

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.1704/Hyd/2014, 1230/Hyd/2015 & 1082/Hyd/2016
(Assessment Years: 2010-11, 2011-12 & 2012-13)

Manjeera Projects Vs ITO Ward – 6 (2)
Hyderabad Hyderabad
PAN:AAOFM 0872 C
(Appellant) (Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Dr. K. Srinivas Reddy, DR

Date of Hearing: 13.02.2018
Date of Pronouncement: 27.04.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

These are all assessee's appeals against the order of the CIT (A)-IV dated 15.09.2014 for the A.Y 2010-11; the order of the CIT (A)-VI, dated 24.8.2015 for the A.Y 2011-12; and the order of the CIT (A)-VI, dated 24.6.2016 for the A.Y 2012-13 respectively. Since, in all the three appeals, the common issue is the disallowance of the claim of deduction u/s 80IB(10) of the I.T. Act, they were heard together and are disposed of by this common and consolidated order. For the sake of convenience, the appeal of the assessee for the assessment year 2010-11 is taken up first.

ITA No.1704/Hyd/20142.

2. In this appeal, the assessee has raised the following grounds of appeal:

“1. The learned CIT(A) erred in fact and in law in denying exemption u/s.80(IB)(10) of the IT Act amounting to Rs.16,99,10,673/- as claimed by the appellant.

2. The learned CIT(A) ought to have appreciated the spirit of the circular No.4/2009 dated 30.6.2009 issued by CBDT permitting allowance of deduction on a year to year basis on the profits from partial completion of the project. As the appellant followed percentage of completion method about which there is no dispute, the deduction should have been allowed since the appellant had produced necessary certificate for completion.

3. The learned CIT(A) ought to have appreciated that the provisions u/s.801B(10) being incentive provisions, a liberal interpretation of the provision will make the provision otiose instead of advancing the purpose of legislation in the light of this accepted principle enunciated the Apex Court. The learned CIT(A) ought to have allowed deduction in respect of completed blocks for which the claim was made for which necessary certificate was obtained from the municipality duly supported by other evidences.

4. The learned CIT(A) ought to have appreciated the spirit of the above circular which has the effect of diluting the provisions of section 801B(10) to remove the hardship caused by strict implementation of the provisions instead of making incorrect interpretation of the circular.

5. The learned CIT(A) ought to have limited the deduction to the portions of the housing project completed by the appellant instead of making a literal interpretation of the provision and disallowing the deduction.

6. The learned CIT(A) ought to have allowed deduction of Rs.1,71,170/-received from deposits of margin money in the banks”.

3. In addition to the above, vide letter dated 16.03.2015, the assessee has raised the following additional grounds of appeal:

“The order of the CIT (A)-VI, Hyderabad in giving a finding at Paragraph 4.15 of the order that the Appellant is not entitled to 80-IB deduction for A, D & E Blocks, the revenue from which is disclosed in A.Y 2012-13 is a finding not necessary for the disposal of appeal and therefore must be deleted”.

4. Brief facts of the case are that the assessee firm, engaged in the business of construction of flats, filed its return of income for the A.Y 2010-11 on 14.10.2010 admitting ‘nil’ income after claiming deduction of Rs.16,99,10,673 u/s 80IB(10) of the Act. The case was selected for scrutiny under CASS and the notice u/s 143(2) was issued on 26.08.2011 and the notice u/s 142(1) was issued on 25.10.2012. In response to the above notices, the representative of the assessee appeared and furnished the details called for. After verification of the details furnished by the assessee, the AO observed that the assessee has undertaken construction of a housing project by name “Manjeera Diamond Towers”, near Gopannapally Village, Serilingampally Mandal, Ranga Reddy District and has claimed deduction u/s 80IB(10) of the Act on the profits admitted during the year from the project. He observed that the assessee has undertaken the housing project on a plot area of 11.05 acres and the project was approved by the local authority on 4.2.2008 and that the housing project

approved as a single project consisting of 11 buildings. He observed that out of the 11 buildings, the assessee has claimed to have completed the construction of 7 buildings and that the construction of the balance 4 buildings is still in skeleton stage or has not yet started. Even, in support of the completion of the 7 buildings, the assessee filed the partial occupancy certificate dated 29.03.2012 issued by GHMC for 4 blocks, i.e. G, H, I & J only and no certificate was furnished regarding the remaining 3 blocks.

