
Allahabad HC denies deduction to housing project where levelling of earth commenced prior to specified date

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In brief

In a recent decision, the Allahabad High Court (HC) held that the benefit of deduction under section 80IA(4F) of the Income-tax Act, 1961 (Act) should not be available to a taxpayer if the activity of filling and levelling of earth had commenced prior to the specified date i.e. 1 October, 1998. Further, the HC rejected the Income-tax Appellate Tribunal's (Tribunal) view that since the work orders were issued subsequent to the specified date, it could be said that the development and construction of the projects had commenced after the specified date.

In detail

Facts

- The taxpayer was a company engaged in building and construction activities.
- The taxpayer entered into an agreement with Ghaziabad Development Authority (GDA) in December, 1996 for construction of flats in its projects. The GDA's approval was received on 28 February, 1998 and construction of the projects commenced in October 1998.
- The taxpayer claimed deduction under section 80IA(4F) read with section 80 IA(5) and 80IB(10) of the Act. As per the aforesaid sections, exemption in

respect of profits derived from a housing project was admissible subject to, *inter-alia*, the condition that the development and construction of the housing project commenced on or after 1 October, 1998 (specified date).

- While the work orders were issued subsequent to the specified date, the levelling of earth had commenced much before the specified date.

Issue before the High Court

Whether the Tribunal was correct in allowing deduction under section 80IA(5) and section 80IB(10) of the Act in view of the fact that the levelling of earth had commenced prior to the specified date?

High Court's decision

- The HC held that a plain reading of section 80IA(4) of the Act reveals that the benefit contemplated under the section would be available only if the undertaking commences the development and construction of the housing project on or after the specified date. The intention of the legislature that development of the project and construction that followed such development must have commenced on or after the specified date was clear.
- In the course of building a housing project, while development precedes construction, development and construction could not be dissected.

¹ ITA No. 284 of 2010

- Thus, where the taxpayer undertakes levelling work to develop the land to facilitate construction of the housing project over it, the development and construction of the housing project “commenced” with such levelling of the earth.
- In this case, as the development of the project i.e. the filling and levelling of the earth had commenced prior to the specified date, the benefit of exemption under section 80IA(4F) read with section 80IA(5) and section 80IB(10) of the Act could not be allowed to the taxpayer.

The takeaways

- Albeit the decision of the HC is in the context of section 80IA(4F) of the Act, the interpretation of the term ‘development’ as set out by the HC could find application elsewhere as well.
- In the context of a real estate project which consists of a multitude of activities like feasibility studies, soil testing, ground levelling, designing etc. this decision could have far reaching impact.
- Where a provision of the Act makes a real estate project eligible for tax benefits only if the development and

construction commences after a specified date, the real estate project might get considerably delayed since undertaking even the preliminary activities for the project could constitute commencement of the project, thus denying it benefits under the Act.

- However, each case would need to be evaluated in light of the facts and the level of activity undertaken in order to apply this rule.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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