IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

ITA No. 966/Chd/2014
(Assessment Year : 2007-08)

The D.C.I.T., Circle 1(1), Chandigarh. PAN: AIIPS8699B (Appellant)	Vs.	Sh.Sham Sunder Sharma, SCO 220, Sector 9-C, Chandigarh. (Respondent)

Appellant by : Shri Manjit Singh, DR
Respondent by : Shri N.K.Saini

Date of hearing : 08.06.2015
Date of Pronouncement : 16.06.2015

O R D E R

PER BHAVNESH SAINI, J.M. :

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals), Chandigarh dated 22.8.2014 for assessment year 2007-08 on the following grounds :

"1. The Ld. CIT (A) has erred in allowing the appeal of the assessee without appreciating the facts of the case.

2. The Ld. CIT(A) has erred in allowing the claim u/s 80IB(10) of the Act without completion certificate issued by the competent authority by simply relying on the order of his predecessor and without considering the contention of the revenue as directed

by the Hon'ble 1TAT vide order dated: 23.11.2011 in IT A No. 330/Chd/2011."

2. Brief facts of the case are that M/s Swastik Constructions, a proprietorship concern of the assessee, had undertaken a construction project at Panchkula and claimed profit from this project of Rs.41,15,216/- as deduction under section 80IB(10) of the Income Tax Act,1961 (hereinafter referred to as 'Act'). The Assessing Officer examined the genuineness of claim of deduction under section 80IB(10) of the Act. The Assessing Officer on the basis of the inquiries made, found that the project was granted approval on 15.02.1996 i.e. much before the date of October, 1998, provided in the Act for claiming deduction under section 80IB(10) of the Act. The assessee had also not furnished completion certificate of the local authority that the project was completed by 31.03.2008. The Assessing Officer accordingly rejected assessee's claim of deduction under section 80IB(10) of the Act.

3. Being aggrieved, the assessee filed appeal before the learned CIT (Appeals). The assessee during course of appellate proceedings filed a copy of letter 12.04.1999 from the Director, Town and Country Planning, Chandigarh regarding "Approval of Service Plan/ estimates in respect of group housing colony in Swastik Vihar, Mansa Devi Complex, Sector-5, Panchkula in an area of 2.99 acres at Panchkula". As per this letter, the approval for 2.99 acres group housing

scheme was granted by the Chief Engineer, HUDA with certain terms and conditions and from this letter, the learned CIT (Appeals) inferred that approval for the project was granted by the competent authority after 01.10.1998. The assessee had also filed a copy of letter dated 18.05.2010 issued by the Director, Town and Country Planning, Haryana, Chandigarh; vide which permission for occupation of the building after charging the composition charges fee was granted to the assessee with certain terms and conditions. The assessee had also filed another letter dated 09.08.2010 issued by District Town Planner(HQ.) [for Director, Town and Country Planning, Haryana, Chandigarh], clarifying that the letter dated 18.05.2010 issued by the Director, Town and Country Planning, Haryana, Chandigarh may be considered as completion certificate. As the completion certificate issued by the competent authority was not filed before the Assessing Officer, the same was forwarded by the learned CIT (Appeals) to the Assessing Officer for verification with the following directions:

> *"2 During the assessment proceedings Assessing Officer observed that the assessee had not furnished completion certificate from the government authorities, which is mandatory requirement for claiming exemption u/s 80IB(10), resulting in denial of deduction u/s 80IB(10).*
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> *3 During the appellate proceedings, the appellant has famished completion certificate issued by Directorate of Town & Country Planning, Haryana vide letters bearing No. ZP/-24-JD(B)-2010/6499 dated 18.05.2010 and ZP-24-SD(B)-2010/9844 dated 9.8.10. On further verification from the O/o Directorate of Town & Country Planning, Haryana regarding validity of the completion certificate, this office was informed that since*

the Residential Colony falls under the Periphery Controlled Area Act, there is no provision in the Act to give 'completion certificate' and therefore, the Occupation certificate issued by the Director, Town and Country Planning, Haryana may be treated as Completion Certificate. Since this certificate was not furnished during the assessment proceedings, the copies of these letters/certificates are being forwarded to you.

4. In this regard, you are requested to verify the above facts and submit report regarding allowability of deduction u/s 80IB(10) in view of certificate received from the O/o Directorate of Town & Country Planning, Haryana after verifying the following facts:-

1. *Whether the Area falls under Periphery Controlled Area Act? If yes.*
2. *Whether there is no provisions of issue of Completion Certificate under this Act?*
3. *What are the provisions for issue of completion certificate under the Haryana Development and Regulation of Urban Areas Act, 1975?"*

4. The Assessing Officer in response to the letter of the learned CIT (Appeals) submitted the report, which is reproduced below for the sake of the ready reference:

"a. Yes, the 2.99 acre site does fall under the jurisdiction of the Punjab New Capital Periphery Control Act 1952.

b. No, there is no statutory provision under the Punjab New Capital Periphery Control Act, 1952 regarding obtaining completion certificate for any project which is sanctioned under the said Act.

c. Under the Haryana Development and Regulation of Urban Areas Rules, 1976, the provision for grant of completion certificate exists under Rule 16, which is reproduced below for ready reference.

Completion Certificate/Part Completion Certificate / Section 24/-

1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications the colonizer shall make an application to the Director in form LC-VIII.

2) After such (scrutiny), as may be necessary the Director may issue a completion certificate/part completion certificate in form LC-K or refuse to issue such certificate stating the reasons for such refusal:

Provided that the colonizer shall be afforded an opportunity of being heard before such refusal."

It is also confirmed that since the permission in the present case stands granted under the Punjab New Capital Periphery Control Act, 1952 the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 are not applicable on the abovementioned 2.99 acre residential colony developed by Sh. Sham Sunder."

4. The learned CIT (Appeals) after taking into consideration the report of the Assessing Officer, held that in the absence of any specific provision regarding issuance of completion certificate in Punjab New Capital Periphery Control Act, 1952; the occupation certificate issued by District Town and Country Planning, Haryana, Chandigarh was to be treated as completion certificate, issued by the Government authorities for the purposes of claiming exemption u/s 80IB of the Act. The deduction claimed u/s 80IB(10) of the Act was accordingly allowed.

5. The Revenue had filed appeal before the Tribunal and the Tribunal remanded the matter to the learned CIT (Appeals) vide its order dated 23.11.2011 in ITA No. 330/Chd/2011 with the following directions:

"In this case, the Assessing Officer had denied the claim of the assessee on two counts. Firstly, on the ground that the project was granted approval on 15.2.1996 i.e. much before the date i.e. October, 1998 as provided in section 80IB(1) of the I.T. Act. Secondly, the project was not completed by March 31, 2008 as the assessee failed to furnish the completion certificate from the local authority. As regards, the rejection of the assessee's claim on first ground by the Assessing Officer, the CTT(A) has not given any findings, therefore, the order of CFT(A) is bad in law and deserves to be set aside. In fact the assessee has raised a specific ground i.e. Ground No.3 before the CIT(A) and the CTT(A) has not considered and decided this ground of appeal. The CTT(A) was required to give his findings on this issue also and therefore, we hold the impugned order as bad in law. Consequently, we remand the matter to CIT(A) with a direction to decide and give his findings with regard to issue raised by the assessee vide Ground No.3 of the appeal.

7. The second ground for rejecting the claim u/s 80IB(10) of the Act is that project was not completed by 31.3.2008 as the assessee has failed to furnish the completion certificate from the local authority. It is apparent from the record that before the CIT(A), the assessee furnished a letter dated 18.5.2010 issued by District Town Planner, Haryana, Chandigarh. The assessee also filed another letter dated 9.8.2010 issued by District Town Planner, Haryana, Chandigarh clarifying the letter dated 18.5.2010 issued by District Town and Planner, Haryana, Chandigarh. The CTT(A) treated these letters as Completion Certificate issued by government authorities for claiming exemption u/s 80IB of the Act. These letters are available at pages 15 to 17 of the assessee's paper book. Shri Akhilesh Gupta, Ld. DR pointed out that letter dated 9.8.2010 issued by District, Town Planner, Haryana, Chandigarh cannot be considered as Completion Certificate. In this letter, it is stated that regarding provisions of Rain Water Harvesting System which is functional at site, there is no requirement for obtaining the completion certificate. Shri Akhilesh Gupta, Ld. DR also submitted that letter dated 18.5.2010 issued by District Town Planner, Chandigarh also cannot be considered as Completion Certificate. According to him, vide this letter the District Town Planner has granted permission for occupation of the building after charging certain amount subject to the following conditions:

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8. The assessee was required to fulfill the above conditions. Shri Akhilesh Gupta, Ld. DR submitted that by no stretch of imagination the above letters can be considered as Completion Certificate by local authority as per law.

9. Considering the entire facts and circumstances of the present case, we set aside the order of CIT(A) in toto and remand the matter to the CTT(A) with a direction to decide the matter afresh in accordance with law considering the contentions raised by the Ld. DR. The CIT(A) shall give an opportunity of being heard to the assessee in the matter. As the same time, we also direct the Ld. CIT(A) to dispose of the assessee's appeal preferably within three months from the date of receipt of order, (sic)"

6. The learned CIT (Appeals) in view of the directions of the Tribunal refixed the appeal for hearing and after considering the submissions of the assessee passed the following order in paras 3 to 5 of the impugned order allowing the appeal of the assessee. The findings of the learned CIT (Appeals) are reproduced as under :

"3. The Hon'ble ITAT, Chandigarh has directed to decide ground of appeal No. 3 raised by the appellant in the original appeal proceedings. This ground is against rejection of claim u/s 80IB(10) on the ground that the project was approved on 15.02.1996, which is much before October, 1998 whereas approval for development and construction was accorded on 12.04.1999. In support of this ground, the appellant had filed a copy of letter bearing no. 5DP(III)-99/4560 dated 12.04.1999 issued by the Director, Town and country Planning, Haryana, Chandigarh regarding "Approval of service plan/estimates in respect of group housing colony in Swastik Vihar, Mansa Devi Complex, Sector 5, Panchkula in an area of 2.99 acres at Panchkula" before my predecessor, who after going through the terms &

conditions mentioned in this letter has concluded in para 7 of her order (supra) as under:

> *"Thus, from the above it clear that approval for the project was granted by the competent authority after 1.10.1998."*

3.1 From the above, it is evident that my predecessor had taken a particular view in the matter. In the absence of any additional evidence/ information before me, I cannot sit in judgement over the view taken by my predecessor. In any case, in my opinion, the view taken by my predecessor was correct. Ground of appeal No. 3 is allowed.

4. The next issue to be adjudicated as per the Hon'ble ITAT, Chandigarh order is regarding completion of the project. The plea of the Department before Hon'ble ITAT, Chandigarh was that the letter dated 18.05.2010 issued by District Town Planner, Haryana, Chandigarh could not be considered as completion certificate. By this letter; the Director, Town and Country Planning, Haryana, Chandigarh had granted permission for occupation of the building after charging the composition charges fee with certain terms & conditions. The appellant had also filed another letter dated 09.08.2010 issued by District Town Planner (HQ.) [for Director, Town and Country Planning, Haryana, Chandigarh] in the appellate proceedings before my predecessor, which had clarified again that the occupation certificate dated 18.05.2010 may be considered as Completion Certificate. My predecessor had forwarded these letters dated 18.05.2010 and 09.08.2010 to the Assessing Officer, with certain directions (reproduced in para 1.1 of this order) and after getting report of the Assessing Officer, had concluded that in the absence of any specific provision regarding issuance of completion certificate in Punjab New Capital Periphery Control Act, 1952; the occupation certificate issued by the District Town Planner was to be taken as completion certificate issued by Government authorities for claiming exemption u/s 80IB. On the facts and circumstances and the evidences produced regarding completion of the project, I find that the view taken by my predecessor was correct. The appellant is duly eligible for the deduction claimed u/s 80IB(10) of the Act. The matter restored by Hon'ble ITAT, Chandigarh is disposed of accordingly and for statistical purposes, the appeal is treated as allowed.

5. In the result, the appeal is allowed"

7. We have heard the learned representatives of both the parties and perused the material available on record. The learned D.R for the Revenue filed copy of the earlier order of the Tribunal dated 23.11.2011 passed in the departmental appeal in the case of the assessee as is referred to above and submitted that the learned CIT (Appeals) is required to follow the order of the Tribunal and should have passed reasoned order. The learned D.R for the Revenue submitted that the learned CIT (Appeals) in defiance of the order of the Tribunal has merely followed the order of this predecessor, which does not exist in the eyes of the law. Therefore, reliance of the learned CIT (Appeals) on the earlier order of his predecessor dated 1.11.2010 is wholly misplaced and is a clear violation of the order of the Tribunal. The learned D.R for the Revenue submitted that the learned CIT (Appeals) should not have followed the order of his predecessor because it is already set aside by the Tribunal and the learned CIT (Appeals) should have decided the appeal of the assessee strictly on merits following the order of the Tribunal dated 23.11.2011. The learned D.R for the Revenue, therefore, submitted that the order of the learned CIT (Appeals) may be set aside and the matter may be remanded to the file of the learned CIT (Appeals) for deciding the appeal afresh in accordance with law and in accordance with the directions of the Tribunal dated 23.11.2011.

8. On the other hand, the learned counsel for assessee defended the order of the learned CIT (Appeals) and

submitted that the learned CIT (Appeals) correctly followed the order of his predecessor because all material was available before the learned CIT (Appeals) for giving relief to the assessee. He has also submitted that even material was available in the first round of proceedings before the Tribunal, therefore, there is no need to remand the matter to the file of the learned CIT (Appeals) again.

9. We have considered the rival submissions and perused the material available on record. It is not in dispute that earlier the learned CIT (Appeals) decided the appeal of the assessee vide order dated 1.11.2010, against which the Revenue preferred appeal before the Tribunal in ITA No.330/Chd/2011 and the Tribunal decided he departmental appeal vide order dated 23.11.2011 and the operative portion of the order of the Tribunal is reproduced above. It would mean that the Tribunal while deciding the departmental appeal has set aside the earlier order of the learned CIT (Appeals) dated 1.11.2010 giving substantial relief to the assessee. Thus the earlier order of the predecessor of the learned CIT (Appeals) dated 1.11.2010 does not exist in the eyes of law. It could not be taken into consideration for any purpose and even the same is not an order in the eyes of law. The Revenue contended before the Tribunal that the project was granted approval on 15.2.1996 i.e. before October, 1998 and further no completion certificate from the local authority have been filed. The Tribunal noted in its finding that “the CIT (Appeals) has not

given any findings, therefore, its order is bad in law and deserves to be set aside". With regard to the filing of the completion certificate is concerned, the Tribunal also set aside the order of the learned CIT (Appeals) and remanded the matter to the learned CIT (Appeals) with direction to decide the matter afresh in accordance with law considering the contention raised by the learned D.R for the Revenue. The learned CIT (Appeals) instead of following the order of the Tribunal dated 23.11.2011 and without considering the evidences and material on record and without giving his independent opinion on the matter in issue has preferred to follow the order of his predecessor dated 1.11.2010 in allowing the appeal of the assessee. Even the learned CIT (Appeals) has quoted some portion of the order of his predecessor in the impugned order. The learned CIT (Appeals) also blatantly observed in the impugned order that he cannot sit in judgment over the view taken by his predecessor. The findings of the learned CIT (Appeals) noted above, clearly show that the learned CIT (Appeals) instead of deciding the appeal on merits and in compliance with the order of the Tribunal dated 23.11.2011 preferred to follow the view and order passed by his predecessor. The learned CIT (Appeals) has even gone to the extent of noting in the impugned order that the view taken by his predecessor was correct. Thus it is clear that the learned CIT (Appeals) has shown disobedience to the order of the Tribunal dated 23.11.2011. As noted above, when the earlier order of the predecessor of the learned CIT (Appeals) dated 1.11.2010 was

set aside by the Tribunal in toto and the matter is remanded to him for passing the order afresh strictly in accordance with law, the earlier order of the predecessor of the learned CIT (Appeals) would not stand in the eyes of law. Therefore, the learned CIT (Appeals) has gravely erred in quoting the portion of the order of his predecessor in the impugned order. The learned CIT (Appeals) has also gravely erred in finding that the view taken by his predecessor was correct. The learned CIT (Appeals) failed to note that when earlier order of his predecessor was subject matter in departmental appeal before the Tribunal and the order of his predecessor has been set aside and the matter in issue is remanded to his file for passing the order afresh, there is no question of treating the order of his predecessor to be an order in accordance with law. Therefore, the learned CIT (Appeals) should not have quoted some portion of the order of his predecessor in the impugned order and should not have also held that the view taken by his predecessor was correct when the view of his predecessor was already set aside. It is a clear case of showing disrespect to the order of the Tribunal. Therefore, contempt proceedings could have been initiated against the learned CIT (Appeals) for blatantly disobeying the order of the Tribunal. The Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing & Leasing Ltd. Vs. CIT, 257 ITR 235 held that the CIT (Appeals) cannot refuse to follow the order of the Appellate Tribunal. The Hon'ble High Court held as under :

"Held, that the Commissioner of Income-tax (Appeals) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. The Members of the Tribunal who decided the appeal upholding the view taken by the Commissioner Income-tax (Appeals) also did not observe due procedure."

10. The learned CIT (Appeals) failed to take note of the fact that he is quasi-judicial authority under the Income Tax Act and is subordinate in judicial hierarchy to the Tribunal. The orders passed by the Tribunal are binding on all the revenue authorities functioning under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The Hon'ble Supreme Court in the case of Union of India Vs. Kamlakshi Finance Corporation, AIR 1992 SC 711 held that *"Judicial discipline requires that the orders of the higher appellate authorities should be followed"*.

11. Considering the facts of the case in the light of the findings of the learned CIT (Appeals) in the impugned order, we are of the view that the order of the learned CIT (Appeals) cannot be sustained in law and is passed by the learned CIT (Appeals) clearly in defiance of the order of the Tribunal. Since it is a first matter reported to us during the course of arguments by the learned D.R for the Revenue that the order of the learned CIT (Appeals) shows complete defiance of the order of the Tribunal, therefore, we do not propose at the

stage to initiate contempt proceedings against the learned CIT (Appeals), however, we warn him to be careful in future in following the order of the Tribunal in accordance with law and should not show any defiance to the order of the Tribunal. In this view of the matter, we set aside the impugned order of the learned CIT (Appeals), Chandigarh and restore the matter in issue to his file with direction to redecide the appeal of the assessee strictly in accordance with law and in following the earlier order of the Tribunal dated 23.11.2011. The learned CIT (Appeals) shall give reasonable sufficient opportunity of being heard to the assessee and shall decide the appeal of the assessee within two months from the receipt of this order.

12. In the result, departmental appeal is allowed for statistical purposes.

Order pronounced in the open court on this 16th day of June, 2015.

Sd/-	Sd/-
(T.R.SOOD)	**(BHAVNESH SAINI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 16th June, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh