

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2208/Ahd/2011  
Assessment Year 2008-09**

M/s. Vraj Corporation, 314, Mansarovar IOC Road, Chandkheda, Ahmedabad, Dist: Gandhinagar PAN: AACFV9461E (Appellant)	Vs	The Addl. CIT, Gandhinagar Range, Gandhinagar (Respondent)
---	----	---

**ITA No. 2496/Ahd/2011  
Assessment Year 2008-09**

The ITO, Ward-4, Gandhinagar (Appellant)	Vs	M/s. Vraj Corporation, 314, Mansarovar IOC Road, Chandkheda, Ahmedabad, Dist: Gandhinagar PAN: AACFV9461E (Respondent)
---	----	--

**Revenue by: Shri Prasoon Kabra, Sr. D.R.  
Assessee by: Shri S.N. Soparkar, A.R.**

Date of hearing : 08-08-2017  
Date of pronouncement : 22-09-2017

## **आदेश/ORDER**

### **PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two appeals filed by assessee and Revenue for A.Y. 2008-09, arise from order of the CIT(A), Gandhinagar dated 22-07-2011, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act. These two appeal arose from the combine order of Ld.CIT(A) having interconnected facts therefore the same are adjudicated by this common order as under.

### **ITA No. 2208/Ahd/2011 filed by assessee**

2. The assessee has raised following ground of appeal:-

*“1. On the facts and in the circumstances of the case, the CIT(A) erred in considering it a fit case for invoking the provisions of section 80-IB(13) r.w.s. 80-IA(10) and further erred in reducing the amount of deduction available to the assessee u/s.80-16(10) by a sum of Rs.1,24,88,000.”*

3. In this case, return of income declaring income of Rs. nil was filed on 30<sup>th</sup> July, 2008. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) on 22<sup>nd</sup> March, 2010. The assessee-firm was engaged in the business of developing housing project. During the course of assessment proceedings, the assessing officer has noticed that assessee has claimed deduction u/s. 80IB(10) of the act to the extent of Rs. 5,03,11,524/- for the year under consideration. The assessing officer has elaborated the provision of section 80IB(10) of the act at page 2 & 3 of the assessment order.

Thereafter, the assessing officer observed that following issues have important effect on allowably of deduction u/s 80IB(10) of the act.

4. The ownership of land rest with three individuals unrelated to Vraj Corporation:-

The assessing officer stated that the project Mansarovar Township at Chandkheda, Dist: Gandhinagar was situated at Survey No. & TP No. 300+314, 300/2 + 305 306/1+306/2 and 307/1A. The assessing officer has examined the land purchase agreement dated 4<sup>th</sup> Sep, 1971 and noticed that such land was an ancestral of Shri Tjakormlal G. Patel and ownership of the aforesaid land was distributed and vested with three persons in the following manner:-

No.	Name of the Co- parceners	Survey no. of plot of land distributed
(i)	Shri Thakorlal Govardhandas Patel	302-2, 305 & 306- 1 &2
(ii)	Smt.Swarnaben Thakorlal Patel	307,368,369
(iii)	Shri Prashant Thakorlal Patel	300 & 314 - 1 & 2

From the above information, the assessing officer observed that ownership and possession of the land was transferred to the three persons in their independent capacity. The assessing officer has further observed that in the case of Shri Prashant Thakor Lal Patel, the land was transferred in an individual capacity whereas as per the agreement same has been transferred to Shri Prashant Thakorlal Patel and HUF. Tthe assessing officer has also observed

that assessee has not substantiated with concrete evidence that the entire land was transferred to assessee-firm as capital contribution. The assessing officer has examined the balance sheet of Shri Prashant Thakorlal Patel for the assessment year 2001-02 and 2002-03 and found his capital a/c as under:-

- (i) As on 31<sup>st</sup> March,2001: Rs. 3500/-
- (ii) As on 31<sup>st</sup> Marc, 2002 :Rs. 88,875/-

From the above facts, the assessing officer concluded that no entry in the books of a/c was passed. He stated that all the contributions, addition etc. brought by the partners have to be entered in the books of the firm. He further pointed out that AUDA had issued permission for the construction in the name of Prashant Thakor Lal and others through letter dated 24<sup>th</sup> July, 2000 before the date of agreement. Therefore, the agreement dated 22<sup>nd</sup> Feb, 2001 has not evidentiary value. He has also pointed out that immediately on sale of flat, bungalow etc. the receipt was trifurcated under the three parts like land, payable a/c, common land a/c and construction house a/c which made it clear that the assessee was paying land cost at regular interval when it recovers from the buyers. The assessing officer observed that above facts made it clear that Shri Prashant Thakorlal Patel in his individual capacity along with his father and mother held the complete right and possession of the land till the unit constructed on it was sold to the buyer after putting construction on the land through the firm Vraj Corporation.

5. Approval of project in the name Prashant T. Patel and others in respect of Vraz Corporation :- The assessing officer has stated that the approval letter granted by AUDA for the project was in the name of Prashant Thakpr and others and not in the name of assessee-firm M/s. Vraz Corporation.

6. Building use certificate issued not in the name of assessee-firm, Vrax Corporation :-The assessing officer noticed that building use certificate issued by AUDA was in the name of Prashant T. Patel or Nikunj N Patel of assessee-firm M/s. Vraj Corporation

7. Defects in the a/cs. and unreliability of books of accounts of the assessee-firm, Vraj Corporation:-The assessing officer has noticed the following defects in the books of accounts of the assessee.

(i)The assessing officer noticed that in the P & L a/c, assessee has shown total sales of Rs. 6,09,21,705/-.Under the head closing stock/work nil amount was shown.

(ii) From the list provided by the assessee of the persons to whom the units were sold, the assessing officer noticed for the period 01-04-2007 to 23-03-2008 unit sold to members was for only Rs. 3,37,46,184/-. On the other hand, constructed units shown to be sold under the partners account was at the amount of Rs. 3,47,65,000/-. In view of this, assessing officer has worked out total sales at Rs. 6,85,11,184/-.

(iii)48 units were transferred to the partners to partners Sh. P.T. Patel HUF and Sh. NN patel. In this connection it was stated

that there was dispute between the partners therefore as mutually decided the unsold units were transferred at the market value of the said units.

8. The assessing officer has not accepted the assessee's explanation that because of dispute between the two partners unsold units were transferred to both the partners as mutually decided relevant market value of said units. The assessing officer has not found any documentary evidence to show that there was any dispute between two partners. The assessing officer concluded that transfer of unsold units to the partners without any documentary evidences show that the profit determined by the assessee was not the real profit on which the deduction u/s. 80IB(10) claimed. He has also noticed that the value at which these units were transferred to the partners was quite excessive as compared to the units sold to the members. He also observed that the transferred of units to the partners reflect an imaginary sale and imaginary profit. He further stated that there exit closing stock on 48 unsold units which was not reported by the assessee. Therefore, the assessing officer has held that the books of accounts of the assessee-firm was unreliable and defective and rejected u/s. 145(3) of the act.

9. Dominant control of the projects not in the hand of Vraj Corporation :-

The assessing officer has stated that the books of accounts suggest that the dominant control of the project was not in the hand of the

assessee. He pointed out that project was implemented on the land belonging to three persons Sh. Thakorlal Govardhandas Patel, Smt. Swarnaben T Patel and Sh. Prashant Thakorlal Patel. They have never given the land for development of project to the assessee-firm. Further, he stated that transfer of the project by the AUDA as well as approval of the project by the AUDA as well as completion certificate by the AUDA was in the name of Shri Prashant T. Patel and others and no certificate was issued. He further observed that 48 unsold units were not shown in the closing stock of the assessee-firm. On the other hand the same were shown as transferred to the partners at their level .

10. Role of M/s. Vraj Coporation only as a contractor :-

The assessing officer observed that the activity of the assessee-firm was only as a work contractor and not a developer. He further stated that the assessee-firm can only be termed as providing skill and labour while dominant and most valuable material in the form of the land etc. were supplied by other parties constituting Prashant T. Patel. He also observed that procuring other material from outside by the firm is just an activity incidental to carrying on the contract work. After considering all these facts, the assessing officer has concluded that it has been established beyond doubt that the assessee was not eligible for deduction u/s. 80IB(10) of the act. Therefore, he disallowed the claim of Rs. 5,03,11,524/- for the year under consideration.

11. Aggrieved against the decision of the assessing officer, the assessee preferred appeal before the Ld. CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee by observing as under:-

*"6.4 I have carefully considered the assessment order and the above submissions and have perused the material available on record. So far as the objection of the Id. AO with regards to ownership of land developed by the appellant firm, the learned counsel for the appellant have made categorical submissions before me that the land on which the project of 'Mansarovar Township' has been developed by the appellant firm only belonged to HUF of Prashant T Patel who is a partner in appellant firm and the land belonging to other two persons had been transferred to their legal heirs after their death and hence no consideration as regards to Sand cost was payable to those persons. The submission of the appellant is further supported by the relevant agreement as well as copy of 'hak patrak' placed on record by the appellant before the A.O. Further it is noticed that the land in question was an ancestral property, hence it was appropriately shown as the property of HUF of Shri Prashant T Patel, Considering such facts and material on record, I am of tine considered opinion the appellant has not committed any error in paying the consideration for land cost to the HUF of Prashant T Patel and the objection of Id. AO to this extent is without any merits.*

*6.5 Now coming to the eligibility of appellant for claiming deduction u/s 801B(10) of the Act, a plain reading of section 801B(10) reveals that this deduction is available to an undertaking which is developing and building housing project as approved by a local authority. It does not lay down any further condition that such development of housing project should also be on the land owned by the assessee undertaking or the permission to develop the same should be in the name of the assessee undertaking. Even this position is now clear in the judgments of Hon'ble Jurisdictional Tribunal in case of Radhe Developers and Shakti Corporation (supra). Hence deduction u/s 801B(10) can certainly not be denied on this grounds. Even otherwise, in the present case, it is an undisputed fact that the appellant firm has paid land cost to owner i.e. Prashant T. Patel HUF and the land was handed over to the appellant firm for development of project. In any case, as discussed above legal ownership over the land has never been any relevant criteria. What is necessary is that the assessee claiming deduction should have complete control and dominance over the project. In the present case, the appellant firm has paid acquired possession and dominant control over the land and has also borne the entire risk and responsibility of the project. Even the AO has not disputed the fact the total consideration form sale of units to members has been received by the appellant firm and it has borne the entire expenditure including land cost of the project. Further, a perusal of the assessment order shows that the AO has not disputed fulfillment of other conditions laid down in sub clause (a) to (d) of section 801B(10) except for the observation that the appellant has carried on the development in the capacity of the contractor. However, as discussed above, the appellant firm has not worked in the capacity of a contractor but has acquired dominant control over the land and has also borne the entire risk and responsibility of the project, and hence the appellant has fulfilled all the tests Said down by Hon'bie ITAT Ahmedabad in case of M/s, Shakti Corporation(supra).*

*With regards to the transfer of 48 units to partners, the AO is of the opinion that the said transfer is in violation of provisions of clause (e) and (f) to section 801B(10) of the Act However, as has been rightly pointed by the learned counsel for the appellant the said provisions has been brought into statute by Finance (No.2) Act, 2009 w.e.f. 1-4-2010, Since the present year under appeal is A,Y 2008-09, the provisions were clearly not applicable to the present year and hence appellant cannot be disallowed deduction u/s*

*80IB(10) on account of such ground. Further, I have observed that the constructed area of each residential unit is much smaller than the threshold limit of 1500 sq. feet and the limit would be crossed only if units are sold after combining structurally 4-5 units together as one unit; which is definitely not the case of the A.O. Considering the entirety of facts, the AO is directed to allow deduction u/s 80IB(10) claimed by the appellant for Rs. 3,78,23,524 as remaining income of Rs. 1,24,88,000 has been considered as income not eligible for deduction in para 5 herein above. The relevant ground of appeal is partly allowed."*

12. During the course of appellate proceedings before us, the Id. counsel has contended that the Id. CIT(A) has erred in denying deduction u/s. 80IB(10) to the extent of Rs. 1,24,88,000/- on the ground that assessee has charged excess price on the dwelling units transferred to the partners. On the other hand, the Id. departmental representative has contended that the assessee had shown transactions with related parties at excessive rates in comparison to the outside parties. He further contended that in the case of the assessee provision of section 80IB(10) r.w.s. 80IA(10) was correctly applied.

13. We have heard both the sides and perused the material on record carefully. We have noticed that the 13 flats of the AR 1 & 8 flats of AR-2 were transferred to the partners of firm at Rs. 7.90 lacs each as against market value of Rs. 5 lacs each. The assessee has pleaded that the aforesaid flats were sold to the outsiders in the month of January whereas the sale was made to the partners in the month of March, 2008. We have further observed that in respect of 11 flats of AR-3, the assessee has charged Rs. 7.90 lacs from partners as against Rs. 4.52 lacs were charged from the outside parties. We have also noticed that 10 flats of A R-3, the assessee

has received sale consideration of Rs. 4.90 lacs from the partners as against Rs. 2.25 lacs of sale consideration received from the outsiders. Further 4 flats of A R-3 on 2<sup>nd</sup> floor were sold to the partners at 2.70 lacs whereas to the outsiders he was made at Rs. 1.82 lacs each. We have considered these facts along with findings of the Id. CIT(A) and the material on record. We are of the view that pleading of the assessee that there was gap in the period of sale of units to the partners and outsiders is not justified. We observed that a gap of short duration cannot increase the prices at tremendous level of sale of units in such a short of period of 2-3 months. The assessee has not brought out any supportive material to demonstrate any economic factor which has enhanced the prices of the units of flats within a short duration when the sale was effected to the partners of the assessee firm. We have also considered the findings of the Id. CIT(A) that in respect of ground floor units there was a small area attached showing only common area without proving the attachment of independent area such units which were transferred to the partners. We have further noticed that the assessee is partnership firm. As per section 4 of the partnership Act, 1932, partnership is the relation between person who have agreed to share the profit of a business carried on by all or any of them acting for all. Section 25 of the partnership Act say that each partner is liable jointly with all other partners and also severally for all acts of the firm done while he is a partner. Section 18 of the partnership act says that a partner is the agent of the firm for the purpose of the business of the firm. We observed that because of the relation between the partners

and the partnership firm, the assessee could not prove with the relevant supporting evidences that the transaction of sale of flats made to the partners at exorbitant price than the sale made to the outside parties were not arranged transactions. The profits of the assessee firm is exempted u/s. 80IB of the act and the share of the partner of a firm is also exempted as per the provisions of section 10(2A) of the act. Looking to the above facts and the propinquity between the assessee and the partners, the assessee has not proved with cogent evidences that the transactions with the partners were carried out at fair market value. After considering the above facts and the detailed findings of the Id. CIT(A), we do not find any error in the decision of the Id. CIT(A), therefore, the appeal of the assessee is dismissed.

**ITA No. 2496/Ahd/2011 filed by revenue**

14. The revenue has raised following ground of appeal:-  
*“1. The learned CIT(Appeals) has erred in law and on facts in deleting the disallowance made u/s 80IB(10) of Rs.5,03,11,524/- and also directing to allow deduction u/s 80IB(10) on disallowance out of vehicle and telephone expenses of Rs.1,06,625/-.”*
15. During the course of appellate proceedings before us, the Id. departmental representative has supported the order of the assessing officer and contended that the assessee firm was a work contractor and not a developer. On the other hand, Id. counsel has placed reliance on the judicial pronouncement in the case of M/s Vraj Construction and M/s. Vraj Contractor vide ITA No. 2494/Ahd/2011 and 2495/Ahd/2011 for deduction u/s. 80IB(10) of the act.

16. We have heard both sides and perused the material on record. We have noticed that Id. CIT(A) has placed reliance on the judicial pronouncement of the Hon'ble jurisdictional High Court delivered in the case of Radhe Developer and Shakti Corporation. The Id. CIT(A) has also stated that a plain reading of section 80IB(10) reveals that this deduction is available to an undertaking which is developing and building housing project as approved by a local authority. It does not lay down any further condition that such development of housing should also be on the land owned by the assessee. We have perused the decision of the Co-ordinate Bench of the ITAT Ahmedabad in the case of M/s. Vraj Construction and Vraj Contractor on the identical issue decided in favour of the assessee. The relevant part of the decision is reproduced as under:-

*"7. In the instant case, the assessee is engaged in the business of construction and developing of infrastructure housing projects. The undisputed facts of the case are that during the year under consideration, the assessee filed return of income showing Nil income after claiming deduction u/s 80IB(10) for Rs.1,52,44,321/-. The same was disallowed by the Assessing Officer on the ground that the assessee is only a work contractor and not a developer. On appeal, the CIT(A) allowed the claim for deduction u/s. 80IB(10) to the assessee, following the decision of ITAT Ahmedabad Bench in the case of M/s. Shakti Corporation, Baroda, reported in 32 SOT 438, holding that the assessee-firm has not worked in the capacity of a contractor but has acquired dominant control over the land and has also borne the entire risk and responsibility of the project.*

*8. We find that the Hon'ble Gujarat High Court in the case of CIT vs. Radhe Developers (supra) has held that the provisions nowhere required that only those developers who themselves own the land would receive the deduction under Section 80IB(10) of the Act. Neither the provisions of Section 80IB nor any other provisions contained in other related statutes demonstrate that ownership of the land would be a condition precedent for developing the housing project. Such requirement cannot be read into the statute because there is nothing under Section 80IB(10) of the Act requiring that ownership of the land must vest in the developer to be able to qualify for such deduction. We, therefore, find that the order of the CIT(A) is supported by the order of the Hon'ble jurisdictional High Court. Hence, we do not find any infirmity in the order of the CIT(A) which is hereby confirmed and the appeal of the Revenue is dismissed accordingly."*

Respectfully following the decision of the Co-ordinate Bench of the ITAT on the identical issue as supra in this order, we do not find any error in the decision of the Id. CIT(A), therefore, the appeal of the revenue is dismissed.

17. In the result, the appeal of the assessee and the appeal of the revenue are dismissed.

Order pronounced in the open court on 22-09-2017

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 22/09/2017**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलालय आधिकरण,  
अहमदाबाद