

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 2294/Del/2018 : Asstt. Year : 2013-14

Addl. CIT, Special Range, Ghaziabad	Vs	M/s Shipra Estate Ltd., Plot No. 9, Corporate Office, Shipra Mall, Indirapuram, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AACCS6116J		

Assessee by : Sh. Prateek Gupta, CA

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 02.08.2021

Date of Pronouncement: 06.08.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT(A)-III, New Delhi dated 23.01.2018.

2. Following grounds have been raised by the revenue:

"1. The Ld. CIT(A) has erred in law as well as in deletion the addition of Rs.2,28,94,733/- made by the AO on account of disallowance of deduction U/s 80IB(10)(a) of the I.T. Act without considering the facts brought out by the AO in the assessment order.

2. The Ld. CIT(A) has erred in law as well as on facts by holding that the AO made the addition simply on the basis of strict interpretation of statute by ignoring the facts that the project was actually completed much before cutoff date as per provisions.

3. The Ld. CIT(A) has erred in law as well as on facts of the case in ignoring the fact that as per clause (ii) of the Explanation U/s 80IB (10)(a), compliance of this condition has been made mandatory.

4. The Ld. CIT(A) has erred in law as well as on the facts of the case in ignoring the decision of Hon'ble High Court of Madhya Pradesh in the case of CIT Vs. Global Reality in ITA No. 35, 36 and 40 of 2012."

3. Brief facts of the case are that the assessee is engaged in the business of construction and sale of flats at Ghaziabad besides purchase of land for carrying out the said activities at other place also. The assessee has shown net profit of Rs.4,79,25,436/-.

4. During the year, the assessee has claimed deduction u/s 80IB(10) of the Act on the project eligible for the deduction namely "NEO". The said project was situated on Plot No. 11, Vaibhav Khand, Indirapuram, Ghaziabad, U.P. and it was a joint venture project with the Ghaziabad Development Authority (GDA). M/s Shipra Estate Limited & GDA entered into an agreement in form of license deed dated 07.04.1998 for the development of a Plot No - 11 measuring 201576.25 sq. mtrs and the process was to be completed within a period of 8 years (5 years initial period & extended by another 3 Years). That in case of default the assessee was liable for penal action. As per agreement the assessee was to develop the whole area but due to some compelling reasons and adverse market position the assessee could not begin the development process on a piece of land measuring 11056 sq. mtrs. The development of the remaining piece of land measuring 11056 sq. mtr was started in F.Y. 2006-07 and the project was named as NEO Project and the

map of the NEO project was duly sanctioned by GDA on 26.09.2006. Since the overall development of Plot No. 11 measuring 201576.25 was required to be completed by the end of financial year 2005-06 and due to non-completion of the same, levy was levied for the period till which the default continued. Since the development of 11056 sq mtr of the land was only remaining, the development of the same took off in FY 2006-07 and completed on 21.02.2011, i.e. 21.02.2011 is the date till which the authority levied the penalty. A letter was issued by GDA stating the facts that the project stands completed on 21.02.2011 and the process of registered the units with the Office of Sub Registrar in the name of ultimate buyers also started on 21.02.2011 itself. It is pertinent to note that the registration of the units in the name of the ultimate customers shall be registered only by the GDA, which is the competent authority to issue the Completion Certificate in the case of the assessee.

5. The claim of the deduction u/s 80IB(10) of the Act has been denied by the AO after observing that the assessee had not fulfilled the condition required u/s 80IB(10) of the Act as per which the assessee had to obtain the Project Completion Certificate from the prescribed authority within a period of 5 years from the end of the financial year in which the project was first approved i.e. on or before 31.03.2012, and the same was applied for on 29.08.2012 and obtained on 21.12.2013. The AO took the date of completion of project as 21.02.2013 i.e. the date of letter of Joint Secretary, GDA mentioned in the assessment order. The AO held that the language of the Act regarding the date on which the project shall be treated to be

complete is explicitly clear. It specifically states that the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority and not from the date of completion mentioned in the completion certificate. The AO has recognized the letter issued on 21.12.2013 as completion certificate by the authority highlighting the fact that the project stands completed on 21.02.2011. The AO has not disputed that the process of registering the units with the Office of Sub Registrar in the name of ultimate buyers also started on 21.02.2011 itself. Registration of the units in the name of the ultimate customers is being registered by the GDA who is also the competent authority to issue the Completion Certificate in the case of the assessee. The GDA has clearly mentioned that the project was completed on 21.02.2011 vide the aforementioned letter therefore it establishes the fact that the project was in fact completed much before the cutoff date of 31.03.2012. It is also a fact that this letter dated 21.02.2013 is not a formal completion certificate issued by the GDA. This letter mentions the date of completion as 21.02.2011.

6. The date of this letter has been erroneously taken by AO as the completion date. Further in respect of the observations of the AO that assessee has not applied for completion certificate in time it is seen from the documents available on record that the assessee has applied for the project completion certificate with the authority vide its letter dated 30.11.2011 after duly completing the work on 21.02.2011. (Copy of letter

place at page no. 18 of the paper book) and the same was also filed before the AO during the assessment proceedings.

7. As per the Uttar Pradesh Apartment (promotion of construction, ownership and maintenance) Act, 2010 wherein it has been clearly stated that apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed authority concerned as per the building bye-laws. Extract of the clause 5 of Section 4 under Chapter 2 of the aforementioned Act is as follows:

"An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye laws. The completion certificate shall be obtained by the promoter from the prescribed authority within the period of two years from the date of sale agreement. Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority.

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months."

8. In view of above, it is clear that the apartments would be registered only when the project completion certificate is obtained by the assessee. Since, the prescribed authority has accepted the project completion on 21.02.2011 therefore first registry of the project was done by the authority in favor of

ultimate buyer's on 21.02.2011. During the Financial Year 2010-11, 5 of the units got registered in favor of the customers of the NEO project by the assessee company and another 291 units in Financial Year 2011-12 out of total units of 346 i.e. the majority of the units i.e. around 86% of the total units got registered in the names of ultimate customers before the end of financial year 2011-12 which is also the cutoff date for getting the project completion certificate. (Copy of first registry made in the name of ultimate customer dated 21.02.2011 by the GDA is placed at page no. 19-50 of the paper book).

9. In view of above stated facts, it is well established that the project of the assessee was completed before the cutoff date as per the provisions by the Act i.e. 31.03.2012. The AO has chosen to ignore all these facts and made the addition on the basis of interpretation of statute by holding that the date of completion is 21.12.2013 i.e. the date of letter of Joint Secretary, GDA ignoring the fact that this letter is not a completion certificate issued by the GDA. This letter itself mentions the date of completion as 21.02.2011. This date of letter has been erroneously taken by AO as 'the completion date. AO held that since this letter is dated 21.12.2013, the completion of the project is beyond the prescribed period u/s 80-IB and not from the date mentioned in the letter i.e. 21.02.2011.

10. We also find that the same issue has been adjudicated earlier by the Co-ordinate Bench of ITAT in the case of the assessee in ITA No.740/Del/2016 for the assessment year 2012-

13 vide order dated 22.01.2021. The relevant part of the order is as under:

"05. For claiming deduction u/s 80 IB (10), assessee has submitted Form No 10 CCB being an audit report required u/s 80 IB of the act for the impugned assessment year. According to para number 23 of the above report it was stated that the project of the assessee has been granted approval on 26th of September 2006 and with respect to the date of completion of the housing project, it was submitted that the request for issuing completion certificate has already been filed with the Ghaziabad development authority [GDA] on 30th of November 2011. However as per the certificate of Architect dated 17/8/2012 the project has been completed in FY 2011 - 12 and the copy of the completion certificate issued by the architect was also attached. According to the certificate of the architect, it was stated that the project has already been completed and possession has already been given to the customers during financial year 2011 - 12. Subsequent to the above filing of the return and certificate dated 29/9/2012 issued by the chartered accountant, the assessee also obtained a letter dated 21 February 2013 from Ghaziabad development authority stating that the date of completion of the above project is 21st of February 2011. Thus, it was stated that the assessee's claim of deduction u/s 80 IB (10) is in order , as it complies with all the conditions including the condition of the completion of the project within five years from tend of the year in which the approval was granted.

