

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SANJAY ARORA, AM AND SHRI PAWAN SINGH, JM**

आयकर अपील सं./I.T.A. No.6754/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2008-09)

Income Tax Officer, Ward 2(4), Mumbai	बनाम/ Vs.	Shiv Om Universal, A-10, Ganesh Krupa, Near Sneha Building, Katrap, Badlapur (E)-421 503
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAVFS 5403 J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Vachaspati Tripathi
प्रत्यर्थी की ओर से/Respondent by	:	Shri Shriram Bajaj
सुनवाई की तारीख / Date of Hearing	:	02.06.2016
घोषणा की तारीख / Date of Pronouncement	:	22.09.2016

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-II, Thane (‘CIT(A)’ for short) dated 01.8.2014, partly allowing the Assessee’s appeal contesting its assessment u/s.143(3) r/w s. 147 of the Income Tax Act, 1961 (‘the Act’ hereinafter) for the assessment year (A.Y.) 2008-09 vide order dated 28.3.2013.

2. The only issue arising per the instant appeal is the maintainability in law of the deduction u/s. 80-IB(10) of the Act claimed by the assessee – a builder and developer, *qua* its housing project ‘Krishna Complex’, Badlapur, Thane. The same stands denied by the Revenue on the ground that the said project is not completed by 31.3.2008, the

last date by which the said project, approved on 22.5.2001 (i.e., prior to 01.4.2004) ought to have been completed u/s. 80-IB(10)(a)(i) r/w *Explanation* (ii) thereto. The assessee's case, on the other hand, rests on the fact that seven of the eight buildings comprising the project, i.e., except Building A-4, stand completed by 31.3.2008, as signified by completion certificates. The assessee be accordingly allowed proportionate deduction, i.e., other than on the profit relatable to building A-4. The Id. CIT(A) has allowed the assessee's claim following the decision by the first appellate authority in the assessee's case for A.Y. 2009-10, wherein reference is made to the following decisions:

CIT vs. Vandana Properties [2013] 353 ITR 36 (Bom);
Vishwas Promoters (P) Ltd. vs. ACIT [2013] 29 Taxmann.com 19 (Mad); and
CIT vs. Brahma Associates [2011] 333 ITR 289 (Bom)

3. We have heard the parties, and perused the material on record, including the cited judgments.

3.1 We begin by reproducing the provision as under:

'Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.'

80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2)

(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

- (i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;
- (ii)
- (iii)

Explanation.—For the purposes of this clause,—

- (i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;
- (ii) the date of completion of construction of the housing project shall be taken to be the date on which the *completion certificate in respect of such housing project is issued by the local authority*;
- (b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided

- (c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place;
- (d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project of two thousand square feet, whichever is less.’

[*emphasis, ours*]

3.2 We firstly observe that the assessee’s contention that the ‘housing project’ could be under the circumstances restricted to seven buildings, or that each building be considered as a separate housing project for the purposes of section 80-IB(10), so that a proportionate deduction there-under is exigible, is misplaced and does not follow a reading of the decisions cited and relied upon. Rather, the Hon'ble jurisdictional High Court in *Brahma Associates* (supra) has categorically held that the project as approved by the local authority is to be considered as the housing project for the purposes of section 80-IB(10) and, two, that a project there-under is a single

project, on the entire of which, where eligible, deduction u/s. 80-IB(10) is to be allowed. We extract the relevant part of the said decision, *which is clear and unambiguous*, as under: (refer para 31/pgs. 302-303, also catch notes at pgs. 290-291)

‘Section 80-IB(10) allows deduction to the entire project approved by the local authority and not to a part of the project. If the conditions set out in section 80-IB(10) are satisfied, then deduction is allowable on the entire project approved by the local authority and there is no question of allowing deduction to the part of the project.’

