

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

S.No.	ITA No.	AY	Appellant	Respondent
1 & 2	1139 & 1140/H/2017	2007-08 & 2008-09	Janapriya Engineers Syndicate Ltd. (formerly known as Janapriya Engineers Syndicate Pvt. Ltd.), Hyderabad. PAN - AAACE4560A)	Dy. Commissioner of Income- tax, Central Circle - 1(2), Hyd.
3&4	215 & 216/H/17	2007-08 & 2008-09	Dy. Commissioner of Income-tax, Central Circle - 1(2), Hyd.	Janapriya Engineers Syndicate Ltd., Hyd. PAN - AAACE4560A)
5&6	1484 & 1485/H/10	2007-08 & 2008-09	Dy. Commissioner of Income-tax, Circle- (2), Hyd.	M/s Engineers Reddy Homes (P) Ltd., Hyderabad. PAN - AABCE4434H

Assessee by: Shri A. Srinivas
Revenue by: Smt. S. Narasamma

Date of hearing: 30/10/2018
Date of pronouncement: 23/01/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

All these appeals are filed by the assessees as well as revenue for AYs 2007-08 and 2008-09. As identical issues are involved in all these appeals, they were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. On perusal of record, we find that appeals in ITA Nos. 1139 & 1140/Hyd/2017 were filed by the assessee with a delay of 128 days before the Tribunal. In this connection, assessee

has filed a condonation petition along with an affidavit wherein it was stated that its AR, who was entrusted to file the appeals before the ITAT, was having a severe medical problem which resulted in a major surgery to him, due to which, the appeals filed belatedly. It was therefore submitted that the delay may be condoned and admit the appeals for hearing and adjudication as the reason is genuine and not wilful.

3. After considering the submissions of the assessee, we are of the view that the assessee was prevented by a reasonable cause for not filing the appeals in time. Therefore, we condone the delay and admit the appeals for hearing and adjudication.

ITA Nos. 1139 & 1140/Hyd/2017 and ITA Nos. 215 & 216/Hyd/2017 by the assessee and revenue, for AY 2007-08 & 2008-09 respectively.

4. These are cross appeals, directed against a common order of CIT(A) – 11, Hyderabad, dated 30/08/2016.

ITA No. 1139/Hyd/2017.

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

"1. The order of the Appellate Commissioner is erroneous, contrary to the law, facts and circumstances of the case, insofar as it relates to the confirming of addition of Rs.1,05,00,000/-.

2. The Appellate Commissioner erred in sustaining the addition of Rs.1,05,00,000/- which was added by the A.O vide paragraph "6" of the assessment order, as unexplained investment.

3. Any other grounds which the assessee may urge either before or at the time of hearing."

5.1 The assessee also filed the following additional ground of appeal in both the years under consideration:

“1.The addition made u/s 40(a)(ia) of the Income tax Act,1961 ought to be deleted since the payees to whom the appellant had paid amounts, have considered the amounts received by them in their books, offered the profits to tax, paid the taxes and filed their Return of Income, in a majority of cases.

2. Any other ground which the appellant might urge either before or at the time of hearing.”

6. As regards the addition of Rs. 1,05,00,000/-, the AO observed that during the course of search & seizure operation, several agreement of sale entered by the assessee-company and its group concern with its landlords for purchase of lands are found and seized. Apart from that agreement of sales receipts given by the landlords are also found and seized and placed in several annexures. One such agreement is found and seized and placed at Page Nos. 156 to 161 of annexure A/JES/18.

6.1 The AO observed that as per the agreement of sale dated 30.09.2006 entered between Alladi Mallaiah and family and the assessee-company, the landlords agreed for sale of 5 acres landed property situated at Survey No.649 and 652, Pampuguda village, Keesara Mandal for a consideration of Rs.3 crores. Out of this, a sum of Rs. 1,20,00,000/- shall be paid on or before 31.03.2007. Further, a sum of Rs. 1,35,00,000/- shall be paid before 31.03.2008 and the remaining sum of Rs. 45,00,000/- shall be payable in the year 2008-09. The Page No.4 of the agreement speaks about the payment schedule.

6.2 Further, the AO observed that in pursuance of the above said agreements, the vendee paid Rs.15,00,000/- in cash and

Rs.15,00,000/- through cheques of Rs. 5,00,000/- each to Alladi Ailaiah, Alladi Komaraiah and Alladi Parvatalu on 03.10.2006. The land lord acknowledged the receipt. Further, the vendee agreed to pay Rs.45,00,000/- within 20 days from the date of agreement. The balance payment of schedules of Rs.2.25 crores are mentioned at Point No.2 of the agreement as under:

Rs. 45,00,000/- by 15.03.2007

Rs. 45,00,000/- by 15.07.2007

Rs. 45,00,000/- by 15.11.2007

Rs. 45,00,000/- by 15.03.2008

Rs. 45,00,000/- by 15.07.2008

6.3 The AO asked the assessee company to furnish the sources of their payments mentioned in the above said agreements vide letter dated 12.11.2009 and 08.07.2010. It was noticed from the copy of the agreement that except Rs.15,00,000/- the balance sum was agreed to be paid in the form of cash. The show cause notices were duly served on the assessee, but, the assessee did not file any explanation and in turn they made written-submission on 04.08.2010 requesting for an opportunity to explain the transaction during the course of hearing. The AO noted that the assessee has chosen not to file any reply till last date of assessment.

6.4 The AO observed that as the agreement clearly speaks about the nature of the transaction and part of the payment was also paid through cash and cheque for which the landlords have given their acknowledgment of receipt, it is clear that the assessee company should have paid the balance sum also as per the payment schedule. Accordingly, a sum of Rs. 1,05,00,000/- (Rs.15,00,000 on 03.10.2006,

Rs.45,00,000 within 20 days from the date of agreement and Rs.45,00,000 on 15.03.2007) was added as unexplained investments by the AO. The AO noted that regarding the balance sum of Rs.1,35,00,000 a detailed discussion is made in the order of Assessment year 2008-09.

6.5 Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A), who upheld the addition on the same reasoning given by the AO.

6.6 Aggrieved by the order of CIT(A), the assessee is in appeal before us.

6.7 Before us, the Id. AR of the assessee submitted that the Assessee submits that the agreement was entered and there in no doubt about the same. However as there were legal cases on the said property, except for an amount of Rs. 30 Lakhs (Rs. 15 Lakhs in cash and 15 Lakhs in Cheques) no other payment has been made by the Assessee. He submitted that during the course of search proceedings no paper or evidence of any sort was found in the premises of the Assessee. No corroborative evidence was found to substantiate that the balance amounts have flown from the Assessee to the land owner. He submitted that the total addition of Rs. 1.05 Crores was based on surmises and conjectures. He submitted that an amount of Rs. 15 lakhs paid in cash as given in the agreement be sustained and the balance of Rs. 90 lakhs be deleted.

6.8 Ld. DR, on the other hand, relied on the orders of revenue authorities.

6.9 Considered the rival submissions and perused the material on record. It is noticed that Department found agreement to sell with the schedule of payments. There is proof for payment of Rs. 15 lakhs in cash and Rs. 15 lakhs by cheque. Apart from that, there is no comparative evidence to show that assessee has actually made the payment except schedule of payment mentioned in the agreement. There is no absolute proof that assessee has made the payment. AO made this addition only on presumption that the payment must have been made. Assessee denies that it actually made any further payments and submits that the deal did not go through. But, no details were submitted. It is always subjective when the transactions involved are to do with cash. Department has not found anything to show that the landlords actually received the payments. The additions can be made only based on actual evidence and not based on presumptions. Particularly, when the deal is not through and department can always verify whether this agreement was acted upon and sale was completed by proper registration. Since allegedly the deal is not completed and there is no proof for making further payments, the evidence available on the agreement to sell alone can be considered as actual payment made relating to this deal. In the absence of any evidence, we have no choice, but, to accept the contention of the assessee, particularly, when allegedly the deal is not through. Therefore, the addition cannot be made merely based on presumption. Accordingly, ground raised by the assessee is allowed.

7. As regards the additional ground pertaining to section 40(a)(ia), the AO noted that the Special Auditor has observed that the assessee had not deducted tax at source on a sum of Rs.4,48,65,718/- and short deduction of tax of Rs.55,93,439/-, totalling to Rs.5,04,59,157/-. The list of such payments is

enclosed as Annex-III to the Special Audit report. In this connection, the assessee was asked to file its objections, if any, for disallowance of Rs.5,04,59,157/-, vide order sheet dated 28.06.2010 and the final show cause dated 08.07.2010.

7.1 The written submission of the assessee, nature of various expenditures debited into the Profit & Loss Account, provision of section 40a(ia), observation of Special auditor etc., were discussed in detail in the assessment order for the Assessment year 2005-06. The assessee's interpretation of the provision of section 40a(ia), legislative intention of the enactment of 40a(ia), etc. were also discussed in detail in the same order. AO observed that the natures of expenditures are similar for this year also and there is no specific explanation furnished by the assessee on the observation of Special Auditor regarding TDS violations. In view of the above observations, the AO rejected the contentions of the assessee, and held that the violation of provision u/s 40(a)(ia) reported by the Special Auditor to the tune of Rs. 5,04,59,157/- (comprising of Rs. 4,48,65,718/- on which tax has not been deducted at source and another sum of Rs. 55,93,439/- on which there was a short deduction of tax) was disallowed and added back to the returned income of the assessee.

7.2 When the assessee preferred an appeal before the CIT(A), the CIT(A) directed the AO to satisfy himself that this amount does not contain any amount remaining unpaid at the end of the year and subject to the said verification, the addition is directed for deletion for both the years under consideration.

7.3 With regard to other component of Rs. 55,93,439/- in AY 2007-08 and Rs. 74,82,616/- in AY 2008-09, the CIT(A) held as under:

"6.4 With regard to the other component of Rs.55,93,439/- in A.Y.2007-08 and Rs.74,82,616/- in A.Y.2008-09, included in the aggregate disallowance u/s.40(a)(ia), it is seen that this is for short deduction of tax. It has been held by the jurisdictional Bench of the ITAT in the case of Hill County Properties Ltd. in ITA No. 1373/Hyd/2013, dated 6.6.2014 that provisions of section 40(a)(ia) are triggered only if tax is not withheld, or after withholding it is not paid. If tax is withheld at a lower rate, the provisions of the above section do not get attracted. For this proposition a decision of the Calcutta High Court in the case of CIT v. SK Tekriwal, ITA No.183 of 2012 and another decision of the Mumbai Bench of the Hon'ble ITAT in the case of DCIT v. M/s. Chandabhoy & jassobhoy, ITA No.20/Mum/2010, was relied upon. Under the circumstances, the disallowance to the extent it is on account of short deduction of tax alone, is liable to be deleted. The Assessing Officer is directed accordingly."

7.4. Before us, the Id. AR of the Assessee submits that an amendment has been made to section 40(a)(ia) by the Finance Act, 2012. By virtue of this amendment if the people to whom the Assessee has paid monies without deducting TDS, and if the people to whom the monies have been paid have offered the same in their incomes, then there is no scope for disallowance u/s 40(a)(ia). He further submits that this amendment has been deemed to be retrospective from the day the section was introduced. The Assessee relies on the judgement of the Allahabad High Court reported at 402 ITR 238 for the retrospective application of the said amendment.

7.5 Ld. DR, on the other hand, relied on the orders of revenue authorities.

7.6 Considered the rival submissions and perused the material on record. We notice that assessee has not deducted

tax at sources for the payment made as per special audit report. There is no dispute but the legislature has softened the stand on the default by the assessee subsequent to various judicial precedents and amended the sections like 40(a)(ia), 201(1), etc. The Courts have held that these amendments are retrospective in nature. Considering the subsequent amendments to the section 40(a)(ia), assessee has to prove that the recipient has declared the income in its gross income. Since, the AO has not initiated proceedings u/s 201(1), the assessee has not submitted any documents. At this juncture, i.e., after a lapse of a decade, there is no point in remitting the issue back to AO. Since, it is the responsibility of the assessee to collect the tax on behalf of Revenue, which assessee has failed, but, there is 99% chance that the recipient must have declared the same as income and paid the tax. There is no doubt that assessee has failed and assessee also accepts the same. At this stage, we can only direct the AO to delete the addition u/s 40(a)(ia) and calculate interest u/s 201(1A) for the period of default. This is in line with the direction of the Hon'ble Supreme Court in the case of Hindustan Coco Cola Beverages Ltd. Vs. CIT (293 ITR 226). Therefore, the ground raised by the assessee is partly allowed.

Now we will take up the issues raised by the assessee in AY 2008-09 in the grounds of appeal, which are as under:

"1. The Appellate Commissioner erred in confirming the disallowance made by the AO amounting to Rs.1,93,40,017/- being the claim of the assessee made u/s.80IB (10) on the project named as JP Arcade. Hyderabad.

2. The Appellate Commissioner erred in confirming the disallowance made by the AO amounting to Rs.1,58,96,825/- being the claim of the assessee made u/s.80IB (10) on the project named as JP Metropolis, Hyderabad.

3. *The Appellate Commissioner erred in sustaining the above two additions on misplaced interpretation of explanation to clause "a" of sub-section 10 to Section (80IB).*

4. *The Appellate Commissioner erred in sustaining an amount of Rs.5,19,52,9001- being addition of unexplained investments by the AO on purchase of lands made by the assessee.*

5. *The Appellate Commissioner erred in sustaining the addition made u/s.69B by the AO, amounting to Rs.78,37,500/- being amounts purportedly paid as on money to one Mr.Lingaia Senapathi.*

6. *The Appellate Commissioner erred in sustaining the addition made u/s.69B by the AO, amounting to Rs.72,75,000/- being amounts purportedly paid as on money to one Mr.Mohd Quader.*

7. *The Appellate Commissioner erred in sustaining the addition made u/s.69B by the AO, amounting to Rs.72,50,000/- being amounts purportedly paid as on money to one Mr.Mirza Baig.*

9. *The Appellate Commissioner erred in sustaining the addition of Rs.1,35,00,000/- which was added by the AO vide paragraph 7.1 of the assessment order as unexplained investment.*

10. *The Appellate Commissioner erred in sustaining an amount of Rs 94 .50.000/- being addition made by the assessing officer as unexplained investment Vide paragraph 7.2 of the assessment order.*

11. *The Appellate Commissioner erred in giving a direction to the AO to assess an amount of Rs,45,00,000/- in the A.Y 2009-10 .*

11. *Any other grounds which the assessee may urge either before or at the time of hearing.*

8. As regards ground No. 1, 2 & 3, relating to the disallowance of claim u/s 80IB of JP Arcadia of Rs. 1,93,43,017/- as well as JP Metropolis of Rs. 1,58,96,825/-, the AO observed that in the return of Income filed, the

assessee disclosed income arising out of business and profession at Rs.7,65,47,347/- but claimed a sum of Rs. 6,86,47,282/- as deduction under section 80IB of the Income Tax Act, 1961 from such income. The assessee was asked to furnish all the particulars of the housing project(s) which is claimed for deduction u/s 80IB, separate Profit & loss account for other projects, method of accounting, amount of WIP, accounting of the sale of flats, etc., vide notices referred to above. However, no details were furnished by the assessee till last week of July, 2010 and the assessee neither appeared nor filed the details called through various notices. The AO, therefore, held that due to non-fulfilment of the precondition as detailed in the provisions of section 80IB(10), the assessee is not entitled to claim deduction of any part of its income u/s 80IB(10).

8.1 When the assessee preferred appeal before the CIT(A), the CIT(A) held as under:

4.5.4 In respect of the new projects at Hyderabad, viz., JP.Arcadia and JP Metropolis, the separate letters dt. 30.03.2012 referred to above is the only information available. The letter in respect of JP Arcadia reads as under:

"I hereby certify that the Residential Apartment Stilt + 5 Floors material of Premises JANAPRIYA ARCADIA, bearing Survey Nos. 9,10,11,11/E 12/2, 12/A, 12/AA, 13/2, 13/A, 13/AA, 13/EE 14,15,16,17,18,19,20,21/A, 21/AA, 27/A, 27/AA, 28/A, 28/AA, 28/E 28/AA, 28/E, 29/2, 29/A, 29/AA AND 29/EE, situated at Mahadevpur Village, Alwal Municipality, Malkajgiri Mandal belongs to janapriya Engineers Syndicate Private Ltd., supervised by us and BLOCK NO.C has been completed by 23/02/2012 according to the plans sanctioned vide Proceedings No. G1/575/BA/573/07, dated 31/03/2007 and HUDA letter No. 2809/P4/Plg/HUDA/2007 – 28.03.2007, Locality Mahadevpur Village, Alwal Municipality, Malkajgiri Mandal. The work has been completed to our best satisfaction, the workmanship and all the materials (type and grade) have been used strictly in accordance with general and detailed

specifications. No provisions of the Building (Block), Bye-Laws, no requisitions made, conditions prescribed or orders issued there under have been transgressed in the course of the work. The building is fit for use for which it has been erected, re-erected or altered, constructed and enlarged. The necessary occupancy certificate may be issued.”

4.5.5 It is seen from the above that this letter does not furnish any information in respect of number of apartments constructed, size of the unit, extent of commercial establishments, if any, or size of the plot on which the project is situated. It is also interesting to note that this letter dated 30.03.2012 is seen to be received in the inward section of GHMC Town Planning Section on 13.03.2012. It is also significant that if such a letter was indeed furnished on 13.03.2012, or even 30.03.2012, there is no reason why the same could not have been furnished before the Assessing Officer in the 'course of the remand proceedings in Nov/Dec. 2013.

4.5.6 As already noted above, details of the size of the project, etc., is not on record. However, what is seen from the letter dated 30.03.2012 is that it refers to completion of Block No.C, and not the project as a whole. The requirement of Completion Certificate provided in the Explanation below 80B(10)(a) cannot be read independent of the clause to which it is appended. Clause (a) refers to commencement of construction as approved by the Local Authority, and its completion within a prescribed time frame that has to be reckoned with reference to the date of such approval. Therefore, the completion referred to in the Completion Certificate envisaged by the Explanation cannot be any completion, but one that is in line with the permissions obtained. Production of Completion Certificate issued by the Municipal Authorities is only to rule out deviations from the approved project plan. The requirement of seeing the Completion Certificate with reference to the internal details Of the approved project is essential because the entire clause to sub-section(10) should be read together. It is a standard rule of Interpretation that an Explanation cannot be construed independent of the Clause to which it is appended. It follows, therefore, that the Explanation envisages -

- firstly, a completion within the stipulated time, of the entire project approved by the local authorities, and not merely a part of such project;
- and,

- *secondly, the project completed should be in line with the specifications originally proposed, on a consideration of which the building permission was given.*

4.5.7 It has to be held, therefore, that the information available in respect of the project in the letter dated 30.03.2012, produced in this Office on 30.06.2016 does not permit any of the above conclusions to be satisfactorily drawn. The Assessing Officer's action in restricting the deduction claimed u/s.80IB(10) in respect of the project J.P. Arcadia would, therefore, not call for any interference.

4.5.8 The claim u/s. 80IB(10) in respect of the other new project at Hyderabad, J.P. Metropolis is also similarly placed. It is supported only by the above referred letter dated 30.03.2012 addressed to Commissioner, GHMC, Hyderabad. This letter is also extracted as under for ready reference:

"I hereby' certify that the Residential Apartment Stilt + 5 Floors material of Premises JANAPRIYA METROPOLIS, bearing Survey Nos. 74/P & 75/P, situated at Ward No.8, BI No.4, Fathenagar Village, Hyderabad belongs to janapriya Engineers Syndicate Private Limited, supervised by us and BLOCK NO.5 has been completed by 23/02/2012 according to the plans sanctioned; vide Permit NO.144/48 OF 2007 Dated: 31/03/2007 and sanctioned Letter No. 8483/TPS/MCH/HO/2003, Locality Fathe Nagar, Meter Factory, Hyderabad. The work has been completed to our best satisfaction, the workmanship and all the materials (type and grade) have been used strictly in accordance worth general and detailed specifications. No provisions of the Building (Block) Bye-Laws, no requisitions made, conditions prescribed or orders issued there under have been transgressed in the course of the work. The building is fit for use for which it has been erected, re-erected or altered, constructed and enlarged. The necessary occupancy certificate may be issued.

4.5.9 It would be apparent from the above that even this project cannot be ascertained to have been completed in the manner, and to the extent, construction was approved by the relevant local authority, Details of the project in respect of which approval was claimed to have been received, is not available for consideration. Besides, the above letter refers to completion of Block

No.5 of the project, and not the project itself. In addition to the unusual coincidence that both projects are claimed to have been complete on the same day - 23.02.2012, for reasons identical to those in the case of the project J.P. Arcadia discussed above, it has to be held that compliance with requirements of Section 80IB(10) is not evident. The Assessing Officer's action in restricting the deduction claimed u/s. 80IB(10) in respect of the project J.P.Metropolis would also, therefore, not call for any interference.”

8.2 Before us, the Id. AR of the Assessee submits that there is no restriction in the section nor in the explanation to section 80IB that part deduction cannot be given. The Id. AR submits that though the permission for the total project has been taken, the completion is being done phase wise and deduction has been claimed proportionately to the extent of completed phase only. Thus the Assessee has claimed proportionate deduction under the section for both the projects i.e. JP Arcadia and JP Metropolis. He relied on the decision of the ITAT, Pune bench in the case of Anand Ashok Gandhi in ITA No 2004/PN/2014 delivered on 27/05/2016, a copy of which is annexed. He submits that the facts of the case are similar to that of the Assessee. He points out that at Para 3 of the order at the bottom five lines, the facts of proportionate claim has been brought out. He submitted that the Pune Bench has in the above order from Para 10 of page 10 has discussed in detail the allowance of pro-rata deduction u/s 801B. Finally in the concluding Para 13 the Hon'ble bench has allowed the claim of pro-rata deduction. He, therefore submitted that based on the various decisions on pro-rata deduction u/s 80IB the claim of the Assessee be allowed.

8.3 Ld. DR, on the other hand, relied on the orders of revenue authorities.

8.4 Considered the rival submissions and perused the material on record. We notice that assessee has only submitted the letters before CIT(A) to claim the deduction in pro-rata basis. As per the findings of Id. CIT(A), these letters do not give any details about the stage of completion, size of the flat to ascertain whether these projects satisfy the conditions specified in section 80IB(10). Therefore, we direct the AO to collect information about the stage of completion of the projects and size of the flats. If it is within the norms, AO should give pro-rata deduction u/s 80IB(10). This is accepted law as far as allowing pro-rata deduction u/s 80IB(10). Considering the precedents, even the coordinate bench of Pune ITAT in the case of Anand Gandhi in ITA No. 2004/PN/2014, order dated 27/05/2016 has adjudicated the issue as below:

“9. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is an individual and engaged in the activity of Promoters and Builders in the name and fashion of "Harshad Constructions". During the impugned assessment year the assessee has constructed a housing project at Ashok Nagar, Handewadi Road, Hadapsar, Pune. The commencement certificate for this project was received by the assessee on 14-02-2007 which was subsequently revised on various dates. As per the original plan passed by the Municipal authorities, there are three buildings, viz., A, B and C. The assessee has submitted the completion certificate only for Buildings B and C but did not furnish the completion certification for Building A on the ground that the same was not constructed. Since the plan was sanctioned for Buildings A, B and C and the assessee has completed only Buildings B and C and Building A was never constructed, the AO rejected the ITA No.2004/PN/2014 claim of deduction of Rs.3,05,70,196/- made by the assessee u/s.80IB(10). In appeal the Ld.CIT(A) following various decisions allowed the claim of pro-rata deduction in respect of Buildings B and C which were completed.

10. We do not find any infirmity in the order of the CIT(A) granting pro-rata deduction to the assessee in respect of Buildings B and C which were completed. We find the Pune Bench of the Tribunal in

the case of M/s. Kumar Company while deciding identical issue had allowed the claim of pro-rata deduction by observing as under :

"12. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute in the impugned grounds raised by the assessee is regarding allowability of pro-rata deduction u/s.80IB(10) in respect of the housing project 'Kumar Padmalaya' where admittedly some of the units have not been completed before 31-03-2008. According to the revenue, for claiming deduction u/s.80IB(10) the assessee has to fulfil all the conditions laid down in section 80IB(10) and there is no concept of pro-rata deduction. According to the assessee it is entitled to pro-rata deduction u/s.80IB(10) in respect of the units which fulfill the conditions laid down in section 80IB(10).

13. We find the Hon'ble Madras High Court in the case of Viswas Promoters Pvt. Ltd. (Supra) while allowing proportionate deduction u/s.80IB(10) has observed as under :

"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 ITA No.2004/PN/2014 [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.

15. In the light of the above reasoning, we have no hesitation in allowing the cases cases filed by the assessee in respect of assessment years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09, thereby answering the substantial questions of law in favour of the assessee, that the assessee is entitled to the claim of deduction in respect of all the blocks forming part of the projects called Agrini and Vajra, but to the extent of each of the blocks satisfying the conditions under Section 80IB(10) of the Act, the assessee would be entitled to the relief on a proportionate basis."

14. We find following the above decision the Pune Bench of the Tribunal in the case of Padmavati Developers (Supra) has decided the issue of pro-rata deduction in favour of the assessee by holding that assessee is entitled to pro-rata deduction in respect of the residential units which have complied with the conditions and were eligible for the deduction u/s.80IB(10). The relevant observation of the Tribunal at Paras 36 to 38 of the order read as under :

"36. Now, coming to the second housing project in Sector No.7. Admittedly, the assessee in assessment year 2006-07 has completed only 2 buildings i.e. Q-1, Q-2 and some flats in assessment year 2007-08. The building comprised in P-1 to P-6 and the row houses have not been constructed by the assessee till the date of survey and upto 31.03.2008.

