

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-3843/Del/2014
(Assessment Year: 2010-11)**

DCIT Circle-16(1) New Delhi	vs	Tulip Infratech Pvt. Ltd. 1201-1204, Indraprastha Building, 21, Barakhamba Road New Delhi PAN : AACCT3755E
Assessee by		Dr. Shalil Agrawal, & Shailesh Gupta, Adv.
Revenue by		Smt. Ritu Sharma, Sr. DR

Date of Hearing	02.01.2018
Date of Pronouncement	02.01.2018

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 25.03.2014 in appeal no. 97/13-14, passed by the Ld. Commissioner of Income Tax (Appeals)-XIX, New Delhi (for short called ld. CIT(A)). Revenue preferred this appeal on the following grounds :-

Ld. CIT(A) had erred in deleting addition amounting to Rs. 5,40,90,763/- made by AO on account of deduction u/s 80IB of I.T.Act, 1961.

2. Relevant facts, in brief, are that the assessee is engaged in the business of Real Estate Development and the main source of income is derived from sale of flats constructed and developed by them under various project. Apart from this source of income, the assessee also earns income from various investments, like fixed or term deposits with banks, mutual fund investment, made out of its surplus cash inflows lying idle in bank accounts at various point in times.

3. For the assessment year 2010-11, the assessee filed their return of income on 25.09.2010 declaring a total income of Rs. 5,00,08,476/- and during scrutiny u/s 143(3) of the Act, Ld. AO found that the assessee had claimed deduction u/s 80IB(10) of the Income Tax Act (for short called "the Act") to a tune of Rs. 5,40,90,763/-. He further found that about 14% of the flats have exceeded the limits specified in the statute, u/s 80IB(10)(c) of the Act. It was submitted before the AO that proportionate benefit may be given u/s 80IB(10) of the Act. However, ld. AO held that

under proviso to section 80IB(10) of the Act benefit has to be given only if all the conditions mentioned therein are fulfilled by the assessee and proportionate benefit could not be extended. On this ground Ld. AO disallowed the claim of the assessee and added back a sum of Rs. 5,40,90,763/-.

4. The assessee preferred an appeal to the ld. CIT(A). Ld. CIT(A) in his order vide paragraph no. 3 observed that a similar issue had arisen in respect of the Assessment Years 2008-09 also and after making elaborate discussion by order dated 25.03.2014 in respect of assessment year 2008-09, the issue was decided in favour of the assessee. While following the same, ld. CIT(A) allowed the appeal in respect of the assessment year 2010-11 also directing the AO to delete the addition. Hence, the revenue preferred this appeal.

5. Ld. DR vehemently placed reliance on the assessment order and submitted that unless and until the assessee fulfils all the conditions under section 80IB(10) of the Act, assessee is not entitled claimed any deduction thereunder, as such, the order of the ld. CIT(A) cannot be sustained. Per contra, it is the submission of the ld. AR that the ld. CIT(A) rightly followed the provisions u/s 80IB (10)(c) of the Act and as a matter of fact the

orders of the ld. CIT(A) for the assessment years 2007-08 and 2009-10, 2008-09 and are upheld by the Tribunal in ITA No. 2325/Del/2010 and 5045/Del/2012 by order dated 18.02.2016, in ITA no. 3842.Del.2014 by order dated 28.02.2017 and in ITA no. 6139.Del.2014 by order dated 31.10.2017 respectively. He submitted that since the Tribunal has been taking consistent view in assessee's own case for the assessment years 2007-08, 2008-09, 2009-10 and 2011-12 the order for the assessment year 2010-11 also fits into the same order and cannot be interfered with.

6. We have gone through the orders of the authorities below and also the orders of the co-ordinate benches of this tribunal in assessee's own case for the assessment year 2007-08, 2009-10 and 2011-12. Facts and issue in all these matter as well as in the present appeal are identical. There is no dispute on this aspect. We, therefore, while respectfully following the consistent view taken by the co-ordinate benches, find that the disallowance of the prorated deduction u/s 80IB (10) of the Act, claimed by the assessee is not sustainable. We, therefore, find that the appeal is devoid of merits and is liable to be dismissed. We order accordingly.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 2nd January, 2018.

Sd/-

(G.D. AGRAWAL)
PRESIDENT

Dated: 02.01.2018

BINITA

Sd/-

(K. NARSIMHA CHARRY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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