

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2732/M/2017  
Assessment Year: 2013-14**

ITO Wd-2(3), 6 <sup>th</sup> Floor, B Wing, Room No.13, Ashar I.T. Park, Road No.16Z, Nr. Ambika Nagar, Wagle Industrial Estae, Thane (W)-400 064	Vs.	M/s. D.V. Realtors, Shree Shashwat, Opp. Sai Mansarovar Complex, Near Pleasant Park, Mira Road (E), Thane – 401 107 <b>PAN: AAFFD 1308P</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Anuj Kisnawala, A.R.  
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 19.02.2019  
Date of Pronouncement : 05.04.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 27.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The grounds raised by the Revenue are as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance of deduction u/s 80IB(10) to the extent of Rs. 1,36,369/-.

1.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in granting above relief to the assessee firm even when the project was not completed within specified time limit as prescribed in section 80IB(10) of the Act as the OC for the project under consideration was issued by the local authority i.e. MBMC on 28.08.2013.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction claimed u/s 80IB(10) on pro-rata basis in the gross violation of the section as the basic condition as laid by section 80IB(10)(f) of not allowing more than one unit to any individual or family members is not fulfilled.

3. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

4. The assessee craves leave to add, amend, alter or delete any ground of appeal.”

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) directing the AO to allow the deduction under section 80IB(10) to the tune of Rs.1,31,32,822/-.The ld counsel of the assessee pointed out that the amount is wrongly mentioned in the ground no.1 which was promptly conceded by the ld DR.

4. At the outset, the Ld. Counsel for the assessee submitted that the issue raised by the Revenue in the present appeal is covered in favour of the assessee by the decision of the coordinate bench in assessee's own case in ITA No.3992/M/2016 A.Y. 2012-13 vide order dated 11.12.2018. The Ld. A.R. submitted that the first appellate authority has allowed the relief to the assessee by following the said decision of the co-ordinate bench of the Tribunal in assessee's own case and therefore, he submitted that in view of the said order , the appeal of the Revenue may kindly be dismissed.

5. The Ld. D.R., on the other hand, relied on the grounds of appeal filed by the Revenue.

6. After hearing both the parties and perusing the material on record including the impugned order and the decision of the co-ordinate bench of the Tribunal, we find that the issue is squarely settled in favour of the assessee by the co-ordinate bench of the

Tribunal in ITA No.3992/M/2016 A.Y. 2012-13 vide order dated 11.12.2018. The operative part of the order is reproduced as under:

“8.We have heard the rival submissions of both the parties and perused the material on record including the impugned order and the decisions cited by both the parties. The undisputed facts are that assessee has applied for issue of completion certificate to the municipality on 22.03.2012 which was within the cut-off date of 31.03.2012 in terms of the provisions of section 80(IB)(10) of the Act and the said certificate was issued by Commissioner of MBMC on 28.08.2013. Besides, we observe from the records before us and order of the Ld. CIT(A) that architect of the assessee i.e. M/s. Nakasha Architect, independent architect M/s. P.R. Consultants issued completion certificates certifying the completion of construction of building in the month of March. Similarly, we have examined other various evidences such as sample copy of possession letter dated 15.01.2012, copy of certificate dated 10.03.2012 issued by M/s. Fire Ext. Engineering for compliance of fire prevention and life safety measures dated 12.02.2012 and application for transfer of electric meters in the name of the purchasers. We are of the opinion that all these evidences corroborate that assessee has completed the project within the specified time as prescribed under section 80(IB)(10) of the Act. The observations of the AO as regards non completion of the project on or before 31.03.2012, purchase of three flats by one family and area of each flat exceeding 1000 sq. ft. are based upon wrong appreciation of facts and based upon conjectures and surmises of the AO which are rightly negated by the Ld. CIT(A) by passing a very reasoned and speaking order discussing the satisfaction of each and every conditionality as provided in section 80(IB)(10) of the Act. Moreover, the case of the assessee is squarely covered by the decision of the jurisdictional High Court in the case of CIT vs. Hindustan Samuh Awas Ltd. (supra) which has been considered by the Ld. CIT(A) and also reproduced the operative para thereof in the appellate order in which it has been held that it would suffice if the assessee has applied for the issuance of completion certificate before the cut off date or specified date under the provisions of section 80(IB)(10) of the Act and architect has specified the completion of the project. The Hon'ble High Court has held that the actual issuance of completion certificate by the municipal authorities is not relevant for the purpose of claiming deduction under section 80(IB)(10) of the Act. Similarly, in the case of Om Swami Smaran Developers (P.) Ltd. (supra) the co-ordinate bench of the Tribunal has held that where the conditions of clause (f) of section 80(IB)(10) of the Act is violated in respect of two flats then the disallowance has to be restricted only for the two flats and not qua the remaining flats which complied with the condition as envisaged under clause (f) of the Act. Under these facts and circumstances we find no reasons to deviate from the finding of the first appellate authority. We, therefore, respectfully following the decision of the Hon'ble Bombay High Court uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.”

7. Since the issue raised by the Revenue in the present appeal is materially same as has been decided by the co-ordinate bench

of the Tribunal (supra), therefore, we respectfully following the decision of the co-ordinate bench of the Tribunal, dismiss the appeal of the Revenue by upholding the order of Ld. CIT(A).

**Order pronounced in the open court on 05.04.2019.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 05.04.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.