37. *The Hon'ble Madras High Court in Viswas Promoters Pvt. Ltd. vs. ACIT, (2013) 255 CTR 149 (Mad.) have laid down that within a composite housing project, where there are eligible and inelligible 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 against the units satisfying the extent of built-up area.*

38. *Similar proposition has been laid down by the Bangalore Bench of the Tribunal in DCIT vs. Brigade Enterprises (P.) Ltd., (2008) 119 TTJ 269 (Bang) and the Pune Bench of the Tribunal in Runwal Multihousing Pvt. Ltd. vs. ACIT in ITA Nos.1015, 1016 and 1017/PN/2011 relating to assessment years 2003- 04 to 2005-06, order dated 21.11.2012. Following the same parity of reasoning, we hold that the assessee is entitled to pro-rata deduction in respect of residential units in the housing project No.7, which have complied with the conditions and were eligible for the deduction under section 80- IB(10) of the Act. However, the said deduction is allowable to the assessee only in respect of units construction of which has been completed upto 31st March, 2008. Accordingly, we direct the ITA No.2004/PN/2014 Assessing Officer to verify the claim of the assessee in this regard in assessment years 2006-07 and 2007-08 and if the assessee has fulfilled the aforesaid conditions under [section 80-IB\(10\)](#) of the Act, pro-rata deduction under the said section could be allowed to the assessee in relation to the buildings / flats completed in Sector No.7. Consequently, the ground of appeal raised by the assessee is partly allowed."*

15. *In view of the above discussion, we hold that the assessee is entitled to pro-rata deduction in respect of the buildings/units of the housing project 'Kumar Padmalaya' which have complied with the conditions laid down in [section 80IB\(10\)](#) of the Act. In other words, the AO cannot reject the claim of deduction u/s.80IB(10) of the entire project for non-completion of the few buildings. We therefore set aside the order of Ld.CIT(A) and direct the AO to allow pro-rata deduction claimed u/s.80IB(10) in respect of project 'Kumar Padmalaya'. The grounds raised by the assessee are accordingly allowed."*

8.5 With regard to completion certificates, it is enough that assessee files the completion certificate on block-wise or handing over proof to the flat owners. Considering the above

decision, we direct the AO to decide the issue as per the above said directions and accordingly, ground raised by the assessee is allowed.

9. As regards ground No. 4 relating to addition on account of unexplained investments of Rs. 5,19,52,900/-, during the search operations in the case of the assessee group, seized material in the nature of Agreements for Sale, Development Agreements, Sale Deeds, Receipts issued by land owners etc., were recovered. These documents showed several transactions involving cash payments and unrecorded transactions. The Assessing Officer referred to various pages in seized material vide Annexures -A/JES/12, A/JES/13, A/JES/14 & A/JES/15 and noticed that while the cheque payments were duly accounted for - with matching voucher copies, the cash payments are not routed through the regular cash book and cash payments do not have matching vouchers. After recording an analysis of cash payments made by the assessee company and its group to various landlords, in the financial years 2006-07 and 2007-08 along with various agreements for sale and corresponding cash receipts found, the Assessing Officer noted that one of the findings of the search is that unaccounted payments of Rs.9,48,70,400/- (later revised to Rs.9,83,70,400/-) were made during the financial year 2007-08 by the assessee company and its group. He further notes that when confronted, Shri K. Ravinder Reddy, Managing Director of the Company, stated that the sources for these investments are the unaccounted business receipts of M/s Janapriya Engineers Syndicate Ltd. (the assessee). For similar reasons, a sum of Rs.6,37,75,000/- and Rs.63,50,000/- was admitted as unexplained investment of the assessee company in F.Y.2006-07 relevant to for A.Y.2007-08. With regard to cash payments made to land

owners in F.Y.2007-08 the Assessing Officer noted at para 4.16 on page 11 that the assessee admitted unaccounted payments of Rs. 27,94,106/- only. For the remaining payments of Rs. 9,20,76,294/- the Managing Director is seen to have stated that the lands are yet to be registered since payments are still being made, and that the following sources were available for making the payments in cash,

Source	Amount (Rs.)
Withdrawals from bank	6,79,60,894
Agricultural income	1,15,00,000
Site advances - crusher	43,85,000
Dairy milk income	12,05,000
Miscellaneous expenses	42,87,400
Site advances-Lorries	27,38,000
Total	9,20,76,294

9.1 The Assessing Officer examined the explanation of the assessee and found various short comings. It was stated by the Managing Director that cash was drawn from the ING. Vysya Bank account of the group concerns. The withdrawals from such bank accounts examined with reference to cash book of the assessee company prepared subsequent to the search and admittedly up to date, revealed that there were negative cash balances from 03.04.2007 to 17.03.2008. A monthly summary of the cash ledger for 01.04.2007 to 31.03.2008 reproduced by the Assessing Officer on page 13 of the assessment order opens with a debit balance of Rs. 1,27,561.40 and the closing balance from April to January is a credit balance ranging from Rs.1,62,88,909.60 in April going up to Rs.3,68,70,818.60 in October before declining to Rs.85,94,328.60 for the month of January. Though there are debit balances for February & March 2008, the Assessing Officer noticed at para 4.21 on page 14 that the peak of the negative cash balance is on 08.10.2007 at Rs.3,70,42,502/-. The negative cash balance thus showed the unexplained

nature of the expenditure incurred in the payments for the land.

9.2 With regard to the cash flow statement furnished to explain the cash payments the Assessing Officer records at para 4.23 and 4.24 on pages 14 to 15 that verification of seized material showed that some of the Sources of cash were attributed to undisclosed income' admitted for assessment year 2007-08. This admission in turn relates to unaccounted cash outflows in the earlier period, for which receipts were found in consequence of which income was admitted. These items of cash outflows, therefore, could not possibly explain payments made during this year. With regard to the remaining items in the Explanation, the Assessing Officer found that in respect of the claim of agricultural income of Rs. 1,15,00,000/- belonging to the Managing Director and other family members, dairy milk income of Rs.12,05,000/-, and items debited to 'Miscellaneous Expenses' (Rs.42,87,400/-), 'Site Advances-Crusher' (Rs.43,85,000/-), and 'Site Advances-Lorries' (Rs. 27,38,000/-), no evidences of their Receipt or source has been furnished.

9.3 In view of the above observations, the Assessing Officer determined that a sum of Rs.6,11,57,900/- noted above, is not satisfactorily explained out of the sum of Rs. 9,20,76,294/- claimed as sources for the land payments. He further noticed that there was an arithmetic mistake in quantifying payment to land owners. This figure was, therefore, adopted at Rs.9,83,70,400/- instead of Rs.9,48,70,400/- in consultation with the Managing Director and A.R. of the assessee as discussed at para 4.29 of the assessment order. As a result of this increase in figure of cash paid to landowners, the unexplained investment in purchase of land now increased by

Rs.35 lakhs. The Assessing Officer added this amount to the unexplained amount of Rs.6,11,57,900/- identified by him, and held that the aggregate amount of Rs.6,46,57,900/-- is the unexplained investment to be added back u/s.69B.

9.4 Before the CIT(A), the assessee filed written submissions and after considering the same, the CIT(A) elaborately discussed the issue and directed the AO to delete the addition of Rs. 1,27,05,000/- (Rs. 1,15,00,000 + 12,05,000/- to the extent it has been brought to tax from other sources or assessed as returned, in the hands of the directors. He, therefore, restricted the addition to the extent of Rs. 5,19,52,900/- (Rs. 35,00,000 + 3,70,42,500 + 1,14,10,400) as against the addition of Rs. 6,46,57,900/- made by the AO on account of unexplained investment in cash payments made to land owners for purchase of land.

9.5 Before us, the Id. AR of the Assessee submits that the explanation for the sources as given is genuine and correct. Further, he submits that a major portion of the sources pertains to cash balances. The peak credit as arrived by the AO, is as per the books of account found on the date of search. On the day of search the books were not completed and many an accounts have not been entered into. He submitted that after the Search and while finalising the accounts on 31st March, 2008, the books were audited and all entries taken into account. As evident from the Balance Sheet which is placed at Pages 4 to 70 of the Paper Book, it can be seen that at Page 19 the Cash on Hand is Rs.2,07,082/-. Thus, it can be seen that all entries which were not entered into as on the date of search were taken into account while finalising the books of account. He, therefore, submitted that

the peak credit as taken by the AO be deleted and the other advances which have been shown as sources be accepted.

9.6 Ld. DR, on the other hand, relied on the orders of revenue authorities.

9.7 Considered the rival submissions and perused the material on record. We notice that AO has arrived the peak credit based on the information found during the search. Subsequently, assessee has submitted audited balance sheet and cash book. AO has to analyse the information based on the reliable sources offered by the assessee and the audited cash book. It is common that books are not complete at the time of search. Assessee should be given opportunity to submit proper information. In this case, assessee has submitted audited cash book. This should be considered and arrive at the peak credit as per cash flow or AO should take the reliable sources on record and make addition of unexplained cash outflow as unexplained investment in cash payments made to land owners. We direct the AO to verify the audited cash book entries with the payments to landlords and also the reliable source of cash available for such payments to landowners. Therefore, ground raised by the assessee is allowed for statistical purposes.

10. As regards ground Nos. 5, 6 & 7 relating to the additions made u/s 69 of Rs. 78,37,500/-, Rs. 72,75,000/- and Rs. 72,50,000/-, the Assessing Officer found that the assessee company had purchased Ac 1.31 Gt. of land in survey No.108 & 109 of Kothapet Village, from one Sri Lingala Senapati. As per the Registered deed No.119/08, dt.14.12.2007 available in the seized material from page 13 to 19 of Annexure-A/JES/PO-2/2 the sale consideration is recorded at

Rs.1,31,62,500/-. AO noted that the sale consideration was seen to be paid for from the ING Vysya Bank a/c of the assessee. He further noted that simultaneously, it is seen that page 42 to 44 of Annexure-A/JES/18 is an agreement for sale dated 07.02.2007 in respect of the same property between the same vendor and vendee as per which the consideration agreed upon was Rs. 2.10 Cr. in cash in addition to Rs.2,62,50,000/- payable in the form of constructed area. The Assessing Officer noticed that out of Rs.2.10 crores, Rs.65,62,500/- was paid before 31.03.2007 and the balance Rs.1,44,37,500/- was to be paid before 31.03.2008. When called upon to explain, the assessee stated that the purchase was not registered and instalments were not completely paid and, therefore, there can be no finding of unaccounted payments. The AO held that the transfer of property was registered and stamp duty of Rs.1,33,725/- was also paid to the SRO, Rangareddy (East). He concluded that the difference between the consideration of Rs.2.10 Cr. agreed upon, and the consideration of Rs.1,31,62,500/- as registered, amounting to Rs.78,37,500/- which is not routed through the regular books of account, is the unrecorded cash component assessable as an unexplained investment u/s.69B.

10.1 AO observed that identical documents were found showing similar transactions between the assessee and Sri Mohd. Khadir, and Sri Mirza Rafiullah Baig. In the case of Sri Mohd. Baig, sale of Ac. 1-30 Gts. at Kothapet was registered vide document No.120/08 dt.14.12.2007 for a consideration of Rs.84,75,000/-. However, the corresponding agreement of sale- also dated 07.02.2007, showed the cash component of the transaction to be Rs.1,57,50,000/-. The difference between the agreed consideration and the registered consideration is Rs.72,75,500/-. By another deed registered as document

number 121/08 also dt.14.12.2007 Sri Mirza Rafiullah Baig transferred Ac. 1-31 Gts. of land at Kothapet to the assessee company for a registered consideration of Rs.84,75,000/-. Here also the corresponding agreement for sale dated 07.02.2007 showed this parcel of land involved a cash consideration of Rs.1,57,50,000/-. The difference between the registered value of consideration and agreed value of consideration is Rs.72,75,000/-. In view of the above observations, the AO held that the amount of difference between agreed and registered value of consideration in cash involved in these two transactions was also brought to tax.

10.2 When the assessee carried the matter in appeal before the CIT(A), the CIT(A) after considering the submissions confirmed the additions made by the AO u/s 69B by, inter-alia, observing as under:

"13.6 It is clear from the above that the transaction is one that admittedly took place between the said contracting parties. The agreement of sale is a signed document and bears a clear reference to a bigger consideration for the transfer of the schedule property. The transaction admittedly relates to the same property that is described therein. Part of the consideration recorded in the Agreement of Sale is not only admitted to, but can also be identified in the registered document. It is also recorded in the Agreement for Sale that the transfer will be registered upon completion of a specified number of payments. Factually it is seen that the document has been registered at the end of the last instalment that was agreed upon in the agreement of sale. This would, therefore, generate a necessary inference that the antecedent events agreed upon in the mutually signed document have indeed taken place. The assessee, however, contends that the said transactions have not taken place. He expects the Assessing Officer to produce evidence of payments made by him. In doing so, it is being urged that the signed document of a transaction that, admittedly took place, is correct only in part. It goes against the settled principles of interpretation that a seized document cannot be partly

correct and partly incorrect: In view of the necessary inference generated by the seized material juxtaposed with the registered document, it is not enough for the assessee to merely deny that certain transactions in the document did not take place. It would indeed be a very unnatural event, if after agreeing to receive Rs.2.10 crores for transfer of his property, in an agreement reduced to writing on stamped paper signed by the Managing Director of the assessee company, the vendor is easily persuaded to register the transfer of property for a much reduced sum of Rs. 1,31,62,500/-. Significantly, the vendee (assessee) for all the resistance he would have naturally faced in persuading the vendor to accept less than the agreed consideration, has been unable to lead any evidence of any form of re-negotiation. It has to be held, therefore, that the assessee has been unable to controvert the preponderant probability of the payment having indeed been made as agreed upon. As noticed earlier, this factual fit between the agreement for sale and the registered document discussed here in the context of the transaction with Sri Lingala Senapati, is available in the other two transactions as well, viz. with Sri Mohd. Qadeer and Mirza Rafiullah Baig, which are identically structured. Under the circumstances the addition deserves to be upheld.”

11. Before us, the Ld. AR, as regards the addition of Rs. 78,37,500/- u/ 69B submitted that it is a fact that assessee has entered into an Agreement of Sale with Mr. Lingala Senapati on 7th February, 2007 (copy of which is placed at Pages 80 to 84 of the Paper Book) in which Rs. 2.10 Crore was to be paid in Cash and the balance in constructed area. In the said Agreement, it was also mentioned that as the property was under litigation and suits pending in various Courts, the property was to be given free of encumbrance. He further submitted that subsequently on 14th December, 2007, an AGPA was entered into with a consideration of Rs. 1,31,62,500/- (copy of Which is placed at Pages 85 to 90 of the Paper Book). The Ld. AR submitted that the Income tax Department has completed the scrutiny of Mr. Lingala Senapati for the Assessment Year 2008-09. Copy of the

Assessment Order is placed at Page 91 to 96 of the Paper Book. In the said Assessment Order, the same material which was referred to in the Assessee's case has been referred to, the same Agreement of Sale and AGPA have been mentioned in the Assessment Order.

11.1 Ld. AR submitted that the details of the Agreement and the AGPA have been discussed in detail by the AO in the Order including mode of payment etc.. He submitted that at Page 5 of the Assessment Order in Para 3, the AO has discussed the summoning of the Managing Director of the Assessee company. The MD was examined in detail and the MD confirmed that only an amount of Rs. 1,31,62,500/- has been paid to Mr. Lingala Senapati in full and final settlement. The AO of Mr. Lingala Senapati completed the assessment taking into account that only an amount of Rs. 1,31,62,500/- was the consideration which has passed.

11.2 Ld. AR, therefore submitted that once the Department has accepted in the case of the Vendors that the consideration was Rs. 1,31,62,500/-, then taking the consideration at Rs. 2.10 Crore and adding the difference of Rs. 78,37,500/- is not acceptable. It is therefore prayed that the addition made be deleted.

11.3 As regards the additions of Rs. 72,75,000/- and Rs. 72,50,000/-, the additions made on similar lines as that of Mr. Lingala Senapathi, but, the vendors in this case are Mr. M. Qadeer and Mr. Mirza Rafiullah Baig. He, therefore submitted that the additions in these cases also may be deleted.

11.4 Ld. DR, on the other hand, relied on the orders of revenue authorities.

11.5 Considered the rival submissions and perused the material on record. We notice that at the time of search, the department found two documents, one for the registered sale deed and another for agreement to sell. The consideration mentioned in both the documents are different. It is natural to presume that when the transaction is complete by registering the document, two parties must have exchanged the value as per the agreement to sell. This is the original arrangement between the parties. In the given case, all the transactions i.e. three transactions are complete. Accordingly, Id. CIT(A) has come to conclusion that assessee must have adhered to the clauses in the agreement to sell. Ld. AR brought to our notice in the case of Shri Lingala Senapati that the department has agreed the value of sale consideration as per the registered sale deed and completed the assessment. For the same transaction, the department cannot treat two different sale consideration. Therefore, we direct the AO to determine the sale consideration adopted for Shri Lingala Senapati and consider the same value as sale consideration in the case of assessee also. Similarly, we direct the AO to verify the other two cases also and determine the sale consideration adopted for the other two parties and determine the same sale consideration as the proper value of consideration in the case of assessee. Therefore, ground raised by the assessee is allowed for statistical purposes.

12. As regards the addition of Rs. 1,35,00,000/- towards unexplained investments, the AO observed that at paragraph 6 of the assessment order 2007-08, a sum of Rs. 1,05,00,000/- was added as unexplained investment on account of land payment made to Alladi Mallaiah and family as per the seized document page Nos. 156 to 161 of annexure A/JES/18. And

the balance sum of Rs. 1,35,00,000/- was treated as unexplained investment for the AY 2008-09, He accordingly made addition of Rs. 1,35,00,000/- as unexplained investment for AY 2008-09.

12.1 On appeal, the CIT(A) confirmed the said addition.

12.2 Ld. AR submitted that this ground is similar to the ground No. 1 in AY 2007-08, therefore, the submissions made therein may be considered for this year also.

12.3 Ld. DR relied on the orders of revenue authorities.

12.4 Considered the rival submissions and perused the material on record. As this ground is similar to ground No. 1 raised by the assessee in AY 2007-08, following the conclusions drawn therein, this ground is allowed.

13. As regards the addition of Rs. 94,58,000/- towards unexplained investment, the AO observed that at paragraph 7 of the assessment order 2007-08, a sum of Rs. 49,50,000/- was added as unexplained investment on account of land payment made to T. Ram Reddy and others as per the seized document vide page Nos. 110 to 120 of annexure A/JES/PO-2/2 and the balance sum of Rs. 94,50,000/- was treated as unexplained investment for the AY 2008-09, He accordingly made addition of Rs. 94,50,000/- as unexplained investment for AY 2008-09.

13.1 On appeal, the CIT(A) confirmed the said addition.

13.2 Considered the rival submissions and perused the material on record. At the time of hearing, no arguments were

put-forth by the Id. AR of the assessee before us on this ground, hence, this ground is dismissed.

14. As regards ground No. 11 regarding the directions of CIT(A) in giving direction to AO to assess an amount of Rs. 45,00,000/- in AY 2009-10, the assessee has not pressed this ground before us, hence, this ground is dismissed as not pressed.

15. ITA No. 215 & 216/Hyd/2017 for AY 2007-08 & 2008-09 by the revenue

16. In this appeal, the revenue has raised the following grounds of appeal, which are common in both the appeals under consideration:

"1. The CIT(A) is not justified in holding that the assessee is eligible to claim deduction u/ s 80IB without appreciating the fact that the assessee has not furnished completion certificates and letters issued by Municipal Authorities as held by the Hon'ble ITAT in the case of M/s Sainath Estates Pvt. Ltd (ITA No.299,300,379 & 380/Hyd/2012 dt. 08.02.2013).

2. The CIT(A) is not justified in holding that the assessee company is eligible for deduction u/ s 80IB (10) without appreciating the fact that apart from non-furnishing of completion certificate, the assessee has also not established the fulfilment of other statutory conditions laid down i.e. size of the plot, built up area of individual fiat, built up area of shops and other commercial establishments in respect of projects completed at Bangalore and the order of CIT(A) is silent on the issue.

3. The CIT(A) is not justified in holding that the disallowance u/s 40(a)(ia) applies only to amounts payable as on 31st March of the respective financial year in respect of items where TDS defaults are observed and not the amounts that have been "paid" though TDS defaults are observed relying on the judgement of Hon'ble ITAT Special Bench, Vizag in the case of Myrilyn Shipping and Transports Vs. ACIT(ITA

No.477/Viz/2008) without appreciating the fact that Hon'ble Andhra Pradesh High Court vide order dt. 08.10.2012 directed interim suspension of the above order.

4. CIT(A) is not justified in holding that if tax is withheld at a lower rate, the provisions of 40(a)(ia) of the Act are do not get attracted without considering the decision of Hon'ble Kerala High Court in the case of CIT Vs. PVS Memorial hospital Ltd where in the decision of Calcutta High Court in the case of CIT Vs S.K. Tekriwal was disagreed.

5. Any other ground that may be urged at the time of hearing.”

17. As regards ground Nos. 1 & 2 regarding claim of deduction u/s 80IB, following the conclusions drawn in assessee's appeal for AY 2008-09 vide paras 8.4 to 8.5 (supra), we dismiss the grounds raised by the revenue.

18. As regards ground No. 3 regarding disallowance u/s 40(a)(ia), following the conclusions drawn in assessee's appeal for AY 2007-08 & 2008-09 vide para 7.6 (supra), we dismiss the ground raised by the revenue.

19. As regards ground No. 4, relying on the findings of CIT(A), which were extracted vide para 7.3 while deciding the assessee's appeals (supra), which are inline with the precedents and we are inclined to accept the findings of Id. CIT(A). We dismiss this ground of appeal of the revenue.

20. Ground No. 5 is general in nature, hence, need no adjudication.

ITA Nos. 1484 & 1485/Hyd/2010 for AY 2007-08 & 2008-09 by revenue.

21. In these appeals, the revenue has raised the following grounds of appeal, which are common in both the appeals:

1) The Commissioner of Income-tax (A) erred in allowing the appeal of the assessee with respect to the addition made u/s 69 of the Act despite the fact that the seized documents are belonging to the assessee company.

2) The Commissioner of Income-tax (A) ought to have appreciated the fact that the payment claimed to have been made by Janapriya Engineers Syndicate Ltd for the land purchased by the assessee company is not reflected in the accounts of Janapriya Engineers Syndicate Ltd., or in the accounts of assessee company.

3) Any other ground that may be urged at the time of hearing.”

22. Brief facts relating to the ground Nos. 1 & 2 are that in the course of assessment proceedings, the AO based on the seized documents and sworn statement of the director of the assessee, made an addition of Rs. 6,30,25,000/- as unexplained expenditure u/s 69C of the Act.

22.1 When the assessee preferred appeal before the CIT(A), it submitted before the CIT(A) that the addition made by the AO was in fact already offered as income in the hands of M/s. Janapriya Engineers Syndicate Pvt Ltd. It was further stated that assessment in the case of Janapriya Engineers Syndicate Ltd. for the AY 2007-08 was already completed wherein at page-10 of the order, the AO had discussed the break-up of the details of the income offered amounting to Rs. 6,37,75,000/-. The AR of the assessee filed a copy of the computation of total income and the break-up of the income offered as also a copy of the assessment order passed in the

case of Janapriya Engineers Syndicate Ltd for the AY 2007-08.

22.2 After considering the submissions of the assessee, the CIT(A) directed the AO to delete the addition, by observing as under:

If the details of the payments as tabulated by the AO in the assessment order of the appellant company is compared with the details of payment tabulated by the - Assessing Officer in the case of Janapriya Engineers Syndicate, it can be seen that all the payments made to various persons are identical except in the case of M/s. Reddy where there is a difference of Rs.9,50,000/- However, the amount offered in the hands of Janapriya Engineers Syndicate is more than the amount arrived at by the Assessing Officer in the case of the appellant company. Since M/s. Janapriya Engineers Syndicate has already offered Rs.6,37,75,000/- in its computation of income which has also been accepted by the AO, addition of the same amount in the hands of the appellant will amount to double taxation of the same amount. In fact, the income has been offered in the hand of Janapriya Engineers Syndicate in accordance with the voluntary disclosure made during the course of search which has been reproduced in the assessment order in the case of M/s Janapriya Engineers Syndicate for the AY 2008-09. I am therefore of the view that addition of Rs.6,29,25,000/- as unexplained expenditure in the hands of the appellant company is not justified. The same is accordingly directed to be deleted.”

22.3 Aggrieved by the order of CIT(A), the revenue is in appeal before us.

22.4 Considered the rival submissions and perused the material on record. We are of the view that the AO has already made addition in the hands of M/s Janapriya Engineers Syndicate and the same payments to land owners cannot be made as addition in the case of assessee on protective basis. Therefore, we are inclined to accept the findings of Id. CIT(A)

and therefore grounds raised by the revenue in both the appeals are dismissed.

23. In the result, appeals of the assessee in ITA Nos. 1139 & 1140/Hyd/2017 are partly allowed and the appeals of revenue in ITA Nos. 215 & 216/H/2017 and 1484 & 1485/H/2010 are dismissed.

Pronounced in the open court on 23rd January, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 23rd January, 2019

kv

Copy forwarded to:

1. *M/s Janapriya Engineers Syndicate Ltd., 3-6-115/A, Janapriya House, Himayat Nagar, Hyd.*
2. *DCIT, Circle – 2(1), 5th Floor, Room No. 514, Signature Towers, Kondapur, Hyd.*
3. *CIT(A) - 11, Hyderabad*
4. *Pr. CIT (Central), Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

S.No.	Description	Date	Intls	
1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S./PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			