



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.5697/Mum./2016  
(Assessment Year : 2012-13)

Income Tax Officer  
Ward-1(3), Mumbai

..... Appellant

v/s

M/s. Kashish Park Realtors  
F.G.P. Complex, Kashish Park  
L.B.S. Marg, Near Mulund Check Naka  
Thane (W) 400 604 – AAGFK2620J

..... Respondent

Revenue by : Shri V. Vidhyadhar  
Assessee by : Shri Subodh Ratnaparkhi

Date of Hearing – 19.04.2018

Date of Order – 25.04.2018

**ORDER**

**PER SAKTIJIT DEY, J.M.**

This appeal by the Revenue is against order dated 30<sup>th</sup> June 2016, passed by the learned Commissioner (Appeals)-1, Mumbai, for the assessment year 2012-13.

2. The issue in dispute in the present appeal relates to assessee's claim of deduction under section 80IB(10) of the Income Tax Act, 1961 (for short "*the Act*") in respect of a housing project.

3. Brief facts are, the assessee a partnership firm is engaged in the business of real estate development / construction. For the assessment year under dispute, the assessee filed its return of income on 29<sup>th</sup> September 2011 declaring total income of ₹ 5,95,659 after claiming deduction of ₹ 4,94,34,549, under section 80IB(10) of the Act. During the assessment proceedings, to verify assessee's claim of deduction under section 80IB(10) of the Act the Assessing Officer called for various information. From the details submitted by the assessee he found that the assessee claimed to have developed a housing project named 'Kashish Park' comprising of building no.MN-6, MN-7 and MN-8 along with Tower-A at FGP Complex, Mulund Check Naka, Thane (West). It was noticed, the assessee received completion certificate in respect of Tower-A in the assessment year 2011-12 and the profit derived there from was offered to tax in the said assessment year. However, the whole of the profit was claimed as deduction under section 80IB(10) of the Act. Similarly, Buildings no.MN-6, MN-7 and MN-8, were completed in assessment year 2010-11. Though, the profit derived there from was offered to tax in assessment year 2010-11, however, assessee claimed deduction under section 80IB(10) of the Act. He found that in the impugned assessment year, remaining flats in Buildings no.MN-6, MN-7 & MN-8 and Tower-A have been sold and assessee derived profit of ₹ 4,94,34,549 which has been claimed as deduction under section 80IB(10) of the Act. On further verification

of the partnership deed and development agreements produced before him, the Assessing Officer found that M/s. FGP Ltd. was the owner of a plot of land admeasuring 58,258 sq.mtrs. Out of the aforesaid land, M/s. FGP Ltd. granted development rights of 5,805 sq.mtrs. to Ladam Homes Ltd. vide agreement dated 5<sup>th</sup> July 2000. Further, development rights in respect of another 19,690 sq.mtrs. of land were granted to Kashish Park Realtors Pvt. Ltd. vide agreement dated 10<sup>th</sup> October 2001. He noticed, Kashish Park Realtors Pvt. Ltd. and Ladam Homes Ltd. had carried out some construction activities over the plot of land sold to them and the full FSI was utilised by them in the construction activity, hence, there was no chance for further construction except the TDR to be sanctioned by Thane Municipal Corporation in lieu of reservation land surrendered to them. The Assessing Officer observed, subsequently M/s. FGP Ltd. entered into an agreement with the assessee on 3<sup>rd</sup> December 2003, for construction of TDR – FSI 9,591 sq.mtrs. However, the agreement was unregistered. The Assessing Officer also found that payments for purchase of FSI from M/s. FGP Ltd. had started by one of assessee's partner viz; Kashish Park Realtors Ltd even before the assessee came into existence. The Assessing Officer observed, earlier, though, Kashish Park Realtors Pvt. Ltd had entered into a development agreement with FGP Ltd., however, it has declined the offer of development of TDR– FSI due to paucity of funds. Thus, the Assessing Officer was of the opinion that

the assessee firm was created under a scheme of arrangement for claiming benefit of deduction under section 80IB(10) of the Act which otherwise would not have been available to Kashish Park Realtors Pvt. Ltd. Thus, the Assessing Officer concluded that the partners of the assessee firm have arranged the business of the firm in a manner to produce more than the ordinary profit. Therefore, he treated the transaction between the parties as a collusive transaction and accordingly rejected assessee's claim of deduction under section 80IB(10) of the Act. Being aggrieved of the aforesaid decision of the Assessing Officer, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) taking note of the fact that deduction claimed under section 80IB(10) of the Act by the assessee in respect of the same housing projects in assessment year 2010-11 and 2011-12, have been allowed by him, followed the same and allowed the deduction claimed by the assessee under section 80IB(10) of the Act.

5. We have heard the parties. At the very outset, the learned Counsels appearing for the rival parties have conceded before us that the issue in dispute stands squarely covered by the decision of the Co-ordinate Bench in assessee's own case for assessment year 2010-11. On a perusal of the aforesaid order of the Co-ordinate Bench dated 9<sup>th</sup>

March 2018, passed in ITA no. 5777/Mum./2014 and ITA no.6172/Mum./2014, it is noticed that while deciding identical issue arising out of identical facts and circumstances, the Tribunal has allowed assessee's claim of deduction under section 80IB(10) of the Act, holding as under:—

*"19. The other objection by the learned DR is that the project of the assessee was not an independent project, the same has been dealt with by CIT(A) in para -4(b) On this aspect the CIT(A) notes that the main reason given by the Assessing Officer was that M/s. Kashish Park Realty Pvt. Ltd. which is one of the partners of the assessee firm had initially the right to acquire TDR-FSI from M/s. FGP Ltd., However, M/s. Kashish Park Realty Pvt. Ltd., subsequently decided not to acquire the FSI-TDR and requested M/S. FGP Ltd., to sell the same to the assessee firm. As per the Assessing Officer, if M/s. Kashish Park Realty Pvt. Ltd., would have developed the project by acquiring TDR-FSI, it would not be entitled to the claim of deduction u/s.80IB(10) of the Act. In this context, the CIT(A) has noted that the CBDT communication dated 04/05/2001(supra) permitted the claim of deduction u/s.80IB(10) of the Act even where the additional housing project was constructed by consuming TDR's on an existing housing project, provided the project is taken up by a separate undertaking having books of accounts maintained in such manner to ensure ascertaining of correct profits. On this basis, the CIT(A) found Assessing Officer's objection as untenable because as per the CBDT, the deduction was available even on construction of a housing project on TDR-FSI acquired in respect of existing housing project site. In our considered opinion no fault can be found with the conclusion by the CIT(A) on this aspect. The charge made by the Assessing Officer is that there is a collusive arrangement in order to claim the benefit u/s.80IB(10) of the Act; this charge, in our view, is not maintainable because even if M/s. Kashish Park Realty Pvt. Ltd., would have carried out the development, in terms of CBDT communication dated 04/05/2001(supra), such project would also be eligible for the benefits of Section 80IB(10) of the Act. Thus, the order of CIT(A) on this aspect is also affirmed. Considering all these aspects, we confirm the order of CIT(A) and therefore, so far as the grounds raised by the Revenue are concerned the same are dismissed."*

6. There being no material difference in the factual position, adhering to the norms of judicial discipline, we respectfully follow the decision of the Co-ordinate Bench on the disputed issue. Accordingly, we uphold the order of the learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 25.04.2018

**Sd/-**  
**RAMIT KOCHAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25.04.2018**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Asstt. Registrar/Sr.P.S)  
ITAT, Mumbai