

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6260/M/2019
Assessment Year: 2010-11**

Income Tax Officer- 30(3)(1), Room No.533, 5 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandr (East), Mumbai - 400051	Vs.	M/s. Rajeshri Build Craft, 102, Kent Tower, Vardhaman Nagar, Narsing Lane, Malad (West), Mumbai – 400 064 PAN: AAHFR8765J
(Appellant)		(Respondent)

**CO No.61/M/2021
(Arising out of ITA No.6260/M/2019)
Assessment Year: 2010-11**

M/s. Rajeshri Build Craft, 102, Kent Tower, Vardhaman Nagar, Narsing Lane, Malad (West), Mumbai – 400 064 PAN: AAHFR8765J	Vs.	Income Tax Officer- 30(3)(1), Room No.533, 5 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandr (East), Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ravi Sawana, A.R.
Revenue by : Shri Bharat Andhale, D.R.

Date of Hearing : 21.09.2021

Date of Pronouncement : 26.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeal by the Revenue and the cross objection by the assessee have been preferred against the order dated 31.07.2019 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. At the time of hearing the Ld. Counsel of the assessee submitted that assessee is not willing to pursue the issue raised in cross objection and therefore the same may kindly be dismissed. Accordingly, the cross objection of the assessee is dismissed.

3. The grounds raised by the Revenue in its appeal ITA No.6260/M/2019 are as under:

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing claim of deduction u/s. 80IB(10) of the Income Tax Act, 1961 without appreciating the fact that the area of balcony of the Flat has to be included to the area of the Flat for allowing the deduction.

2. On the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate that the deduction u/s. 80IB(10) of the Income Tax Act, 1961 is not allowable if the area of the Flat is more than 1000 square feet after including the area of balcony of the Flat to the area of the Flat.”

4. The only issue raised in the grounds of appeal by the Revenue is against the order of Ld. CIT(A) directing the AO to allow

the deduction under section 80IB(10) of the Act to the assessee.

5. The facts in brief are that the assessee filed the return of income on 15.10.2010 declaring total income at Rs.12,480/- in which the assessee has claimed deduction under section 80IB(10) of the Act. A survey action under section 133A of the Act was carried out on the assessee on 25.01.2012 in order to verify the eligibility of claim of deduction under section 80IB(10) of the Act. During the course of survey it was found that there were some violations of conditions as envisaged under the provisions of section 80IB(10) of the Act and consequently the

AO rejected the claim of the assessee under section 80IB(10) of the Act by framing assessment under section 143(3) of the Act vide order dated 28.03.2013.

6. In the appellate proceedings the Ld. CIT(A) allowed the appeal of the assessee on the basis of DVO report dated 11.09.2018 which certified that built up area of individual residential flat in the housing project does not exceed 1000 sq. ft. and plot/land of the building is less than 1 acre. The ld. CIT(A) also referred to the DVO report mentioning that measurement of built up area of the flats by the architect was incorrect. The Ld. CIT(A) in order to ascertain the built up area remanded the matter back to the AO who further referred the matter to DVO to ascertain the built up area of flats for deciding the eligibility of deduction under section 80IB(10) of the Act. Thereafter, the DVO submitted the report as stated hereinabove and ld CIT(A) allowed the appeal of the assessee on this issue.

7. After hearing both the parties and perusing the material on record, we find that the Ld. CIT(A) has rightly allowed the appeal of the assessee on the basis of department valuation report dated 11.09.2018 wherein it has been specifically stated that the architect has wrongly measured the built up area and the plot of land on which the said building was constructed and also that the built up area of individual residential flat does not exceed 1000 sq. ft. We note that the only objection of the AO while rejecting the claim of the assessee was that the built up area of each flat exceeded 1000 sq. ft. whereas the DVO has clearly given a finding that the built up area of the balcony as well as the flat together would not exceed 1000 sq. ft. Accordingly, we

do not find any infirmity in the order of Ld. CIT(A) and the appeal of the Revenue is dismissed by upholding the order of Ld. CIT(A).

8. In the result, the appeal of the Revenue as well as cross objection of the assessee are dismissed.

Order pronounced in the open court on 26.10.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.