06. During the assessment proceedings, the Id. Assessing Officer noted that assessee has claimed deduction under Section 80IB(10) of the Income Tax Act, 1961 (the Act) of Rs. 28,84,19,207/- and restricted the same at Rs. 13,00,15,605/- for Sun City Phase-I Project at Indirapuram, Ghaziabad. The Id. Assessing Officer examined the claim of the assessee and asked the assessee to show the date of completion of the project. The assessee submitted a letter issued by Ghaziabad Development Authority (GDA) regarding the completion certificate. The approval to the plan for the construction of housing project was granted by GDA on 26.09.2006. The plan was constructed on total plot area of 11055.99 sq. mts. The project was stated to have been completed and possession has already been given to customers on 21 February 2011, during Financial Year 2011-12. Thus, according to the assessee the project was completed on 21/02/2011 i.e. within five years from the end of the financial year in which the project was approved (i.e. 26/9/2006). The Assessing Officer noted that according to the provisions of Section 80IB(10) of the Act the project should have been

completed within 5 years from the end of the financial year for which the housing project was approved by the local authority. He noted that the project for eligibility of deduction, the last date of completion would be 31st of March 2012. The AO noted that Ghaziabad Development Authority (GDA) through its Joint Secretary issued completion certificate on 21.02.2013. However, according to the assessee the application was submitted for completion certificate vide letter dated 29.09.2012. The assessee submitted that GDA has approved the date of project as on 21.02.2011. It further states that application after the completion of the project was submitted to the authority and the authorities constituted an inspection committee. As per the report and recommendation of the committee, the GDA approved the date of the completion of the project as 21.02.2011. The Id. Assessing Officer was of the view that the Act recognizes only the actual date of the completion certificate by the local authorities. He, therefore, rejected the explanation of the assessee that the first registration of the flat was made on 21.02.2011 and Ghaziabad Development Authority has accepted the date of completion as at 21.02.2011 as per the letter dated 21.02.2013. The Assessing Officer was of the view that the language of the Act was very clear and the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of housing project is issued by the local authority. He held that such completion certificate was issued by GDA on 21.02.2013, which is beyond the prescribed time limit on 31.03.2012. He further held that merely as the first registration of housing unit has taken place on 21.02.2011, the whole project cannot have to be considered as completed by 31.03.2012. He held that assessee has constructed 346 units in the project and by merely registration one unit out of 346 units the assessee cannot claim to have completed the whole project within the prescribed limit. Therefore, he held that the submission of the assessee is de void of any merit. He therefore held that, the assessee has not completed the housing project in terms of the outer time limit provided u/s 80 IB (10) of the act i.e. within five years from the end of the financial year in which the approval was granted.

07. The learned assessing officer also noted that assessee has allotted the flats to the related parties for more than one unit and therefore the assessee is not entitled to deduction u/s 80 IB (10) of the act. The assessee on its own surrendered proportionate deduction to the extent of Rs. 58,47,000/-. Consequently, the Id. Assessing Officer disallowed the claim of deduction under Section 80IB (10) of the Act amounting to Rs. 13,00,15,605/- for non-completion within specified limit. Accordingly, assessment order under Section 143(3) of the Act

was passed on 22nd December, 2014 determining total income of the assessee at Rs. 213,87,823/-.

08. The assessee challenged the same before the Id. Commissioner of Income Tax (Appeals). The assessee made detailed submission before him on 11.08.2015 reproduced at page 5.1.2 of the order of the Id. CIT (Appeals). Before him, the assessee submitted that project is completed in time. Therefore, order under Section 250(4) of the Act was passed by him giving direction to the AO to ascertain the correct date of completion by obtaining and examining the relevant details from the Development Authority and assessee. The report of the Assessing Officer states that committee of GDA was constituted on 25th October, 2012, inspected the site on 21.02.2013 and on the basis of the documents noting the fact that registration of sale of flat commenced on 21.02.2012, the GDA stated that the date of completion of the project is 21.02.2011. The Assessing Officer also submitted a copy of the report of the committee. It also gave the minutes of the committee of GDA. The assessee given an opportunity and submitted its rejoinder of 21.02.2015, which is as per para No. 5.1.4 of the order of the Id. CIT (Appeals). The Id. CIT (Appeals) also put before the assessee the decision of the Hon'ble Madhya Pradesh High Court in CIT Vs. Global Reality dated 21.08.2015 wherein it was held that issuance of completion certificate after cut-off date by local authority mentioned the completion of the date of project before cutoff date does not fulfill the required condition of Section 80IB (10) of the Act. The assessee submitted that the case of the assessee on facts is quite difficult. Assessee also submitted a letter of the installer of lift stating that the lifts were installed on 3.12.2011. The Id. CIT (Appeals) held that it is clear that inspection of the site had not taken place before the cut-off date on or before 31.03.2012. He further noted that the committee itself was constituted on 25th October, 2012 i.e. after the cut-off date and the inspection was carried out on 29.01.2013. He, therefore, held that the recommendation of the committee regarding completion of the project is not supported by inspection of the site before cut-off date. He further held that completion certificate merely based on date of registration of sale of flat only. He further noted that with respect to the installation of the lift with the Assistant Director of Electric Security, Ghaziabad, vide letter dated 3.12.2011 certified that the installation of lift is satisfactory. However, some of the lifts have been handed over on 17.11.2011, 27.02.2012 and 31.01.2012. Thus, according to him none of the lifts has been installed before the registration of sale of flats. He, therefore, noted that the registration of one unit on 21.02.2011 was prior to handing over of the lift to the appellant and, therefore, the plea that date of registration should be taken as the date of

