

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.1977/AHD/2016**

**(निर्धारणवर्ष / Assessment Year: (2011-12))**

**(Virtual Court Hearing)**

Deputy Commissioner of Income Tax, Circle-2(3), Surat.	<b>Vs.</b>	M/s. Chitrani Developers, Chitrani Row House, Near B.R. Park, Jahangirpura, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFC9740Q</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Ms Anupama Singla – Sr. DR

Respondent by : Shri M K Patel – AR

**सुनवाईकीतारीख/ Date of Hearing : 21/10/2020**

**घोषणाकीतारीख/Date of Pronouncement: 03/11/2020**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-1, Surat [in short the “CIT(A)”] in Appeals Nos. CAS-1/761/ 2015-16, dated 06.05.2016, which in turn arises out of an assessment order passed by the Assessing Officer (AO) u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 11.03.2016.

2. The Grievances raised by the Revenue are as follows:-

*“1.On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing deduction U/s. 80IB(10) of the Act of Rs.1,86,84,900/-.*

*2.On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in not appreciating the fact that the project was under construction and was not complete. The fact relating to non-completion of the project was duly confirmed by local authority and assessee had applied to the Municipal Corporation for splitting up of project into two parts, which was not approved by them till completion of assessment.*

*3.On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in not appreciating the fact that judicial pronouncements relied upon by Ld.CIT(A) are not relatable*

to the present case as the buildings were not complete as on 31.03.2012, the reckoning date, as confirmed by the local authority.

*4. On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in not appreciating the fact that allowing proportionate deduction is not proper because Section 80IB(10) allows deduction to the entire project approved by the local authority and not to a part of the project. If the conditions set out in Section 80IB(10) are satisfied, then deduction is allowable on the entire project approved by the local authority and there is no question of allowing deduction to a part of the project.”*

3. Although, appeal filed by the Revenue contains multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue, as noted above. Most of the grounds raised by the Revenue, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the Revenue. With this background, we summarize and concise the grounds raised by the Revenue as follows:

*“ On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in not appreciating the fact that allowing proportionate deduction is not proper because Section 80IB(10) allows deduction to the entire project approved by the local authority and not to a part of the project.*

*However, the contention of the assessee is that if assessee has completed the part of the project by fulfilling all the stipulated conditions given in Sec. 80IB(10) then he is eligible for the deduction against the profits derived from such completed part of the project.”*

4. The facts of the case which can be stated quite shortly are as follows: The assessee is a builder and developer who has developed a residential project namely "Sutrali Apartments" on a land bearing TPS NO 42, FP No 20 Paikee, Part B, Jahangirpura, Surat, which was approved by Local Authority i.e. SMC on 30.03.2007 for construction of ten buildings (A to J Towers) on total plot area of 7,968 sq. Mtrs. The assessee has filed the copy of original plan passed by Surat Municipal Corporation SMC( Local Authority Surat). However, for whatever reasons, the assessee firm could only complete the project for 6 buildings (C to H) within the stipulated time i.e. 31.03.2012 for which BUC (Building Use Certificate) was also obtained from the appropriate authority i.e. SMC. It was noted by the assessing officer during the scrutiny proceedings that knowing fully well the assessee firm was not able to complete the remaining towers for various reasons, and therefore assessee applied

before SMC for approval of Revised Plan on 20.03.2012. As per the revised plan, original plot admeasuring 7968 sq. mtr was proposed to be sub-divided into two plots viz. sub-plot-I admeasuring 4767 sq. mtrs & sub-plot-II admeasuring 3201 sq. mtrs, however this proposal has not been approved by SMC and finally proposal has been rejected on 14.08.2014 by SMC. Therefore, assessing officer noticed that what is surviving is the original approval of SMC granted on 30.03.2007 by SMC on said plot for construction of 10 towers (A to J) out of which assessee could complete project for 6 Towers (C to H) before stipulated dated of 31.03.2012. The assessee firm has completed the construction of 6 buildings (C to H) on sub-plot-I admeasuring 4,767 sq. mtrs for which BUG has also been obtained for all the six towers/buildings.

Based on these facts, the assessing officer held that when the approval of Local Authority was for 10 Buildings/Towers, then constructing only 6 buildings out of that will make the assessee absolutely ineligible for deduction u/s.80IB(10) of the Act, not even for the profits derived from the residential project completed in respect of 6 buildings (out of total 10 buildings). Therefore, assessing officer denied deduction under section 80IB(10) of the Act to the tune of Rs.1,86,84,898/- and added to the total income of the assessee.

5. On appeal, Id CIT(A) allowed the deduction partly in respect of 6 buildings (out of total 10 buildings). The Id CIT(A) held that if assessee has completed the part of the project by fulfilling all the stipulated conditions given in section 80IB(10) then he is eligible for the deduction against the profits derived from such completed part of the project.

6. Aggrieved by the order of the Id CIT(A), the Revenue is in appeal before us.

7. Learned DR for the Revenue submits before the Bench that the approval of Local Authority was for 10 Buildings/Towers, and assessee has constructed only 6 Buildings/Towers. Since the assessee has not completed the entire project within stipulated period therefore deduction u/s.80IB(10) of the Act, should not be allowed. She also pointed out that the deduction under section 80IB(10) is available provided assessee has completed entire project. The assessee applied before SMC for approval of Revised Plan on 20.03.2012 but the same was rejected by the SMC, therefore

assessee is not entitled for deduction under section 80IB(10) of the Act. Apart from this, Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para no.4 of this order and is not being repeated for the sake of brevity.

8. On the other hand, Id Counsel, Shri M.K.Patel, submits before the Bench that issue under consideration is covered by many judgments of Tribunals and High Courts (including jurisdictional High Court) and all have unanimously decided in favour of the assessee. Learned counsel for the assessee invited our attention to the order dated 27.08.2019, passed by the Division Bench of this Tribunal in the case of ITO vs. Shruti Corporation (in ITA No's.2575/AHD/2014 for AY.2010-11, 2963/AHD/2014 for AY.2011-12 and 1856/AHD/2016 for AY.2012-13) wherein the question before the Bench was that out of 27 buildings, only 6 building were completed in all respect as on 31.03.2012 of which BUC certificate was also obtained from SMC i.e. Local Authority- whether deduction under section 80IB(10) would be available on partly completed project, that is, in respect of 6 buildings? The claim of Revenue was that the whole project was not completed before 31.03.2012, hence, deduction under section 80IB(10) of the Act is no available. However, the Division Bench held that deduction under section 80IB(10) would be available to the assessee in respect of 6 buildings, that is, part of the project. The findings of the Division Bench are as follows:

*"12. We have heard the rival submissions and perused the relevant material on record. We find that there is no dispute the out of 27 buildings, 6 building were complete in all respect as on 31. 03. 2012 of which BUC certificate was also obtained from SMC i.e. Local Authority. The claim of Revenue is that the whole project was not completed before 31.03.2012, hence, deduction under section 80IB(10) of the Act is no available. However, this is covered by the decision of Hon'ble Gujarat High Court in the case of CIT v. B M Brothers [Tax Appeal No. 796 of 2013 dated 01.10.2013 in which the Hon'ble Gujarat High Court observed "6. Considering the provisions of section 80IB(10) of the Act, when the "housing project" named Maninagar at Rajkot was approved prior to 01/04/2004 and different units were constructed before 31/03/2008, it cannot be said that ITAT has committed any error granting deduction under section 80IB(10) of the Act with respect to only those units of 'housing project named Maninagar was already approved prior to 01/04/2004 of which construction have been completed prior to 31/03/2008. It cannot be disputed that the 'Housing project named. 'Maninagar' was already approved prior to 01/04/2004 and*

*construction that have been put up have been completed prior to 31/03/2008." Thus, in the instant case 6 building which, were approved prior to 30.03.2007 of which construction was completed by 31.03.2012 in all respect. The assessee has claimed deduction under section 801B(10) of the Act. In respect of 6 building only. This issue is also covered by decision of Hon'ble Madras High Court in the case Viswas Promoters (P) Ltd. Vs. ACIT 255 CTR (Mad.) 149. In the light of above facts and circumstances, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. Accordingly, Ground No. 1 to 5 of revenue appeal are dismissed."*

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. As the issue is squarely covered in favour of the assessee by the decision of the Division Bench, in the case of Shrusti Corporation (supra) and there is no change in facts and law and the Ld DR for the Revenue is unable to produce any material to controvert the aforesaid findings of the Division Bench (supra). We find no reason to interfere in the said order of the Division Bench. Respectfully following above binding precedent, we uphold the contention of the assessee and therefore we dismiss the grounds of appeal raised by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced on 03/11/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date:03/11/2020

Samanta, PS

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)

4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

*// True Copy //*

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat

