

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.4694 & 4695/DEL/2014
Assessment Year: 2010-11 & 2011-12

DCIT Circle 7(1) New Delhi	v.	S.G. Estates Ltd. 105-106, Deep Shikha Tower Rajender Place New Delhi
		TAN/PAN:AAACS2843L
(Appellant)		(Respondent)

Appellant by:	Shri Kaushlendra Tiwari, D.R.		
Respondent by:	Shri Gautam Jain, Advocate		
Date of hearing:	24	10	2017
Date of pronouncement:	24	10	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed by the Revenue against separate impugned orders dated 12/6/2014 and dated 18/6/2014, passed by the Ld. CIT (Appeals)-X, New Delhi for the quantum of assessments passed under section 143(3) of the Income Tax Act, 1961 for the assessment years 2010-11 and 2011-12.

2. In both the appeals, common issues have been raised arising out of identical set of facts, therefore, the same were heard together and are being disposed of by way of this consolidated order.

3. In both the appeals, the only grievance of the Revenue is that the ld. CIT(A) has erred in law in directing the Assessing Officer to allow proportionate deduction under section 80IB(10) on the number of flats.

4. At the outset, the ld. counsel for the assessee, submitted that this precise issue had come up for consideration before the Tribunal in assessee's own case in assessment years 2008-09 and 2009-10, wherein this issue has been allowed in favour of the assessee vide order dated 17/12/2014, which now stands confirmed by the Hon'ble jurisdictional High Court also in ITA No.478/2015. The copies of both the orders/judgments were filed before us.

5. The facts in brief are that the assessee-company has been engaged in the business of real estate developers and builders. It has developed two group housing projects namely, "Impression Vasundhara" and "Impressions 58" in Vasundhara, Ghaziabad along with other projects. During the year, it has claimed deduction under section 80IB(10) of Rs.2,55,19,712/- on the profits of both these projects. Before the Assessing Officer, assessee had submitted the following facts qua these projects:-

"IMPRESSION VASUNDHARA"

PROJECT NAME	Impression Vasundhara
BUILDER NAME	S G Estates Limited
Land Sanctioning Authority	U P Aavas & Vikas Parishad, Ghaziabad
Sancton Letter Ref	945/NP/23/06-07A/N-6 DT. 14.05.2007
Land Area (in Sq. Mtr)	5636.36 Sq Mt.

Total Saleable Area (In Sq. Ft.)	Super Area 194623 Builtup Area 139987
	Area (in Sq Ft.)
Built Up area below 1000 Sq Ft. flat	67823
Built up area above 1000 Sq. Ft. flat	69294
Commercial Area	2870

IMPRESSIONS 58

Project Name	Impression 58
Builder Name	S G Estates Limited
Land Sanctioning authority	Ghaziabad Development Authority
Sanction Letter Ref	198/957/CMP/GH/07-08
Land Area(in Sq Mtr.)	6088 Sq Mt
Total Saleable Area (in Sq Ft.)	Super Area 196210 Builtup Area 145152
Built up area below 1000 Sq Ft flat	109695
Built up area above 1000 Sq Ft flat	31261
Commercial area	4196

Based on architect's certificate and the site map approved following further facts emerged in respect of these two group housing projects as under:

Impression Vasundhara

This project has total 122 dwelling units out of which in 50 dwelling units the 'built up area' of each dwelling unit exceeds 1000 Sq Ft.

Impression 58

The project has total 154 dwelling units out of which in 26 dwelling units the 'built up area' of each dwelling unit exceeds 1000 Sq Ft."

6. The Assessing Officer held that since some of the dwelling units had exceeded the built up area of 1000 sq. ft., therefore, deduction u/s 80IB(10) cannot be allowed, as it is allowable in respect of the project as a whole and not individual resident unit independently. Accordingly, he disallowed the entire claim of Rs.2,55,19,712/-.

7. The ld. CIT (A), following the appellate order in the case of the assessee for earlier year, allowed assessee's claim. He also referred to the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Housing and Construction Limited in I.T.A. No.480 & 485/2010 and directed the Assessing Officer to allow proportionate deduction under section 80IB(10) on the flats which were within 1000 sq. ft.

8. The ld. D.R., though admitted that this issue is covered in favour of the assessee by the order of the Tribunal in earlier years, however, submitted that provisions of section 80IB(10) are amply clear that it is meant for entire housing project and if the assessee has violated the terms and conditions as mentioned in the said section, i.e., has constructed some flats which has exceeded the limit of 1000 sq. ft., then deduction for the whole housing project cannot be allowed.

9. We have heard the rival contentions and also perused the relevant finding given in the impugned order. We find that this issue had come up for consideration before the Tribunal in the assessee's own case for assessment years 2008-09 and 2009-2010, wherein proportionate deduction under section 80IB(10)

has been directed to be allowed. The relevant observations and finding of the Tribunal in this regard read as under:-

“20. Considering the above submissions, we find that the first appellate order on the issue is fully covered by the decision followed by the Learned CIT(Appeals). The decisions are of 3rd member, Chennai Bench in the case of Sanghvi & Doshi Enterprises - 141 TTJ (Chennai -3rd Member), Ankit Enterprises vs. DCIT - 172/PN/2011, ITA No. 156/Pune-2011, Bengal Ambuja Housing Development Ltd. - ITA No. 458 of 2006 dated 05.01.2007 (Calcutta High Court). In the present case, the assessee was having two projects in which there were some flats which exceeded the prescribed area of 1000 sq. ft. whereas certain other flats were within the limit as prescribed under sec. 80IB(10) of the Act. The Assessing Officer found that since there were some flats exceeding prescribed limit regarding the built up area, therefore, no deduction under sec. 80IB(10) should be allowed. On the basis of cited decisions, the Learned CIT(Appeals) held that there is no concept or definition of “housing project” in the I.T. Act and that made technicalities should not be the guided principles for considering the claim of deduction by the assessee. Thereafter, the Learned CIT(Appeals) following the decision of 3 rd Member Bench of the ITAT at Chennai in the case of Sanghi & Doshi Enterprises & Ors. cited before him held that in the present case proportionate deduction under sec; 80IB(10) should be allowed to the assessee. He accordingly directed the Assessing Officer to allow proportionate deduction under sec. 80IB (10) keeping in view the number of flats which have complied to the provisions of the section. He further directed that the deduction may, however, not to be allowed of that portion where the flats have violated the prescribed area. Since the view taken by the Learned CIT(Appeals) is supported by the above cited decisions relied upon by him and no contrary decisions

thereto brought to our notice by the Revenue supporting the view of the Assessing Officer, we do not find reason to interfere with the first appellate order on the issue. The same is upheld. The ground No.2 is accordingly rejected.”

10. The aforesaid decision of the Tribunal has also been confirmed by the Hon'ble jurisdictional High Court wherein the Hon'ble High Court has discussed and decided this issue in the following manner:-

“20. Considering the above submissions, we find that the first appellate order on the issue is fully covered by the decision followed by the Learned CIT (Appeals). The decisions are of 3rd member, Chennai Bench in the case of Sanghvi & Doshi Enterprises - 141 TTJ (Chennai -3rd Member), Ankit Enterprises vs. DCIT - 172/PN/2011, ITA No. 156/Pune-2011, Bengal Ambuja Housing Development Ltd. - ITA No. 458 of 2006 dated 05.01.2007 (Calcutta High Court). In the present case, the assessee was having two projects in which there were some flats which exceeded the prescribed area of 1000 sq. ft. whereas certain other flats were within the limit as prescribed under sec. 80IB(10) of the Act. The Assessing Officer found that since there were some flats exceeding prescribed limit regarding the built up area, therefore, no deduction under sec. 80IB(10) should be allowed. On the basis of cited decisions, the Learned CIT (Appeals) held that there is no concept or definition of “housing project” in the I.T. Act and that made technicalities should not be the guided principles for considering the claim of deduction by the assessee. Thereafter, the Learned CIT(Appeals) following the decision of 3 rd Member Bench of the ITAT at Chennai in the case of Sanghi & Doshi Enterprises & Ors. cited before him held that in the present case proportionate deduction under sec; 80IB(10) should be allowed to the assessee. He accordingly directed the

Assessing Officer to allow proportionate deduction under sec. 80IB (10) keeping in view the number of flats which have complied to the provisions of the section. He further directed that the deduction may, however, not to be allowed of that portion where the flats have violated the prescribed area. Since the view taken by the Learned CIT(Appeals) is supported by the above cited decisions relied upon by him and no contrary decisions thereto brought to our notice by the Revenue supporting the view of the Assessing Officer, we do not find reason to interfere with the first appellate order on the issue. The same is upheld. The ground No.2 is accordingly rejected.”

11. Whence deduction under section 80IB (10) has been allowed in earlier years on the same project on similar set of facts and also the fact that the allowbility of the same has attained finality from the stage of the Hon'ble High Court, then respectfully following the judicial precedence, we also direct the Assessing Officer to allow proportionate deduction under section 80IB(10) for both the years. Accordingly, both the appeals of the Revenue for assessment years 2010-11 and 2011-12 are dismissed.

12. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open Court on 24th October, 2017.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 24th October, 2017

JJ:2510

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

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