completion of project is de void of merit. He thereafter referred to the ratio of the Hon'ble Madhya Pradesh High Court in CIT vs. Global Reality (2015) 62 taxman.com 204 held that the appellant has failed to fulfil the condition of clause (a) of Section 80IB (10) of the Act. He confirmed the disallowance of the claim under Section 80IB (10) to Rs.13,00,15,605/-.

09. The assessee also challenged the levy of interest under Section 234B and 234C of the Act. Assessee submitted that as per para No. 6 of the assessment order the appellant had sold 10,000 equity shares of M/s. Gul Properties Pvt. Ltd. for Rs.200 crores. Out of this, assessee received Rs.127 crores in the Financial Year 2007-08. The Assessing Officer stated that assessee has considered the date of sale on 30.03.2012. However, assessee has received more than 51% of consideration in previous years. The assessee ought to have paid the advance tax during the year. As assessee has failed to do so, the Assessing Officer computed that interest liability under Section 234B & 234 C of the Act of Rs. 4.8 crores.

10. The assessee contended that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench in the case of Ram S. Sarda Vs. DCIT (2012) 13 ITR (T) 457. The Id. CIT (Appeals) held that if the assessee does not contest the liability of advance tax then assessee couldn't question the liability of interest under Section 234B of the Act. He, therefore, noted that when advance tax liability is not disputed, it becomes a case of exercise of discretion by the Assessing Officer in levying or not levying interest under Section 234B or 234C of the Act.

11. Thus, assessee aggrieved with the order of the Id. CIT (Appeals) has preferred this appeal before us.

12. The Id. AR on the issue of completion of the housing project for claiming deduction u/s 80 IB (10) of the act, submitted that appellant obtained the approval on 26.09.2006 for developing housing project in the name of Neo Project, Phase-I, as on 11056 sq. mtrs. of land situated at Plot No. 11, Indirapuram, Ghaziabad. The permissibility of 5 years for completion of the project ended on 31st of March 2012. He submitted that assessee submitted a request on 15.02.2011 to GDA for issuance of registration in the name of first buyer of the flats. Accordingly, on 21.12.2011 the first flat was sold at same registration. The Electricity Board on 24.10.2011 approved the installation of lift in various towers. Thus, on 21.10.2011 the process of handing over of the possession to respective buyers submitted. He further stated that Electricity Board on 28.11.2011 issued electricity certificate to the project. Thus,

based on this on 30.11.2011 the assessee made an application for issuance of completion certificate in respect of the project. He referred to such application placed at Page Nos. 65 of the paper book. He further referred to the letter dated 21.02.2013 issued by GDA confirming the date of completion i.e. 21.02.2011. He further stated that the GDA once again confirmed to the Addl. CIT during the remand proceedings about the date of completion at 21.02.2011. Such communication dated 3.09.2015 was also submitted. He further stated that before 31.03.2012 i.e. the cut-off date 296 flats were already registered in favour of buyers by the GDA. This itself shows that the project was in fact completed before the cut-off date. He further referred to the decision of the Hon'ble Delhi High Court in CIT Vs. CHD Developers Ltd. in 362 ITR 177 (Del.) He specifically referred to Para No. 7 wherein para 8.16 identical facts were considered. He also referred to para No. 9 of that decision. He referred to para No. 10 of that decision wherein the claim of the assessee was allowed following the decision of the Hon'ble Gujarat High Court and Hon'ble Karnataka High Court. He further referred to a decision from paper book where several decisions of the co-ordinate bench were relied upon. He further stated that the decision of the Hon'ble Madhya Pradesh High Court in CIT Vs. Global Reality 379 ITR 107 (M.P.) relied upon heavily by the Id. CIT (Appeals) for confirming the disallowance of deduction has already been stayed by the Hon'ble Supreme Court vide order dated 8.07.2019. He, therefore, submitted that this decision cannot be applied to the facts of the case of the assessee. He further even distinguished the facts of that case and stated that it should not be applied. He extensively referred to the provisions of Section 80IB (10) of the Act. He further submitted that the fact of completion before the cut-off date is also supported by certificate of architect. He further stated that though CIT (Appeals) for this assessment year has not allowed the claim of the assessee. However, he referred to the order of the Id. CIT (Appeals) dated 23.01.2018 for Assessment Year 2013-14 and order dated 10.05.2018 for Assessment Years 2014-15 and 2015-16 wherein the claim of the assessee was thoroughly discussed and the addition on account of disallowance of deduction under Section 80IB(10) of the Act was allowed. He, therefore, submitted that the claim of the assessee deserves to be allowed.

13. The Id. DR heavily relied upon the order of the Id. Assessing Officer and the CIT (Appeals). He also extensively relied on the decision of the Hon'ble Madhya Pradesh High Court in CIT vs. Global Reality and stated that the issue in the case of the assessee is squarely covered against the assessee. It was further stated that merely stating of the decision by the Hon'ble High Court does not obliterate the binding precedent of the order

unless it is quashed. With respect to the order of the Id. CIT (Appeals) in subsequent years he submitted that the appeals for Assessment Years 2014-15 and 2015-16 have been dismissed by the co-ordinate bench on account of low tax effect and appeal for Assessment Year 2013-14 is pending before the co-ordinate bench. Thus, moreover the orders of CIT (Appeals) as they have been challenged before the higher forum cannot be an on-going force for appeal at higher forum. In view of this he submitted that the order of the lower authorities so far as disallowance of deduction under Section 80IB (10) is concerned is required to be upheld.

14. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts are clearly stated in the above paragraphs that the approval of the housing project was granted on 26 September 2006. Therefore, the project is required to be completed within five years from the end of the year in which the approval was granted. Thus, the project should have been completed by 31st of March 2012. The assessee filed an application before the Ghaziabad development authority for issue of completion certificate on 30 November 2011, which is placed at page number 65 of the paper book. Along with the application, the assessee submitted the drawings of the buildings duly signed by the architect, the landscaping work as per the sanction drawings, no objection for operating the lift, drawings, Mark parking plan, and site plan market with setback. The assessee requested Ghaziabad development authority to issue the completion certificate of the project. The assessee has also obtained a certificate dated 17 August 2012 from M/s Jaiswal & Associates, architects, planners, and engineers who certified that the assessee has developed two bedroom apartments at plot number 11, Vaibhav Khand, Indrapuram, Ghaziabad Under the project name "Shipra Neo". The approval of the plan for construction of the development was granted by the Ghaziabad development authority on 26/09/2006 on a total plot area at 11,055.99 m². The built-up area of the apartment was also verified and it was certified that the built-up area of two bedroom flat consisting of 346 lakhs in seven blocks having the highest built-up area of one unit of flats in square feet of 999.23 ft² to the lowest built-up area of 934.011 ft². It was also certified that the project has been completed and the possession has already been given to the customers during financial year 2011 – 2012. Consequent to the above request of the assessee dated 30 November 2011 to the Ghaziabad development authority, on 21 February 2013, it issued a letter for payment of fees of ₹ 3,243,830/- and completion certificate stating that date of completion of the project is accepted as 21st of February 2011. The fee was also charged from the assessee from 1/4/2006 to 21st/2/2011. Further, it was also noted that

the flat was registered in favour of the buyer on 21 February 2011, which was requested as per letter dated 15 February 2011 to Ghaziabad development authority to register a flat number SNC - 1104. Along with this letter, the assessee has also submitted, and it stated that the construction of above-mentioned flat is according to the approved map and therefore the above let may be registered in the name of the buyer. Further, the committee constituted by the Ghaziabad development authority also certified that the date of completion of the above project is 21 February 2011. Further, a letter was issued by Ghaziabad development authority on 13th of March 2015 to the assessee wherein also the date of completion is stated to be 21st/2/2011. Thus according to the sale deed even the buyer is accepted the possession of the above property in its completeness. Further, on page number 104 of the paper book the assessee has submitted the list of late buyer whose position has been given to them before 31st of March 2012. Assessee has given a list of 102 such buyers who have been allotted flats, possession is granted and the sale deed is registered. When the learned assessing officer asked the Ghaziabad development authority to state the completion date of the above project, a letter dated 3 September 2015 was issued by the Ghaziabad development authority to additional Commissioner of income tax stating that that approval of the plan was granted on 1 April 2006 and the flats in the above project were registered on 21 February 2011 and therefore the date of completion has been taken at 21 February 2011. The learned assessing officer also asked the further information and therefore it gave the information that the committee constituted inspected the property on 29th of January 2013. Therefore the learned assessing officer was of the view that when the inspection of the property has took place only on 9 January 2013 the date of completion could not have been certified by the Ghaziabad development authority on 21st of February 2011. The assessee has also relied on the Uttar Pradesh apartment (promotion of construction, ownership and maintenance) act, 2010 wherein it has been provided that that any apartment can be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority is for building bylaws. It was further provided that if the completion certificate is not issued by the prescribed sanctioning authority within three months of the submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months. It also specifies that the completion mean the completion of the construction work of a building as a whole or the completion of an independent bloc of such building. In view of this the claim of the assessee is that according to that law when the assessee applies for completion certificate to

respective authority, and same is not granted within three months of such request, the completion certificate is deemed to have been granted to the assessee after the expiry of three months. In the present case, the assessee made an application on 30 November 2011; therefore, on this ground also the completion date is within the five years limitation. It is also interesting to note that for assessment year 2013 – 14 identically the deduction u/s 80 IB 10 was disallowed by the learned assessing officer however on appeal before the learned and CIT – A allowed the claim of the assessee wide order dated 23 January 2018. Further, similarly for assessment year 2014 – 15 also the learned CIT appeal allowed the claim of the assessee as per order dated 10 May 2018. However, both these orders are in challenge before the coordinate bench. However, the reasons given therein are required to be considered. An interesting fact has been recorded by the learned CIT – A for assessment year 2013 – 14 that during the financial year 2010 – 11 five of the units got registered in favour of the customers by the appellant company and another 291 units were transferred in financial year 2011 – 12 out of the total 346 units constructed by the assessee. Thus 86% of the total units were registered in the name of the ultimate customers before the end of the financial year 2011 – 12, which is also the cut-off date for getting the completion certificate. Therefore, it was held that that the project of the assessee was completed much before the cut-off date as per the provisions of the act i.e. 31st of March 2012. The learned CIT –A noted that that the honourable M P High Court has taken a view in favour of the strict interpretation of the statute as relied upon by the learned assessing officer. He also noted that the honourable Madras High Court in 29 taxmann.com 386, Honourable Gujarat High Court in 362 ITR 174, Honourable Delhi High Court in 362 ITR 177, Honourable Bombay High Court in 377 ITR 150 and various coordinate benches have taken a view which is in favour of the assessee. The learned CIT – A has noted that there is no decision of the Honourable jurisdictional High Court either against the assessee or in favour of the assessee. Therefore, he, relying on the decision of the honourable Supreme Court in the CIT versus Vegetable Products Ltd (1973) 88 ITR 192 decided the issue in favour of the assessee. Coming to the decision of the honourable Madhya Pradesh High Court in 379 ITR 107, which has been relied upon by the learned assessing officer and CIT-A for denying the benefit u/s 80 IB (10) of the act to the assessee on the issue of the completion certificate has been stayed by the Honourable Supreme Court in CIT versus Global Estates in SLP number 35004 – 05/2015. However, stay of a judgment does not obliterate the principles laid down therein, however, where there are several judicial precedents of honourable High Courts in favour of the assessee, same should be followed in the given

circumstances. In view of this, we hold that the date of completion of the project has correctly been claimed that 21st of February 2011 and it is in accordance with the provisions of Section 80 IB (10) of The Income Tax Act. Accordingly, we allow ground number [1] of the appeal of the assessee."

11. Since, the matter stands covered by the earlier order of the Tribunal and the action of the revenue is incorrect on the facts of completion certificate, we decline to interfere with the order of the Id. CIT(A).

12. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 06/08/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 06/08/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR