

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 55/MUM/2021 (A.Y.2014-15)

Deputy Commissioner of Income-tax, Circle-3, Thane Room No.02, 6 th Floor, B-Wing, Ashar IT Park, Wagle Industrial Estate, Thane(W)-400 604	vs	M/s Pushpa Developers Company G-8, Vanraj CHS Ltd, Near Forest Colony, Kopri, Thane (E)-400 601 PAN : AADFP5631M
APPELLANT		RESPONDENT

C.O. No.77/Mum/2022
(Arising out of ITA No.55/Mum/2021)
(Assessment year : 2011-12)

M/s Pushpa Developers Company G-8, Vanraj CHS Ltd, Near Forest Colony, Kopri, Thane (E)-400 601 PAN : AADFP5631M	vs	Deputy Commissioner of Income-tax, Circle-3, Thane Room No.02, 6 th Floor, B-Wing, Ashar IT Park, Wagle Industrial Estate, Thane(W)-400 604
CROSS OBJECTOR		RESPONDENT

Assessee represented by	Shri Vipul Joshi
Department represented by	Shri Nihar Ranjan Samal, Sr.AR

Date of hearing	30/06/2022
Date of pronouncement	27/09/2022

ORDER**Per Kavitha Rajagopal (JM):**

This appeal has been filed by the Revenue as against the order of the Ld. Commissioner of Income-tax (Appeals)-2, Thane dated 26/02/2020 passed under section 250 of the Income-tax Act, 1961 and relates to assessment year 2011-12.

2. The assessee is engaged in the business of development of housing project under SRA and had shown gross total income of Rs.4,68,65,993/-. It is observed that the assessee had completed the development of building project named 'Shriram Project' and had shown gross total income of Rs.4,68,65,993/- and had followed the project completion method thereby arriving at total income of Rs.27,57,440/-. The assessee filed its return of income for the impugned year on 30/09/2009 declaring total income of Rs.27,57,440/-. The assessee's case was selected for scrutiny and assessment order under section 143(3) of the I.T. Act was passed on 18/03/2014 determining total income at Rs.6,25,92,012/-. It is observed that the assessee had claimed deduction under section 80IB(10) of the Act of Rs.4,40,90,875/- and had followed the project completion method of accounting. It was submitted that the assessee had developed the said project under government approved SRA Scheme which had commenced on 19/09/2006 and completed on 18/03/2011. It was further submitted that the total area of the plot was 1231.1 sq.mtr for which the assessee had valued 488.29 sq.mtr of unsold TDR of Rs.10,51,190/-. It is observed that the assessee had sold TDR admeasuring 1525 sq.mtr for a consideration of Rs.5,24,52,850/-. The sale price was worked out of Rs.34,395/- per sq.mtr and the Assessing Officer had worked out the

value of unsold TDR of 488.29 sq.mtr at Rs.1,67,94,886/- (-) Rs.5,24,52,850/- x 488.29 ÷ 1525 and arrived at the difference between the value determined by the Assessing Officer and the value adopted by the assessee to be Rs.10,51,190/- (Rs.1,57,43,696/- (-) 1,67,94,886/-). This was added to the total income of the assessee. It is observed that as the assessee was following project completion method, the income against the sale of TDR was declared during the year under consideration on completion of the project. The assessee claimed deduction under section 80IB(10) of the Act on the sale of TDR which was disallowed by the Assessing officer on the ground that deduction under section 80IB(10) was available only to eligible business and the profit must have been derived from developing and building housing projects. The Assessing Officer further stated that the TDR was generated to the assessee on account of development of project and the sale of TDR cannot be assumed as profit derived from that project, which, according to the Assessing Officer was not derived directly from the development of the project. The assessee was in appeal before the Ld.CIT(A) on the said disallowance. The Ld.CIT(A) allowed the claim of deduction under section 80IB(10) on the ground that the TDR rights sold by the assessee relates to the project which was ongoing and completed during the impugned year. The Ld.CIT(A) held that the profits accruing on sale of TDR rights are not contingent as per the prevailing market rate and are directly arising from the project completed by the assessee and allowed the deduction on this basis. The Revenue is in appeal before us as against the order of the Ld.CIT(A) in allowing the deduction under section 80IB(10) of the Act.

3. The Ld.DR contended that the assessee is not entitled to the deduction under section 80IB(10) on the ground that the said deduction is available to

eligible business only for deriving profits from development and building housing projects. The Ld.DR further contended that the TDR is not derived directly from the development of the assessee's project and that the assessee has not derived the said TDR from the eligible business of developing and building of housing projects. The Ld.DR stated that the assessee is not entitled to deduction under section 80IB(10) on this ground and further relied on the decision of the Assessing Officer.

4. The Ld.AR, on the other hand, contended that the TDR is derived from the development and building housing projects of the assessee under the SRA Scheme and that the profit and gain derived from the business of the assessee is eligible for deduction under section 80IB(10) of the I.T. Act. The Ld.AR stated that the assessee is following the project completion method wherein the sale of the said TDR is entitled to deduction under section 80IB(10) of the Act. The Ld.AR stated that the assessee is following the project completion method wherein the sale of the TDR is entitled to deduction under section 80IB(10) of the Act when the same is sold during the commencement of the project or during the year in which the project is completed. The Ld.AR further stated that the impugned sale of TDR was sold during the ongoing project period and the same was completed during the impugned year. The Ld.AR further relied on the order of Ld.CIT(A).

5. We have heard the rival submissions and perused the materials on record. It is observed that the assessee was engaged in the development of building projects and had undertaken SRA projects and was following the project completion method. It is also evidenced that the assessee had challenged the lower authorities' decision on double addition pertaining to the impugned sale of TDR in ITA No.1640/Mum/2020 and ITA

No.1641/Mum/2020. In the said appeals before the co-ordinate bench, the assessee though had challenged the addition of Rs.1,57,43,696/- on account of alleged difference in valuation of closing stock of unsold TDRs and the value at which the assessee has sold the TDRs, the said ground was withdrawn for the reason that the Ld.CIT(A) has allowed deduction under section 80IB(10) of the Act on the said addition resulting in acceptance of the income declared by the assessee in its return of income thereby resulting in no tax implication on the assessee. In the present appeal, the Revenue has challenged the action of Ld.CIT(A) in allowing deduction under section 80IB(10) of the Act on the ground that the sale of TDR is not out of the profit derived directly from the development of the project. It is evident that the TDRs that was sold by the assessee had nexus to the project which was ongoing during the impugned year under consideration. The Ld.CIT(A) has also held that there is no time lag in the sale of TDRs and the completion of the project as the same has been sold during the completion of the project. There is no question of appreciation in the valuation of TDRs in assessee's case negating the contingency in sale of TDR based on the market conditions. It is also pertinent to point out that as the assessee is frequenting such projects, the assessee has been maintaining regular stock of TDRs as part of the accounts of the assessee. The Ld.CIT(A) has rightly examined and appreciated the evidences furnished by the assessee company. The assessee has also relied on various decisions substantiating the claim of the assessee. Some of the cases relied upon by the assessee are as under:-

- (i) CIT vs Meghalaya Steels Ltd (2016) 382 ITR 217 (SC)
- (ii) CIT vs Sonasha Enterprises (ITA No.1391 of 2012, order dt 31.10.2014 (Bom HC)

- (iii) PCIT vs Pratham Developers (2021) 124 taxmann.com 365 (Guj)
- (iv) M/s Aarti Projects and Constructions vs DICT (ITA 4190/m/2016, order dated 05/01/2017)(Mum)
- (v) ITO vs M/s Citywood Builders Ltd ITA No.2101/M/2015, order dated 28.02.2017 (Mum)
- (vi) Rehab Housing Pvt Ltd vs DCIT (ITA No.7498/M/2014, order dated 22.06.2017)(Mum)

By respectfully following the said decisions and from the above observation , we are inclined to hold that there is no infirmity in the order of the Ld.CIT(A) in allowing deduction under section 80IB(10) of the Act subject to availability of profits from eligible project from which the TDR rights are derived. In the result, we dismiss this ground of appeal filed by the Revenue.

6. The other grounds filed by the Revenue are ancillary to ground 1 and are hereby dismissed accordingly.

CROSS OBJECTION NO.77/Mum/2022

7. The assessee has filed this cross objection challenging the addition of Rs.1,57,43,696/- on account of alleged difference in valuation of TDRs as closing stock. The Ld.AR for the assessee had not pressed ground 1 raised on violation of principles of natural justice.

8. Grounds 2.1 to 3.2 pertain to the said addition. As mentioned above in the brief facts of the appeal, the difference between the value arrived at by the Assessing Officer and the value adopted by the assessee in the sale of TDR was added to the income of the assessee by the Assessing Officer and confirmed on appeal before the Ld.CIT(A). The assessee has challenged this ground of appeal before us. Though the income of TDR is eligible for deduction under section

80IB(10) of the Act, but what is the quantum of such deduction is also to be ascertained necessarily. To compute such income eligible for deduction, it is necessary to compute, correct valuation difference of TDR. Therefore, in our considered opinion, this ground raised by the assessee needs verification by the Assessing Officer and is hereby remanded to the file of the Assessing Officer for the purpose of computing the difference in the value arrived at by the Assessing Officer from that of the value adopted by the assessee. In the result, the cross objection filed by the assessee is partly allowed.

9. In the result, the appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 27th September, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 27/09/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai