

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA Nos. 1554, 956/Hyd/2018, 1599/Hyd/2019 & 15/Hyd/2020		
Assessment Years: 2013-14 to 2016-17		
Manjeera Projects Hyderabad PAN:AAOFM0872C (Appellant)	Vs.	Asstt. Commissioner of Income Tax, Circle 6(1) Hyderabad (Respondent)
Assessee by:	Sri K.C. Devdas	
Revenue by:	Sri Y.V.S.T. Sai, DR	
Date of hearing:	26/08/2021	
Date of pronouncement:	08/09/2021	

ORDER

Per S. S. Godara, J.M.

These assessee's four appeals arise against the CIT (A) 6 Hyderabad's separate orders dated 24.1.2017, 16.03.2018, 1.3.2019 and 30.10.2019 in A.Ys 2013-14 to 2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short the Act), respectively.

Heard both the parties. Case files perused.

2. It emerges out at the outset that the assessee's twin appeals No.1554/Hyd/2018 and 1599/Hyd/2019 suffer from 453 and 128 days delay in filing. It has filed respective condonation petition (s)/affidavit(s) dated 16.10.2018 and 24.10.2019 pleading therein that it was on account of resignation of the tax

consultant/expert and on account of communication gap and that the delay(s) on the issue has been caused. Revenues case, on the other hand, relied on the twin correspondence(s) dated 27.2.2017 and 1.3.2017 regarding recovery of taxes and penalty proceedings as against the corresponding appeal(s) filed on 31.7.2018 and 1.11.2019 respectively. Learned CIT-DR's vehement contention before us is that the impugned delay has not been explained much less than of each and every day as per section 5 of the Indian Limitation Act.

3. We have given our thoughtful consideration to the rival contentions and see no reason to express our agreement with the Revenue's stand. The assessee's twin condonation petition(s)/affidavit(s) have already attributed the reason of the impugned delay(s) to its tax consultant's resignation and communication gap at various levels. Hon'ble Apex Court's landmark decision of Collector of Land Acquisition vs. Mst Katiji & Ors on 19 February, 1987, AIR 1353/1987 SCR (2) 387 and University of Delhi vs. Union of India Civil Appeal Nos.9488-9489/2019 dated 17.12.2019 settle the law that all technical aspects must make way for the cause of substantive justice provided the assessee offers cogent explanation regarding the delay in issue. We therefore, condone the respective delay(s) of 453 and 128 days in the A.Ys 2013-14 and 2015-16 appeals ITA Nos.1554/Hyd/2018 and 1599/Hyd/2019. These cases are taken up for adjudication on merits.

4. It next emerges that the assessee's identical sole of substantive ground raised in all the instant appeals challenges correctness of the learned lower authorities action disallowing its 80IB(10) deduction claim(s) of Rs.4,06,38,140/-, Rs.25,31,71,497/- , Rs.41,28,961/- and Rs.10,74,831/- assessment year-wise respectively.

Both the learned representatives invited out attention to CIT (A)'s detailed discussion in the lead A.Y 2014-15's appeal ITA No.956/Hyd/2018 affirming the Assessing Officer's action to this effect as under:

"5.0 The assessee raised as many as seven grounds of appeal against the denial of exemption u/s.80IB(10) of the Act amounting to Rs. 4,06,38,140/-. The grounds of appeal are taken up for discussion and adjudication in 'the forthcoming paragraphs of this order.

6.0 Brief facts of the case are that the assessee firm is into the business of developing Housing Projects after obtaining necessary approval from GHMC. Based on the report of DVO, the AO has disallowed the claim made u/s. 80IB(10) of the Act as the said project was not completed within the prescribed time limit and has also not fulfilled the conditions laid down u/s 80IB(10) of the Act for grant of the said deduction. The DVO in his report dated 20.03.2013 stated that only 241 flats were completed and 20 flats were more than 1500 Sft each. Relying on the primary conditions for eligibility of deduction that the builtup area of residential units should not exceed 1500 sft and the project has to be completed within 5 years from the dated of approval granted by GHMC, the AO disallowed the deduction u/s. some! 0) of the Act The relevant portion of the assessment order in this regard is reproduced below for ready reference:

"4.10 In 'he above mentioned bold and underlined part "housing project" is the subject to both the predicates, "should be on minimum area of one acre" and "should have dwelling units with a maximum built up area of 1000 sq.ft)". Therefor» this makes the legislative intention very clear that it is in the housing project with residential units having builtup area of 1500 sq.ft (in the case of Hyderabad): below and leaves nothing to the imagination or speculation or interpretation to consider the benefit of the part of the project;

4. 11 Similar is the case with the condition that the housing project has 10 be completed within five years, i.e., before 31.03,2013. In the instant case, housing project means the entire housing project as approved by the local authority and no/part or piece of the housing project.

4.12 When the statute is giving a benefit, it is for a purpose. The purpose the benefit of deduction u/s.801B(10) is to promote housing on-a large scale-a make po using available and affordable. But when the benefit is being given some conditions, it means that the statute demands some commitment from the assessee, that the stated purpose for which the benefit is given is realised at the earliest and this condition also acts as a protection 10 the flat purchasers as it ensures that the project on which benefit is being enjoyed by the assessee, is completed in time.

4.13 When there is no ambiguity in the provisions of statute it cannot be interpreted in a different manner to confer benefit on the assessee. For such proposition, reliance is placed upon the decision of the Hon'ble Supreme Court ill case of IPCA Laboratories Ltd vs. DCIT 2661TR 521. The principle of beneficial interpretation would apply only in a case where the court is in doubt about true scope and ambit of the provision. When a meaning of the word is clear and unambiguous the court has to give effect to it whatever be the consequences, in this context, reliance is

placed on the decision in the case of Indian Rayon Corporation Ltd vs. CIT, 231 ITR 26.

4.14 The Hon'ble Supreme Court in case of Petron Engg. Construction Pvt Ltd vs. CBDT 175 ITR 523 held that liberal interpretation of an incentive provision can be resorted to only when it is possible without impairing the legislative requirement and the spirit of the provision. Where the phraseology of a particular provision takes within its sweep the transactions which are taxable, it is not/or the courts to strain and stress the language so as to enable the taxpayer to escape the tax. The Hon'ble Supreme Court, again in case of Pandian Chemicals Ltd vs. CIT, 262 ITR 278 observed that Rules of interpretation would come into play only if there is any doubt with regard to the express language used in the provision. Where the words are unequivocal, there is no scope for importing the rule of liberal interpretation of an Incentive provision. The Hon'ble Supreme Court in case of CIT vs. N.C.Budharaja and Another, 204 ITR 412 held that liberal interpretation of an incentive provision should not do violence to plain language. The object of an enactment should be gathered from a reasonable interpretation of the language used therein.

4.15 Considered in the light of the aforesaid principle of Jaw, the language used in Clause (a) of section 80IB(10) is clear and unambiguous enough to leave any scope for interpreting it in a different manner to confer benefit upon the assessee.

4.16 The decisions relied upon by the assessee are of not much help to it if considered in the light of the principles laid down by the Hon'ble Supreme Court as discussed herein before.

4.17. The ITAT, Hyderabad in a recent decision in the case of M/s. Sainath Estates P Ltd has held that in case of the nonfulfillment of the clear and unambiguous conditions of eligibility, the deduction u/s 80IB(10) has to be Disallowed.

4.18 Notwithstanding the above, even if it is held that the assessee is eligible for deduction u/s 80IB(10) even if the housing project is not completed before the specified time limit, the claim of the assessee that pro rata deduction may be allowed for flats having built up area less than 1500 sq ft; as allowed in various Tribunal Orders, is not tenable. "The object of the provisions of Section 80IB (10) is to augment affordable dwelling units. By having very significant number of flats exceeding 1500 sq ft, the assessee succeeded to augment affordable dwelling units. The reply to this question has to be in the negative. Some limit has to be drawn up to ensure that the basic character of the project continues to remain in harmony with the object of the tax Incentive i.e, augmenting affordable dwelling units. Further, it needs to be emphatically stated that pro rata deduction has to be ruled out because if that is permitted, some assessee may construct substantial number of flats exceeding 1500 sq ft. and may claim deduction without serving the purpose of the legislation. Likewise, the flats which exceed 1500 sqft. also have to be left of the purview of the deduction. In the present case, such deduction to be assessee will not serve the purpose of the legislation.

4.19 Similarly, the condition prescribed in Sec.80IB(10)(f) that in a case where a residential unit is allotted to a person being an individual, no other residential unit in such housing project is allotted to the individual or the spouse has not been complied to this case.

5. As discussed above, there is no ambiguity in income Tax Provisions with regard to the conditions to be fulfilled by the assessee to be eligible for deduction u/s 801B(10). As the assessee has not fulfilled the conditions laid down, the claim of deduction of Rs. 4,06,38,140/-u/s. 801B(10) is disallowed and brought to tax. "

6.1 In this regard, it is important to note that the issue under dispute in the impugned AY 2014-15 is not new to the case of the assessee in as much as the assessee has been claiming deduction u/s, 80(1B)(10) of the Act in respect of income derived from the project under reference starting from the AY 2009-10. Further, right from the initial AY 2009-10 onwards, the Department has disagreed with the assessee's contention with regard to allowability of deduction u/s. 80(1B)(10) of the Act, more specifically, on the issue of date of completion of the Housing Project-Further, on appeal to CIT(A) for various AYs 2009-10 to 2013-14, the assessee's claim of deduction u/s. 80(1B)(10) was denied and, therefore, the assessee went in further appeals before the Hon 'ble ITAT and the same are pending for disposal as all date.

6.2 As the facts and legal issue with regard to allowability of deduction u/s.80(1B)(10) of the Act in respect of the impugned AY 2014-15 are akin to facts and legal issues involved in the earlier AYs, by following the principle of consistency, I would like to place reliance on the decision of my predecessor in the case of the same assessee for the AY 2011-12. The relevant portion of the decision of CIT(A) in assessee's own case in ITA No.1395/14-15/CIT(A)-VI/15-16, dated 24.08,2015 for AY 2011-12 is reproduced below for ready reference:

"Decision:

06.0. The submissions of the appellant have been considered. The Housing Project was granted approval on 04.02.2008 for construction of 12 residential blocks (A to L). For the year under consideration, deduction under Sec 80(1B)(10) was claimed on project completion method (G,H,I,J 96.80% and F, K, L (51.17% complete) and revenue was recognised in respect of 7 blocks G, H, I, J (4 blocks under Phase-I-A) and F, K, L (3 blocks in Phase-I-B).

06.1 For a claim to be considered for deduction u/s 80(1B)(10), the Housing Project that was given an approval on 04.02.2008 had to be completed by 31.03.2013. The date of completion would be taken to be [refer sub-clause (ii) of Explanation to Sec 80(1B)(10) the date on which the Completion Certificate in respect of such Housing Project is issued by the Local Authority. In this light, the certificate of completion obtained by the appellant with reference to the Housing Project was examined and it is seen that with respect to:

(a) Block G, H, I, J, GHM.C had issued a partial occupancy certificate on 29.03.2012. Therefore. the construction of those blocks can be said to have been completed before the specified date.

(b) Block F, K, L, the assessee submitted that the compliance was made as per requirements of GHMC and an application for occupancy certificate was made on 30.03.20/3 and partial occupancy certificate was issued on 07.10.2014. But the certificate dated 7.10.14 records that the building completion notice was submitted by the applicant (assessee) only on 16.09.2014.

(c) Block A,D,E the assessee submitted that the compliance was made (IS per requirements of GHMC and an application for occupancy certificate was made on 30.03.2013 and partial occupancy certificate was issued on 02.09.2014. But the certificate dated 02.09.14 records that the

building completion notice was submitted by the applicant (assessee) only on 04.07.2014.

(d) For Blocks B & C, the appellant has not given any details nor has claimed deduction u/s 80IB(10). It is therefore presumed that for the 2 Blocks, construction was not completed.

06.2 Thus, for Blocks, F K. L & A, D. E, not only completion certificates were issued after the specified date i.e. 31.03.2013, even the application for the completion certificate was made after that date, meaning thereby the blocks did not get completed before the specified date i.e. 31.03.2013 within the meaning of section 80IB(10). It is therefore, held that construction for the Blocks F,K.L & A.D, E was not completed.

07.0 Thus out of the total 12 blocks, construction was not completed in 8 Blocks and for this reason assessee is not eligible for deduction u/s 80fB(10) in view of the decision of ITAT in the case of Sainath Estates Pvt Ltd that held that the use of word 'shall' in Explanation II made the furnishing of Completion Certificate issued by the Local Authority mandatory 10 prove that development and construction of the Housing Project is complete in all respect. It went on to state that "As has already been stated herein before the aforesaid amended provision was introduced to the statue by the Finance Act, 2004 with effect from 01.04.2005. Earlier to it, the provision as contained u/s 8018(10) did not require furnishing of a completion certificate issued by the local authority. Therefore, the intention of the legislature in bringing such a provision requiring production of completion certificate issued by the local authority cannot be overlooked or brushed aside for conferring a benefit upon the assessee only for the sake of liberal interpretation. The requirement of completion certificate assumes importance for removing the possibility of deviation from the sanctioned plan and to see to it that the project has been constructed in accordance with the sanctioned approval. It is settled principle of law that when the language of a provision is clear and unambiguous then there is little scope to interpret int in a different manner".

07. The appellant had placed reliance on Instruction No. 4/2009 dared 30.06.2009 and has submitted that by virtue of the said Instruction, deduction of 100% on its profit is allowable on a year to year basis as profit has been shown on partial completion of the project every year. But the appellant has overlooked clause (b) of the said Instruction which has clearly stated that if it was found that the project was not completed within the specified time limit, then the deduction granted to the assessee in the earlier years should be withdrawn. As cited above, out of the 12 blocks, only 4 blocks have been held to be completed within the specified time period. Hence, the claim of the assessee that it should be allowed deduction on partial completion method would not hold glass to the fact that the project as on 31.03,2013 was incomplete and in keeping with the Instruction, the deduction already granted would anyway have to be disallowed. The deduction which was otherwise allowable on partial completion method is held to be not allowed in view of the fact that the condition of completing the project within the specified time limit was not satisfied.

07.2 It is also observed that for Blocks G, H, J, J, the Valuation Officer had mentioned that 20 flats exceeded the maximum builtup area of 1500 Sq.ft. The Assessing Officer had observed that conditions prescribed as per clause (f) of Sec 80IB(10) was also not complied with. During the appellate proceedings, the appellant submitted that in previous year 2012-13 (A.Y 2013-14), in block G, H and F four flats were sold to

persons to whom 1 flat each had already been sold earlier in violation of provisions of the Sec 80IB(10). According to the appellant, it was eligible under sec 80IB(10) inspite of these irregularities and according to it, each block was a Housing Project and was eligible for deduction. Out of the 241 completed flats under Phase-I-A; for the blocks exceeding 1500 Sq.ft., it should be allowed pro-rata deduction for flats having built-up area of 1500 sq.ft. Similarly, it submitted that disallowance on proportionate basis should be made on the profits accrued on the sale of flats sold to individuals to whom flats were already sold. Reliance was specifically placed on the decision of Madras High Court in the case of *Viswas Promoters Pvt. Ltd Vs. ACIT (2013)29 Taxman.com 19* in support of its contention. In that case, the assessee, a developer had undertaken several Housing Projects containing blocks of different sizes; some were of less than 1500 sft.area and others more than that. The assessee claimed proportionate deduction u/s 80IB(10) for those blocks which were of less than 1500 sft. area. The Assessing Officer denied deduction u/s 80IB on the ground that the deduction under the said section was for the project as a whole and all the residential units in the project must satisfy the conditions therein, viz; the built-up area be less than 1500 sft. The Commissioner (Appeals) allowed the claim of the assessee, but on appeal. by the Revenue, the ITAT confirmed the order of the Assessing Officer. On further appeal before the High Court, the Hon'ble High Court held that each one of the blocks of the four projects undertaken by the assessee had a separate sanction from the competent authority, Though the projects, vi., AGRINI and VAJRA were Slated to be the master plan, each block in those projects had its own specifications and had gone}Or approval of the Competent Planning Authority. Taking this background into consideration, it held each block to be an independent building and a Housing Project for purposes of considering the claim of deduction u/s 80IB(10) of the Act. It also observed that in those blocks, the built up of some flats exceeded 1500sft. For that reason alone, the entire claim could not be rejected and the assessee was entitled for relief on a proportionate basis of flats that satisfied the condition of the nature stated under section 80IB(10) of the Act. This, the Hon'ble High Court held that this was subject to the blocks satisfying the conditions u/s 80/B(10) of the Act.

07.3 In appellant's case, the facts of the case totally dissimilar. For all the 12 blocks in the Housing Project, a single approval and a single sanction was taken on 4.2.2008. It is not the appellant's case that each block in the project had its own specification and was given a separate approval. For a ratio of a decision to be applicable, the facts have to be identical. That not being so, the decision in the case of Madras High Court (supra) is not applicable and it is held that each block is not a "Housing Project " but instead block A to L form a single Housing Project.

08.0 This issue. Had also come in appeal for A.Y 2010-11 before the CIT(A)-6, Hyderabad and the CIT(A) vide order dated 15.09.2014 held that the project comprising of 12 residential blocks was a single Housing Project. As block F, K, L, A, D, E had not been completed before the specified date. the disallowance of deduction u/s 80IB was upheld for the reason that only part of the project had got completed as on 31.03.2013. Moreover, as already stated more than 1 flat has been sold to the same individual, hence even for that deduction cannot be allowed. In view of the aforesaid, it is held that the Assessing Officer is correct in disallowing deduction u/s 80IB(10) of the Act. Therefore, the addition is upheld.

09.0 In the result, appeal for A.Y. 2011-12 is dismissed.

Accordingly, by following the principle of consistency, the appeal filed by the assessee is dismissed and the order of the assessment is confirmed.

7.0 Without prejudice to the decision taken to dismiss the appeal by placing reliance on the decision of CIT(A) in the case of the same assessee for the AY 2011-12, I would like to adjudicate the issue on merits as discussed below.

7.1 The main issue involved in this case is importance of completion of construction of Housing Project i.e. whether the assessee is eligible to claim deduction in respect of income derived from partial completion of project i.e. though the entire project is not completed, but certain residential blocks consisting of such Housing Project have been completed, then, income from such completed residential blocks is entitled to claim deduction u/s 80IB(10) or not?

7.2 In my considered opinion, this particular issue would depend upon a specific fact i.e. whether the assessee has obtained the plan approval from the competent authority for the entire project consisting of various blocks as a whole at one go or piecemeal manner in respect of different blocks of the Housing Project at different points of time. As such, completion of construction of Housing Project has to be reckoned on the basis of plan approval sanctioned by the competent authority. If the plan approval has been granted for the entire Housing Project as a whole, then until unless all the blocks consisting of the project are completed in all respects within the stipulated due date i.e., 5 years from the end of the year in which the approval has been granted, it cannot be construed as completion of construction of Housing Project. As such, emphasis is on project completion as a whole but not completion of blocks consisting of the project. In this regard, the relevant portion of the Act are reproduced below for ready reference;

"Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if:-

a) such undertaking has commenced or commences development and construction of the Housing Project on or after the 1st day of October, 1998 and completes such construction,-

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been or is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing projects approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

Explanation -For the purposes of this clause,-

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have

been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) 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's issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (h) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred sq. feet at any other place.

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three percent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher:

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:-

- (i) the individual or the spouse or the minor children of such individual,*
- (ii) the Hindu undivided family in which such individual is the karta,*
- (iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.*

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

(Emphasis supplied)

As seen from the Explanation (ii) to clause (a) of sub-section (10) of 80IB of the Act, it is clearly stated that the date of completion of the construction of the Housing Project shall be the date on which completion certificate has been issued by the local authority.

7.3 In the instant case, it is all admitted fact that the assessee has not completed construction of all the 12 Blocks forming part of the Housing Project namely, Manjeera Diamond Tower within the due date prescribed.

7.4 As seen from the facts of the case, the assessee has obtained plan approval from Greater Hyderabad Municipal Corporation (GHMC) for the Housing Project Manjeera Diamond Tower on 04.02.2008. Accordingly, within 5 years from the end of the FY in which plan approval was granted i.e. 31.03.2013, the assessee should have completed the entire project. However, as per the documentary evidence furnished by the assessee from GHMC, the assessee has completed the construction of only 4 Blocks consisting of the Housing Projects i.e, G, H, I & J on or before the stipulated due date Le. 31.03.2013. On the other hand, the assessee has contended that it has obtained the Occupancy Certificate in respect of 10 Blocks viz.,G, H, I, J, F, K, L, A, D and E blocks. To be precise, the assessee obtained Partial Occupancy Certificate in respect of blocks G, H, I and J vide GHMC Certificate No. 18904/19/03/2012 dated 29.03.2012. Further, the assessee produced a copy of letter addressed to the Chief City Planner, GHMC filed on 30.0.3.2013, seeking issue of Occupancy Certificate in respect of other six blocks i.e, A, D, E,F, K & L. However, GHMC had issued Occupancy Certificate in respect of F, K & L blocks on 07.10.2014 and in respect of A, D and E blocks on 02.09.20'14. In the said Occupancy Certificates. it is stated that the assessee has submitted application for occupancy Certificate on 16.09.2014 and 04.07.20.14 in respect of F, K &L Blocks and A. D & B blocks, which fall after the stipulated due date of 31.03 .20 13.

7.5 On the other hand, the assessee has contended that, in respect of F, K & L and A, D & E blocks, the Licensed Architect has certified that the construction was completed On 08.02.2013 and 12.03.2013 respectively. Further, the assessee contended that the application made to the Chief City Planner (Town Planning Section) GHMC for issue of Occupancy Certificate in respect of these 6 blocks Le. F, K &L and A. D, & E was within the due date Le. 30.03.2013 (supra). However, there was a procedural delay on account of GHMC in granting the Occupancy Certificate. As such, the assessee is trying to rely upon the certificate issued by the Licensed Architect in support of completion of project In this regard, the assessee has failed to explain why the date of application is mentioned as 16.09.2014 and 14.07.2014 in the Occupancy Certificates issued by GHMC, as stated above. On the other hand, as per the provisions of the Act; the requirement is certificate issued by the competent authority and the date on which the certificate is issued by the competent authority will be construed.as-the date of completion of construction.

7.6 Be that as it may, at this juncture, it is important to note that two blocks consisting of the project .i.e, B and C have not been completed within the due date i.e, 31.03.2013 as per-the-assessee's own admission. Though the assessee is not entitled to claim exemption u/s 80IB(10) of the Act in respect of income derived from sale of houses falling under those blocks in as much as the built up area has exceeded the threshold limit of 1500 Sq. Ft., but at the same time, those two blocks are also forming part of the same Housing Project i.e, Manjeera Diamond Towers. As such, it is an undisputed fact that two of the blocks consisting of the project i.e, B and C have not been completed within the stipulated due date i.e. 31.03.2013. Accordingly, even after considering for argument's sake that F, K, L, A, D and E Blocks have been completed, since Block Band C have not been completed within the threshold limit of 31.03.2013, the assessee is not entitled to claim deduction in respect. of income from the Housing Project, even certain blocks have 'been completed within the due date.

7.7 In this regard, reliance is placed on the following decisions:

- i) *Sainath Estates Pvt. Ltd. Vs. DCIT [2013/142 ITD 370 (Hon'ble ITAT Hyderabad): In this case, it is held by Hon'ble ITAT that obtaining Completion Certificate/ Occupancy Certificate from the competent authority before the stipulated due date i.e, 4 years from the year in which plan approval has been granted is a mandatory requirement for the purpose of claiming deduction u/s. 80IB(10) of the Act. Tile held portion of the order is reproduced below for ready reference:*

"A reading of the provision of sec 80-IB(10), as amended by the Finance (No.2) Act, 2004, with effect from 1.4.2005 makes it clear that an assessee will be entitled to claim deduction under the said provision if he fulfils all the conditions mentioned therein. Sub-clause (ii) of clause (a) of section 80-IB(10) provides that in a case where Housing Project has been approved by the local authority on or after 1-4-2004 and has been completed within 4years from the end of the financial year in which the Housing Project has been approved by the local authority would be entitled for deduction. Explanation (ii) to clause (a) of section 80-1B(10), however, puts a rider 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.

Therefore, it is apparent that deduction under section 80IB(10) in respect of a Housing Project shall be available to the assessee, provided the project is approved by the local authority after 1-4-2004 and has been completed within a period of 4 years and such completion has been certified by the local authority. The use of the word 'shall' in Explanation (ii) makes the furnishing of completion certificate issued by the local authority mandatory to prove that the development and construction of the Housing Project is complete in all respects.

The requirement of completion certificate assumes importance for removing the possibility of deviation from the sanctioned plan and to see that the project has been constructed in accordance with the sanctioned approval.

If the furnishing of the completion certificate to prove the completion of the project is not to be insisted upon then the purpose for bringing such a provision to the statute becomes redundant. If the furnishing of completion certificate from the local authority is to be considered as not mandatory then in every case the assessee will come up with one plea or the other for not furnishing the completion certificate while claiming deduction under section 80-IB(10). In that event, the intent and purpose of enacting such a provision will not be fulfilled.

Similarly the municipal assessment of the individual flat owners or sale of flats cannot be substitute for the completion certificate issued by the local authority. These facts does not conclusively prove that the entire project was complete in all respects. These documents certainly cannot be considered to be in compliance with the statutory provision [Para 13]

Therefore, the assessee was not entitled to deduction under section 80-IB(10) as the completion certificate issued by the local authority certifying the completion of the project had not been submitted by it. [Para 14]"

2) CIT vs.Global Reality (2015) 397 ITR 107 (Hon'ble Madhya Pradesh HC.

In this case, the Hon'ble Madhya Pradesh High Court held that not only issue of completion certificate/Occupancy Certificate by the competent

authority certifying the completion of the project within the stipulated due date, but also such certificate should have been issued before the stipulated due date. To be precise, even if the competent authority is certifying that the project has been completed within the stipulated due date, but if such certificate is dated subsequent to the due date of completion of the project, then also (be assessee is not entitled to claim deduction t1/5. 80IB(10) of the Act. The held portion of the order is reproduced below for ready reference:

"The explanation below clause (a) in particular (ii) postulates that the date of completion of construction of Housing Project' shall be taken to be 'the date on which completion certificate in respect of such Housing Project' is issued by the Local Authority. If Explanation (ii) is superimposed on the expression 'completes such construction' in Clause (a) of section 80-IB(10), it would mean that the Housing Projects commenced on or after 01-10-1998 must possess completion certificate issued by the Local Authority on or before the cut off date, as may be applicable to become eligible for tax deduction. As per Explanation (it), therefore, the synonym of 'completes such construction' would be the date on which completion certificate is issued by the Local Authority. No more and no less. [Para 20]

Issuance. of completion certificate, after the cut of date by the Local Authority but, mentioning the date of completion of project before the cut of date, does not fulfil the condition specified in clause (a) of section 80-IB (10) read with Explanation (ii) thereunder. The argument of the assessee that the effect of amended clause (a) of sub-section 10 of section BO-IB! which has come into force with effect from 1st April, 2005, has retrospective effect or that it is unjust in any manlier or incapable of compliance at all is rejected. Similarly, (he requirement of securing completion certificate issued by the Local Authority before the cut Of date is not directory, in view of the express provision in section 80-IB (a) and the Explanation (if) thereunder. The completion certificate granted by the Local Authority must bear the date of having been issued before the cut off dote. [Para 26]

The impugned judgment of (he Tribunal is set aside; and in the facts of the present case, the decision of the Assessing Officer to disallow deduction under section 80-IB(10)(a) is upheld. [Para 28]"

As seen from the above, it is sine quo non to obtain the Completion Certificate/Occupancy Certificate from the competent authority on or before the stipulated due date in order to claim deduction u/s. 80IB(10) of the Act. In the instant case, it is an admitted fact that the assessee could obtain the Partial Completion Certificate-only in respect of G, H, J & J On or before the stipulated due date) but failed to obtain Completion Certificate/Occupancy Certificate in respect of all other blocks of the Project within the stipulated due date, Accordingly, the assessee is not eligible to claim deduction u/s. 80IB (10) of the Act as the basic requirement of completion of the entire project within the stipulate due date has not been fulfilled in this case.

7.8 . Even after considering partial completion would also entitle the assessee to claim deduction u/s. 80IB(10) of the Act, then also the assessee is eligible to claim deduction in respect of income derived from G H, I & J blocks only. In the impugned AY, it is noticed that the assessee has disclosed loss from G Block of Rs, 1,08,06,974/-, I Block of Rs. 63,16,467/-and there is no income from J Block at all. However, the assessee disclosed income from H Block amounting to Rs, 48,87,329/-. After adjusting the loss from G & J blocks against the income from H

block, there won't be any income, which is eligible for deduction u/s, 80IB(10) of the Act.

7.9 In view of this, even after considering the assessee's view point that partial completion also would entitle the assessee to claim deduction u/s. 80IB(10) of the Act on the facts of the case, the assessee is not eligible to claim any deduction inasmuch as there is no income derived from the partially completed blocks of G, H, I and J' disclosed in the return of income for the impugned AY.

7.10 Accordingly, on Account of the alternative line 01' adjudication, I am of the considered opinion that the assessee's claim of deduction u/s. 80IB(10) of the Act is not allowable. Hence, the grounds of appeal raised by the assessee are dismissed”.

Summary:

1) As all the 12 Blocks consisting of the Housing Project have not been completed within the stipulated due date i.e. 31.03.2013, the assessee is not eligible to claim deduction u/s 80IB of the Act since the plan approval was obtained for the entire project as a whole consisting of 12 Blocks.

2) The assessee's claim of completion of F, K 4, rq" L and At D & H within the stipulated due, date on the basis of initial application made to the GHMC cannot be accepted in as much as there is specific stipulation in the provisions of the Act i.e. Explanation (ii) to clause (a) of sub -sec (10) of 80IB of the Act that the date of completion of the Housing Project shall be taken to be the date on which the completion certificate is issued by the local authority.

3) Alternatively, considering the partially completed blocks i.e. G, H, I and J are entitled to deduction u/s 80IB (10) of the Act, as there is no net income from these blocks, the question of allowing any deduction does not arise”.

5. Mr. Devdas strongly submitted during the course of hearing that the instant sec 80IB(10) deduction disallowance issue is no more *res integra* so far as all these processing projects are considered since this Tribunal's coordinate bench's order in its own cases for assessment years 2010-11 to 2012-13 involving ITA Nos 1704/Hyd/2014, 1230/Hyd/2015 and 1082/H/2016 already accepted these very claim vide following detailed discussions:

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

“1. The learned CIT(A) erred in fact and in law in denying exemption u/s.80(IB)(10) of the IT Act amounting to Rs.16,99,10,673/- as claimed by the appellant.

2. The learned CIT(A) ought to have appreciated the spirit of the circular No.4/2009 dated 30.6.2009 issued by CBDT permitting allowance of

deduction on a year to year basis on the profits from partial completion of the project. As the appellant followed percentage of completion method about which there is no dispute, the deduction should have been allowed since the appellant had produced necessary certificate for completion.

3. The learned CIT(A) ought to have appreciated that the provisions u/s.80IB(10) being incentive provisions, a liberal interpretation of the provision will make the provision otiose instead of advancing the purpose of legislation in the light of this accepted principle enunciated the Apex Court. The learned CIT(A) ought to have allowed deduction in respect of completed blocks for which the claim was made for which necessary certificate was obtained from the municipality duly supported by other evidences.

4. The learned CIT(A) ought to have appreciated the spirit of the above circular which has the effect of diluting the provisions of section 80IB(10) to remove the hardship caused by strict implementation of the provisions instead of making incorrect interpretation of the circular.

5. The learned CIT(A) ought to have limited the deduction to the portions of the housing project completed by the appellant instead of making a literal interpretation of the provision and disallowing the deduction.

6. The learned CIT(A) ought to have allowed deduction of Rs.1,71,170/- received from deposits of margin money in the banks".

3. In addition to the above, vide letter dated 16.03.2015, the assessee has raised the following additional grounds of appeal:

"The order of the CIT (A)-VI, Hyderabad in giving a finding at Paragraph 4.15 of the order that the Appellant is not entitled to 80-IB deduction for A, D & E Blocks, the revenue from which is disclosed in A.Y 2012-13 is a finding not necessary for the disposal of appeal and therefore must be deleted".

4. Brief facts of the case are that the assessee firm, engaged in the business of construction of flats, filed its return of income for the A.Y 2010-11 on 14.10.2010 admitting 'nil' income after claiming deduction of Rs.16,99,10,673 u/s 80IB(10) of the Act. The case was selected for scrutiny under CASS and the notice u/s 143(2) was issued on 26.08.2011 and the notice u/s 142(1) was issued on 25.10.2012. In response to the above notices, the representative of the assessee appeared and furnished the details called for. After verification of the details furnished by the assessee, the AO observed that the assessee has undertaken construction of a housing project by name "Manjeera Diamond Towers", near Gopannapally Village, Serilingampally Mandal, Ranga Reddy District and has claimed deduction u/s 80IB(10) of the Act on the profits admitted during the year from the project. He observed that the assessee has undertaken the housing project on a plot area of 11.05 acres and the project was approved by the local authority on 4.2.2008 and that the housing project approved as a single project consisting of 11 buildings. He observed that out of the 11 buildings, the assessee has claimed to have completed

the construction of 7 buildings and that the construction of the balance 4 buildings is still in skeleton stage or has not yet started. Even, in support of the completion of the 7 buildings, the assessee filed the partial occupancy certificate dated 29.03.2012 issued by GHMC for 4 blocks, i.e. G, H, I & J only and no certificate was furnished regarding the remaining 3 blocks.

5. In order to verify the allowability of assessee's claim during the relevant A.Y, AO made a reference to the District Valuation Officer of the Department to inspect the housing project and verify its eligibility for deduction u/s 80IB(10) of the Act. The DVO, after inspection of the housing project, vide valuation report dated 22.03.2013, submitted a detailed report. As per the said report, the measurements of only 241 flats constructed at Manjeera Diamond Towers, Phase-I, were given by the assessee and the assessee had submitted that the occupancy certificate is yet to be obtained for F, K & L blocks and the application for issuance of completion certificate before the GHMC is yet to be filed. As regards the status of the project in March, 2013, the DVO reported that; i) 4 buildings are completed in respect of which occupancy certificate was obtained; ii) 3 buildings are stated to be completed but no efforts have been made to obtain the completion certificate from the local authority; and iii) the balance buildings are in skeleton shape or are yet to be started. Further, it was reported that, and out of the 241 flats completed, 20 flats are of the size exceeding 1500 sft each. Therefore, the AO issued a show-cause notice to the assessee to substantiate its claim of deduction u/s 80IB(10) of the Act.

6. In reply thereto, the assessee relied upon the CBDT instruction No.04/2009 dated 30.06.2009 and also filed a list of case laws in support of its contention that the deduction u/s 80IB(10) is allowable on year to year basis on partial completion of the housing project. The AO however, held that the entire project has been approved as a single project and therefore, the assessee should have completed the whole of the project on or before 31.03.2013 and since the project is not fully completed and the balance of work is nowhere near completion, the assessee is not eligible for deduction u/s 80IB(10) of the Act.. He also observed that the built up area of some of the residential flats is more than 1500 sft. He, thus held that the assessee is not at all eligible for deduction u/s 80IB(10) of the Act for this reason as well. Further, he also observed that the assessee has claimed interest received on margin money kept as deposits in the Banks also as a deduction u/s 80IB(10) of the Act. Holding that the interest income is not derived from the eligible business of the assessee, he denied the claim of the assessee. Accordingly, he disallowed the claim of deduction of Rs.16,99,10,673 u/s 80IB(10) of the Act. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before us.

7. The learned Counsel for the assessee, reiterating the submissions made before the authorities below, submitted that though the project has been approved on 4.2.2008 and the assessee was required to complete the project within five years from the end of the relevant financial year 2007-08, i.e. before 31.03.2013, the entire project could not be completed by such date. He submitted that the assessee has completed the blocks G, H, I & J before 29.03.2012 as is evident from the occupancy certificate dated 29.03.2012 and the blocks F, K & L were also completed as is evident from the Architect Certificate enclosed along with the

application for issuance of occupancy certificate from GHMC as well as the Fire & Emergency Services Department on 30.03.2013. He submitted that when each of the block contains multiple residential flats, each block has to be considered as a housing project and since the assessee has completed seven blocks out of the whole project, the assessee is eligible for claiming deduction u/s 80IB(10) of the Act on the profits of these blocks on percentage completion method. He placed reliance upon the CBDT Instruction No.04/2009 dated 30.06.2009 wherein the Board has clarified that (a) the deduction can be claimed on a year to year basis, where the assessee is showing profit from partial completion of the project in every year;

(b) in case it is late and found that the condition of completing the project within the specified time limit of 4 years as stated in section 80IB(10) has not been satisfied, the deduction granted to the assessee in the earlier A.Ys should be withdrawn. Therefore, according to the learned Counsel for the assessee, since the assessee has completed the construction of 4 buildings containing various residential units, each block also can be considered as a separate housing project and the assessee is eligible to claim the deduction u/s 80IB(10) of the Act on the profits from buildings ITA Nos 1704 1082 and 1230 Manjeera Projects Hyderabad.

which are completed. For this proposition, he placed reliance upon the following decisions:

- i) ITO vs. Saket Corporation (2015) 62 Taxmann.com 38 (Guj.)*
- ii) M/s. Viswas Promoters Pvt Ltd vs. Asstt. CIT reported in 373 ITR 317 (Mad.)*
- iii) Siddhivinayak Kohinoor Venture vs. Addl. CIT (2014) 159 TTJ 0390 (Pune)*
- iv) CIT vs. Vandana Properties (2013) 353 ITR 36 (Bom.)*
- v) CIT vs. Voora Property Developers P Ltd (2015) 373 ITR 317 (Mad)*
- vi) Pushkar Construction Co. Vs. ITO (2015) 43 ITR (Trib.) 293 (ITAT Ahd.)*

8. On the issue of the completion of blocks F, K & L, he has drawn our attention to the assessee's application to the Director General of Fire & Emergency Services and to the GHMC submitted on 30.03.2013 along with the Architect Certificate stating that the F, K & L blocks under the housing project "Manjeera Diamond Project" have been inspected and have been completed in all aspects as per the design and approved plans of the GHMC. He has drawn our attention to the provisions of section 455 of Hyderabad Municipal Corporation Act of 1955 to argue that if the Municipal Commissioner failed to refuse permission within 21 days after receipt of the notice of the completion, then it shall be deemed to have been granted. He submitted that there was no refusal by the Commissioner within the stipulated period of 21 days of the assessee's application dated 30.03.2013 and therefore, the occupancy certificate should be deemed to have been

granted to the assessee. Notwithstanding the above arguments, the learned Counsel for the assessee submitted that on 28.05.2013, the Chief City Planner was again approached by the assessee, seeking the issuance of occupancy certificate and in reply thereto the Chief City Planner, vide letter dated 13.06.2013, had pointed out only the following defects:

- i) Civil works in the cellar and sub-cellar flats are not completed*
- ii) Not constructed the compound wall in the north-west corner of the block*
- iii) Not constructed the rain water harvesting structures.*

9. He submitted that these defects are not substantial for considering whether or not the blocks are completed in all respects and that these minor defects also have been complied with by the assessee subsequently and ultimately the completion certificate was issued on 16.12.2014. Therefore, according to him, the assessee has completed the blocks F, K & L in all respects before the due date i.e. 31.03.2013 and therefore, the assessee is eligible for deduction u/s 80IB(10) of the Act on the income from these buildings too. In support of this contention, he placed reliance upon the following decisions:

- a) CIT vs. Hindustan Samuh Awas Ltd (2015) 377 ITR 150 (Bom.)*
- b) M/s. Sriram Constructions, Hyderabad vs. DCIT, Hyderabad in ITA No.1300/2001 & Others dated 29.4.2016.*
- c) CIT vs. M/s. Ittina Properties (P) Ltd in ITA No.556 of 2013 & others dated 15.7.2014 of the Hon'ble Karnataka High Court.*

10. As regards the objection of the Revenue that some of the flats exceeded the area of 1500 sft, he submitted that the proportionate deduction is to be disallowed and not the entire claim of deduction. Thus, according to him, the assessee is eligible for deduction u/s 80IB(10) of the Act for all the blocks completed by it.

11. As regards the interest income which has been claimed as a deduction u/s 80IB(10) of the Act, the learned Counsel for the assessee submitted that these deposits were kept as margin money with the Banks for completion of the project and therefore, they are inextricably linked to the project and interest therefrom is also linked to the project and therefore, the assessee is eligible for deduction u/s 80IB(10) of the Act on such interest income as well. In support of this contention, he placed reliance upon the decisions of the Hon'ble Telangana & A.P. High Court in the case of Indo Aquatics (2014) 369 ITR 589 (T&AP), and in the case of CIT vs. Godavari Drugs Ltd (2015) 371 ITR 379 (T&A.P.).

12. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the housing project has been approved as a single project and therefore, the assessee is required to complete the entire project on or before 31.03.2013 and has to obtain the completion certificate by the said date for all the buildings as is required under the relevant provision. He submitted that section 80IB (10) being an incentive provision, has to be interpreted as per the wordings of the section. He, thus placed reliance upon the following decisions for the above proposition:

- a) IPCA Laboratories vs. Dy.CIT (2004) 266 ITR 0521 (S.C)
- b) Indian Rayon Corpn. Ltd vs. CIT (1998) 231 ITR 0026.
- c) Petron Engineering Construction (P) Ltd & Anr. Vs. CBDT & Others (1989) 175 ITR

13. To the effect that obtaining of completion certificate is mandatory and without the same, the assessee is not eligible for deduction u/s 80IB(10) of the Act. The learned DR placed reliance upon the following decisions:

- a) CIT Bhopal vs. Global Reality, reported in (2015) 379 ITR 107 (M.P)
- b) Sainath Estates (P) Ltd vs. Dy.CIT (2013) 26 ITR (T) 55 (Hyd.Trib.)
- c) CIT Lucknow vs. Arif Industries Ltd (2017) 80 Taxmann.com 374
- d) Dy.CIT CO-Circle (VI)(1) vs. Marco Marwell Projects Ltd (2013) 29 Taxmann.com 249 (Chennai Trib.).

14. On the issue of interest income from margin money not being eligible for deduction u/s 80IB(10) of the Act, the learned DR placed reliance upon the decision of the Hon'ble Supreme Court in the case of Liberty India vs. CIT (2009) 317 ITR 218 (S.C).

15. Having regard to the rival contentions and the material on record, we find that the assessee's project has been approved on 4.2.2008 and there is no dispute that the assessee has to complete the project on or before 31.03.2013. The project contains eleven blocks in an area of 11.05 acres and the assessee has completed 4 blocks in totality and has also obtained partial completion certificate in respect of these blocks. In respect of 3 blocks, it is the claim of the assessee that they were also completed in all respects and the application for issuance of completion certificate along with necessary enclosures such as Architect's Certificate etc., was filed on 30.03.2013.

16. From the facts and circumstances of the case before us, the question before us is whether the entire project is to be completed before 31.03.2013 or each block can be considered as an independent housing project and deduction u/s 80IB(10) can be allowed in respect of such completed blocks?. The assessee has received the approval for all the blocks as one housing project as is evident from the Municipal proceedings No.G/1272/BP/581/ 2007 dated 4.2.2008 (at page 2 of the paper book

filed by the assessee) but the assessee has been able to complete only seven buildings out of the whole project. The CBDT instruction No.04/09 dated 30.06.2009 had clarified that the assessee can claim the deduction u/s 80IB(10) on a year to year basis when it is following percentage completion method and such a deduction so granted in each of the years can be withdrawn if the condition of the completing the project within the stipulated period is not fulfilled.

17. In the case before us, the assessee has claimed the deduction u/s 80IB(10) on percentage completion method. The project was supposed to be completed by 30.03.2013. Though the claim in the A.Y 2007-08 is made for the first time, the assessment proceedings were initiated only after issuance of notice u/s 143(2) on 26.08.2011 and the assessment order was passed on 30.03.2013, by which date, the information regarding the stage of the project was available with the AO. Therefore, the AO did not allow the deductions. Therefore, the action of the AO cannot be said to be against the instruction No.04/09 (cited supra). The question that arises now is whether the deduction is to be denied in toto, since the project is not completed in toto?. Both the parties before us have relied upon various judicial precedents on the issue in support of their contentions. Therefore, their applicability to the facts of the case before us is to be examined.

18. In the case of IPCA Laboratories (Supra), the Hon'ble Supreme Court of India was dealing with the allowability of deduction u/s 80HHC and has held that "even though a liberal interpretation has to be given to an incentive provision, the interpretation has to be as per the wordings of the section and the benefits which are not available under the section cannot be conferred by ignoring or misinterpreting clear words in the section.

19. In the case of Indian Rayon Corporation Ltd (Supra), the Hon'ble Bombay High Court held that the principle of beneficial interpretation has no application where the words of statute are plain, precise and unambiguous.

20. In the case of Petron Engineering Constructions Pvt. Ltd & Anr (Cited Supra), the Hon'ble Apex Court held that though it is true that an exemption provision should be construed liberally, such a construction should not be made doing violence to the plain meaning of such exemption provision and Liberal Construction will be made whenever it is possible to be made without impairing the Legislature requirement and the spirit of the provision.

21. From the above judgments relied upon by the learned DR, it emerges that a beneficial provision should be liberally construed, but without doing violence to the plain meaning of the provision and keeping in mind the legislature requirement and the spirit of the provision. These decisions are on the principle of interpretation of the statute and not directly on the provisions of section 80IB(10) of the act.

22. The provisions of section 80IB(10) as applicable to the relevant A.Y reads as under:

"[80IB(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of

March, [2008] by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,--

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,--

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 [but not later than the 31st day of March, 2005], within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.] Explanation.--For the purposes of this clause,--

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) 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;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place;

(d) the built-up area⁸⁵ of the shops and other commercial establishments included in the housing project does not exceed [three] per cent of the aggregate built-up area of the housing project or [five thousand square feet, whichever is higher]

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:--

(i) the individual or the spouse or the minor children of such individual,

(iii) the Hindu undivided family in which such individual is the karta,

(iv) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.] Explanation.--For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government)."

23. From a literal reading of the above provision, the relevant conditions to be fulfilled in the case before us are that the project (i) shall have been approved by the local authority; (ii) should be on a minimum area of one acre; (iii) each residential unit should not exceed the specified area; (iv) should have been completed within the stipulated period; and (v) the project shall be taken to be completed on the date on which the completion certificate is issued by the local authority.

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/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. Voora 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 CIT vs. Hindustan ITA Nos 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.

31. The other ground of the Revenue for denying the claim of deduction u/s 80IB is that the area in some of the flats exceeded 1500 sft. As held by the Hon'ble Madras High Court in the case of Viswas Promoters (Supra), the assessee is entitled to deduction in respect of the flats which do not exceed the area of 1500 sft on pro-rata basis. The AO is accordingly directed to allow the deduction.

32. As regards the claim of interest income, as a deduction u/s 80IB(10) of the Act, the learned Counsel for the assessee has placed reliance upon the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Indo Aquatics Ltd reported in (2014) 369 ITR 589 (T&AP) wherein the Hon'ble High Court has held that the interest earned on deposits for opening letters of credit is entitled to exemption and that it is an essential activity for undertaking exports as the deposit of amounts for that purpose is a condition precedent. In the case before us also, the assessee was required to keep the deposits as margin money with the Banks for completion of the project and hence is attributable to the project and the assessee is eligible for deduction u/s 80IB(10) on such interest income. The AO is accordingly directed to allow the same. Ground of appeal No.6 is also allowed.

33. For these two appeals, the grounds raised by the assessee are the same as in A.Y 2010-11 except for the quantum. For the detailed reasons given above, these appeals are also allowed”.

6. Mr Devdas's next argument is that since the learned coordinate bench has already considered the assessee's deduction claim(s) regarding all these housing projects in light of the relevant statutory provision(s) and sec 455 of the Hyderabad Municipal Corporation Act of 1955 (Supra), deemed completion coming from the date of filing of the Architect's Certificate, we ought to follow

judicial consistency as per the hon'ble apex court's landmark decision Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (S.C).

7. Learned counsel further sought to emphasise the fact that the Revenue's identical objections stand rejected in the coordinate bench's order and therefore, the assessee very well deserves to be held entitled for sec 80IB (10) deduction.

8. Learned CIT-(DR), on the other hand, has drawn strong support from the CIT (A)'s discussion extracted in the preceding paragraphs. He has filed a detailed paper book running into 65 pages comprising of his written submissions, partial occupancy certificate regarding Block G, H, I, J, F, K and L with original and revised approval letters issued by the GHMC, assessee's schedule of account and various judicial precedents. Mr. Sai's case in light of all the foregoing documentary evidence is that the CIT (A) has rightly treated the assessee as having a single residential project involving all the corresponding blocks than these blocks to be treated as independent project(s) themselves. Mr. Sai further sought to draw our attention to the CBDT's circular/instruction No.4/1999 regarding eligibility of sec 80IB(10) deduction. And that the assessee not having completed all these project(s). He argued that we ought to adopt strict interpretation while dealing with the deduction provision in the instant taxing statute as per the hon'ble apex court's recent landmark decision CCE (Import) vs M/S. Dilip Kumar And Company (2018) 9 SCC 1 (S.C)(FB)

9. We have given our thoughtful consideration to the foregoing rival pleadings. We are of the opinion that neither party's submissions regarding the impugned issue of sec 80IB(10)

deduction claim(s) therein, as the case may be, deserve to be accepted in entirety. So far as the Revenue's objection(s) are concerned that none of the assessee's residential projects is eligible for the impugned deduction, there is hardly any dispute that the learned coordinate bench has already declined the same regarding blocks "G, H, I, K, F, L" in the foregoing detailed discussion in preceding paragraphs. Meaning thereby that all these Revenue's objections are presumed to have been raised and declined regarding the corresponding conditions enshrined in section 80IB(10) of the Act. We therefore, adopt the foregoing detailed discussion mutatis mutandis so far as the assessee's residential projects, except "A", "D" and "E" projects are concerned. The Revenue's arguments to this effect are rejected accordingly. The assessee's corresponding ground in the above housing projects stand accepted.

10. Next comes the assessee's remaining three housing projects i.e. A, D and E. Both the learned representatives are fair enough that the scheduled date of completion of these three projects also falls on 31.3.2018 only. Learned AR placed strong reliance on the tribunal's findings that it has already been held to be eligible as per Para 33 in A.Y 2011-12 and 2012-13 respectively. We however, note that from a perusal of the departmental paper book (page 9 therein) that the assessee had filed for the corresponding building's completion notice on 4.7.2014 only i.e much after than the scheduled date of completion falling on 31.3.2014. Coming to the earned counsel's vehement contention that the very argument already stands accepted, we observe that the said decision nowhere took into consideration the foregoing clinching aspect of the assessee itself

having filed for completion certificate in July, 2014 in the prescribed format. The vexed question before us now is as to whether the foregoing learned coordinate bench's well pondered decision ought to be treated as a binding precedent or not. We find that the hon'ble jurisdictional high court in Commissioner Of Income-Tax vs B.R. Constructions on 19 June, 1992 (1993) 202 ITR 222 AP holds that such an adjudication which is not based on the correct appreciation facts does not amount to a binding precedent being per incuriam as follows:

“37. The effect of binding precedents in India is that the decisions of the Supreme Court are binding on all the courts. Indeed, article 141 of the Constitution embodies the rule of precedent. All the subordinate courts are bound by the judgments of the High Court. A single judge of a High Court is bound by the judgment of another single judge and a fortiori judgments of Benches consisting of more judges than one. So also, a Division Bench of a High Court is bound by judgments of another Division Bench and Full . A single judge or Benches of High Courts cannot differ from the earlier judgments of co-ordinate jurisdiction merely because they hold a different view on the question of law for the reason that certainty and uniformity in the administration of justice are of paramount importance. But, if the earlier judgment is erroneous or adherence to the rule of precedents results in manifest injustice, differing from the earlier judgment will be permissible. When a Division Bench differs from the judgment of another Division Bench, it has to refer the case to a Full Bench. A single judge cannot differ from a decision of a Division Bench except when that decision or a judgment relied upon in that decision is overruled by a Full Bench or the Supreme Court, or when the law laid down by a Full Bench or the Supreme Court is inconsistent with the decision.

38. It may be noticed that precedent ceases to be a binding precedent -

- (i) if it is reversed or overruled by a higher court,*
- (ii) when it is affirmed or reversed on a different ground,*
- (iii) when it is inconsistent with the earlier decisions of the same rank,*
- (iv) when it is sub silentio, and*

(v) when it is rendered *per incuriam*.

39. In paragraph 578 at page 297 of *Halsbury's Laws of England, Fourth Edition*, the rule of *per incuriam* is stated as follows :

"A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

40. In *Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court*, the Supreme Court explained the expression "*per incuriam*" thus (at page 36 of 77 FJR) :

"The Latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when the Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court."

42. As has been noticed above, a judgment can be said to be *per incuriam* if it is rendered in ignorance or forgetfulness of the provisions of a statute or a rule having statutory force or a binding authority. But, if the provision of the Act was noticed and considered before the conclusion arrived at, on the ground that it has erroneously reached the conclusion the judgment cannot be ignored as being *per incuriam*. In *Salmond on Jurisprudence, Twelfth Edition*, at page 151, the rule is stated as follows :

"The mere fact that (as is contended) the earlier court misconstrued a statute, or ignored a rule of construction, is no ground for impugning the authority of the precedent. A precedent on the construction of a statute is as much binding as any other, and the fact that it was mistaken in its reasoning does not destroy its binding force."

43. In *Choudhry Brothers' case*, as noticed above, the Division Bench treated the judgment in *Ch. Atchiaiah's case*, as *per incuriam* on the ground that the earlier Division Bench did not notice the significant changes the charging section 3 has undergone by the omission of the words "or the partners of the firm or the members of the association individually"-. In our view, this cannot be a ground to treat an earlier judgment as *per incuriam*. The change in the provisions of the Act was present in the mind of the court which decided *Ch. Atchiaiah's case*. Merely because the conclusion arrived at on construing the provisions of the charging section under the old

Act as well as under the new Act did not have the concurrence of the latter Bench, the earlier judgment cannot be called per incuriam.

44. Though a judgment rendered per incuriam can be ignored even by a lower court, yet it appears that such a course of action was not approved by the House of Lords in Cassell and Co. Ltd. v. Broome [1972] 1 All ER 801, wherein the House of Lords disapproved the judgment of the Court of Appeal treating an earlier judgment of the House of Lords as per incuriam. Lord Hailsham observed (at page 809) :

"It is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way."

11. Mr. Devdas once again sought to reiterate the point that the assessee's Architect had duly applied for completion of the impugned project as per the foregoing Hyderabad Municipal Corporation Act (Supra) on 30.3.2013. And that the delay in issue was at the corporation's end only which would not be fatal to the impugned deduction claim in view of the learned coordinate bench's findings dealing with the issue of deemed completion (Supra). We find no substance in the assessee's last argument as well since the Municipal Corporation herein has duly prescribed for the corresponding completion certificate procedure, step-wise, wherein the concerned applicant must ensure all the necessary compliance. We find that the assessee has not placed on record any corresponding clinching document to this effect as to whether it had filed the completion certificate in the prescribed format or not. We must also emphasize herein that the said prescribed proforma makes it mandatory for an applicant to submit "Building Completion Notice" which was submitted on 4.7.2014 only (supra). We thus adopt a different approach herein regarding the assessee's impugned sec 80IB(10) Explanation (i), (ii) deduction claim(s) pertaining to its "A", "D" and "E" housing projects.

Learned lower authorities action rejecting the same stands upheld.

12. Lastly comes the issue of proportionate section 80IB(10) deduction claim. Learned coordinate bench has already upheld the assessee's claim in Para 31. We therefore direct the assessing authority to frame its consequential computation as per law i.e. he shall reiterate his impugned sec 80IB (10) disallowance qua blocks "A", "D" and "E" and delete the same pertaining to G, H, I, K, F, K and L in foregoing terms.

13. We further make it clear before the parties that both the learned representatives had placed record a catena of caselaw before us regarding the basic principles of interpretation and multi-dimensional facets of the impugned sec 80IB(10) deduction claim. The same are not dealt with specifically in view of the fact that the assessee herein has not completed its corresponding housing block(s)/project's within the stipulated deadline falling 31.3.2013. No other ground has been pressed before us. The assessee's four appeals are partly allowed in above terms. A copy of this common orders be placed in the respective files.

Order pronounced in the Open Court on 8th September,2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 8th September, 2021.

Vinodan/sps

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3	CIT (A)-6,Hyderabad
4	Pr. CIT -6, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order