

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES : “ D ” NEW DELHI]**

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

**I. T. Appeal Nos. 4182, 4183 & 4184 (Del) of 2014
Assessment Years : 2010-11, 2011-12 & 2012-13.**

Deputy Commissioner of Income Tax, Central Circle : 18, New Delhi.	Vs.	M/s. TDI Infrastructure Ltd., 9 – Kasturba Gandhi Marg, New Delhi – 110 057.
		PAN : AAACI 5799 P
(Appellant)		(Respondent)

Assessee by : Shri Salil Aggarwal, Adv.; &
Shri Shailesh Gupta, C. A.;

Department by : Shri Vijay Varma, CIT [DR];

Date of Hearing : 10.04.2018;

Date of Pronouncement : 25.06.2018.

O R D E R.

PER PRASHANT MAHARISHI, A. M. :

These are three appeals filed by the Revenue for assessment years 2010-11 to 2012-13 against the order of the learned Commissioner of Income Tax (Appeals)–III, New Delhi, dated 20.05.2014 raising identical grounds of appeal that the learned CIT (Appeals) has erred

in allowing the deduction to the assessee under section 80IB(10) of the Act on proportionate basis by ignoring the fact that the entire project as a whole did not fulfill the condition prescribed under section 80IB(10) of the Act.

2. The briefly stated facts of the case is that assessee company is engaged in the business of real estate development. It filed its return of income on 15.10.2010 declaring a loss of Rs.2.40 crores. The assessment under section 143(3) of the Act was made on 8.03.2013 at a total income of Rs.39,07,55,630/-. The Assessing Officer made the disallowance of Rs.41,47,62,259/-. The assessee was also entitled to claim deduction under section 80IB of the Act of Rs.7,07,87,665/-. The learned Assessing Officer disallowed the same holding that since the appellant has got the housing project under two separate licenses and pursuant to which assessee has constructed 11 towers having some of the houses of more than 1,000 sq. ft. size. Therefore, according to the Assessing Officer there is a violation of the provisions of section 80IB(10) and hence, following his own order for assessment year 2009-10, the learned Assessing Officer disallowed the entire claim.

3. The assessee preferred appeal before the learned CIT (Appeals), who deleted the above addition, relying upon his orders for earlier years. Therefore, Revenue is in appeal before us.

4. The learned Departmental Representative vehemently submitted that there is no provision under section 80IB(10) to grant proportionate deduction under that section. He vehemently relied on the order of the learned Assessing Officer and the learned CIT (Appeals) for assessment year 2009-10.

5. The learned authorized representative submitted that issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of Brahma Associates in 333 ITR 289 wherein the order of the Special Bench in 315 ITR (AT) 268 is upheld. He further stated that in that decision it has been upheld that the number of houses, which does not conform to the requisite condition, the disallowance can be made only to that extent.

6. We have carefully considered the rival contentions and find that the assessee has constructed a project, where part of the houses were

more than the requisite size. When such houses are part of the eligible housing project for deduction under section 80IB(10) of the Act, the deduction is required to be disallowed proportionately. As the learned CIT (Appeals) has allowed the claim of deduction under section 80IB(10) only on the houses having area of less than 1,000 sq. ft., we do not find any infirmity in his order. The same is infirmity with the order of the Hon'ble Bombay High Court in CIT Vs. Brahma Associates (supra). In view of this, we dismiss the appeals of the Revenue which are on the similar point without change in the facts and circumstances for all the three years.

7. In the result, all the appeals of the Revenue, are dismissed.

The order is pronounced in the Open Court on : **25th June, 2018.**

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : the **25.06.2018.**

MEHTA

Copy of the Order forwarded to :-

1. Appellant;

2. Respondent;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

//True Copy//

By Order

Assistant Registrar
ITAT, New Delhi

	Date
Date of dictation	19.06.2018
Date on which the typed draft is placed before the dictating Member.	25.06.2018
Date on which the typed draft is placed before the Other Member.	25.06.2018
Date on which the approved draft comes to the Sr. P.S. /P.S.	25.06.2018
Date on which the fair order is placed before the Dictating Member for pronouncement.	25.06.2018
Date on which the fair order comes back to the Sr. P.S. / P.S.	25.06.2018
Date on which the final order is uploaded on the website of ITAT.	25.06.2018
Date on which the file goes to the Bench Clerk.	25.06.2018
Date on which the file goes to the Head Clerk.	
The date on which the file goes to the A.R. for signature on the order.	
Date of dispatch of the Order.	

