

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R.KUMAR, AM

आयकर अपील सं./ITA Nos. 635 & 637/CHD/2017

निर्धारण वर्ष / A.Y : 2009-10 & 2012-13

M/s Penta Homes Pvt. Ltd., 1275/2, Jand Gali, Patiala.	बनाम VS	The ACIT, Circle, Patiala.
स्थायी लेखा सं./PAN No: AACCP9184D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri T.N.Singla

राजस्व की ओर से/ Revenue by : Shri Jagmohan Kumar Garg, CIT-DR

सुनवाई की तारीख/Date of Hearing : 29.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 30.11.2018

आदेश/ORDER

PER BENCH

These two appeals filed by the assessee pertain to 2009-10 and 2012-13 assessment years which are part of the consolidated order dated 22.02.2017 of CIT(A), Patiala pertaining to 2009-10, 1010-11 and 2012-13 assessment years.

2. Both these appeals are being decided by a common order as the stand of the parties was that the issues raised in ground No. 2 in both the appeals are identical and the arguments advanced therein accordingly would remain the same. Apart from the common issue, there is an independent ground No. 3 in ITA 637/CHD/2017 wherein separate arguments would be advanced. Accordingly, for ready reference, we reproduce the grounds from ITA 635/CHD/2017 which read as under :

1. *That the order of Learned Commissioner of Income Tax (A) is bad, against the facts & Law*

2. *That the Learned Commissioner of Income Tax (A) has wrongly upheld the disallowance of deduction u/s 80IB(10) amounting to Rs.51,10,390 /-.*

3. Considering the fact that there was a common order for three years and only the appeals of two years had been argued since the appeal for 2010-11 assessment year which was part of the consolidated order was still pending

before the ITAT. The case was re-fixed requiring the parties to address the issue. The ld. AR in response to the clarification pointed out that since there were other issues in the appeal on which some clarity was sought from the assessee, these had not been argued. However, in the meantime, before the appeal could come up for re-hearing, on clarification, it was submitted that the Co-ordinate Bench had concluded the hearing on 27.08.2018 in 2010-11 assessment year in ITA 636/CHD/2017. In the said background, the ld. AR relied upon the arguments advanced before the AO and the CIT(A) and the arguments advanced before the ITAT that even if the first approval date is considered as 14.10.2015, even then on the basis of third party evidences, the statutory requirements stood fulfilled. The ld. CIT-DR relied upon the orders of the authorities below.

4. The short issue which arises for consideration in the present appeal qua ground No. 2 is in the background where the assessee is a company deriving income from the business of development and building, housing projects. A perusal of the record shows that the assessment order dated 13.12.2011 passed u/s 143(3) was set aside by CIT, Patiala u/s 263 on 20.03.2014. Pursuant to the said order, the assessment order dated 19.03.2015 was passed by the AO denying the deduction claimed u/s 80IB of the Act. The AO considering the record noted that the first approval from the competent authority available on record was dated 14.10.2005 and in terms of the provisions of Section 80IB, it was noted that the Completion Certificate should have been obtained on or before 31.03.2011. The assessee, it is seen made various arguments before the AO justifying the entitlement of deduction u/s 80IB @ 100% in terms of the first approval. The arguments were also advanced contesting that the approval granted by PUDA on 14.10.2005 was not an approval granted by a Competent Authority as it was not "a local authority" as required by the Income Tax Act and thus, though the material was procured and construction activity started, it was ultimately the second approval by Zirakpur Municipality which was relevant. Thus, the completion letter dated 09.03.2009 on the basis of which Completion Certificate dated 01.06.2012 and 17.10.2012 was given, was relied upon. It was canvassed that approval by the Municipal Council, Zirakpur which was the local authority, granted on 24.10.2007 on the basis of which the Completion Certificate could have been obtained on or before 31.03.2013, the certificate granted in June,2012 and October,2012 were stated to be very much within time. It is seen that

the Tax Authorities discarded the second approval dated 24.10.2007. The reliance placed by the assessee on Inter Department Meeting held by the Department of Local Government, Government of Punjab on 23.02.2006 was not accepted. It was also noted that the second approval dated 24.10.2007 infact relies upon the first approval dated 14.10.2005 and it was noticed that the assessee after the first approval, paid External Departmental Charges to PUDA and even after the second approval, continued to pay the balance External Departmental Charges to PUDA thereby indicating that the first approval was very much operative. The arguments of the assessee that the assessee was ignorant about which authority was to be approached for grant of approval, was discarded on the reasoning that an assessee who *“embarks on a multi-crore project is supposed to be well versed and well advised on law and facts. Unlike poor and ignorant ordinary litigants, it cannot take shelter of the excuse of ignorance of law”*. The disallowance of deduction u/s 80IB(10) made by the AO was affirmed in appeal by the CIT(A).

5. In 2012-13 i.e. in ITA 637/CHD/2017, the reasoning adopted in dismissing the appeal in 2009-10 was followed by the CIT(A).

6. The Id. AR though reiterating the facts and position of law has canvassed before the AO and the CIT(A) referring to facts available on record submitted that even if on the insistence of the Department, the approval dated 14.10.2005 is adhered to, even then the assessee on the basis of the material available on record is entitled to claim 100% deduction of eligible profits u/s 80-IB(10) on the basis of the following facts and evidences which are not in dispute and infact some of which constitutes third party evidences. The following facts were referred to :

1. **Possession certificates given to more than 600 allottees out of the total number of flats constructed of 782, by 31.3.2011.**
2. **Certificate of electricity connection released to 602 flats owners out of the total number of flats constructed of 782, by 31.3.2011.**
3. **Fire Safety Certificate issued, dated 27.1.2009, by the office of Fire Station after checking the fire safety arrangement inside the impugned project and finding them satisfactory.**
4. **Certificate of Air Pollution Control dated 11.6.2009 issued to the impugned project by Punjab Pollution Control Board.**
5. Certificate of Registration of the Residents Welfare Society of the impugned housing project dated 23.9.2010.
6. Application submitted for issuance of completion certificate for the impugned project dated 9.3.2009.
- 7) Application for permission to occupy building, under Building bye-laws, for the impugned project dated 20.01.2009 and forming part of the application submitted for issuance of completion certificate, submitting therein that the building had been

completed in all respects according to the sanctioned plan and was fit for use for which it had been erected.

- 8) Form-E, being a certificate required under the building byelaws No.3.12(iii), issued by a Registered Architect certifying that the impugned project had been completed on 15.9.2008 in accordance with sanctioned plan and submitted alongwith application for issuance of completion certificate.
- 9) Completion Certificate by a Registered Architect or Engineer in Form-C certifying that the project was supervised and completed by it on 15-09-08 in accordance with Punjab Regional and Town Planning and Development Act,1995.
- 10) Letter written by the assessee to the Additional Chief Administrator, GMADA dated 18.5.2009 requesting to complete the external development work relating to the impugned project and thereafter to issue completion certificate at the earliest so as to avoid any litigation against the assessee by the allottees of the project who were demanding completion of External Development work and the issuance of completion certificate.
- 11) **A letter issued by GMADA in response to information demanded by Shri Yogeshwar Vashisht under RTI Act, 2005 stating that the licence for the impugned project was given on 14.10.2005 and the completion certificate had been applied for on 9.3.2009.**

(emphasis supplied)

7. The copies of these documents, it was submitted, were available on the Paper Book. It was submitted that it is not in the hands of the assessee to have a completion certificate signed and delivered on a specific date. The application having been made well within time alongwith the facts on record demonstrate that the assessee had substantially completed the construction. Thus, the Completion Certificates made available dated 01.06.2012 and 17.10.2012 were in the background where the construction stood completed and infact even the possession stood handed over to the owners well within time. It was his submission that out of the 782 flats constructed, possession of 624 flats stood given by 31.03.2011 and in 602 flats, electricity connection had also been given. It was submitted that these are third party evidences. Similarly, fire fighting system stood installed on 12.12.2008 and copy of the letter issued on 27.01.2009 by the concerned Fire Station, Dera Bassi certified the fact that admittedly personnel of the Fire Department had visited and checked the fire safety arrangements and only after carrying out Inspection etc. had issued the Certificate. The pollution control Authority also has certified as per certificate dated 11.06.2009, which is also a third party evidence. Thus, the application of the assessee dated 18.05.2009 for issuance of Completion Certificate before GAMADA which is the concerned Local Authority for issuance of Completion Certificate evidently demonstrates that the Project stood completed before the stipulated date of five years. Mere issuance of certificate on subsequent date, it was submitted, cannot be the basis for denying the legitimate claim. Reliance was placed upon the decision of the jurisdictional High Court in the case of

Pr. CIT Vs Ambey Developers Pvt. Ltd. in ITA 263 of 2016 (P&H) wherein the specific issue had come up for consideration apart from decisions of Gujrat and Bombay High Court in CIT Vs Tarnetar Corporation and CIT Vs Hindustan Samuh Awas Ltd. respectively.

8. The ld. CIT-DR had vehemently relied upon the orders of the authorities below and had canvassed that the assessee is supposed to know from where the approval is to be sought and by trying to rely upon the subsequent approval which is affirming the original approval of dated 14.10.2005, it was submitted, the assessee was trying to extend the time which is well fixed by the Statute. It was also his submission that the assessee may be called upon to explain as to on which date, the entire flats stood sold.

9. The ld. AR in reply submitted that the sale of flats is in continuous flux as they are frequently resold and if some flats were lying unsold, the said arguments cannot be a ground for denying the benefit because as far as the assessee is concerned, Project is complete i.e. in regard to its construction. Sale of the flats would depend upon the market conditions and this cannot be a new ground to revisit the issue. It has been his argument that the third party evidences on record sufficiently demonstrate that the Project stood largely completed. The arguments advanced on behalf of the assessee referring to the approval sought from the Zirarkpur Municipal Corporation, it was submitted, is in the background where the assessee is not having much experience about the local laws and had engaged in the activity relying upon the informations given to him from time to time and since the assessee has given up that argument and has instead argued that even when the first approval date of 14.10.2005 is adhered to even then the Project stood completed within the statutory limits and most of the evidence is third party evidence on record and the factual position is supported by para 5.10 in 2009-10 has been noted by the AO. A perusal of which, it was submitted, would show that in effect over 60% of the cost of Project stood incurred upto 2007 i.e. well before 31.03.2009. For ready reference, relevant extract relied upon is reproduced hereunder :

“5.10 In the case under consideration assessee has also started construction activity according to the sanction granted on 14/10/2005. Therefore it is very clear that assessee considered the first approval as valid and legal approval and planned whole construction activities accordingly. As per assessee's own submission assessee has also made more than 50% of expenditure (Rs. 40,90,44,343/-out of Rs. 63,94,69,498/-) on this project well before getting second approval on 24/10/2007. As 50% work for project on which 80-IB

deduction is claimed completed before the assessee got second approval on 24/10/2005 and as per assessee's submission first approval granted is illegal assessee's half constructed project become illegal, ab-initio. In this scenario also assessee's claim for 80-IB deduction is not justified."

10. We have heard the rival submissions and perused the material on record. The position of law on the issue is well settled by the jurisdictional High Court. The Court in very categorical terms has held that if the assessee is otherwise able to demonstrate completion of the project on the application made to the local authority within stipulated time, but for the requirement of issuance of certificate, the assessee cannot be faulted for this delay. For ready reference, we reproduced para 8 of the said decision :

"8. Adverting to the interpretation and meaning to be assigned to Explanation (ii) to Section 80IB(10)(a) of the Act, essentially it has to be seen whether the term "shall" used therein is to be treated as mandatory or it is in the nature of a directory requirement. In our opinion, though the word used in Explanation (ii) to Section 80IB(10)(a) of the Act is "shall", but it would not necessarily mean that in every case, it shall be taken to be mandatory requirement instead would depend upon the intent of the legislature and not the language in which the provision is clothed. The meaning and the intent of the legislature would be gathered not on the basis of the phraseology of the provision but keeping into consideration its nature, its design and the consequences which would follow from interpreting it in a particular way alone. The purport of the said Explanation (ii) to Section 80IB(10)(a) of the Act is to safeguard the interest of the revenue wherever the construction has not been completed within the stipulated period. Thus, it cannot mean that the requirement is mandatory in nature and would disentitle an assessee to the benefit of Section 80IB(10)(a) of the Act even in respect of those cases where the assessee had completed the construction within the stipulated period and had made an application to the local authority within the prescribed time. The issuance of the requisite certificate was within the domain of the competent authority over which the assessee had no control. From the findings recorded by the CIT(A) as affirmed by the Tribunal, it was clear that the construction had been completed before the stipulated date i.e. 31.3.2010. It was also not disputed that the certificate of completion was applied on 29.3.2010 which was issued to the assessee on 31.12.2011. The assessee in such circumstances could not be denied the benefit of Section 80IB(10)(a) of the Act. The CIT(A) and the Tribunal had rightly adjudicated the issue in favour of the assessee-respondent. Learned counsel for the appellant revenue has not been able to show any illegality or perversity in the findings recorded by the CIT(A) as well as the Tribunal, warranting interference by this Court."

11. Reverting to the facts of the case, we note that admittedly the Completion Certificate available with the assessee is dated 01.06.2012 and 17.10.2012 which is beyond the stipulated period in terms of the approval of the Project dated 01.04.2005 which, in terms of Section 80IB(10) requires that the Project be completed within five years from the end of the financial year in which it was approved. We find that the factum of Project completion within time on the basis of application moved before GAMADA on 18.05.2009 is no longer res-integra as the Co-ordinate Bench in ITA 636/CHD/2017 pertaining to 2010-11 assessment year which is part of the consolidated order wherein two appeals are being considered in the present proceedings has already considered the very same facts and near similar

arguments have come for the consideration that the assessee was entitled to claim deduction u/s 80IB(10). We note that before the Co-ordinate Bench, on behalf of the assessee, following arguments are found to have been advanced :

6. *Before us, the Ld. counsel for assessee stated that it had fully complied with the aforesaid conditions. The Ld. counsel for assessee pointed out that undisputedly the first approval for the housing project had been obtained by the assessee from PUDA on 14.10.2005 and accordingly, as per the provisions of section 80IB(10) of the Act, the assessee was required to obtain completion certificate in respect of the housing project by 31.3.2011. The Ld. counsel for assessee contended that the impugned housing project had been completed within the stipulated time which was evident from the following documents:*

1) *Possession certificates given to more than 600 allottees out of the total number of flats constructed of 782, by 31.3.2011.*

2) *Certificate of electricity connection released to 602 flats owners out of the total number of flats constructed of 782, by 31.3.2011.*

3) *Fire Safety Certificate issued, dated 27.1.2009, by the office of Fire Station after checking the fire safety arrangement inside the impugned project and finding them satisfactory.*

4. *Certificate of Air Pollution Control dated 11.6.2009 issued to the impugned project by Punjab Pollution Control Board.*

5. *Certificate of Registration of the Residents Welfare Society of the impugned housing project dated 23.9.2010.*

6. *Application submitted for issuance of completion certificate for the impugned project dated 9.3.2009.*

7) *Application for permission to occupy building, under Building bye-laws, for the impugned project dated 20.01.2009 and forming part of the application submitted for issuance of completion certificate, submitting therein that the building had been completed in all respects according to the sanctioned plan and was fit for use for which it had been erected.*

8) *Form-E, being a certificate required under the building byelaws No.3.12(iii), issued by a Registered Architect certifying that the impugned project had been completed on 15.9.2008 in accordance with sanctioned plan and submitted alongwith application for issuance of completion certificate.*

9) *Completion Certificate by a Registered Architect or Engineer in Form-C certifying that the project was supervised and completed by it on 15-09-08 in accordance with Punjab Regional and Town Planning and Development Act, 1995.*

10) *Letter written by the assessee to the Additional Chief Administrator, GMADA dated 18.5.2009 requesting to complete the external development work relating to the impugned project and thereafter to issue completion certificate at the earliest so as to avoid any litigation against the assessee by the allottees of the project who were*

demanding completion of External Development work and the issuance of completion certificate.

11) A letter issued by GMADA in response to information demanded by Shri Yogeshwar Vashisht under RTI Act, 2005 stating that the licence for the impugned project was given on 14.10.2005 and the completion certificate had been applied for on 9.3.2009.

Copies of all the above documents were placed before us at paper book page no.76-91. The Ld. counsel for assessee stated that the aforesaid documents clearly showed that the project had been completed by 2009 though the certificate from the concerned authority had been obtained much later for no default of the assessee. Therefore, for all purposes the project of the assessee should be treated as being completed within five years of obtaining the approval, as stipulated in the Act, enabling the assessee to claim deduction u/s 80IB(10) of the Act. Reliance in this regard was placed on the decision of the Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax, Patiala vs M/s Ambey Developers Pvt. Ltd. ,ITA No.263 of 2016(O &M) dated 20-07-17, pointing out that it was held therein that the condition for obtaining certificate from the concerned authority was not compulsory and if the assessee had substantially complied with the conditions of completing the project within stipulated time, it should be treated as sufficient compliance with the condition of section 80IB(10) of the Act enabling the assessee to claim the deduction of its projects as specified therein. Copy of the order was placed before us.

7. The Ld. D.R., on the other hand relied upon the order of the CIT (A) pointing out therefrom that the assessee got first approval for the impugned project on 14.10.2005 from PUDA which was the competent authority and reckoned from that date completion certificate was to be obtained by the assessee by 31.3.2011 but the assessee had not completed the project in this period the completion certificate having given to it only on 1.6.2012 and 17.10.2012 which is after five years of sanctioning of the project. Therefore, clearly the assessee had not complied with the conditions of section 80IB of the Act and authorities below had, therefore, rightly denied deduction claimed by the assessee under the said section.

11.1 It is seen that the Co-ordinate Bench has considered the issue in the following manner :

8. We have heard the rival contentions, perused the orders of the authorities below and gone through the case laws referred to before us. The issue before us relates to claim of deduction of profits under section 80IB(10) of the Act, being profits earned on undertaking and developing housing project. The section stipulates certain conditions to be fulfilled for claiming deduction on profits from housing projects. In the impugned case, the contention of the Revenue for denying the claim of deduction is that the assessee has not fulfilled the condition specified in the section of having completed the housing projects within five years from the end of the financial year in which approval for the same was obtained by the local authority. The facts which are not disputed are that the project in relation to which the dispute has arisen is Penta VIP Towers Project, the approval for commencing which was given by PUDA on 14.10.2005 and the completion certificate was given on 1.6.2012 and 17.10.2012. Undeniably, the five period for the completion of the project, as stipulated under the Act, ended on 31.3.2011. The contention of the assessee is that it had competed

the project within stipulated time and evidences to this effect had also been filed in the form of completion certificate of the flat owners of majority of flats, certificate of electricity connection, certificate of fire safety in the project, the formation of residents welfare association in the project, all issued prior to 31.3.2011 and application for completion certificate filed much before the end of five years period. The contention of the assessee was that merely because the completion certificate had not been obtained from the local authority within five years period the assessee should not be denied the claim of deduction, when otherwise it was evident from the record that the project had actually been completed before the stipulated period of five years. The contention of the Revenue, on the other hand, was that the condition for obtaining completion certificate from the local authority within stipulated period of five years was an essential/mandatory condition in absence of which an assessee was not entitled to claim deduction under section 80IB of the Act.

9. *We are convinced with the arguments of the Ld. counsel for the assessee. Undoubtedly, the evidences filed by the assessee prove that the project was completed well before the end of five years period i.e. 31.3.2011. It is not disputed that the assessee had applied for completion certificate alongwith the Architect certificate in the prescribed form, etc on 9.3.2009. It is also not disputed that out of the total number of flats constructed of 782, possession of 624 flats had been given by 31.3.2011 proving that the project had been completed by the end of that period. Admittedly and undisputedly 602 electricity connections had been released to flat owners in the impugned project. Also fire fighting system had been installed in the project by 12.12.2008 which is evident from the copy of letter submitted by the assessee to the aforesaid station officer requesting it to issue final NOC/completion certificate in this regard which was duly issued on 27.1.2009 by the office of the Fire Station, Derabassi stating in its certificate that an official of the office had visited and checked fire safety arrangement inside Penta Homes and found them satisfactory at the time of inspection. Further even Pollution Control Certificate had been issued to the project by the Punjab Pollution Control Board on 11.6.2009. Even the assessee had applied for the issuance of completion certificate to the impugned project, to the concerned local authority i.e. GAMADA on 9.3.2009. The Revenue has not brought to our notice any objections issued by the concerned local authority which resulted in delay in issuing the completion certificate. Therefore, clearly the assessee had completed its project and applied well in advance for the completion certificate and the delay in obtaining the same beyond 31-03-11, was not as a result of any fault of the assessee. It is thus clearly evident from the above that for all purposes the project of the assessee was completed in 2009, which was well before the end of the stipulated period of five years i.e. 31.3.2011. Merely because a certificate was issued later by the competent authority and that too for no fault of the assessee who had applied for the same well within stipulated time. The assessee cannot be denied deduction u/s 80IB(10) of the Act. The Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs. Ambey Developer Pvt. Ltd. in ITA No.263 of 2016 (P&M) while dealing with an identical issue held that the term "shall" used in section 80IB(10)(a) of the Act for obtaining completion certificate from the local authority need not be read as a mandatory condition. The Hon'ble High Court has said that the meaning of the term "shall" would depend upon intent of the Legislature and not the language in which the provision is clothed. The Hon'ble High Court held that the purport of the said requirement of obtaining completion certificate was to safeguard interest of the Revenue*

wherever the construction had not been completed within stipulated period and thus it would be sufficient compliance if the assessee had otherwise demonstrated completion of the project and had also made application to the local authority within stipulated time but the required certificate was obtained later on for no fault of the assessee. The relevant findings of the Hon'ble High Court at para 8 of the order are as under:

“8. *Adverting to the interpretation and meaning to be assigned to Explanation (ii) to Section 80IB(10)(a) of the Act, essentially it has to be seen whether the term "shall" used therein is to be treated as mandatory or it is in the nature of a directory requirement. In our opinion, though the word used in Explanation (ii) to Section 80IB(10)(a) of the Act is "shall", but it would not necessarily mean that in every case, it shall be taken to be mandatory requirement instead would depend upon the intent of the legislature and not the language in which the provision is clothed. The meaning and the intent of the legislature would be gathered not on the basis of the phraseology of the provision but keeping into consideration its nature, its design and the consequences which would follow from interpreting it in a particular way alone. The purport of the said Explanation (ii) to Section 80IB(10)(a) of the Act is to safeguard the interest of the revenue wherever the construction has not been completed within the stipulated period. Thus, it cannot mean that the requirement is mandatory in nature and would disentitle an assessee to the benefit of Section 80IB(10)(a) of the Act even in respect of those cases where the assessee had completed the construction within the stipulated period and had made an application to the local authority within the prescribed time. The issuance of the requisite certificate was within the domain of the competent authority over which the assessee had no control. From the findings recorded by the CIT(A) as affirmed by the Tribunal, it was clear that the construction had been completed before the stipulated date i.e. 31.3.2010. It was also not disputed that the certificate of completion was applied on 29.3.2010 which was issued to the assessee on 31.12.2011. The assessee in such circumstances could not be denied the benefit of Section 80IB(10)(a) of the Act. The CIT(A) and the Tribunal had rightly adjudicated the issue in favour of the assessee-respondent. Learned counsel for the appellant revenue has not been able to show any illegality or perversity in the findings recorded by the CIT(A) as well as the Tribunal, warranting interference by this Court.”*

10. *In view of the above since the Hon'ble Jurisdictional High Court in the case of Ambey Developer Pvt. Ltd. (supra)above has categorically held that the assessee having demonstrated completion of the project and having applied for completion certificate well within stipulated date, it shall be entitled to claim deduction u/s 80IB(10) of the Act and as per the facts in the present case the assessee had demonstrated completion of the project in the year 2009 and had also shown to have applied for completion certificate in 2009 itself while it was required to obtain the certificate by 31.3.2011, it can be safely said that the assessee had applied with the conditions of having obtained completion certificate within five years from the date of approval of the project and hence was entitled to claim deduction of profits u/s 80IB(10) of the Act. Ground No.2 raised by the assessee is, therefore, allowed.*

11.2 Accordingly, since on facts, there is no dispute, we find that in the peculiar facts and circumstances of the present case, in terms of the position of law as appreciated by the jurisdictional High Court in the case of Ambey Developer Pvt. Ltd. and the view taken by the Co-ordinate Bench, deduction

u/s 80IB(10) deserves to be allowed. Ground No. 2 of the assessee, accordingly is allowed.

12. In the result, ITA 635/CHD/2017 is allowed.

ITA 637/CHD/2017

13. Referring to the independent surviving issue in ITA 637/CHD/2017, it is seen that the relevant facts are discussed at pages 11 to 13 of the assessment order. A perusal of which shows that the assessee was required to justify the expenditure of Rs. 20,23,712/- claimed under Travelling Expenses. The assessee's explanation that it was an expenditure for updating the Directors with the latest design and structure and latest technology being used in Real Estate business was not accepted on the grounds that there was no evidence as to what conference, seminar etc. was attended and what latest technology was acquired etc. The receipts of the expenses on foreign tour supported by bills were stated to be not sufficient. It was further noticed that the assessee had travelled alongwith his wife Mrs. Meetika Singh, also a Director, alongwith three more persons and her children. The relevant discussion from the assessment order is extracted hereunder :

“This itself indicates that the assessee's travel expenditure has nothing to do with the purpose of business as no relevance to the business with the travelling was established by the assessee. The assessee has incurred these expenditure for the personal purpose for example It is found that from the bills/vouchers submitted by the assessee that Mrs. Meetika Singh (Director) has travelled outside India with three more persons. During the assessment proceedings, the authorized representative has stated that she travelled outside India alongwith her children. The assessee is not able to substantiate his argument with any proof, therefore, this expenditure is considered as personal expenses of the assessee and not being for the purpose of business and profession wholly and exclusively. Therefore, Rs.20,23,712/- claimed by the assessee as travelling expenses are hereby disallowed u/s 37(1) and added to the return income of the assessee.”

14. In appeal before the First Appellate Authority, the issue appears to have been considered, argued and decided in the following manner :

09. Ground No. 6 agitates against the disallowance of travelling expensed claimed by the assessee amounting to Rs. 20,23,712/-. During the assessment proceedings, the assessee was given show cause notice dated 20.02.2015 and asked to submit reply in that regard, which is reproduced as under:-

"You have made an expenditure of Rs. 20,25,712/- during the year under consideration under the head travelling expenses. You have not Submitted any proof like bills and vouchers in this regard also you have stated that to keep the management updated on designing and structure and latest technology being used In real estate business the director have to visit abroad. Use of latest technology helps not only reduced cost but environment friendly also. As such all the travelling

expenses were wholly and exclusively for business purposes of the assessee. Further you are again asked to give the following details in this regard :-

- (i) Any invitation to see design and structure of any particular building at particular place from any authority,*
- (ii) Any proof of learning and attending any conference seminar, meeting, exhibition etc.*
- (iii) Proof regarding acquisition of latest technology, (iv) Any report prepared after the visit and implementation of the learned technology or structure or design."*

The AO found that the travelling expenses debited by the appellant have nothing to do with its business purpose as the same was not established by it. He held director has incurred these expenses for personal purposes and therefore, the same are not allowable u/s 37(1) of the Act.

"Ground 6, The grievance projected through this ground is that the Id AO was not justified in disallowing travelling expenses when complete evidence was placed on record,-The facts of the case are that during the period relevant to the above assessment year an amount of Rs. 20,23,712/- was incurred on foreign travel expenses, the detail of which was supplied during the course of assessment/proceedings. It was also explained that the visits were made or keeping the management updated on designing and structure and latest technology being used in real estate business. The information was collected from various sources by the visiting persons by making spot visits and making enquiries from the builders under the garb of customer. Since the company is into the construction business and was preparing to come up with new projects the information was relevant for the conduct of the business. It was further explained that no part of the expenditure incurred could be said to be personal in nature. The disallowance has, therefore, been made without bringing on record any adverse evidence. In fact the decision taken is perverse to the facts on record. It is therefore, requested that the addition may kindly be deleted or in the alternative reduced accordingly."

9.2 I have considered the rival arguments as also the evidence on record. The AO has held that the business purpose of the travelling expenses has not been established. It is seen that the appellant has given general arguments regarding the purpose of foreign visits undertaken by its Director and others. Except making general claims, no documentary evidence to establish business purpose of the travelling undertaken by the Director and other persons has ever been submitted by the appellant. The relationship of other persons with the appellant company has also not been specified. As admitted by the counsel, during assessment proceedings, Director's family also accompanied her on foreign visits. Thus, in the absence of proof of business purpose in respect of travelling expenses, no interference is called for in the conclusion drawn by the A.O. Consequently, the disallowance made by him is upheld."

15. We find on hearing the parties and considering the evidence relied upon, namely documents appended at pages 30 to 35 that the issues need elaboration. It is seen that the bills raised by Touch Wood Travels are attached and these by no stretch can be said to throw light on the issues. Accordingly, it is evident that the issue has neither been considered nor argued with reference to the relevant facts. In the interests of justice, parties are directed to refer to specific visits specifying the persons travelling and the countries travelled to as mere filing of bills raised by travel agent cannot be said to be sufficient compliance. The issue is restored to the AO to decide the same on the basis of facts and evidences. The expenses of children or personal expenses, it goes without saying, have to be disallowed. The

assessee in its own interest is directed to place full facts and evidences on record. The documents filed admittedly are not sufficient and complete. Accordingly, in the interest of substantial justice, we deem it appropriate to set aside the issue back to the file of the AO directing the assessee to place supporting facts and evidences as relying upon generalized arguments would be of no help. The ground No. 3 is, accordingly, allowed for statistical purposes.

16. In the result, ITA 635/CHD/2017 is allowed and ITA 637/CHD/2017 is partly allowed for statistical purposes

Order Pronounced in the Open Court on 30.11. 2018.

Sd/-

(डा. बी.आर.आर. कुमार)
(Dr. B.R.R. KUMAR)

लेखा सदस्य/ Accountant Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar
ITAT, Chandigarh.