

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the assessee is entitled to the deduction u/s 80IB(10), when the area of plot, on which the housing project is constructed is less than one acre?”

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that assessee is entitled to the deduction u/s 80IB(10), when the area of flat constructed is more than 1500 sq. ft.?

3. The appellant prays that the order of the AO should be restored and order of the CIT(A) should be set aside.”

3. As the Grounds of appeal reveal, the only issue in this appeal relates to the claim of assessee for deduction u/s 80IB(10) of the Act with respect to the profits derived from housing project “Hermes Heritage” located at Pune. The Assessing Officer has denied the claim primarily on the ground that a similar claim for earlier assessment years of 2003-04 to 2006-07 was denied by the then assessing authority. The CIT(A) has allowed the claim noticing that in the assessment years 2003-04 to 2006-07, the claim was allowed by the Tribunal, and such decision has since been upheld by the Hon'ble Bombay High Court also. The CIT(A) also noted that in Assessment Year 2008-09, a similar issue was decided by the Tribunal in assessee’s favour following the precedents. Accordingly, the CIT(A) has allowed the claim of assessee for deduction u/s 80IB(10) of the Act.

4. At the time of hearing, the Id. DR has not disputed that the precedents followed by the CIT(A) continue to hold the field and same have not been altered by any higher authority. Under these

circumstances, we hereby affirm the order of CIT(A) and accordingly, Revenue fails in its appeal.

5. Resultantly, appeal of the Revenue is dismissed.

Order pronounced in the open court at the conclusion of hearing in the presence of the Id. DR on 28th February, 2017.

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai, Date : 28th February, 2017

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai