

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. Nos.	IT(ss)A No(s) /ITA No.	Assessment Year (s)	Appeal(s) by	
			Appellant vs. Respondent	Appellant vs. Respondent
1.	IT(ss)A No. 03/Ahd/2016	2008-09	M/s.Sagar Corporation 2 nd Floor Akar Complex Samta Char Rasta Subhanpur, Baroda PAN:ABIFS 4394 Q	The DCIT Central Circle-2 Baroda
2.	IT(ss)A No.04/Ahd/2016	2009-10	-do- assessee	-Revenue-
3.	ITA No.08/Ahd/2016	2009-10	M/s.Sagar Projects Gorwa Refinery Road Near Petrofils Township Baroda – 390 016 PAN: ABJFS0802J	-Revenue-

Assessee by :	Shri Mukund Bakshi, AR
Revenue by :	Shri Samir Tekriwal, CIT-DR

सुनवाई की तारीख/ Date of Hearing	03/02/2020
घोषणा की तारीख/Date of Pronouncement	19 /02/2020

आदेश / O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeals have been filed at the instance of the different Assesseees against the separate orders of the Commissioner of Income Tax (Appeals)–12, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-12/375/ CC-2/2014-15, CIT(A)-12/336B/CC-12/2013-14 and CIT(A)-12/335B/CC-2/2013-14 identically dated 31/08/2015 arising in



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the assessment orders passed under s.153C r.w.s.153A r.w.s.143(3) and under s.143(3) r.w.s.147 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 26/03/2013 and 31/03/2013 (in the case of Sagar Projects) relevant to Assessment Years (AYs) 2008-09, 2009-10 & 2009-10 respectively.

2. Since all the appeals relate to the same issue involving identical facts and circumstances but to different assessees, hence the same are heard analogously and are being disposed of by way of this common order.

3. First we take up the assessee's appeal in IT(ss)A No.3/Ahd/2016 (in the case of Sagar Corporation) for AY 2008-09 as a lead case, wherein assessee has raised the following grounds of appeal:

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

1. The Ld. CIT (A)-12, Ahmedabad has erred in law and in facts in confirming the action of the Ld. A.O. in denying the deduction of Rs.3,74,191/- claimed u/s. 8018(10) on the following grounds:

i) The appellant has first time made claim of deduction u/s 801B(10) in the return of income filed in response to notice us/ 153C and no claim of deduction u/s 801B(10) was made in the original return of income filed electronically on 30.09.2008 and the requisite report from the auditor in Form No. 10CCB was also not filed before the due date prescribed u/s 80AC r.w.s. 801B(13) r.w.s. 80LA (7) or even before the time limit allowed for revised return for the year under consideration in response to notice u/s 153C of the I.T. Act.



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ii) The appellant has not fulfilled the condition prescribed u/s 80IB(10) r.w.s. 80AC till the time available for filing return in response to notice u/s 153C.

The Ld. CIT(A)-12, Ahmedabad ought to have allowed the claim of deduction u/s. 80IB(10) amounting to Rs.3,74,191/- as claimed.

2. Your appellant craves the liberty to add, alter, amend or delete any or all of the above ground(s) of appeal.

4. Facts of the case are that assessee is engaged in the business of construction and developer. A search action u/s.132 of the Act was conducted in Darshanam Group of cases on 25/10/2010. During the course of search, certain documents inventorised in Annexure A-14 belonging to the assessee were seized from the premises of M/s.Darshanam Life Space Pvt.Ltd., 3rd Floor, Platinum Complex, Subhanpura, Baroda. Thereafter, proceedings u/s.153A of the Act was initiated in the case of M/s.Darshanam Life Space Pvt.Ltd. and the provisions of section 153C were accordingly attracted in the instant case of the assessee as section 153C of the Act provides that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the



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provisions of section 153A of the Act. In this case, books of account and documents were found and seized in the possession of M/s.Darshanam Life Space Pvt.Ltd. group. Thereafter, a notice u/s.153C r.w.s.153A(a) was issued. The assessee vide Question No.33 dated 24/08/2012 was asked to submit the details of deduction claimed u/s.80IB of the Act. In response thereto, the assessee has submitted as under:

“1. The assessee is a partnership firm and the said firm is came in to existence w.e.f. 06/02/2007. The assessee firm has commenced its project of residential housing project in the year 2007-08 known as “Darshanam Villa – 1 & 2,” of 33 & 43 residential housing units respectively, situated at Near Parivar Char Rastta, Waghodia Road, Baroda.

*2. The assessee firm has acquired development right in the land bearing R.S.NO.724/1, 724/2 & 725 of village Bapod Dist.Baroda admeasuring 61108 Sq. feet for a consideration of Rs.69/- per Sq.feet as per Sale of agreement dated 30/03/2007executed with Shri Jayntilal Dalsumhbhai Panchal, a landowenr and Shri Rakesh Kantilal Pate/ and others and Javnika Chhotalal Pate/ and others, a confirming parties and accordingly, the assesses firm has made total payment of the said land in the financial year 2007-08 to Shri Jayantilal D. Panchal for purchase of land. Copy of sate of agreement dated 30/03/2007 is enclosed at **Annexure - 1**.*

*3. The approval of development and construction of housing project is obtained on 06/11/2007 from Vadodara Municipal Corporation and subsequently, the said plan has been revised on 26/03/2009 and same is enclosed at **Annexure - 2**.*

4. It is further submits that the claim of deduction was rightly made and the terms of agreement fully indicated that the dominion of ownership and subsequent control over the land vested with the assessee firm on execution of the development agreement. The landowner only was entitled to fixed consideration towards sale of land and entire risk and reward associated with the project was with the assessee firm only and contentions in support of the law that the ownership by registration in the name of the assessee claiming deduction u/s. 8QIB(10) is not essential in view of the settled proposition laid down in the case ofRadhe Developers in ITA No. 2482/Ahd/2006.



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5. *The assessee firm is also aware of the later decision of the jurisdictional Tribunal in I.T.A. No. 1503/Ahd/2008 for A.Y. 2005-06 in the case of M/s. Shakti Corporation (unreported) wherein the Tribunal reconfirmed the law and proposition laid down in Radhe Developers with a rider that the same cannot be universally applied without looking into the development agreement and other agreements entered by the developers with the landowner. The Hon'ble Tribunal has in para 16 of the order has observed and found as under:*

"16. The facts involved in the case of the assessee are similar to the facts in the case of Radhe Developers (supra) and accordingly we are of the view that the assessee has acquired the dominant over the land and has developed the housing project by incurring all the expenses and taking all the risks involved therein. We may mention here that, in our opinion, the decision in the case of Radhe Developers (supra) will not apply in a case where the assessee has entered into the agreement for a fixed remuneration merely as a contractor to construct or develop the housing project on behalf of the landowner. The agreement entered into in that case will not entitle the Developer to have the dominant control over the project and all the risks involved therein will vest with the landowner only. The interest of the Developer will be restricted only for the fixed remuneration for which he would be rendering the services. The decision in the case of Radhe Developers (supra) has not dealt with such situation. The proposition of law laid down in the case of Radhe Developers cannot be applied universally without looking into the development agreement entered into by the Developer along with the landowner. In the case of Shakti Corporation since the assessee has filed copy of the development agreement and crux of the agreement is that the assessee has purchased the land and has developed the housing project at its own, therefore, we are of the view that the assessee will be entitled for the deduction u/s. 80IB(10). The decision of the Hon'ble Supreme Court in the case of Faqir Chand Gulati (supra) will not assist the Revenue, as the agreement is not sharing of the constructed area. In other cases the copy of agreement since has not been submitted before us. If submitted, the terms and conditions of the agreement were not specifically argued before and placed before us, we therefore, in the interest of justice and fair play to both the parties set aside the order of the CIT(A) and restore all other appeals to the file of the AO with the direction that the AO shall look into the agreement entered into by each of the assesseees with the landowner and decide whether the assessee has in fact purchased the land for a fixed consideration from the landowner and has developed the housing project at its own cost and risks involved in the project. In case the AO finds that practically the land has been bought by the Developer and Developer has all dominant control over the project and has developed the land at his own cost and risks, the AO should allow the deduction to the assessee u/s. 80IB(10). In case the AO finds that the Developer has acted on behalf of the landowner and has got the fixed



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consideration from the landowner for the development of the housing projects, the assessee should not be allowed deduction u/s. 80IB(10) to the assessee."

6. *Accordingly, the assessee firm is establishing by referring to the various terms of the Sale of Agreement and it shows that the assessee firm in fact exercises the dominion of ownership over the land and subsequent control over the project. All risks and reward involved with the project vest with the developer and the landowner is only entitled to a fix consideration. The various terms of the Sale of Agreement 30/03/2007 with respect to the land bearing Survey No. 724/1, 724/2 & 725 of village Bapod Dist. Baroda admeasuring 61108 Sq. feet for a consideration of Rs.69/- per Sq. feet, on which the housing project in respect of which deduction u/s. 80IB is claimed is discussed as under:*

7. *The various terms of agreement are as under:*

a. *The owners have given development rights in the land with the consent of confirming party for a consideration of Rs.69/- per sq. ft; in respect of land bearing R.S.NO. 724/1, 724/2 & 725 of village Bapod Dist. Baroda (Refer page no. 1 of the Sale of Agreement).*

b. *The Landowners has to execute the sale deed in favour of the Purchaser (Developer) in the name of any other as may be which is instructed by the developer (Refer clause no. 4 of the Sale of Agreement).*

c. *The Purchaser (Developer) is also free to execute sale deed in its favour irrespective of time limit for payment of sale consideration as decided by the seller and no excess rate of sale consideration or extra amount shall demanded by the seller in any circumstances. (Refer clause no. 5 of the Sale of Agreement).*

d. *The Purchaser (Developer) is entitled to obtain various permission or revised the plan layout as well as obtaining approval of said plan layout and construction permission from the local authority and expenses thereof shall be borne by the developers for which, the setter has to sign necessary documents / papers and co-operate to the Purchaser (Developers) to obtain such approval etc. (Refer clause no. 6 of the Sale of Agreement).*

8. *On the basis of above agreement, the landowners has given possession of the land for development and construction of residential housing scheme as per plan layout approved by the local authority and assessee firm has incurred all the*



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expenditure for development and construction of the housing project including the following:

i) Architect fees.

ii) Development charges to be paid to the regulatory authorities for making availability of electricity connection charges paid to GEB, drainage & water connection facilities charges paid to local authority and also obtaining the permission for commencing the development and construction.

iii) All expenses for development of infrastructure such as:

a) Common entrance gate with compound wall to the housing scheme

b) Internal roads

c) Streetlights

d) Water lines and connections for supply of water from the common source of the water for the entire housing project

e) Providing drainage lines for each individual house in the housing project and its discharge through the common Corporation discharge lines / connections.

f) Common plot for accommodating the play area for children, sit out for elders, lawn, etc.

iv) The expenses for construction of the houses in the housing scheme under the various heads are also incurred by the appellant.

v) The advertisement expenses for promoting and sale of the houses in the scheme.

The assessee firm has incurred various charges / development charges paid to local authority / VUDA for obtaining to approvals, drainage and water connection, electricity connection charges paid to GEB, architect fees paid for drafting and designing of plan play out, advertisement expense incurred for publicizing the residential housing scheme and development and construction expenses etc; and same have been debited to profit and loss account on year to year basis.

*8. Thereafter, on completion of the various houses / tenements in the housing scheme, the completion certificate is also obtained by the assessee firm and in fact, completion is issued in the name of landowners, (Darshanam Vatika) indicating that the regulatory authority also recognizes the construction and development as per the approved plan by the assessee firm. Copies of the completion certificate dated 17/1/2008, 21/06/2008, 16/12/2008 & 12/02/2009 (total 6 completion certificate) received from Vadodara Municipal Corporation are enclosed at **Annexure - 3**.*



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8. *In the sale of the houses in the scheme, the assessee firm has entered and executed Construction agreement and executed the conveyance deed for sale of plot along with construction with the purchaser of that house in the scheme. The various terms of construction agreement indicate the following:*

- a) The construction of tenement / bungalow is to be done in the "Darshanam Villa".*
- b) The purchaser has agreed to purchase the residential unit along with construction of residential house as per the design and the specification approved by the local authority.*
- c) The construction is to be done as per the design and the specification details given in the brochure as well as approved plan layout obtained from the local authority.*
- d) The purchaser i.e. the customer would not be entitled to the possession until complete payment is made to the assessee firm.*
- e) Any extra work other than specified in the brochure is to be reimbursed / paid by the purchaser / customer in advance.*

*From the above discussion and also on perusal of the various documents / approvals, Profit & Loss Accounts, etc. it would be evident that the assessee firm has carried out the activity of development and construction of the housing project as an integrated activity which is the requirement of sec. 80IB(10) as the profit which is eligible for deduction is to be derived from **development and building housing projects** as per the other conditions specified.*

9. *In light of the above requirement, the meaning of the term 'developers / contractors' as observed in the decision of the **Hon'ble Ahmedabad Tribunal in the case of Radhe Developers Vs. /TO 113 ITJ 300 (AHD)** in Para 30 & 31 is worth referring. The Honble ITAT has referred to the decision of the **Hon'ble Supreme Court in the case of Gu/arat Industrial Development Corporation Vs. CIT 227 ITR 414** and for the sake of ready reference is reproduced as under:*

"30. What is the meaning of the term develop, developer, developing, development, we can find the answer in certain dictionaries, including the Law Dictionary.

(a) The Webster's Encyclopedia Unabridged Dictionary of the English Language gives following meanings of the term 'developer' as:

"1. One who or that which develops;

2. A person who invests in and develops the urban or suburban potentialities of real estate".

(b) Oxford Advanced Learners Dictionary of Current English Fourth Indian edition gives meaning of the term "developer" as person or company that develops land.



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(c) *Random House Dictionary of the English Language, the following definitions can be found:*

Develop:

- a. *To bring out the capabilities or possibilities of; bring to a more advanced or effective state.*
- b. *To cause to grow or expand.*

Developer:

- a. *The act or process of developing; progress.*
- b. *Synonym: Expansion, elaboration, growth, evolution, unfolding, maturing, maturation,*

d. *Webster Dictionary, the following definitions emerge :*

- a. *To realize the potential of;*
- b. *To aid in the growth of: strengthen, develop the biceps*
- c. *To bring into being: make active (develop a business)*
- d. *To convert (a tract of land) for specific purpose, as by building extensively (e)*

*Law Lexicon Dictionary, the following definitions could be seen: **Development***

- a. *To act, process or result of development or growing or causing to grow; the state of being developed,*
- b. *Happening.*

31. *The Supreme Court in the case of Gujarat Industrial Development (supra), considering the meaning of 'developer' held that the word 'Development' appearing in the provisions should be understood in its wider sense and, therefore, "granted exemption even though the Gujarat Industrial Development Corporation was engaged in the industrial development. The development means the realization of potentialities of land or territory by building or mining. Accordingly, it can be safely said that a person who undertakes to develop real estate by developing and constructing a housing project is an eligible undertaking; developing and building of housing projects within the meaning of section 80-IB(10) of the Act. In the present case in hand, the landowner has not made any conscious attempt to develop the property except ensuring their rights as landowner so that the sale value of the land could be realized to them as per the terms of 'Agreement to Sale' and the 'Development Agreement', The landowners, no doubt, have not thrown themselves into development of property. It is only the assessee who is developing the property. Throwing itself into the business of development and building of housing projects by taking all risks associated with the business by engaging architects, structural consultants, designing and planning of the housing schemes, payment of development charges, obtaining necessary permissions, approving plans, hiring machinery and equipments, hiring engineers, appointing contractors, etc. No doubt, the permission has been obtained in the name of the registered landowners, but the same have been obtained by the assessee-firm through its partners who are holding*



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power of attorney of the respective landowners. It is a fact that the assessee is a 'developer' and not a 'contractor' as held by the lower authorities. The developer is not working on remuneration for the landowners, but developer is working for himself in order to exploit the potential of its business in his own interest and, therefore, opted for all business risks associated with the business of development of real estate including developing and building of housing projects. As per the provisions of section 2(1)(g) of Regulation of Employment and Conditions of Service Act (27 of 1996), the term 'Contractor' means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor."

It is thus evident that the activity of the assessee can undoubtedly be held as that of development and construction of the housing project and once it is held that the assessee is deriving profit from such activity, it is immaterial in what manner and how the documents are executed.

12. AH the activities listed as aforementioned is undertaken and executed by the assessee strengthening that the development and construction activity of the housing project as approved by the authorities at their own risk. The profit / surplus of the project are also belonged to the assessee firm.