5. In order to verify the allowability of assessee's claim during the relevant A.Y, AO made a reference to the District Valuation Officer of the Department to inspect the housing project and verify its eligibility for deduction u/s 80IB(10) of the Act. The DVO, after inspection of the housing project, vide valuation report dated 22.03.2013, submitted a detailed report. As per the said report, the measurements of only 241 flats constructed at Manjeera Diamond Towers, Phase-I, were given by the assessee and the assessee had submitted that the occupancy certificate is yet to be obtained for F, K & L blocks and the application for issuance of completion certificate before the GHMC is yet to be filed. As regards the status of the project in March, 2013, the DVO reported that; i) 4 buildings are completed in respect of which occupancy certificate was obtained; ii) 3 buildings are stated to be completed but no efforts have been made to obtain the completion certificate from the local authority; and iii) the balance buildings are in skeleton shape or are yet to be started. Further, it was reported that, and out of the 241 flats completed, 20 flats are of the size exceeding 1500 sft each. Therefore, the AO issued a

show-cause notice to the assessee to substantiate its claim of deduction u/s 80IB(10) of the Act.

6. In reply thereto, the assessee relied upon the CBDT instruction No.04/2009 dated 30.06.2009 and also filed a list of case laws in support of its contention that the deduction u/s 80IB(10) is allowable on year to year basis on partial completion of the housing project. The AO however, held that the entire project has been approved as a single project and therefore, the assessee should have completed the whole of the project on or before 31.03.2013 and since the project is not fully completed and the balance of work is nowhere near completion, the assessee is not eligible for deduction u/s 80IB(10) of the Act.. He also observed that the built up area of some of the residential flats is more than 1500 sft. He, thus held that the assessee is not at all eligible for deduction u/s 80IB(10) of the Act for this reason as well. Further, he also observed that the assessee has claimed interest received on margin money kept as deposits in the Banks also as a deduction u/s 80IB(10) of the Act. Holding that the interest income is not derived from the eligible business of the assessee, he denied the claim of the assessee. Accordingly, he disallowed the claim of deduction of Rs.16,99,10,673 u/s 80IB(10) of the Act. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before us.

7. The learned Counsel for the assessee, reiterating the submissions made before the authorities below, submitted that

though the project has been approved on 4.2.2008 and the assessee was required to complete the project within five years from the end of the relevant financial year 2007-08, i.e. before 31.03.2013, the entire project could not be completed by such date. He submitted that the assessee has completed the blocks G, H, I & J before 29.03.2012 as is evident from the occupancy certificate dated 29.03.2012 and the blocks F, K & L were also completed as is evident from the Architect Certificate enclosed along with the application for issuance of occupancy certificate from GHMC as well as the Fire & Emergency Services Department on 30.03.2013. He submitted that when each of the block contains multiple residential flats, each block has to be considered as a housing project and since the assessee has completed seven blocks out of the whole project, the assessee is eligible for claiming deduction u/s 80IB(10) of the Act on the profits of these blocks on percentage completion method. He placed reliance upon the CBDT Instruction No.04/2009 dated 30.06.2009 wherein the Board has clarified that (a) the deduction can be claimed on a year to year basis, where the assessee is showing profit from partial completion of the project in every year; (b) in case it is late and found that the condition of completing the project within the specified time limit of 4 years as stated in section 80IB(10) has not been satisfied, the deduction granted to the assessee in the earlier A.Ys should be withdrawn. Therefore, according to the learned Counsel for the assessee, since the assessee has completed the construction of 4 buildings containing various residential units, each block also can be considered as a separate housing project and the assessee is eligible to claim the deduction u/s 80IB(10) of the Act on the profits from buildings

which are completed. For this proposition, he placed reliance upon the following decisions:

- i) ITO vs. Saket Corporation (2015) 62 Taxmann.com 38 (Guj.)
- ii) M/s. Viswas Promoters Pvt Ltd vs. Asstt. CIT reported in 373 ITR 317 (Mad.)
- iii) Siddhivinayak Kohinoor Venture vs. Addl. CIT (2014) 159 TTJ 0390 (Pune)
- iv) CIT vs. Vandana Properties (2013) 353 ITR 36 (Bom.)
- v) CIT vs. Voora Property Developers P Ltd (2015) 373 ITR 317 (Mad)
- vi) Pushkar Construction Co. Vs. ITO (2015) 43 ITR (Trib.) 293 (ITAT Ahd.)

8. On the issue of the completion of blocks F, K & L, he has drawn our attention to the assessee's application to the Director General of Fire & Emergency Services and to the GHMC submitted on 30.03.2013 along with the Architect Certificate stating that the F, K & L blocks under the housing project "Manjeera Diamond Project" have been inspected and have been completed in all aspects as per the design and approved plans of the GHMC. He has drawn our attention to the provisions of section 455 of Hyderabad Municipal Corporation Act of 1955 to argue that if the Municipal Commissioner failed to refuse permission within 21 days after receipt of the notice of the completion, then it shall be deemed to have been granted. He submitted that there was no refusal by the Commissioner within the stipulated period of 21 days of the assessee's application dated 30.03.2013 and therefore, the occupancy certificate should be deemed to have been granted to the assessee. Notwithstanding the above arguments, the learned Counsel for the assessee submitted that on 28.05.2013, the Chief City Planner was again

approached by the assessee, seeking the issuance of occupancy certificate and in reply thereto the Chief City Planner, vide letter dated 13.06.2013, had pointed out only the following defects:

- i) Civil works in the cellar and sub-cellar flats are not completed
- ii) Not constructed the compound wall in the north-west corner of the block
- iii) Not constructed the rain water harvesting structures.

9. He submitted that these defects are not substantial for considering whether or not the blocks are completed in all respects and that these minor defects also have been complied with by the assessee subsequently and ultimately the completion certificate was issued on 16.12.2014. Therefore, according to him, the assessee has completed the blocks F, K & L in all respects before the due date i.e. 31.03.2013 and therefore, the assessee is eligible for deduction u/s 80IB(10) of the Act on the income from these buildings too. In support of this contention, he placed reliance upon the following decisions:

- a) CIT vs. Hindustan Samuh Awas Ltd (2015) 377 ITR 150 (Bom.)
- b) M/s. Sriram Constructions, Hyderabad vs. DCIT, Hyderabad in ITA No.1300/2001 & Others dated 29.4.2016.
- c) CIT vs. M/s. Ittina Properties (P) Ltd in ITA No.556 of 2013 & others dated 15.7.2014 of the Hon'ble Karnataka High Court.

10. As regards the objection of the Revenue that some of the flats exceeded the area of 1500 sft, he submitted that the proportionate deduction is to be disallowed and not the entire claim of deduction. Thus, according to him, the assessee is

eligible for deduction u/s 80IB(10) of the Act for all the blocks completed by it.

11. As regards the interest income which has been claimed as a deduction u/s 80IB(10) of the Act, the learned Counsel for the assessee submitted that these deposits were kept as margin money with the Banks for completion of the project and therefore, they are inextricably linked to the project and interest therefrom is also linked to the project and therefore, the assessee is eligible for deduction u/s 80IB(10) of the Act on such interest income as well. In support of this contention, he placed reliance upon the decisions of the Hon'ble Telangana & A.P. High Court in the case of Indo Aquatics (2014) 369 ITR 589 (T&AP), and in the case of CIT vs. Godavari Drugs Ltd (2015) 371 ITR 379 (T&A.P).

12. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the housing project has been approved as a single project and therefore, the assessee is required to complete the entire project on or before 31.03.2013 and has to obtain the completion certificate by the said date for all the buildings as is required under the relevant provision. He submitted that section 80IB (10) being an incentive provision, has to be interpreted as per the wordings of the section. He, thus placed reliance upon the following decisions for the above proposition:

- a) IPCA Laboratories vs. Dy.CIT (2004) 266 ITR 0521 (S.C)
- b) Indian Rayon Corpn. Ltd vs. CIT (1998) 231 ITR 0026.

- c) Petron Engineering Construction (P) Ltd & Anr. Vs. CBDT & Others (1989) 175 ITR 0523

13. To the effect that obtaining of completion certificate is mandatory and without the same, the assessee is not eligible for deduction u/s 80IB(10) of the Act. The learned DR placed reliance upon the following decisions:

- a) CIT Bhopal vs. Global Reality, reported in (2015) 379 ITR 107 (M.P)
- b) Sainath Estates (P) Ltd vs. Dy.CIT (2013) 26 ITR (T) 55 (Hyd.Trib.)
- c) CIT Lucknow vs. Arif Industries Ltd (2017) 80 Taxmann.com 374
- d) Dy.CIT CO-Circle (VI)(1) vs. Marco Marwell Projects Ltd (2013) 29 Taxmann.com 249 (Chennai Trib.).

14. On the issue of interest income from margin money not being eligible for deduction u/s 80IB(10) of the Act, the learned DR placed reliance upon the decision of the Hon'ble Supreme Court in the case of Liberty India vs. CIT (2009) 317 ITR 218 (S.C).

15. Having regard to the rival contentions and the material on record, we find that the assessee's project has been approved on 4.2.2008 and there is no dispute that the assessee has to complete the project on or before 31.03.2013. The project contains eleven blocks in an area of 11.05 acres and the assessee has completed 4 blocks in totality and has also obtained partial completion certificate in respect of these blocks. In respect of 3 blocks, it is the claim of the assessee that they were also completed in all respects and the application for issuance of

completion certificate along with necessary enclosures such as Architect's Certificate etc., was filed on 30.03.2013.

16. From the facts and circumstances of the case before us, the question before us is whether the entire project is to be completed before 31.03.2013 or each block can be considered as an independent housing project and deduction u/s 80IB(10) can be allowed in respect of such completed blocks?. The assessee has received the approval for all the blocks as one housing project as is evident from the Municipal proceedings No.G/1272/BP/581/2007 dated 4.2.2008 (at page 2 of the paper book filed by the assessee) but the assessee has been able to complete only seven buildings out of the whole project. The CBDT instruction No.04/09 dated 30.06.2009 had clarified that the assessee can claim the deduction u/s 80IB(10) on a year to year basis when it is following percentage completion method and such a deduction so granted in each of the years can be withdrawn if the condition of the completing the project within the stipulated period is not fulfilled.

17. In the case before us, the assessee has claimed the deduction u/s 80IB(10) on percentage completion method. The project was supposed to be completed by 30.03.2013. Though the claim in the A.Y 2007-08 is made for the first time, the assessment proceedings were initiated only after issuance of notice u/s 143(2) on 26.08.2011 and the assessment order was passed on 30.03.2013, by which date, the information regarding the stage of the project was available with the AO. Therefore, the AO did not allow the deductions. Therefore, the action of the AO

cannot be said to be against the instruction No.04/09 (cited supra). The question that arises now is whether the deduction is to be denied in toto, since the project is not completed in toto?. Both the parties before us have relied upon various judicial precedents on the issue in support of their contentions. Therefore, their applicability to the facts of the case before us is to be examined.

18. In the case of IPCA Laboratories (Supra), the Hon'ble Supreme Court of India was dealing with the allowability of deduction u/s 80HHC and has held that “even though a liberal interpretation has to be given to an incentive provision, the interpretation has to be as per the wordings of the section and the benefits which are not available under the section cannot be conferred by ignoring or misinterpreting clear words in the section.

19. In the case of Indian Rayon Corporation Ltd (Supra), the Hon'ble Bombay High Court held that the principle of beneficial interpretation has no application where the words of statute are plain, precise and unambiguous.

20. In the case of Petron Engineering Constructions Pvt. Ltd & Anr (Cited Supra), the Hon'ble Apex Court held that though it is true that an exemption provision should be construed liberally, such a construction should not be made doing violence to the plain meaning of such exemption provision and Liberal Construction will be made whenever it is possible to be made

without impairing the Legislature requirement and the spirit of the provision.

21. From the above judgments relied upon by the learned DR, it emerges that a beneficial provision should be liberally construed, but without doing violence to the plain meaning of the provision and keeping in mind the legislature requirement and the spirit of the provision. These decisions are on the principle of interpretation of the statute and not directly on the provisions of section 80IB(10) of the act.

22. The provisions of section 80IB(10) as applicable to the relevant A.Y reads as under:

“[80IB(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) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 [but not later than the 31st day of March, 2005], within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.]

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 that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(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 kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place;

(d) the built-up area⁸⁵ of the shops and other commercial establishments included in the housing project does not exceed [three] per cent of the aggregate built-up area of the housing project or [five thousand square feet, whichever is higher]

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

- (i) the individual or the spouse or the minor children of such individual,*
- (iii) the Hindu undivided family in which such individual is the karta,*
- (iv) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.]*

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking

which executes the housing project as a works contract awarded by any person (including the Central or State Government)."

23. From a literal reading of the above provision, the relevant conditions to be fulfilled in the case before us are that the project (i) shall have been approved by the local authority; (ii) should be on a minimum area of one acre; (iii) each residential unit should not exceed the specified area; (iv) should have been completed within the stipulated period; and (v) the project shall be taken to be completed on the date on which the completion certificate is issued by the local authority.

24. As far as the 4 blocks are concerned, all the above, except condition No.(iv) are fulfilled and as far as 3 blocks are concerned, both the conditions (iv) and (v) are not fulfilled. In respect of some of the flats, there is a violation of condition No.(iii) as well. Therefore, it is to be examined, if the deduction is not to be allowed in toto even if one of the above condition is not fulfilled.

25. The Hon'ble Bombay High Court in the case of CIT vs. Vandana Properties reported in (2013) 355 ITR 36 (Bom.) has considered similar situation wherein the assessee therein had obtained approval to construct four buildings on a plot of land admeasuring 2.36 acres and intimation of the approval in respect of those buildings was granted during the years 1993-96 and following the percentage completion method, the assessee therein had offered to tax, the income earned from construction of buildings A, B, C & D from time to time and deduction u/s

80IB(10) of the Act was also claimed and allowed. Subsequently, the State Govt. in the year 2001, permitted conversion of the status of the land and the assessee became entitled to construct additional building "E" on the plot of land and accordingly the building plan was submitted by the assessee which was approved by the Municipal Corporation, subject to various conditions set out therein. Thereafter, the commencement certificate for construction of "E" building was issued on March 10, 2003 and in the return of income for the A.Ys 2004-05 and 2005-06, the assessee estimated the profit from E building and claimed deduction u/s 80IB(10) of the Act. The AO disallowed the claim on the ground that the approval for "E" building was granted on 11th of October, 2002, as an extension of the approval granted for the buildings in A to D and therefore, the E block, being continuation of A, B, C & D buildings, the project must be held to have commenced prior to October 1, 1998, and hence is not eligible for deduction u/s 80IB(10) of the Act. The AO also held that the buildings were constructed in a plot of land admeasuring 2.36 acres of the land and if it was proportionately divided between all the buildings, then the land pertaining to E building would be less than one acre and hence, deduction u/s 80IB(10) could not be allowed. The Hon'ble Bombay High Court held that the building E was approved by the local authority on October 11, 2002 by a separate approval and therefore, it constituted an independent housing project and that section 80IB(10) while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having a minimum area of one acre. Thus, the Hon'ble High Court has held that if the assessee has constructed a building on

minimum of one acre, as per the sanctioned plan and obtained the completion certificate, the assessee is entitled to deduction u/s 80IB(10).

26. The Hon'ble Madras High Court in the case of CIT vs. Voora Property Developers (P) Ltd reported in (2015) 373 ITR 317 (Mad) was considering the case of an assessee, who received approval of the local authority in respect of a composite housing scheme and had obtained separate plan permits for six blocks on one acre and 6.5 cents of land. The AO therein had denied the deduction u/s 80IB(10) on the ground that the assessee had developed six separate projects in one single piece of land measuring 1.065 acres and therefore, the assessee did not fulfil the essential conditions of the minimum area of one acre for a single project as laid down u/s 80IB(10). The Hon'ble High Court held that if the conditions specified u/s 80IB are satisfied, then the deduction is allowable on the entire project and since the assessee constructed six blocks in a land measuring 1 acre and 6.5 cents, the assessee was entitled to deduction.

27. The Coordinate Bench of this Tribunal in the case of M/s. Sriram Constructions vs. Dy.CIT in ITA No.1300/Hyd/2011 vide orders dated 29.04.2016 has also considered similar situation and has held that the assessee will not automatically lose the deduction u/s 80IB(10) for the entire project but is eligible for pro-rata deduction as allowed by the CIT (A) in the said case.

28. The Coordinate Bench of this Tribunal at Ahmedabad in the case of Pushkar Construction Co vs. ITO reported in (2015)

43 ITR (Trib.) 293 (ITAT Ahm.) has followed the decision of the Hon'ble Bombay High Court in the case of CIT vs. Vandana Properties (Supra) and also the Hon'ble Madras High Court in the case of CIT vs. Voora Property Developers (P) Ltd (Supra) to hold that the assessee is entitled to deduction u/s 80IB(10) of the Act, if the assessee fulfills the condition of constructing a housing project on a plot having the area of more than one acre. It was held that on a plot of land having minimum area of one acre, there could be any number of housing projects and since the housing projects were approved by the local authority and fulfilled the conditions set out u/s 80IB(10), deduction could not be denied to all the housing projects. It was also held that section 80IB(10) specified the size of the plot of land but not the size or the number of housing projects that were required to be undertaken on a plot having minimum area of one acre.

29. In the case of M/s. Viswas Promoters Pvt. Ltd (cited Supra), the Hon'ble Madras High Court has observed that there is no definition of the expression "Housing Project" u/s 80IB of the Act and that said expression is defined under Explanation to section 80HHBA of the Act. The Hon'ble High Court, after considering the said definition, has held as under:

"13. Section 80IA of the Act is a specific provision which deals with deduction in respect of profits and gains from industrial undertakings or enterprises engaged in the development of infrastructural facilities such as roads, bridges and other structure as regards the grant of deduction in respect of development and construction of a housing project. Section 80IB is a specific provision in respect of profits and gains from undertakings engaged in developing and constructing housing projects other than infrastructure development undertakings. Thus, housing projects considered herein under Section

80IB refers to any building other than road, bridge or other structure. Thus, going by the definition of "housing project" to mean the construction of "any building" and the deduction under Section 80IB of the Act is hundred per cent of the profits derived in the previous year relevant to the assessment year from such housing project complying with the condition, each block in the larger project by name "Agrini" and "Vajra", has to be taken as an independent building and hence a housing project, for the purpose of considering a claim of deduction. Section 80IB(10) begins by stating:

Thus the undertaking qualifying for deduction under Section 80IB of the Act is an "undertaking developing and building housing projects" and the deduction is in respect of "profits and gains derived from" such housing project, satisfying the conditions stipulated in the clause therein. Thus, within a composite housing project, where there are eligible and ineligible units, the assessee can claim deduction in respect of eligible units in the project and even within the block, the assessee is entitled to claim proportionate relief in the units satisfying the extent of the built-up area.

14. On the facts admitted by the Revenue, in the projects "Agrini" and "Vajra", there are number of flats which are below 1500 sq.ft., and the relevant built-up area requirement is specified under Section 80IB(10)(c) of the Income Tax Act. Thus, the built-up area in some of the flats in both these projects are in excess of 1500 sq.ft., i.e., 32 flats in Agrini and only one flat in Vajra and that the assessee had not claimed any deduction on this. We hold that the Tribunal is not correct in its view, that by reason of these Units being in excess of 1500 sq.ft., the entire claim of the assessee in respect of these two projects would stand rejected under Section 80IB(10) of the Income Tax Act. Thus, going by the definition of "housing project" under Explanation to Section 80HHBA of the Act as referred to above as the construction of "any building" and the wordings in Section 80IB(10) of the Act, the question of rejection in entirety of the project on account of any one of the blocks not complying with the conditions, does not arise. Even in the case of each one of the blocks, wherever there are flats which satisfied the conditions particularly of the nature stated under Section 80IB(10)(c) of the Act, we have already upheld the case of the assessee in T.C.Nos.1348 and 1349 of 2007 dated 10.10.2012 for grant of relief under Section 80IB(10) of the Act on a proportionate basis, by following the decision of the Bombay High Court reported in [2011] 333 ITR 289 (CIT

Vs. Brahma Associates). Thus applying the decision of this Court in T.C.Nos.1348 and 1349 of 2007 dated 10.10.2012, we hold that the assessee is entitled to succeed both on the principle of proportionality as well as by reason of the construction on the meaning of the expression "housing project" as referring to construction of any building and the wordings in Section 80IB(10) of the Act. In the circumstances, we hold that the mere fact that one of the blocks have units exceeding built-up area of 1500 sq.ft, per se, would not result in nullifying the claim of the assessee for the entire projects. Consequently, in respect of each of the blocks, the assessee is entitled to have the benefit of deduction in respect of residential units satisfying the requirement under Section 80IB(10)(c) of the Act. In so holding, we also agree with the decision of the Bombay High Court reported in [2012] 206 TAXMAN 584 (CIT v. Vandana Properties), which was decided by the Bombay High Court on similar lines as in the assessee's case before us".

In the case before us, the assessee had admittedly completed four buildings i.e. G, H, I & K and has also furnished the occupancy certificate dated 29.3.2012. Therefore, the assessee is clearly eligible for deduction u/s 80IB(10) on the profits earned from these buildings.

30. The next question to be considered is whether the assessee is entitled to deduction u/s 80IB(10) on the profits from blocks F, K & L for which the assessee has not obtained the occupancy certificate from GHMC, Hyderabad as on 30.03.2013 but has already submitted an application for the same. It is seen that according to the Architects' certificate, the assessee has completed the construction in all aspects and that the assessee has submitted the application for issuance of occupancy certificate as on 30.3.2013 by paying the requisite fees. The learned Counsel for the assessee has relied upon the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan

Samuh Awas Ltd reported in (2015) 377 ITR 150 (Bom.) wherein under similar circumstances, it was held that where the assessee has applied for the issuance of completion certificate by paying the fees within the specified time, the delay by the Municipal Corporation in issuance of certificate cannot be attributed to the assessee and the assessee is entitled to the deduction u/s 80IB(10). In the said case, the assessee was supposed to get the certificate before 31st March, 2008 whereas the assessee has submitted application on 26.03.2008 and also deposited the fee for such certificate on 31.3.2008 and the certificate was issued in October, 2008. Based on these facts, the Hon'ble High Court held that the delay in obtaining the certificate cannot be attributed to the assessee. The assessee before us, has also relied upon the decision of the Coordinate Bench of this Tribunal in the case of Shri M. Srinivasa Rao vs. ACIT in ITA No.1049/Hyd/2014 dated 29.2.2016 which in turn has followed the decision of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Samuh Awas Ltd (Supra) to hold that where the assessee has applied for issuance of occupancy certificate and the Municipal Authorities do not refuse to issue the certificate within 21 days from the date of receipt of such application, then the occupancy certificate has to be presumed to have been issued. In the case before us also, the assessee has made an application on 30.03.2008 and within 21 days thereafter, the Municipal Authorities did not refuse the occupancy certificate and therefore, it is clear that the assessee's claim has not been denied and hence has to be deemed to have been issued. It is another fact that the assessee itself made a fresh application again for issuance of completion certificate on 28.05.2013, in reply to which, the Municipal Corporation vide

letter dated 13.06.2013 pointed out certain defects, which, in our opinion are not substantial and essential for considering the blocks to be incomplete. They are only peripheral works, which may be part of the housing project but are not essential. Therefore, in our opinion, the assessee is entitled to the deduction u/s 80IB(10) even for the Blocks of F, K and L. Thus, assessee's grounds of appeal Nos. 1 to 5 are allowed.

31. The other ground of the Revenue for denying the claim of deduction u/s 80IB is that the area in some of the flats exceeded 1500 sft. As held by the Hon'ble Madras High Court in the case of Viswas Promoters (Supra), the assessee is entitled to deduction in respect of the flats which do not exceed the area of 1500 sft on pro-rata basis. The AO is accordingly directed to allow the deduction.

32. As regards the claim of interest income, as a deduction u/s 80IB(10) of the Act, the learned Counsel for the assessee has placed reliance upon the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Indo Aquatics Ltd reported in (2014) 369 ITR 589 (T&AP) wherein the Hon'ble High Court has held that the interest earned on deposits for opening letters of credit is entitled to exemption and that it is an essential activity for undertaking exports as the deposit of amounts for that purpose is a condition precedent. In the case before us also, the assessee was required to keep the deposits as margin money with the Banks for completion of the project and hence is attributable to the project and the assessee is eligible for deduction u/s

80IB(10) on such interest income. The AO is accordingly directed to allow the same. Ground of appeal No.6 is also allowed.

ITA No.1230/Hyd/2015 A.Y - 2011-12 & ITA No.1082/Hyd/2016 - A.Y 2012-13

33. For these two appeals, the grounds raised by the assessee are the same as in A.Y 2010-11 except for the quantum. For the detailed reasons given above, these appeals are also allowed.

34. In the result, assessee's appeals are allowed.

Order pronounced in the Open Court on 27th April, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 27th April 2018.

Vinodan/sps

Copy to:

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- 2 ITO Ward 6(2) Hyderabad
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- 4 CIT – III Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order