

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ए', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं**

**श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष**

**Before Shri JOGINDER SINGH, Judicial Member, and**

**Shri G. MANJUNATHA, Accountant Member**

**ITA NO.3306/Mum/2016**

**Assessment Year: 2011 - 2012**

Income Tax Officer Ward 4(4), Thane (W)	<b>बनाम/ Vs.</b>	Hari Om Builders & Developers, 1 Manohar Nagar, Opp Shiv Shakti Complex, Valiv, Vasai (E) Mumbai 401 208
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>P.A. No. ABDFS3536P</b>		

**CO No.261/Mum/2017(Arising out of ITA  
NO.3306/Mum/2016 AY: 2011 - 2012**

Hari Om Builders & Developers, Mumbai 401 208	<b>बनाम/ Vs.</b>	Income Tax Officer Ward 4(4),Thane (W)
<b>(Cross-Objector)</b>		<b>(Respondent)</b>

राजस्व की ओर से / Revenue by	Shri Rajesh Kumar Yadav DR
निर्धारिती की ओर से / Assessee by	Shri Subodh Ratnaparkhi

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>05/02/2018</b>
घोषणा की तारीख/ <b>Date of Pronouncement</b>	<b>05/02/2018</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated  
2<sup>nd</sup> February, 2016 of the learned first appellate authority

allowing deduction u/s. 80IB(10) of the Income Tax Act, 1961 (hereinafter the Act), amounting to Rs 2,80,10,538/- relying upon the decision from Hon'ble Gujarat High Court in the case of Tarnetar Corporation (2012) 26 taxman.com 180 (Guj). The assessee has also filed cross-objection with respect to the same deduction u/s. 80IB(10), originally allowed in the assessment framed u/s. 143(3) of the Act by holding that the same is a mistake apparent from record by passing an order u/s. 154 of the Act, which is not maintainable under the Act.

2. First we shall take up the appeal of the Revenue. The only ground raised by the Revenue is with respect to allowability of deduction u/s. 80IB(10) of the Act. The facts in brief are that the assessee declared 'nil' income in its return filed on 29.09.2011, after claiming deduction u/s. 80IB(10) of the Act amounting to Rs 2,80,10,538/- on the project of building 1, 2 and 3. The assessment u/s. 143(3) was completed on 08.08.2003 allowing the claimed deduction. Originally, CIDCO was the legal authority for Vashi area where the project of the assessee is situated and later on the said area came within the jurisdiction of Vasai

Virar Municipal Corporation. A show cause notice u/s. 154, dated 10.04.2014, was issued to the assessee. As per the Revenue the assessee could not submit the completion certificate even after affording a reasonable time thus, the claimed deduction u/s. 80IB(10) was allowed. The assessee was aggrieved by the rectification order passed by the learned Assessing Officer therefore, appeal was preferred before the learned CIT(A) where the addition made by the Assessing Officer was deleted. The learned CIT(A) deleted the addition on the plea that the buildings were completed before 31<sup>st</sup> March 2011, therefore, the conditions of section 80IB(10) stood fulfilled. The learned CIT(A) relied upon the decision in the case of CIT vs. Hindustan Samuha Awas Limited. In that case it was held that where the assessee undertook a housing project and completed the same within time and moved the application for completion certificate within time but the same was issued after a delay, such delay could not be attributed to the assessee and the assessee would be entitled for deduction u/s. 80IB(10) of the Act. The case of the Revenue is that since the completion certificate was not issued within time by the local authority, therefore, the required conditions prescribed u/s. 80IB(10)

of the Act were not fulfilled by the assessee. There is no dispute to the fact that the project was completed as per the prescribed conditions within the stipulated period and the application for grant of completion certificate was applied within time, therefore, in principle, we are in agreement with the finding of the learned CIT(A) that if there is any lapse on the part of Municipal Authorities in issuing the completion certificate, the assessee cannot be penalized. It is also noted that originally the assessment was framed u/s. 143(3) of the Act on 08.08.2003 that too on examination/verification of the return, filed by the assessee. In the original assessment, there is a finding that the assessee has complied with all the conditions imposed by the provisions of the Act. The rectification u/s 154, of the Act carried out by the assessee as on the premise that the project of the assessee was without occupation certificate therefore, the claimed deduction originally allowed u/s. 143(3) on 08.08.2003 was wrongly allowed. It is further noted that CIDCO was the original local authority for Vashi (East) and thereafter the jurisdiction was transferred to Municipal Corporation (VVMC). Due to change in the authority the occupancy certificate got delayed and the certificate for building no.1

was granted by CIDCO on 27.03.2008 but with respect to building No. 2 & 3 which were completed on 22.03.2011 got delayed due to change of approving authority. We have perused the record along with application dated 22.03.2011 for grant of occupancy certificate with respect to building no. 2 & 3, sample copies of electricity bills of flats in building no 2 & 3, evidencing installation of electricity meters and supply of electricity, occupancy certificate of building nos. 2 & 3 issued by VVMC on 31.05.2014 (all documents are attached in the paper-book of the assessee), thus, the decision from Hon'ble jurisdictional High Court in Hindustan Samuh Awas Limited (62 taxman.com 175)(Bom), CIT vs. Tarnetar Corporation (26 taxman.com 180) (Guj), Income Tax Officer vs. Saket Corporation (62 taxman.com 38) (Guj), M/s. D K Construction vs. Income Tax Officer (IA No. 243/Indore/2010 dated 6.12.2010) we find no infirmity in the order of the learned CIT(A).

3. So far as order u/s. 154 of the Act, withdrawing the deduction originally allowed u/s. 80IB(10) is concerned, we find that the learned CIT(A) has rightly observed that it was not a mistake apparent from record as the original order

was passed u/s. 143(3) of the Act. The learned CIT(A) has already mentioned various decisions with respect to the issue and withdrawal of claim u/s. 80IB(10) of the Act was not a mistake apparent from record. Even otherwise, on merits, the claim of the assessee is quite justified. We affirm the stand of the learned CIT(A) with respect to claim u/s. 80IB(10) in which we find no infirmity.

4. So far as the cross-objection no.261/Mum/2017 is concerned, since we have dismissed the appeal of the Revenue on the issue of claimed deduction u/s. 80IB(10), in favour of the assessee, therefore, the cross-objection of the assessee has remained for academic interest only, consequently dismissed as infructuous.

Finally, the appeal of the Revenue and Cross-objection of the assessee are dismissed.

This Order was pronounced in the open court in the presence of learned representatives from both sides at the conclusion of the hearing on 5<sup>th</sup> February, 2018.

*Sd/-*

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : **05/02/2018**

**SA**

*Sd/-*

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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**