and order in ITA No. 2310/Ahd/2015 dated 01.02.2018 pertaining to A.Y.2011-12 wherein the Hon'ble ITAT allowed the appeal of the appellant on this issue. Facts of the case continue to be same hence, respectfully following the decision of Hon'ble ITAT referred supra amounting to Rs.11,41,532/- is deleted. ***Ground No. 4 of the appeal is allowed.***

32. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

33. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

34. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that, the learned CIT-A following the order of the ITAT in the own case of the assessee in the earlier year has allowed the deduction to the assessee. At the time of hearing, the learned DR has not brought anything on record suggesting that the order of the ITAT has either been reversed by the higher forum or there is available any contrary judgement of the higher authority. Thus, we do not find any infirmity in the order of the learned CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.

34.1 In the result, the appeal of the Revenue is hereby dismissed.

35. In the combined results, both the appeals filed by the Revenue are dismissed.

Order pronounced in the Court on 08/02/2023 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 08/02/2023

Manish