

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.479/Hyd/2017
(Assessment Year: 2012-13)

Grandeur Homes P Ltd Secunderabad PAN: AACCG7612F (Appellant)	Vs	Asstt. Commissioner of Income Tax, Circle 2(2) Hyderabad (Respondent)
--	----	--

For Assessee :	Shri S. Rama Rao
For Revenue :	Shri K.J. Rao, DR

Date of Hearing:	18.04.2019
Date of Pronouncement:	29.05.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2012-13 against the order of the CIT (A)-2 Hyderabad, dated 30/12/2016. The assessee has raised the following grounds of appeal:

“ 1. The order of the learned CIT (A) is erroneous both on facts and in law.

2. The learned CIT (A) erred in deciding the appeal without providing proper opportunity. The learned CIT (A) ought to have provided opportunity to the appellant to present case.

3. The learned CIT (A) erred in confirming the action of the AO in not allowing the deduction u/s 80IB(10) of the I.T. Act claimed in the return of income of Rs.30,54,002/-.

4. The learned CIT (A) ought to have considered the fact that the housing project in respect of Emerald Heights was approved on 24.3.2007 and completion certificate

for Block, A, D and Club House was obtained within a period of 5 years i.e. on 10.6.2011.

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

2. Brief facts of the case are that the assessee company engaged in the business of Real Estate Developers/Managers, filed its return of income for the A.Y 2012-13 on 29.9.2012 admitting total income of Rs.19,14,700/- after claiming deduction u/s 80IB(10). During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee has claimed deduction u/s 80IB(10) of the Act with respect to profits of Rs.30,54,002/- and Rs.4,64,73,118/- derived respectively from the Housing Projects Splendour (Gajularamamaram) and Emerald Heights (Ghanapur). The assessee was asked to produce the copy of the project lay out and completion certificates etc. In response to the same, the assessee furnished the approval letters and on perusal of the same, the AO observed that the housing project Emerald Heights was approved by the HUDA on 23.03.2007 and the projects consist of four blocks viz., A, B, C and D. Observing that all the blocks and club house are part of one single project, the AO observed that the occupancy certificate has been issued by the Grama Panchayat only for two blocks i.e. A & D as having been completed on 5.1.2012 and that further verification by the Inspector also revealed that only A, D blocks and Club House have been completed and that the block of B is under construction and that the construction of Block C has not yet been started. Since the entire project was not completed, the AO disallowed the claim of deduction u/s 80IB(10) in respect of “Emerald Heights”. However, the deduction u/s 80IB(10) was

allowed for the project “Splendour”. Aggrieved by the disallowance of deduction u/s 80IB(10) in respect of Emerald Heights, the assessee filed an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before us.

3. The learned Counsel for the assessee submitted that the assessee has completed the projects A & D and also the Club House and has accordingly filed the occupancy certificate before the AO which is placed at Page No.51 of the Paper Book filed before us. He submitted that the entire project was of 10.02 acres and the Blocks A & D were in an area of 4.2 acres. Thus, he submitted that the blocks themselves also satisfied the conditions of deduction u/s 80IB(10) and therefore, the deduction should be allowed.

4. The learned DR, however, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that in the case of Manjeera Projects, the Coordinate Bench of this Tribunal (to which both of us are signatories) have considered various judicial precedents on the issue and have held that if the blocks of the housing project which are completed also fulfils the conditions of 80IB(10), then the assessee shall be eligible for deduction u/s 80IB(10) in respect of such completed blocks only. For the sake of ready reference, the relevant paragraphs of the above order are reproduced hereunder:

“24. As far as the 4 blocks are concerned, all the above, except condition No.(iv) are fulfilled and as far as 3 blocks are concerned, both the conditions (iv) and (v) are not fulfilled. In respect of some of the flats, there is a violation of condition No.(iii) as well. Therefore, it is to be examined, if the deduction is not to be allowed in toto even if one of the above condition is not fulfilled.

25. The Hon'ble Bombay High Court in the case of CIT vs. Vandana Properties reported in (2013) 355 ITR 36 (Bom.) has considered similar situation wherein the assessee therein had obtained approval to construct four buildings on a plot of land admeasuring 2.36 acres and intimation of the approval in respect of those buildings was granted during the years 1993-96 and following the percentage completion method, the assessee therein had offered to tax, the income earned from construction of buildings A, B, C & D from time to time and deduction u/s 80IB(10) of the Act was also claimed and allowed. Subsequently, the State Govt. in the year 2001, permitted conversion of the status of the land and the assessee became entitled to construct additional building "E" on the plot of land and accordingly the building plan was submitted by the assessee which was approved by the Municipal Corporation, subject to various conditions set out therein. Thereafter, the commencement certificate for construction of "E" building was issued on March 10, 2003 and in the return of income for the A.Ys 2004-05 and 2005-06, the assessee estimated the profit from E building and claimed deduction u/s 80IB(10) of the Act. The AO disallowed the claim on the ground that the approval for "E" building was granted on 11th of October, 2002, as an extension of the approval granted for the buildings in A to D and therefore, the E block, being continuation of A, B, C & D buildings, the project must be held to have commenced prior to October 1, 1998, and hence is not eligible for deduction u/s 80IB(10) of the Act. The AO also held that the buildings were constructed in a plot of land admeasuring 2.36 acres of the land and if it was proportionately divided between all the buildings, then the land pertaining to E building would be less than one acre and hence, deduction u/s 80IB(10) could not be allowed. The Hon'ble Bombay High Court held that the building E was approved by the local authority on October 11, 2002 by a separate approval and therefore, it constituted an independent housing project and that section 80IB(10) while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having a minimum area of one acre. Thus, the Hon'ble High Court has held that if the assessee has constructed a building on minimum of one acre, as per the sanctioned plan and obtained the completion certificate, the assessee is entitled to deduction u/s 80IB(10).

26. The Hon'ble Madras High Court in the case of CIT vs. Voora Property Developers (P) Ltd reported in (2015) 373 ITR 317 (Mad) was considering the case of an assessee, who received approval of the local authority in respect of a composite housing scheme and had obtained separate plan permits for six blocks on one acre and 6.5 cents of land. The AO therein had denied the deduction u/s 80IB(10) on the ground that the assessee had developed six separate projects in one single piece of land measuring 1.065 acres and therefore, the assessee did not fulfil the essential conditions of the minimum area of one acre for a single project as laid down u/s 80IB(10).

The Hon'ble High Court held that if the conditions specified u/s 80IB are satisfied, then the deduction is allowable on the entire project and since the assessee constructed six blocks in a land measuring 1 acre and 6.5 cents, the assessee was entitled to deduction.

27. The Coordinate Bench of this Tribunal in the case of M/s. Sriram Constructions vs. Dy.CIT in ITA No.1300/Hyd/2011 vide orders dated 29.04.2016 has also considered similar situation and has held that the assessee will not automatically lose the deduction u/s 80IB(10) for the entire project but is eligible for pro-rata deduction as allowed by the CIT (A) in the said case.

28. The Coordinate Bench of this Tribunal at Ahmedabad in the case of Pushkar Construction Co vs. ITO reported in (2015) 43 ITR (Trib.) 293 (ITAT Ahm.) has followed the decision of the Hon'ble Bombay High Court in the case of CIT vs. Vandana Properties (Supra) and also the Hon'ble Madras High Court in the case of CIT vs. Vooora Property Developers (P) Ltd (Supra) to hold that the assessee is entitled to deduction u/s 80IB(10) of the Act, if the assessee fulfills the condition of constructing a housing project on a plot having the area of more than one acre. It was held that on a plot of land having minimum area of one acre, there could be any number of housing projects and since the housing projects were approved by the local authority and fulfilled the conditions set out u/s 80IB(10), deduction could not be denied to all the housing projects. It was also held that section 80IB(10) specified the size of the plot of land but not the size or the number of housing projects that were required to be undertaken on a plot having minimum area of one acre.

29. In the case of M/s. Viswas Promoters Pvt. Ltd (cited Supra), the Hon'ble Madras High Court has observed that there is no definition of the expression "Housing Project" u/s 80IB of the Act and that said expression is defined under Explanation to section 80HHBA of the Act. The Hon'ble High Court, after considering the said definition, has held as under:

"13. Section 80IA of the Act is a specific provision which deals with deduction in respect of profits and gains from industrial undertakings or enterprises engaged in the development of infrastructural facilities such as roads, bridges and other structure as regards the grant of deduction in respect of development and construction of a housing project. Section 80IB is a specific provision in respect of profits and gains from undertakings engaged in developing and constructing housing projects other than infrastructure development undertakings. Thus, housing projects considered herein under Section 80IB refers to any building other than road, bridge or other structure. Thus, going by the definition of "housing project" to mean the construction of "any building" and the deduction under Section 80IB of the Act is hundred per cent of the profits derived in the previous year relevant to the assessment year from such housing project complying with the condition, each block in the larger project by name "Agrini" and "Vajra", has to be taken as an independent building and hence a housing project, for the purpose of considering a claim of deduction. Section 80IB(10) begins by stating:

Thus the undertaking qualifying for deduction under Section 80IB of the Act is an "undertaking developing and building housing projects" and the deduction is in respect of "profits and gains derived from" such housing project, satisfying the conditions stipulated in the clause therein. Thus, within a composite housing project, where there are eligible and ineligible 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 in the units satisfying the extent of the built-up area.

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 [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".

In the case before us, the assessee had admittedly completed four buildings i.e. G, H, I & K and has also furnished the occupancy certificate dated 29.3.2012. Therefore, the assessee is clearly eligible for deduction u/s 80IB(10) on the profits earned from these buildings.

30. The next question to be considered is whether the assessee is entitled to deduction u/s 80IB(10) on the profits from blocks F, K & L for which the assessee has not obtained the occupancy certificate from GHMC,

Hyderabad as on 30.03.2013 but has already submitted an application for the same. It is seen that according to the Architects' certificate, the assessee has completed the construction in all aspects and that the assessee has submitted the application for issuance of occupancy certificate as on 30.3.2013 by paying the requisite fees. The learned Counsel for the assessee has relied upon the judgment of the Hon'ble Bombay High Court in the case of Samuh Awas Ltd reported in (2015) 377 ITR 150 (Bom.) wherein under similar circumstances, it was held that where the assessee has applied for the issuance of completion certificate by paying the fees within the specified time, the delay by the Municipal Corporation in issuance of certificate cannot be attributed to the assessee and the assessee is entitled to the deduction u/s 80IB(10). In the said case, the assessee was supposed to get the certificate before 31st March, 2008 whereas the assessee has submitted application on 26.03.2008 and also deposited the fee for such certificate on 31.3.2008 and the certificate was issued in October, 2008. Based on these facts, the Hon'ble High Court held that the delay in obtaining the certificate cannot be attributed to the assessee. The assessee before us, has also relied upon the decision of the Coordinate Bench of this Tribunal in the case of Shri M. Srinivasa Rao vs. ACIT in ITA No.1049/Hyd/2014 dated 29.2.2016 which in turn has followed the decision of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Samuh Awas Ltd (Supra) to hold that where the assessee has applied for issuance of occupancy certificate and the Municipal Authorities do not refuse to issue the certificate within 21 days from the date of receipt of such application, then the occupancy certificate has to be presumed to have been issued. In the case before us also, the assessee has made an application on 30.03.2008 and within 21 days thereafter, the Municipal Authorities did not refuse the occupancy certificate and therefore, it is clear that the assessee's claim has not been denied and hence has to be deemed to have been issued. It is another fact that the assessee itself made a fresh application again for issuance of completion certificate on 28.05.2013, in reply to which, the Municipal Corporation vide letter dated 13.06.2013 pointed out certain defects, which, in our opinion are not substantial and essential for considering the blocks to be incomplete. They are only peripheral works, which may be part of the housing project but are not essential. Therefore, in our opinion, the assessee is entitled to the deduction u/s 80IB(10) even for the Blocks of F, K and L. Thus, assessee's grounds of appeal Nos. 1 to 5 are allowed".

6. Respectfully following the same, we deem it fit and proper to remand the issue to the file of the AO with the direction to examine whether the area of blocks A&D together fulfills the conditions of 80IB(10) i.e. the project should have been completed within the stipulated period and the area should be more than one acre and none of the flats should exceed 1500 sq. ft and the

occupancy certificate has been furnished and if all the above conditions are satisfied, the deduction u/s 80IB(10) shall not be disallowed in respect of these two blocks.

7. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 29th May, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 29th May, 2019.

Vinodan/sps

Copy to:

- 1 M/s. Grandeur Homes Pvt. Ltd, 4th Floor, Ashok Hitech Chamber, 8-2-12-/76/1/B/16, 17, 18, Road No.2 Banjara Hills, Hyderabad 500034
- 2 ACIT, Circle 2(2) Signature Towers, Kondapur, Hyderabad
- 3 CIT (A)-2 Hyderabad
- 4 Pr. CIT – 2 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order