13. It is also submitted that the intention of the appellant in the sale of residential house on a consolidated consideration is further supported by the fact that even in the P & L Account the consideration disclosed is towards the sale of the residential houses and not sale of plots / lands or construction contract receipt

14. The assessee firm is draws your attention to the Explanation inserted in Section 80IA(4) which reads as under.

[Explanation - For the removal of doubts, it is hereby declared that nothing contained in this section shall apply in relation to a business referred to in sub-section (4) which is in the nature of works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1)]

The above explanation is inserted by the Finance Act 2007 and the explanatory note issued by the CBDT by Circular No. 3 of 2008 clarified as under:

34.2. The tax benefit was introduced for the reason that industrial modernization requires a massive expansion of, and qualitative improvement in, infrastructure (viz,



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expressways, highways, airports, ports and rapid urban rail transport systems) which was lacking in our country. The purpose of the tax benefits has all along been for encouraging private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other works contract. The incentive has all along been intended to benefit developers who undertake entrepreneurial and investment risk and not contractors who only undertake business risk.

34.3. Accordingly, it has been clarified by inserting an explanation that the provisions of section 80I A shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the said section. Thus, in a case where a person makes the investment and himself executes the development work i.e. carries out the civil construction work, he will be eligible for tax benefit under section 80-I A. In contrast to this, a person, who enters into a contract with another person (including Government or an undertaking or enterprise referred to in section 80-IA) for executing works contract, will not be eligible for the tax benefit under section 80-IA.

From the reading of the above clarification, it is evident that the intention of insertion of the explanation was to restrict the developer as well as the contractor from claiming deduction in respect of the same project and where the developer and contractor is the same person and where the investment is made by the same assessee including the execution of development work, civil construction etc. would be entitled to the deduction. The restriction is to the person who is not developing the same out of his own funds and merely as a contractor.

The assessee submits that similar explanation is found to be existing u/s. 80IB reading as under:

[Explanation - For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to any undertaking which execute the housing project as works contract awarded by any person (including the Central or State Government).]

The above explanation is inserted with respective effect from 1.4.2001 and the same has been elaborately discussed by the jurisdictional High Court in the case of Radhe Develops vide para 37 and 38, wherein the Hon'ble High Court has held that considering the facts, as existing that case, identical to the facts of the assessee's case, held that the assessee is not a works contractor. Thus, it is submitted that even from this angle, the assessee cannot be held to be contractor.



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Lastly it is also submitted that the intention of the appellant in the sale of residential house on a consolidated consideration is further supported by the fact that even in the P & L Account the consideration disclosed is towards the sale of the residential houses and not sale of plots / lands or construction contract receipt. The copy of P&L Account for the year under consideration is already submitted.

Considering the above submissions, it is thus, submitted that the assessee is fulfilled all the conditions as specified u/s 80IB(10) of the I.T. Act, and therefore, the claim of deduction as made by the assessee firm is to be allowed.

15. The assessee firm has not claimed any deduction u/s 80IB(10) of the I.T Act, in the return of income filed u/s 139(1) of the Act; 1961 in any of the assessment years. The assessee firm has now claimed deduction u/s 80IB(10) of the I. T. Act; in the years under consideration, in the income tax returns filed in response to notice u/s 153C of the I T. Act; as the assessee firm is fulfilled all the conditions for claiming deduction u/s 80IB(10) of the I.T Act; and assessee firm is eligible to claim deduction as per Income Tax Act; which is allowable as per law."

5. The Assessing Officer was not agree with the submission or contention of the assessee and made addition of Rs.3,74,191/-.

6. Against the said order, assessee preferred first statutory appeal before the Ld.CIT(A) who confirmed the action of the Assessing Officer.

7. Now assessee has come before us by way of second statutory appeal.

8. At the outset, Ld.AR relied upon an order of the Coordinate Bench 'C' passed in assessee's own case in IT(ss)A No.05/Ahd/2016 for AY 2010-11, dated 17/05/2018, wherein on similar facts and circumstances,



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Coordinate Bench set aside the matter back to the file of Ld.CIT(A) with the following observation:

“1. This appeal, filed by the assessee, is directed against Learned CIT(A)’s order dated 31st August 2015, in the matter of assessment under section 143(3) r.w.s 153C of the Income Tax Act 1961, for the assessment year 2010-11.

2. Grievances raised by the appellant are as follows:

1. The Ld. CIT (A)-12, Ahmedabad has erred in law and in facts in confirming the action of the Ld. A.O. in denying the deduction of Rs.5,38,387/- claimed u/s.80IB(10) on the following grounds:

- i) The appellant has first time made claim of deduction u/s 80IB(10) in the return of income filed in response to notice u/s 153C and no claim of deduction u/s 80IB(10) was made in the original return of income filed electronically on 30.09.2008 and the requisite report from the auditor in Form No.10CCB was also not filed before the due date prescribed u/s. 80AC r.w.s. 80IB(13) r.w.s. 80LA(7) or even before the time limit allowed for revised return for the year under consideration in response to notice u/s.153C of the IT. Act.
- ii) The appellant has not fulfilled the condition prescribed u/s.80IB(10) r.w.s. 80AC till the time available for filing return in response to notice u/s.153C

The Ld. CIT(A)-12, Ahmedabad ought to have allowed the claim of deduction u/s. 80IB(10) amounting to Rs.5,38,387/- as claimed.

2. The Ld. Commissioner of Income Tax (Appeals)-II, Baroda has erred in law and in facts in denying the deduction u/s.80IB(10) amounting to Rs.4,04,326/- in respect of addition of Rs.4,04,326/- made on account of suppression of receipt of contractor. The addition being contrary to the facts and law is prayed to be deleted or in the alternative even if the same is liable to be taxed, it is to be allowed as deduction u/s. 80IB(10), and hence the deduction in respect thereof may kindly be directed to be granted.”



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3. *When this appeal was taken up for hearing, it was noticed that the Learned CIT(A) has rejected the section 80IB(10) claim of the assessee on the short ground that it was claimed, for the first time, in return filed in response to notice under section 153C, and that there was no adjudication on the merits. Learned representatives fairly agree that in the light of co-ordinate bench's decision in the case of Sagar Associates vs. DCIT (ITA No.448-552/Ahd/2013), this claim cannot be rejected merely on the ground that the claim has been made for the first time in 153C proceedings, and that it has to be, therefore, adjudicated on merits.*

4. *In view of the above discussions, and bearing in mind the fact that there is no adjudication on merits by the Learned CIT(A), we deem it fit and proper to remit the matter to the file of the Learned CIT(A) for adjudication on merits. Ordered, accordingly.*

5. *In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 17th May, 2018."*

9. On the other hand, Ld.DR has fairly conceded that the matter is squarely covered by the order of the Coordinate Bench as stated above and he has nothing to controvert arguments of the Ld.AR.

10. Since in similar facts and circumstances, the Coordinate Bench has set aside the matter back to the file of Ld.CIT(A) holding that there was no adjudication on merit by the Ld.CIT(A). Accordingly, we remit this matter back to the file of Ld.CIT(A) to decide the matter afresh on merit as per provisions of law.

11. In the result, assessee's appeal in IT(ss)A No.03/Ahd/2016 for AY 2008-09 in the case of Sagar Corporation is allowed for statistical purposes.



*IT(ss)A Nos.03 & 04/Ahd/2016
Sagar Corporation vs. DCIT (AYs 2008-09 & 2009-10) &
ITA No.8/Ahd/2016
Sagar Projects vs. DCIT (AY 2009-10)*

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12. Now coming to IT(ss) A No.04/Ahd/2016 for AY 2009-10 (in the case of Sagar Corporation) and ITA No.08/Ahd/2016 for AY 2009-10 (in the case of Sagar Projects).

(a) In IT(ss) A No.04/Ahd/2016 for AY 2009-10, the assessee has raised the following grounds of appeal:

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

1. The Ld. CIT (A)-12, Ahmedabad has erred in law and in facts in confirming the action of the Ld. A.O. in denying the deduction of Rs.22,99,781/- claimed u/s. 80IB(10) on the following grounds:

i. The appellant has first time made claim of deduction u/s 80IB(10) in the return of income filed in response to notice u/s 153C and no claim of deduction u/s 80IB(10) was made in the original return of income filed electronically on 30.09.2008 and the requisite report from the auditor in Form No. 10CCB was also not filed before the due date prescribed u/s 80AC r.w.s. 80IB(13) r.w.s. 80LA (7) or even before the time limit allowed for revised return for the year under consideration in response to notice u/s 153C of the T. Act.

ii. The appellant has not fulfilled the condition prescribed u/s 80IB(10) r.w.s. 80AC till the time available for filing return in response to notice u/s 153C.

The Ld. CIT(A)-12, Ahmedabad ought to have allowed the claim of deduction u/s. 80IB(10) amounting to Rs.22,99,782/- as claimed.

2. The Ld. Commissioner of Income Tax (Appeals)-12, Baroda has erred in law and in facts in confirming the disallowance of Rs.11,71,000/- made by the Ld. A.O., out of "cost of right release expense", on cancellation of booking of customers. The recipients are duly assessed to tax, and the amount received from appellant has been duly offered for taxation in their returns of income. The disallowance of Rs.11,71,000/- being erroneous in facts and in law is prayed to be allowed.



*IT(ss)A Nos.03 & 04/Ahd/2016
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3. *The Ld. Commissioner of Income Tax (Appeals)-12, Baroda has erred in law and in facts in confirming the addition made u/s. 68 of the Act of an amount of Rs.15,68,000/- being the deposit received at the time of booking of flats alleging the impugned transaction as bogus. The addition of Rs.15,68,000/- being erroneous in facts and bad in law is prayed to be deleted.*

4. *Your appellant craves the liberty to add, alter, amend or delete any or all of the above ground(s) of appeal.*

(b) In ITA No.08/Ahd/2016 for AY 2009-10, the assessee has raised the following grounds of appeal:

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

1. *The Ld. CIT (A)-12, Ahmedabad has erred in law and in facts in confirming the action of the Ld. A.O. in denying the deduction of Rs.38,62,286/- claimed u/s. 80IB(10) on the following grounds:*

i. *The appellant has first time made claim of deduction u/s 80IB(10) in the return of income filed in response to notice u/s 148 and no claim of deduction u/s 80IB(10) was made in the original return of income filed on 21.07.2009 and the requisite report from the auditor in Form No. 10CCB was also not filed before the due date prescribed u/s 80AC r.w.s. 80IB(13) r.w.s. 80LA (7) or even before the time limit allowed for revised return for the year under consideration in response to notice u/s 148 of the IT. Act.*

ii. *The appellant has not fulfilled the condition prescribed u/s 80IB(10) r.w.s. 80AC till the time available for filing return in response to notice u/s 148.*

The Ld. CIT(A)-12, Ahmedabad ought to have allowed the claim of deduction u/s. 80IB(10) amounting to Rs.38,62,286/- as claimed.

2. *The Ld. Commissioner of Income Tax (Appeals)-12, Baroda has erred in law and in facts in confirming the disallowance of Rs.6,00,000/- made by the Ld. A.O., out of "cost of right release expense", on cancellation of booking of customers. The recipients are duly assessed to tax, and the amount received from appellant has been duly offered for taxation in their returns of income. The disallowance of Rs.6,00,000/- being erroneous in facts and in law is prayed to be allowed.*



*IT(ss)A Nos.03 & 04/Ahd/2016
Sagar Corporation vs. DCIT (AYs 2008-09 & 2009-10) &
ITA No.8/Ahd/2016
Sagar Projects vs. DCIT (AY 2009-10)*

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3. *The Ld. Commissioner of income Tax (Appeals)-12, Baroda has erred in law and in facts in confirming the addition made u/s.68 of the Act of an amount of Rs.1,54,000/- being the deposit received at the time of booking of flats alleging the impugned transaction as bogus. The addition of Rs.1,54,000/- being erroneous in facts and bad in law is prayed to be deleted.*

4. *Your appellant craves the liberty to add, alter, amend or delete any or all of the above ground(s) of appeal.*

13. Since identical facts and circumstances are involved in these two appeals, therefore, taking a consistent view and in parity with the order of the Coordinate Bench, and with similar directions, these two matters are also remitted back to the file of Ld.CIT(A) to decide afresh on merit as per provisions of law. Thus, both the appeal(s) of the assessee are allowed for statistical purposes.

14. In the combined result, all the three appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on	19 /02/2020
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Sd/-
(**WASEEM AHMED**)
ACCOUNTANT MEMBER

Sd/-
(**MAHAVIR PRASAD**)
JUDICIAL MEMBER

Ahmedabad; Dated 19 / 02 /2020

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS



IT(ss)A Nos.03 & 04/Ahd/2016
Sagar Corporation vs. DCIT (AYs 2008-09 & 2009-10) &
ITA No.8/Ahd/2016
Sagar Projects vs. DCIT (AY 2009-10)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-12, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad