

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M JAGTAP, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos. 24&25/Ahd/2020
(Assessment Years: 2013-14 & 2014-15)

DCIT Circle-2(2), Ahmedabad	Vs.	Shree Parshwanath Corporation, 50, Harsiddh Chambers, Ashram Road, Ahmedabad-380014
[PAN No.AADFS3093C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri James Kurian, CIT DR
Respondent by :	Shri Vartik Choksi, A.R.
Date of Hearing	07.06.2022
Date of Pronouncement	10.06.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

Both the appeals filed by the Revenue are directed against the order dated 23.10.2019 passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad arising out of the separate orders dated 28.03.2016 & 23.12.2016 passed by the DCIT, Circle-2(2), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2013-14 & 2014-15 respectively.

2. The sole issue for consideration before us is as to whether the assessee is entitled to deduction under Section 80IB(10) of the Act to the tune of Rs. 42,52,86,128/- under the present facts and circumstances of the case.

3. The brief facts leading to the case is this that appellant is a partnership firm engaged in the business of real estate filed its return of income on 28.09.2013 declaring total income at Rs. NIL. The appellant also claimed

deduction of Rs. 42,52,86,128/- under Section 80IB(10) of the Act in respect of the project at Atlantis Park, Sughad. Necessary details in order to establish the claim of the assessee were directed to be produced by the Ld. AO. Factually completion certificate in respect of Atlantis Park Project was issued in respect of 876 units though the project is consisting of total 1140 units. The completion certificate issued by BU further indicates that the whole Project of 1140 units were not completed by 31.03.2012 i.e. within five years to the end of the Financial Year in which the project was to be approved rather reflects completion of 876 units only. Relevant to mention that the project were approved on 30.03.2007 and it was required to be completed by 31.03.2012.

4. The Ld. AO was of the opinion that since the project was not completed in its entirety till 31.03.2012, the condition stipulated under Section 80IB(10) of the Act has been violated. In that view of the matter the assessee was not found eligible for deduction under Section 80IB(10) of the Act and consequently deduction amounting to Rs. 42,52,86,128/- claimed under Section 80IB(10) was disallowed and added back to the total income of the assessee which was, in turn, deleted by the Ld. CIT(A). Hence, the instant appeal before us.

5. In appeal the Ld. CIT(A) discussed the claim of deduction under Section 80IB(10) of the assessee in detail. The appellant has found to have made claim deduction under Section 80IB(10) for blocks for which it has received BU permission before prescribed date. The Ld. CIT(A) held that the appellant has rightly claimed deduction under Section 80IB(10) on project Atlantis Park in the return of income and deleted the addition made by the Ld. AO relying upon the judgment passed by the Pune Tribunal in the case of M/s. Sai Siddhi Atul in ITA No. 2420/PN/2016 dated 15.11.2018.

6. At the time of hearing of the matter the Ld. Counsel appearing for the assessee also submitted before us that the issue is squarely covered by the judgment delivered by the Jurisdictional High Court in the case of CIT vs. B.M. & Bros., reported in (2014) 42 taxmann.com 24 (Guj.) wherein the identical situation of the assessee's claimed under Section 80IB(10) was allowed with respect to only those units of the 'housing project', which were approved and construction have been completed prior to 31.03.2008. A copy whereof has also been handed over to us.

7. The Ld. D.R. failed to controvert such submission made by the Ld. A.R.

8. We find that while allowing the claim of the assessee the Ld. CIT(A) observed as follows:

"4.5 During the course of appellate hearing, Appellant has also relied upon following decisions of Hon'ble Pune ITAT and ratio of these decisions are also applicable on facts of the case.

(i) Hon'ble Pune Bench in case of Rahul Construction Co. reported in 21 taxmann.com 435

(ii) Hon'ble Pune ITAT in case of Anand Ashok Gandhi in IT A No. 2004/PUN/2014 dated 25.05.2016

"Claim of pro-rata deduction u/s.80IB(10) - non-completion of the few buildings -Held that- We find the assessee in the instant case is an individual and engaged in the activity of Promoters and Builders in the name and fashion of "Harshad Constructions". During the impugned assessment year the assessee has constructed a housing project at Ashok Nagar, Handewadi Road, Hadapsar, Pune. The commencement certificate for this project was received by the assessee on 14-02-2007 which was subsequently revised on various dates.

As per the original plan passed by the Municipal authorities, there are three buildings, viz., A, B and C. The assessee has submitted the completion certificate only for Buildings B and C but did not furnish the completion certification for Building A on the ground that the same was not constructed. Since the plan was sanctioned for Buildings A, B and C and the assessee has completed only Buildings B and C and Building A was never constructed in

appeal the Ld.CIT(A) following various decisions allowed the claim of pro-rata deduction in respect of "" Buildings B and C which were completed.

No infirmity in the order of the CIT(A) granting pro-rata deduction to the assessee in respect of Buildings B and C which were completed. We find the Pune Bench of the Tribunal in the case of M/s. Kumar Company [2016 (2) TMI 231 - ITAT PUNE] while deciding identical issue had allowed the claim of pro-rata deduction wherein held AO cannot reject the claim of deduction u/s.80IB(10) of the entire project for non-completion of the few buildings. We therefore set aside the order of Ld. CIT(A) and direct the AO to allow pro-rata deduction claimed u/s.80IB(10) - Decided in favour of assessee."

In above case, though approval was for three buildings being A to C, but Assessee has submitted the completion certificate only for building - B and C and even building - A was never constructed and still Hon'ble ITAT has allowed deduction to Appellant.

(iii) Hon'ble Pune ITAT in case of Satyanarayan Ramswarup Agarwal in ITA No. 807/PN/2014 dated 21.03.2016

"16. The third aspect of the issue is non-completion of housing project before stipulated date. This issue was also considered by the Tribunal vide paras 8 to 8.2 and the assessee was held to be entitled to pro-rata deduction under section 80IB(10) of the Act. The relevant findings of the Tribunal, read asunder:

"8. The next issue is with regard to non-completion of housing project. The Assessing Officer stated that the assessee has commenced the construction of third building in the year 2010-11 and it clearly shows that the assessee has not completed the housing project within prescribed four years from the date of first approval of housing project. The Assessing Officer observed that if at all the assessee wanted he could have completed the total housing project except the so called 189 sq. mtrs. of land under road widening. The action of assessee proves that he had partially completed the construction of building and carried out on the same till 2010-11 by which, it is proved beyond doubt that he had not completed housing project within the prescribed period of four years. The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having considered the same, the CIT(A) granted relief to the assessee on this account as well. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

8.1 After going through the rival submissions and material on record, we find that the issue before us is with regard to prorata deduction u/s.80IB(10). On the issue of prorata deduction, the ITAT Pune Bench has allowed prorata deduction u/s.80IB(10) in the case of Ramsukh Properties Vs. DC/7", Circle 1, Pune in ITA No.84/PN/2011

vide its order dated 25.07.2012. For the convenience, the relevant portion of the order reads as under:

'We agree to proposition put forward by Ld. Departmental Representative that plain reading of section 8018(10) of the Act suggests about only completion of construction and no adjective should be used along with the word completion. This strict interpretation should be given in normal circumstances. However, # in case before us, assessee was prevented by reasonable cause to complete construction in time due to intervention of CID action on account of violation of provisions of Urban Land Ceiling Act applicable to land in question. Assessee was incapacitated to complete the same in time due to reasons beyond his control. Assessee should not suffer for same. The revision of plan is vested right of assessee which cannot be taken away by strict provisions of statute. The taxing statute granting incentives for promotion of growth and development should be construed liberally and that provision for promoting economic growth has to be interpreted liberally. At the same time, restriction thereon too/ has to be construed strictly so as to advance the object of provision and not to frustrate the same. The provisions of taxing statute should be construed harmoniously with the object of statute to effectuate the legislative intention. In view of above facts and circumstances, we hold that assessee is entitled for benefit u/s 80IB(10) of the Act in respect of 173 flats completed before prescribed limit. The Assessing Officer is directed accordingly.'

8.2 *In view of above, it is clear that assessee received approval for C building from PMC vide certificate dated 03.02.2005 but work on C building could not start since additional FSI in lieu of road widening was not received from PMC. The assessee could not plan the work for C building since engineers and architects could not design the structure of building in the absence of FSI. The details of follow up done by assessee with PMC have been duly appreciated by CIT(A). The legislative intent read that the clear provisions of the requisite section, do not permit any proportionate deduction u/s. 80/8(10) of Act. However, in view of the decision in Ramsukh Properties (supra) as discussed above, the CIT(A) rightly allowed the proportionate deduction in respect of project completed during the impugned assessment year. The provisions of taxing statute should be construed harmoniously with year. The provisions of taxing statute should be construed harmoniously with the object of statute to effectuate the legislative intention. Under the circumstances, proportionate deduction u/s.80IB(10) of the Act is justified. Accordingly, the order of CIT(A) on this issue needs no interference from our side. We uphold the same."*

17. *In view of categorical finding of the Tribunal that where the project in respect /of buildings 'A' and 'B' has been completed by 31.03.2009 and where non-completion of building 'C' was beyond the control of assessee, since it had not received FSI within stipulated period, we find no merit in the orders of authorities below in denying deduction under section 80IB(10) of the Act to the assessee for prorata units completed by the assessee before stipulated date, The issue in this regard is settled by various decisions of the High Courts including the decision of Hon'ble Bombay High Court in CIT Vs. Vandana Properties reported in 353 ITR 36*

(Bom.), wherein it has been held that the developer is entitled to pro-rate deduction under section 80IB(10) of the act on the completed units.”

(iv) Hon’ble Pune ITAT in case of M/s Varun Developers in ITA No. 1624/PN/2011 dated 22.03.2013

*In view of detailed discussion made herein above and the contention of AO that BU permission was not received by Appellant within prescribed period for all the blocks for which approval was given are already discussed by various Courts and AO has not brought any other contrary decision on record nor stated as to how decision relied upon by Appellant in Assessment Proceedings are not applicable to its facts, following the ratio laid down by various Courts, it is held that Appellant has rightly claimed deduction under Section 80-IB(10) on project Atlantis Park in return of income. The AO is directed to delete the addition made in Assessment Order. In nutshell, Appellant is entitled for deduction under Section 80-IB(10) for Rs. 42,52,86,128/-. The ground no. 1 & 2 have overlapping as far as issues are concerned. The **first issue** raised is to allow the deduction us. 80IB(10) stands disposed off in favour of appellant. Hence, this issue raised in ground no. 1 & 2 is **allowed.**”*

9. We find that the Hon’ble Jurisdictional High Court on the identical situation allowed the deduction claimed by the assessee under Section 80IB(10) of the Act in respect of the complete units with the following observation:

“5. We have heard Shri Pranav Desai, learned Counsel appearing on behalf of the appellant-revenue and considered the orders passed by the ITAT as well as CIT(A). It is required to be noted that the layout plan of the 'housing project' named 'Maninagar' at Rajkot came to be approved by the Assistant Town Planner on 30/03/2002 as also by the Collector, Rajkot on 17/04/2002 i.e much before the date 01/04/2004, which is the cut-off date. The said 'housing project' was with respect to 119 units. It was found that, out of 119 units, on most of the plots, after getting necessary approvals, constructions were already completed. Considering the above, ITAT granted deductions under Section 80-IB(10) of the Act with respect to those units constructed and completed prior to 31/03/2008. The CIT(A) while granting deduction under Section 80-IB(10) of the Act with respect to those units approved prior to 01/04/2004 and granted prior to 31/03/2003 has observed in paragraph 3.4 as under:

'3.4 I have carefully considered the finding given by the Assessing Officer and the contentions of the AR of the appellant The main basis of not allowing deduction u/s. 80-IB(10) by the A.O. appears to be the averment of the A.O. that the assessee has taken 69 approvals for construction and therefore it could not be construed approval for the entire project. The A.O. is of the view that S. 80-IB(10) Explanation (i) envisages approval to be obtained for such housing project, but does not envisage multiple approval or approvals in piecemeal manner. The AO. is also of the view that

Section 80-IB(10) uses the word 'approval' and not 'approvals' for housing project. Accordingly, the A.O. came to conclusion that the assessee has failed to fulfil the basic conditions laid down in Section 80-IB(10) and that is why the claim of deduction was disallowed. However, the above contentions of the A.O. is not correct. Firstly, he has not clearly pointed out which of the conditions laid down u/s. 80-IB(10) are not fulfilled by the appellant. As regarding his averment that Section 80-IB(10) uses the word 'approval' and not 'approvals' for housing project it appears that the A.O. has not properly gone through the other provisions of Section 80-IB(10). The word 'approval' can be taken and considered as singular and also multiples when more than one projects are there. In this connection, specific reference is made to the Section 80-IB(10) and the Explanation there below. The Explanation reads as under:—

"(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. "

Thus, from (I) above, it is clear that more than one approvals has also been envisaged by the Legislature in the Act and that is why it is mentioned 'in a case where the approval in respect of the housing project is obtained more than once...'. Thus, there is no bar in the Act for obtaining more than one approval. The basic fact is that the A.O. is to see whether the conditions laid down u/s. 80-IB(10) are cumulatively fulfilled or not? Here, in the case of appellant, the housing project 'lay out plan' has been approved by the Assistant Town Planner to RMC on 30/03/2002 as also by the Collector, Rajkot on 17/04/2002, which is much before the date 01/04/2004 which is the cut-off date. As far as the date of commencement is concerned, it has no relevance under the provisions of Section 80-IB(10) of the Act because the provisions only speak about the approval or date of completion. As far as the condition of the area of project is concerned it should be more than one acre, here in the case of appellant the project 'Maninagar' having 119 units was constructed on an area of 3.33 Acres. Similarly, the condition regarding built-up area per unit should be less than 1500 sq. ft. and there is no dispute regarding that in the appellant's case also because all the 119 units are having less than area of 1500 sq.ft. As regarding the date of completion it has been laid down in Section 80-IB(10) that the construction should be completed on or before 31/03/2008. Here, in the case of appellant, it is found that most of the units have been completed before 31/03/2008. However, it is found that out of 119 units, construction of some of the units was completed after 31/03/2008 as shown in the Table on pages 7 & 8 of the assessment order. The argument of the AR of the appellant is that during the year under consideration only 21 units have been sold and in case of all these units construction was completed before 31/03/2008. However, in my considered opinion, the units construction of which has been completed after 31/03/2008 will not be eligible for benefit u/s. 80-IB(10) in any year. From the copies of the commencement

and completion certificate issued by the RMC it is found that the same has been issued in the name of appellant-firm M/s. B.M. & Brothers for the housing project known as 'Maninagar' on Raiya Road and the same is given for construction of residential units. Further also brochure issued by the appellant-firm says that 'Maninagar' is a residential housing project wherein layout plan also shows that various houses are constructed on adjoining plots from Sr. Nos. 1 to 119 as per the approved layout plan giving place for roads and public plots. These factors also indicate that it is a residential housing project known as 'Maninagar' having composite residential units. The appellant also relied on the decision in the case of Vandana Properties [27 DTR (Mum) 282 (2009)], wherein it has been held by the Hon'ble Tribunal that the approval for separate buildings can be granted and that will not effect the claim of the assessee u/s. 80-IB(10) of the Act. Moreover, the Hon'ble ITAT, Bangalore in the case of Brigade Enterprises (P) Ltd. (119 ITJ 269) has held that although separate approvals are obtained for different units, if particular unit satisfied the conditions of Section 80-IB(10) deduction is to be granted. Therefore, keeping in view all the facts of the case and the legal issue involved, it is held that the appellant fulfils all the conditions laid down u/s 80-IB(10) of the Act and that the A.O's averment that on the basis of multiple approvals 80-IB deduction can be disallowed- is s held to be incorrect. Accordingly, the claim of deduction made by the appellant u/s. 80-IB is allowed and the addition made of Rs.1,45,67,940/- is hereby ordered to be deleted. However, the A.O. is directed to see if the construction of any unit is completed after 31/03/2008 during the year the eligible profit on the sale should be excluded from the 80-IB(10) deduction. Similarly for the assessment year subsequent to the A.Y. 2008-09 also he should keep in mind that whatever units which are sold after A.Y. 2008-09 and where date of completion is after 31/03/2008 no deduction u/s. 80-IB(10) should be allowed out of eligible profit. Accordingly, this ground of appeal is partly allowed.'

The Tribunal confirmed the aforesaid findings and has dismissed the appeal preferred by the revenue.

6. Considering the provisions of Section 80-IB(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 80-IB(10) of the Act with respect to only those units of 'housing project' named 'Maninagar' approved prior to 01/04/2004 and of which constructions 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 with respect to different units. The 'housing project' was approved prior to 01/04/2004 and constructions that have been put up have been completed prior to 31/03/2008.

7. Under the circumstances, in the facts and circumstances of the case, the respondent-assessee was entitled to deduction under Section 80-IB(10) of the Act with respect to those units, which were approved prior to 01/04/2004 and constructed prior to 31/03/2008. Under the circumstances, there is no substantial question of law arising in the present appeal and the same deserves to be dismissed and is accordingly dismissed.”

10. Respectfully relying upon the decision passed by the Hon'ble Jurisdictional High Court we find no justification in interfering with the order passed by the Ld. CIT(A) in allowing the claim of deduction under Section 80IB(10) on the units which are mentioned in the permissions issued by BU certifying completion as made by the assessee without any ambiguity so as to warrant interference. Hence, the Revenue's appeal is, thus, dismissed.

ITA No. 25/Ahd/2020(A.Y. 2014-15):-

11. The identical issue involved in the case has already been dealt with by us in ITA No. 24/Ahd/2020 for A.Y. 2013-14 and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, the appeal preferred by the Revenue is dismissed.

12. In the combined results, both the appeals preferred by the Revenue are dismissed.

This Order pronounced in Open Court on	10/06/2022
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Sd/-
(PRAMOD M JAGTAP)
VICE PRESIDENT

Ahmedabad; Dated 10/06/2022
TANMAY, Sr. PS

TRUE COPY

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

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

आदेशानुसार/ BY ORDER,

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

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DCIT vs. Shree Parshwanath Corporation
Asst.Year –2013-14 & 2014-15

- 10 -

1. Date of dictation 08 .06.2022
2. Date on which the typed draft is placed before the Dictating Member 08.06.2022
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S 08.06.2022
5. Date on which the fair order is placed before the Dictating Member for pronouncement .06.2022
6. Date on which the fair order comes back to the Sr.P.S./P.S 10 .06.2022
7. Date on which the file goes to the Bench Clerk 10 .06.2022
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....