आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

श्री आर. के. पांडा, लेखा सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI R.K. PANDA, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / **ITA Nos.2210 & 2211/PN/2014**
निर्धारण वर्ष / **Assessment Years : 2007-08 & 2010-11**

ITO, Ward-7(1), Pune .... अपीलार्थी / Appellant

बनाम v/s

M/s. System Enterprises,
289, Tej House,
M.G. Road, Pune – 411001
PAN : AAFFS5784G .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri P. L. Kureel
प्रत्यर्थी की ओर से / Respondent by : Shri Vipin Gujrathi

सुनवाई की तारीख / Date of Hearing :09.11.2016		घोषणा की तारीख / Date of Pronouncement:11 .11.2016

आदेश / ORDER

PER R.K.PANDA, AM :

The above 2 appeals filed by the Revenue are directed against the separate orders dated 25-09-2014 of the CIT(A)-II, Pune relating to Assessment Years 2007-08 & 2010-11 respectively. Since identical grounds have been taken by the Revenue in both these appeals, therefore, these were heard together and are being disposed of by this common order.

2. First we take up ITA No.2210/PN/2014 for A.Y. 2007-08 as the lead case. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of Builders. It filed its return

of income on 31-10-2007 declaring NIL income after claiming deduction of Rs.55,68,568/- u/s. 80IB(10) of the I.T. Act. The return was processed u/s.143(1) of the I.T. Act. Subsequently, the Assessing Officer issued notice u/s.148 which was served on the assessee on 19-12-2012. It was replied by the assessee that the return filed on 31-10-2007 may be treated as return filed in response to notice u/s.148 of the I.T. Act. During the course of assessment proceedings the Assessing Officer noted that the assessee has continued construction of a housing project by the name "Kailash Kutir" on a piece of land at Survey No.9, Hissa No.21A to 21D & 27 Wanowrie, Pune – 40. The project comprises of 7 row houses and 56 flats in A, B & C buildings as per commencement certificate No.CC/1951/05 dated 25-08-2005 issued by PMC. The Assessing Officer asked the assessee to justify the claim of deduction u/s.80IB(10) of the I.T.Act. Rejecting the various explanations given by the assessee and following the order of his predecessor for A.Y. 2009-10 which has been upheld by the CIT(A) the Assessing Officer disallowed the claim of deduction u/s.80IB(10) of the I.T.Act.

3. In appeal the Ld.CIT(A) following the order of the Tribunal in assessee's own case for A.Y. 2009-10 vide ITA No.1123/PN/2013 dated 28-08-2014 allowed the claim of deduction u/s.80IB(10) made by the assessee.

4. Aggrieved with such order of the CIT(A) the Revenue is in appeal before us with the following grounds :

> "1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in allowing the assessee's claim of deduction u/s.80IB(10) without appreciating the fact that the assessee has not fulfilled conditions laid down in sub-clause (1) of section 80IB(10) of the I.T. Act, 1961 for claiming deduction u/s.80IB(10).

> 2. The order of the CIT(A) be vacated and that of Assessing Officer be restored on this issue.
>
> 3. The appellant craves to add, alter, amend, substitute or delete any of the grounds urged herein above as and when found necessary".

5. The Ld. Counsel for the assessee at the outset submitted that the Assessing Officer while disallowing the claim of deduction u/s.80IB(10) has followed the order of his predecessor for A.Y. 2009-10 which has been upheld by the CIT(A). Referring to the decision of the Tribunal in assessee's own case for A.Y. 2009-10 vide ITA No.1123/PN/2013 order dated 26-08-2014 he submitted that the Tribunal has already allowed the claim of deduction u/s.80IB(10) by setting aside the order of the CIT(A). He submitted that since the Ld.CIT(A) while allowing the claim of deduction has followed the order of the Tribunal for A.Y. 2009-10 which was the basis for disallowance by the Assessing Officer, therefore, the order of the CIT(A) be upheld and the ground raised by the revenue should be dismissed.

6. The Ld. Departmental Representative on the other hand fairly conceded that the issue stands decided in favour of the assessee by the decision of the Tribunal for A.Y. 2009-10.

7. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the decision of the Tribunal in assessee's own case for A.Y. 2009-10. We find the Assessing Officer following the order of his predecessor for A.Y. 2009-10 which has been upheld by the CIT(A) disallowed the claim of deduction u/s.80IB(10) on the project "Kailash Kutir". We find the CIT(A) following the order of the Tribunal in assessee's

own case for A.Y. 2009-10 allowed the claim of deduction made by the assessee u/s.80IB(10). Since the very basis of disallowance u/s.80IB(10) was the reasonings given in the order for A.Y. 2009-10 and since the Tribunal has already decided the issue in favour of the assessee for A.Y. 2009-10 vide ITA No.1123/PN/2013 dated 28-08-2014, therefore, in absence of any contrary material brought to our notice against the order of the Tribunal for A.Y. 2009-10 we find no infirmity in the order of the CIT(A) allowing the claim of deduction u/s.80IB(10). Accordingly the grounds raised by the Revenue are dismissed.

<u>ITA No.2211/PN/2014 (A.Y. 2010-11) :</u>

8. Grounds raised by the Revenue are as under :

> "1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in allowing the assessee's claim of deduction u/s.80IB(10) without appreciating the fact that the assessee has not fulfilled conditions laid down in sub-clause (1) of section 80IB(10) of the I.T. Act, 1961 for claiming deduction u/s.80IB(10).
>
> 2. The order of the CIT(A) be vacated and that of Assessing Officer be restored on this issue.
>
> 3. The appellant craves to add, alter, amend, substitute or delete any of the grounds urged herein above as and when found necessary".

9. After hearing both the sides, we find the above grounds by the revenue are identical to the grounds raised by the revenue in ITA No.2210/PN/2014. We have already decided the issue and the grounds raised by the revenue have been dismissed. Following the same reasonings, the grounds raised by the revenue for this year are also dismissed.

10. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 11-11-2016.

Sd/-	Sd/-
(VIKAS AWASTHY)	**(R.K. PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 11th November, 2016.
सतीश

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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