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## Factual situation relevant for allowing deduction under section 80-IB of the Income-tax Act, 1961

### In brief

In a recent case of M/s. Abad Constructions Pvt. Ltd.<sup>1</sup>, the Kerala High Court held that the factual situation, and not documents like the approved plan, occupancy certificate and building tax assessment order, were relevant for allowing a deduction under section 80-IB of the Income-tax Act, 1961 (the Act).

### Facts

- The taxpayer had claimed a deduction under section 80-IB(10) of the Act for the assessment years (AY) 2005-06 and 2006-07 for developing and building housing projects.

- The tax officer (TO) made a preliminary enquiry and found that two projects undertaken by the taxpayer may not qualify for a deduction under section 80-IB of the Act.
- In respect of one of the projects, the TO found some violations of the approved construction plan. The built up area of the 'A' type apartment was 1,497 sq. ft. (just 3 sq. ft. less than the maximum area permissible for claiming a deduction under section 80-IB of the Act). Furthermore, the list of the purchasers revealed that some adjacent flats were sold to members of the same family. Given the necessity of a physical inspection, two inspectors were sent to the site to verify the facts.
- The report submitted by the inspectors mentioned that during the inspection, most of the apartments were locked as they had been handed over to the purchasers. Hence, the factual situation of the project could not be assessed.

<sup>1</sup> CIT v. M/s Abad Constructions Pvt. Ltd. [TS-178-HC-2014(Ker)]

- The TO completed the assessment by allowing a deduction under section 80-IB of the Act.
- The Commissioner held that the TO's orders were erroneous as they were prejudicial to the interest of the revenue. Accordingly, the TO was directed to recompute the deduction.
- The Tribunal quashed the Commissioner's order under section 263 of the Act.

### **Issue before the High Court**

Whether the Commissioner was justified in invoking his revision jurisdiction under section 263 of the Act?

### **Revenue's contention**

In view of the facts available on record, and because the inspection could not be completed, the TO ought to have rejected the claim for deduction for want of material particulars. Non-application of mind by the TO led to an erroneous decision.

### **Taxpayer's contention**

Since the TO proceeded with the assessment by allowing the claim for deduction, it was presumed that the material available at the date of completion of the assessment proceedings was sufficient to satisfy the TO that the claim was justified. Hence, the initiation of proceedings by the Commissioner under section 263 of the Act was erroneous.

### **High Court's ruling**

- In spite of several documents like an approved plan, occupancy certificate and building tax assessment proceedings being available in the file, the TO opined that there was need for further inspection. This indicated that the TO was not satisfied with the material available on record.
- Though not satisfied with the material available, the TO accepted the claim for deduction. This was because of non-application of mind.
- Section 80-IB of the Act did not state that the presentation of documents like an approved plan, occupancy certificate and building tax assessment order were sufficient. The section indicated that the factual situation was relevant for deciding the allowance of a claim.
- The High Court upheld the Commissioner's revision order.

### **PwC observation**

The High Court's conclusion that the factual situation is more relevant than the documents on record in allowing a deduction under section 80-IB of the Act would have implications to taxpayers claiming deductions under other sections of the Act as well.

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