3.3 Before proceeding further, we may extract the findings by the Tribunal in the assessee’s case for A.Y. 2009-10 (in ITA No. 5375/Mum/2013 dated 08.6.2015/copy on record), dismissing the Revenue’s appeal raising the same issue and, accordingly, relied upon before us:

‘6. We find that the issue raised in the present appeal is squarely covered by the jurisdictional High court in the case of *Vandana Properties* (supra) and *M/s. Brahma Associates* (supra), which in turn has been affirmed by the Hon’ble Apex Court in a bunch of appeals with lead in Civil Appeal No.4476/2015 judgment dated 29.04.2015. Accordingly, we hold that the assessee is entitled to (its) claim of deduction u/s. 80IB(10) of the Act in respect of seven buildings completed before 31.03.2008. Accordingly, we uphold the order of the CIT(A). The grounds of appeal raised by the revenue are dismissed.’

The Hon’ble jurisdictional High Court in *Brahma Associates* (supra) holds, on the contrary, *that there is no question of allowing deduction on a part of the project*. The tribunal’s order (supra) accepting the assessee’s claim, stating it as ‘covered’ by the decisions in *Vandana Properties* (supra) and *Brahma Associates* (supra), could, in view of the clear injunction by the Hon’ble Court in *Brahma Associates* (supra) clarifying the scope and meaning of the term ‘housing project’ u/s. 80-IB(10) as well as the scope of the provision itself, is therefore apparently inconsistent therewith, i.e., the latter decision, which is binding on us. There is no discussion of the import or the context of the extracted findings in *Brahma Associates* (supra), rendered in the

context of the qualifying condition of section 80-IB(10)(d), forming the basis of the decision by the Hon'ble Court, in the said order by the tribunal, which upholds the decision by the first appellate authority *allowing deduction to a part of the project*, reproducing his findings at para 5 of its order (which is followed by para 6, reproduced above), as under:

'5. The only issue arising in this appeal is The relevant findings of the CIT(A) are as under:

"4.1 The Id. AR has vehemently relied upon the decision of Hon'ble High Court in the case of *CIT vs. Vandana Properties* (2012) 19 taxmann.com 316 (Bom), wherein it has been held that where housing project is consisted of several buildings/ then even one building with several residential units would constitute a "Housing Project" u/s. 80IB(10) of the Act. Similarly, in the case of *Vishwas Promoters (P) Ltd. vs. ACIT* (2013) 29 Taxmann.com 19 (Mad), which has been also relied upon by the appellant, it has been held that each block could be considered as a separate housing project when larger project consisted of various blocks. In this case, deduction u/s. 80IB(10) on the principles of proportionality as well as by reason of construction on the meaning of expression "Housing Project" has been held to be allowable. The Hon'ble Madras High Court while delivering the judgment in this case has relied upon the decisions of Hon'ble Bombay High Court in the case of *CIT vs. Brahma Associates* (2011) 333 ITR 289 and *CIT vs. Vandana Properties* (2012) 206 Taxman 584. Since the facts of the case of the appellant are identical the decisions of Hon'ble Bombay High Court in the case of *Vandana Properties* (supra) and Hon'ble Madras High Court in the case of *Vishwas Promoters (P) Ltd.* (supra) clearly support the case of appellant. Moreover, the decision of Hon'ble Bombay high Court being jurisdictional one, is binding on me. *Therefore, I am of the considered view that the 7 buildings completed within the stipulated time comprising of more than 1 acre built up are constitute a separate housing project in the case of appellant and accordingly, the appellant is*

entitled to deduction u/s. 80IB in respect of the profit derived from such buildings. Thus, only in respect of building No.A-4 which has not been completed before 31/03/2008, the appellant is not entitled to claim the deduction u/s 80IB(10). From the facts available on record, it appears that the appellant itself has not claimed deduction u/s. 80IB(10) on Building No.A-4 of Krishna Complex. However, the assessing officer is directed to verify this fact from the record and disallow the deduction u/s. 80IB(1) only in respect of the Building No.A-4 which has not been completed within the stipulated time.”

[*emphasis, ours*]

There is, it may be emphasized, no concept of a partial satisfaction of the qualifying condition/s, i.e., for eligibility, of a project (which is the subject matter of eligibility), so that it is either eligible or not, i.e., in terms of the qualifying conditions, resulting in its profits being either deductible or not so in terms of the relevant provision. In fact, *Brahma Associates* (supra) stands since upheld by the Hon’ble Apex Court (reported at *CIT vs. Sarkar Builders & Others* [2015] 375 ITR 392 (SC)). Further, the other decisions relied upon are in different contexts. The factual matrix of a case cannot but be kept in view to fully appreciate the ratio of the decision. In *Vandana Properties* (supra), the Hon’ble High Court was considering the eligibility of a building which came up much later on the site of an existing housing project, completed much earlier. The issue was as to how the land size, which is required per section 80-IB(10)(b) to be at a minimum of one acre for an eligible housing project, is to be reckoned; the Revenue denying the claim on the ground that the land already considered for the earlier, completed (before 01/10/1998) project could not be once again taken into account. Even considering proportionate land, its size fell below one acre. This did not find favour both with the Tribunal and the Hon’ble High Court which clarified that ‘land’ for the purpose of a housing project u/s. 80-IB(10) does not necessarily imply a (wholly) vacant land. The additional building ‘E’ that came up much later was approved independently on 11/10/2002, only after the status of the

land was converted from 'surplus vacant land' to 'within ceiling land' by the State Government. And was therefore to be considered as a separate project, independent of the earlier project, with which it had no relation. As long as therefore the land size as per the project as approved was not less than one acre, deduction could not be denied. *It was in this context that a separate building was considered as an independent project.* The decision nowhere contradicts the earlier decision by the Hon'ble Court in *Brahma Associates* (supra). The decision in *Vishwas Promoters (P.) Ltd.* (supra) stood again rendered in a different context, i.e., of section 80-IB(10)(c), wherein restriction is cast on the size of the residential units in a housing project. Clearly, a residential unit and a housing project, of which the former is a part/component, are conceptually different, signifying different objects/notions. To say, therefore, that each residential unit is a housing project for the purposes of section 80-IB(10)(c), apart from being inconsistent with reality, in contradiction with the decision in *Brahma Associates* (supra), unequivocally clarifying the project to be one as approved by the local authority and, further, a single project. This aspect of the matter stands also discussed at length by the tribunal in *Asst. CIT vs. Ekta Sankalp Developers* [2015] 152 ITD 805 (Mum), which was again in the context of section 80-IB(10)(c). While holding, following *Brahma Associates* (supra), a housing project to be a single project *qua* which deduction, therefore, cannot be allowed in part, the tribunal was of the view that the condition contained in section 80-IB(10)(c), however, applies *qua* a residential unit and not the project *per se*. As such, each residential unit that satisfies the condition of the provision would form part of an eligible project. In the result, the assessee would be entitled to deduction under the provision in relation to the profit relatable to the qualifying residential units, i.e., in proportion.

Further, the decision in *Brahma Associates* (supra) is also rendered in the context of a qualifying condition, i.e., a condition precedent, per cl.(d) of s. 80-IB(10), *and forms, as afore-stated, the basis of its decision.* To, therefore, say that the decision in *Vandana Properties* (supra) and *Brahma Associates* (supra) squarely cover the

issue at large, as does the tribunal vide its order dated 8/6/2015 supra and, therefore, is covered by the said order by the tribunal itself, cannot be accepted. *Why, a project is either complete, or not so, by a particular date, so that the qualifying condition of section 80-IB(10)(a) is either met or not.* The question of it being satisfied in part; the project comprising eight buildings, all of which are admittedly not complete by 31.03.2008, does not arise. The course thus available for us is to refer the matter to a larger bench of the tribunal. We, however, on a careful and anxious consideration of the matter, including the decision in *Brahma Associates* (supra), binding on us, for the reasons stated hereinafter, are inclined to agree with the assessee's claim in preference to that of the Revenue. Our conclusion being in agreement with that by the tribunal (supra), we do not consider it necessary to refer the matter to a larger bench, also explaining the apparent conflict of the said order with the judgment in *Brahma Associates* (supra).

3.4 The dispute in the present case is with reference to the date of completion of the construction of the housing project, which stands provided in the provision itself as being the date on which the completion certificate is issued in respect of such housing project by the local authority (*Explanation* (ii) to sec. 80-IB(10)(a)). The first issue therefore would be if the project could be considered as complete, i.e., in terms of the Act, to any extent, in view of the admitted position that the provision contemplates the completion of the entire project and not a part of it. That is, if cognizance could be given under the provision to this fact or, put differently, could the housing project be considered as complete to any extent where the same does not extend to all the buildings of the project? *We consider it as so.* Our reason for so stating is that each of the buildings, stated to be seven (being A1, A2, A3, B1, B2, C1 and C2), stand granted a completion certificate in terms of Regulation 6(6) of the Development Control Regulations for Greater Mumbai, 1991 issued under

Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), which, along with Regulations 6(7) and 6(8), reads as under:

‘6) Completion certificate:- The owner, through his licensed plumber, shall furnish a drainage completion certificate to the Commissioner in the form in Appendix 'XIX'. The owner through his licensed surveyor/engineer/structural engineer/supervisor or his architect, who has supervised the construction, shall furnish a building completion certificate to the Commissioner in the form in Appendix XX. These certificates shall be accompanied by three sets of plans of the completed development. The Commissioner shall inspect the work and, after satisfying himself that there is no deviation from the approved plans, issue a certificate of acceptance of the completion of the work in the form in Appendix XXI.

(7) Occupancy certificate:- On receipt of the acceptance of completion certificate in the form in Appendix XXI, the owner, through his licensed surveyor/engineer/structural engineer/supervisor or his architect shall submit to the Commissioner a development completion certificate in the form in Appendix XVIII with three copies of the completion plan, one of which shall be cloth mounted for record. The Commissioner may inspect the work and after satisfying himself that there is no deviation from the sanctioned plans, issue an occupancy certificate in the form in Appendix XXII or refuse to sanction the occupancy certificate within 21 days from the date of receipt of the said completion certificate, failing which the work shall be deemed to have been approved for occupation, provided the construction conforms to the sanctioned plans. One set of plans, certified by the Commissioner as the completed plans, shall be returned to the owner along with the occupancy certificate. Where the occupancy certificate is refused or rejected, the reasons for refusal or rejection shall be given in intimation of the rejection or refusal.

(8) Part occupancy certificate :- When requested by the holder of the development permission, the Commissioner may issue a part occupancy certificate for a building or part thereof, before completion of the entire work as per the development permission, provided sufficient precautionary measures are taken by the holder to ensure public safety and health. The occupancy certificate shall be subject to the owner's indemnifying the Commissioner in the form in Appendix XXIII.’
[emphasis, ours]

Clearly, the 'completion certificate', which the Act prescribes as signifying completion, represents a stage anterior to the issue of an occupancy certificate. Further, though the Act postulates a completion certificate in respect of a housing project, *the same, under the relevant law, is only issued qua each separate building comprising the project*. This also explains as to how and why completion certificates were issued at different times (from 22/7/2005 to 27/3/2008, and finally to the eighth building on 25/11/2009) for different buildings in the present case (refer para 3 of the assessment order). Even assuming that a completion certificate is finally issued, i.e., on the completion of the entire work as per the sanctioned plans – of which there is though no indication, it is clear that the same regulations that provide for application for a completion certificate, i.e., for the entire project, signifying its' completion as per the approved plans, also envisage the issue of a completion and, subsequent thereto, occupancy certificate for a building or part of it, observing the same procedure and adhering to the same guidelines, by the same authority, and on the same basis, i.e., a satisfaction, on the same parameters, as it does for granting completion and, following it, occupancy certificate for the entire project. The same thus has the same validity in the eyes of law, i.e., the law under which it is granted. To clarify further, a building forming part of the project, to which such certificate/s stands granted, cannot be under the relevant regulations regarded as any less 'complete' than were it, instead of a part of a housing project, to comprise the whole project itself. That is, even forming part of a project, the completion certificate issued thereto accords a building the same status as regards its' completion as it would where such certificate is issued in case of a single building comprising an independent project. The completion and the (part) occupancy certificates issued derive their strength and validity from the same principal source, i.e., the D&C Regulations under the MRTP Act, that confer validity to the completion or a occupancy certificate issued by the local authority. Rather, as it appears, such certificates are issued only building-wise. Further, the Act recognizing the completion certificate *qua* a project, i.e., as

signifying its completion, cannot therefore possibly not recognize the completion of a building comprising a project, i.e., by deduction. Why, would not the relevant housing project be regarded as complete, i.e., under the MRTP Act and, consequently, under the Act, upon the issue of a completion certificate to the only incomplete (eighth) building comprising the assessee's project? It would be an absurdity, a contradiction, to suggest otherwise. We accordingly answer the question posed in the affirmative.

3.5 We may next consider the question if the deduction u/s. 80-IB(10) could be allowed to the assessee's relevant housing project, admittedly comprising eight buildings, on the profit derived on that part of the project that is complete, ignoring that which is yet to be completed (by the prescribed date). Where the said two parts are, to any extent, related, there is no question of the project being regarded as complete to any extent. *The reason is that a 'project', to be considered as such, must necessarily have all the qualitative attributes and ingredients thereof, i.e., of the project as approved, which only would qualify it as representing the housing project, as approved, which is, by definition, a housing project u/s. 80-IB(10), as explained in Brahma Associates (supra).* For example, the project may have a school, dispensary, a park, a convenient shopping facility, a community or health/sports centre, etc., i.e., amenities, or common utilities, which is/are not complete. Surely, pending the completion of the same, or such like parts of the project, forming an integral part of and servicing the entire project, the project cannot be regarded as complete to any extent. Where, on the other hand, the same concerns two parts of the project, which are independent of each other, as (say) two residential buildings, it is unexceptional as to why the project cannot be regarded as 'complete' to that extent, i.e., in terms of and following the completion parameters as prescribed by the Act itself. *The independence of-course should be both with reference to construction as well as functional.* The two buildings being independent of each other, could be constructed independent of each other, as signified by the issue of a separate completion certificate *qua* each building,

as in the present case. We say so as the completion of one such (independent) building, in respect of which completion (occupancy) certificate stands issued, admits of habitation, providing the inhabitants access to all the infrastructural facilities and amenities of the project. Residence and living, which is the sole purpose of any residential project, is wholly un-influenced by the non-completion (by the stipulated date) of a similar building forming part of the approved housing project. We, in doing so, have adopted a purposive interpretation of the provision. This is as it would be manifestly unjust where a part of the project, complete in itself, is not regarded as qualifying as eligible despite complying with the conditions of completion in its respect. We employ the words 'complete in itself' as where it is not so, the project suffers from a 'deficiency' *qua* a qualitative attribute that would get removed on the completion of that part of the project. The statute mandates the completion of the entire project, implying full functionality, so that there could be no dilution on that aspect thereof. As such, where there all the qualitative attributes of the composite project are in place, so that it can be regarded as representing the project as defined, we see no reason as to why the completion of a part of the project cannot be regarded as the completion of the project, as approved, to that extent, entitling it to proportionate deduction. We emphasize this in view of the clear provision of law as well as the clear mandate of the decision in *Brahma Associates* (supra), so that the deduction u/s. 80-IB(10) is to extend to a project as a whole, which is the one, single project. It is even otherwise well settled that only a cumulative satisfaction of all the conditions of eligibility entitles the subject undertaking to qualify as one and, further, that there is no equity about tax and the provisions of the taxing statutes are to be strictly construed, as once again clarified by the Hon'ble jurisdictional High Court recently in *Humayun Suleman Merchant vs. CCIT* [2016] 73 taxmann.com 2 (Bom). This is more so in case of an exemption provision as explained time and again by the Apex Court, as in *Novopan India Ltd. vs. CCE* [1994] 73 ELT 769 (SC). In *Brahma Associates* (supra), the ratio of which is binding on us, the provision under reference

was section 80-IB(10)(d), inserted w.e.f. 1.04.2005, providing commercial user, by way of convenient shopping or other commercial establishment to a specified extent. The tribunal allowing deduction on the residential part of the project, the Hon'ble Court held that the provision is *qua* deduction on the profits of the entire housing project, which is one, indivisible project. The term 'housing project' being not specifically defined in section 80-IB(10), the same was to be taken as approved by the local authority, i.e., for the purpose of section 80-IB(10). Further, being a substantive provision, section 80-IB(10)(d) would have no retrospective application. The relevant year being A.Y. 2003-04, for which there was no restriction in section 80-IB(10) as to commercial user, the tribunal, it clarified, had erred in restricting the disallowance to the commercial area *qua* which therefore no stipulation, i.e., to any extent, which could not be imported in the provision, noting, with reference to the D&C Regulations of different Municipal Corporations, the commercial user as varying between 5% and 50% of the total built-up area. The said decision stands since upheld in *Sarkar Builders* (supra).

The word 'project' in *Brahma Associates* (supra) is being thus read by us as including that part of the approved project which has all the attributes of the entire project. *This is toward and by way of a harmonious construction and reconciliation between the intent and object of the provision on one hand, and its language on the other.* Without doubt, 'completion' of the project forms one of the qualifying conditions for an eligible project. So however, the completion of the construction of the part of the project not completed is (to be) independent of that completed (by the specified date). The two, as emphasized, are, again, not functionally related. Residence in the part completed, as in seven buildings in the instant case, would thus not be impacted in any manner by the non-completion of the incomplete part (eighth building). *The completion of construction, it needs to be appreciated, is a condition extrinsic and not intrinsic to the project.* It may well be that despite all the efforts by the Developer, a part could not be completed within the statutorily defined time

period. Again, there could exist conditions or otherwise develop circumstances in the environment impeding the progress of the project, causing its' delay. *The statutory mandate qua completion, as a qualifying condition, would, therefore, meaningfully applied, in our view, extend to that part of the project, which has all the ingredients of the project, as approved, i.e., is capable of being regarded as a complete project in itself, so that it is deficient only with reference to the size of the project.* The incident of taking approval of all the buildings together, or of conceiving the project at a particular size, should not act as a detriment in providing relief. The land area would also, as explained in *Vandana Properties* (supra), have to be taken with reference to the project as approved. We are, when we say so, also conscious that it may well be that the remaining, incomplete part of the project is not brought to completion even subsequently. This consideration would not disturb our conclusion in any manner. The reason is simple, i.e., that the project completed by the specified date is a complete project in itself, liable to be regarded as a separate project, albeit smaller in size. The functional independence would also ensure that the completed project meets the approval standards under the D & C Regulations with reference to which a project is approved by the local authority.

In sum

4. The assessee stands allowed relief by the Id. CIT(A) following the decision by the first appellate authority in the assessee's case for A.Y. 2009-10, which stands since upheld by the tribunal (supra), which found the decisions in the case of *Vandana Properties* (supra) and *Brahma Associates* (supra) as squarely covering the issue at hand. There is no discussion of the facts of those cases and/or the *ratio decendi* of those decisions, or even of the law laid down per the said decisions, which alone is binding. The same, holding a project as approved as being the housing project u/s. 80-IB(10) and, therefore, as one, single project, so that there is no question of a deduction on a part of the project, *which forms the basis of the decision in these judgments*, the

said order by the tribunal, rather than following the Hon'ble High Court, is, with respect, in apparent conflict therewith and *de hors* the same. The decision in *Vishwas Promoters P. Ltd.*(supra), the other decision relied upon in-as-much as the same stands referred to in the order by the first appellate authority which finds reproduction in the tribunal's order (supra), is also in direct conflict with the decision in *Brahma Associates* (supra), since affirmed by the apex court in *Sarkar Builders* (supra). It is also axiomatic that a project either qualifies, i.e., as a whole, as an eligible project, or not. Following the tribunal's order (supra) could thus only be at the peril of not following – *at least prima facie*, the binding decision in *Brahma Associates* (supra), clarifying the scope of the deduction u/s. 80-IB(10) and binding on us. On the Id. AR being so confronted by the Bench during hearing, reading the relevant part of *Brahma Associates* (supra), extracted above (refer para 3.2), he would, seeking time, place on record the Regulations under the MRTP Act (which stand reproduced in this order), further pleading that the completion parameters for the completion of a building are the same under the said regulations as for the housing project as a whole, which must therefore be taken as signifying completion for the purposes of the Act, resting his case at that.

We, in this regard, observe that the relevant D & C Regulations (which are in the public domain) only speak of 'completion certificate' *qua* a building and, accordingly, completion certificates are issued separately for each building. The housing project would therefore be considered as complete on the issue of a completion certificate for the last building. Though we are therefore not required to consider a case where the D & C Regulations provide for completion certificate *qua* a project, i.e., in the facts of the present case, even extending the argument, as it may be so in a given case, or where each of the buildings form part of a composite project, a completion certifying that all its functional or qualitative attributes are in place, cannot but be regarded as representing the 'whole' project, albeit smaller in size and, therefore, complete to that extent. This is as the issue of a completion certificate,

which the law stipulates as signifying completion, a qualifying condition for eligibility, cannot but, and does indeed, similarly, signify completion, of a building/s comprising the project. *Completion, it may be appreciated, is not a functional attribute, or a concomitant, of a project. The condition of completion by a specified date as an eligibility criterion is, on the other hand, extrinsic to the project.* In a given case, it may well be outside the control of the Developer, rendering the provision un-compliable. In contradistinction, s. 80-IB(10)(d), as explained in *Sarkar Builders* (supra), is inextricably linked with the approval and construction of a housing project. The same cannot be said of clause (a) thereof, which must therefore be regarded as the stipulation. What thus obtains for s. 80-IB(10)(d) may not hold good in the context of clause (a) thereof. This is also the conclusion that follows a careful reading of the provision of law (sec. 80-IB(10)) as well as the cited decisions. In *Brahma Associates* (supra), binding on us, the Hon'ble High Court was considering the condition of sec. 80-IB(10)(d), which impinges on an inherent feature, the configuration or a qualitative aspect of the project. This thus then distinguishes the said decision, i.e., with reference to the present case; it being trite that a decision to be read in the factual backdrop and the context in which it is rendered. This is as the words take their colour from the context in which they are used (*CIT vs. Venkateswar Hatcheries (P.) Ltd.* [1999] 237 ITR 174 (SC)). Again, as explained in *Goodyear India Ltd. vs. State of Haryana and Another* [1991] 188 ITR 402 (SC), a precedent is an authority only for what it actually decides and not what may remotely or even logically follow from it (also: *CIT v. Sun Engineering Works (P.) Ltd.* (1992) 198 ITR 297 (SC); *Blue Star Ltd. v. CIT* (1996) 217 ITR 514 (Bom.)).

Considering it as a stipulation, rather than a qualitative attribute, the same can be regarded as met where the project is otherwise complete in all respects, i.e., has all the ingredients of the entire project, save its size. A purposive and harmonious construction of the provision leads us to regard the condition of completion (by a specified date) as a stipulation, so that, though mandatory, *shall have the effect of*

excluding that part of the project which does not meet the said stipulation. Rather, could, one may ask, a uniform completion date be prescribed for all housing projects, which may vary in several respects, besides get beset with construction issues wholly outside the province of the Builder, i.e., get embroiled in factors that are extrinsic to the project. The intent of the Legislature in providing a completion date, as we understand, is to restrict the benefit to where the project is not set on an indefinite course and is completed in a time bound manner. Any exigency may intervene to delay a project. The statutory mandate is, nevertheless, to be respected. The part of the project completed in time, i.e., per the same standards and parameters as prescribed by Act for and signifying completion, would accordingly recommend itself as eligible for deduction. *The project completed should be, without doubt, functionally independent of that not complete, having all the ingredients of the project as approved.* The reason is that only a completed project can be said to contain all the ingredients of the project, quantitative or qualitative. As such, only a project which contains all the features of the whole project can be said to be a 'project', or is liable to be considered as one such, i.e., in substance, being deficient - with reference to the entire project, only in size. So reading the provision of section 80-IB(10)(a) along with *Explanation (ii)* thereto would ensure the object of the provision while at the same time preventing the mischief sought to be curbed by confining the deduction to a project that is completed within a reasonable time, set at four years from the end of the year of its commencement, with the existing projects being also allowed, similarly, another period of four years, eschewing any charge of inequity. A housing project which is complete in all its functional aspects, meeting all the infrastructural facilities that on completion would accrue to the residents thereof, can only be regarded as representing the project as approved, bearing its ingredients, so that it would qualify as an eligible project even where a part of the residential complex is not complete by the specified date. This is as it is again trite law that though being required to be strictly construed, in-as-much as an exemption is an exception to the general rule, once the subject falls

within the purview of the provision, so that the same is applicable, it is to be construed liberally (refer: *Union of India v. Wood Papers Ltd.* (1990) 4 SCC 256: AIR 1991 SC 2049 (at pp. 2051-52); *Hansraj Gordhandas v. H.H. Dave* AIR 1970 SC 755). We also derive support from *Bajaj Tempo Ltd. vs. CIT* [1992] 196 ITR 188 (SC), wherein it stands held as under: [Head Notes at pg. 189]

‘A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the section and not to frustrate it.’

True, there is no equity about tax, and the two make strange bed fellows. However, as explained in *R. B. Jodhamal Kuthiala vs. CIT* [1971] 82 ITR 570 (SC) that though equitable considerations are irrelevant in interpreting tax laws, the same are to be interpreted reasonably and in consonance with justice. This in fact stands oft-repeated by the apex court, as in *CIT vs. Gotla* [1985] 156 ITR 323 (SC), holding as:

‘Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.’

Decision

5. In the present case there is, as apparent, no functional relationship or dependence between the buildings completed and that not completed (by the specified date – 31.3.2008), which are thus independent of each other. This is as the Revenue’s only objection is that one of the eight buildings comprising the assessee’s otherwise eligible housing project u/s. 80-IB(10), i.e., ‘Krishna Complex’, is not complete by that date; the assessee holding completion certificates (by that date) for the other seven buildings of the project. We, accordingly, see no reason as to why deduction u/s.80-IB(10) cannot be allowed on the part that is completed by 31.3.2008. In our view, therefore, the assessee would be entitled to deduction u/s.80-IB(10) on the

building/s comprising the housing project for which it stands issued a completion certificate by 31/3/2008. Our decision, for the reasons stated at paras 3.1 through 4 of this order, cannot be regarded as in breach of the cited decisions by the Hon'ble jurisdictional High Court and, besides, is also in agreement with that by the tribunal in the assessee's case for A.Y. 2009-10. We decide accordingly.

6. In the result, the Revenue's appeal is dismissed.
परिणामतः राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on September 22, 2016

Sd/-
(Pawan Singh)

न्यायिक सदस्य / Judicial Member

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22.09.2016

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai