

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Virtual Hearing)

ITA No.34 to 37/Ind/2022

Assessment Year: 2012-13 to 2014-15 & 2017-18

ACIT-2(1), Bhopal (Appellant/Assessee)	बनाम/ Vs.	M/s. D.K. Construction, Bhopal (Respondent/Revenue)
P.A. No. AAAFD 7121 P		

ITA No.24/Ind/2022

Assessment Year: 2017-18

M/s. D.K. Construction, Bhopal (Appellant/Assessee)	बनाम/ Vs.	ACIT 2(1) Bhopal (Respondent/Revenue)
P.A. No. AAAFD 7121 P		
Appellant by	Shri S.S. Deshpandey, AR	
Respondent by	Shri P.K. Mishra, CIT-DR	
Date of Hearing:	07.12.2022	
Date of Pronouncement:	31.01.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by separate appeal-orders, all dated 13.12.2021, passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**Ld. CIT(A)**], which in turn arise out of assessment-order dated 30.11.2018 u/s 147 read with section 143(3) for assessment-year [**AY**] 2012-13 and

2013-14, dated 29.12.2016 u/s 143(3) for AY 2014-15, and dated 29.12.2019 u/s 143(3) for AY 2017-18; all passed by learned ACIT-2(1), Bhopal [**“Ld. AO”**], the revenue/assessee has filed the captioned appeals.

2. All these appeals relate to the same assessee and several grounds are identical; therefore they were heard together and are being disposed of by this common-order for the sake of convenience.

3. Briefly stated the facts are such that the assessee is a firm engaged in the business of builder and developer of housing projects. The cases of assessee were subjected to re-assessment u/s 147 or normal scrutiny-assessment u/s 143(3) wherein the deduction u/s 80-IB(10) was disallowed and certain additions based on survey-proceeding were also made. Being aggrieved, the assessee filed first-appeals to Ld. CIT(A) and succeeded in all assessment-years but, however, could not succeed on some grounds in AY 2017-18. Now, the revenue/assessee have come in these appeals before us assailing the orders of first-appellate authority.

4. We will proceed year-wise for the sake of smooth adjudication.

ITA No. 34/Ind/2022 – Revenue’s appeal for AY 2012-13:

ITA No. 35/Ind/2022 – Revenue’s appeal for AY 2013-14:

ITA No. 36/Ind/2022 – Revenue’s appeal for AY 2014-15:

5. These appeals involve identical grounds with varying amounts. Therefore, we take up AY 2012-13 as a lead case and our findings shall apply *mutadis mutandis* to all other years.

6. The grounds raised by revenue in AY 2012-13 are as under:

“1. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.10,81,30,132/- made by AO in AY 2012-13 on account of disallowance of deduction claimed u/s 80-IB(10) of the Income Tax Act, 1961 by allowing the deduction on "proportionate completion" where there is no such provision envisaged in the Income Tax Act, 1961.

2. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,81,30,132/- made by AO in AY 2012-13 on account of disallowance of deduction claimed u/s 80-IB(10) of the Income Tax Act, 1961 without appreciating the fact that the project was not complete on the cut-off date and completion certificate had not been issued by the competent authority.

3. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction on "proportional completion" whereas explanation (ii) below the section 80-IB(10) of the IT Act talks clearly about "date of completion of housing project" to be the "date on which completion certificate in respect of such housing project" was issued by the local authority.

4. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that completion of part of housing project will entitle assessee to claim deduction u/s 80-IB(10) of IT Act even though the act prescribe for completion of "Such housing Project" as has been approved by local authority in terms of clause (iii) of 80-IB(10)(a) of IT Act, 1961.

5. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,81,30,132/- made by AO in AY 2012-13 on account of disallowance of deduction claimed u/s 80-IB(10) of the Income Tax Act, 1961 by not following the order of Hon'ble Jurisdictional High Court of Madhya Pradesh in number ITA No. 65/2012 & 161/2012 in the case of the assessee for AYs 2005-06 & 2008-09 and full bench decision of Hon'ble jurisdictional High Court in the case of Commissioner of Income Tax Bhopal Vs Global Reality in ITA No.35/2012, 36/2012 and 40/2012 wherein it has been held that the deduction u/s 80-IB(10) is allowable only if the completion certificate has been issued by the competent authority before the cut-off date.

6. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,81,30,132/- made by AO in AY 2012-13 on account of disallowance of deduction claimed u/s 80-IB(10) of the Income Tax Act, 1961 by not following the Judgment of Hon'ble Supreme Court of India in the case of Commissioner of Custom (Import) Mumbai Vs. Dilip Kumar and Company & Others (TS-336-SC-2018-CUST) and Ram Nath & Co. Vs. Commissioner of Income Tax Civil Appeal No. 2510 of 2020 @ SLP(C) No. 23699 of 2016 wherein it has been held that exemption provisions should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue."

7. Although the revenue has raised several grounds, the sole controversy involved in these grounds is the entitlement of deduction u/s 80-IB(10) claimed by assessee.

8. Facts apropos to the issue are such that the assessee developed a housing project named "D.K. College" and claimed deduction u/s 80-IB(10). During assessment-proceeding, the Ld. AO observed that the impugned project consisted of 180 residential units; that it was approved by local authority on 24.03.2017 and accordingly it was required to be completed by 31.03.2012 as per provisions of section 80-IB(10); but the assessee completed only 178 units by 31.03.2012 and 2 units viz. Unit No. 151 and 152 remained uncompleted. The Ld. AO also observed that the 2 units remaining uncompleted were part and parcel of the entire housing project and did not constitute either a separate housing project or a separate block. Ld. AO further observed that the section 80-IB(10) allows deduction only if the entire housing project is completed within the specified time and since in the present-case, the assessee had completed a part of the project (178 units) but not entire project, it is not entitled to deduction. With such observations, the Ld. AO disallowed deduction.

9. During first-appeal, the assessee made a detailed submission to Ld. CIT(A) which is re-produced in the order of appeal in Para No. 3.1.1. The Ld. CIT(A), after considering those submissions, allowed the claim of assessee by observing and holding thus:

“3.1.2 *I have considered the facts of the case, plea raised by the appellant and findings of the AO. As culled out from the assessment order the sole reason for disallowance of claim of deduction u/s 80IB(10) of the Act to the appellant with respect to project 'D.K Cottage' was that the completion certificate was not issued for entire project. As regard, to the project namely, 'D.K Cottage' initially a lay out plan of the project for construction of colony on 180 plots was approved by the Town and Country Planning department on 02.11.206. Thereafter, the project was given building permission by local authority 'Municipal Corporation Bhopal' vide permission No NC5314-2188-32007 dated 24.03.2007, thereafter permission was granted vide permission No*

NC5314-980-122009 dated 21.12.2009, NC5211-488-62010 dated 15.06.2010, OC5211-993-82010 dated 10.08.2010 and NC5211-300-52011 dated 16.05.2011. Hence, the project was given approval on 5 occasions for total 180 units. As per provisions of section 80IB(10)(a)(iii)(expl.i) of the Act, the approval date shall be the date when the building plan of such housing project was first approved by the local authority i.e. on 24.03.2007. Therefore, as per provisions of section 80IB(10)(a)(i) of the Act, the construction of project was to be completed on or before 31.03.2012. The building permission was granted by Municipal authorities for construction on 147 plots and the remaining 33 plots were withheld with the local authority as mortgage. Out of these 33 plots, 31 plots were released in phase wise manner on 31.07.2009, 30.10.2009, 21.04.2010, 16.07.2010, 01.10.2010 & 25.02.2011. Two plots which remained unconstructed and mortgage with local authority were plot no 151 & 152. Therefore, the appellant for getting exemption u/s 80IB(10) of the Act applied for completion certificate before local authority for all 178 constructed units and the same was provided by local authority vide F.No 543/ **भ.अ.शा./शिन/12** dated 31.03.2012 for 178 units. The completion certificate was issued after site verification by official of local authority. Two plots which remained unconstructed and mortgage with local authority were plot no 151 & 152 and plot no 151 was released by local authority vide order No 1848 dated 18.05.2012 and plot no 152 was released by local authority vide order No 282 dated 26.02.2015. Therefore, there was a reasonable cause with the appellant for not getting completion certificate for all 180 units. Per contra, the ld AO has alleged that the two units which remained incomplete as on 31.03.2012 were part and parcel of entire housing project approved by local authority on 24.03.2007 and so as per conditions stipulated under section 80IB(10) the appellant has to complete the project as a whole within the specified time. Before moving further, I find it apt here to reproduce relevant provisions of section 80IB(10) for better clarity of law and for ready reference:-

“Section 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 kilometres from the municipal limits of these cities and one thousand and five hundred square 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 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,

(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).

From the above mentioned provisions of section 80IB(10), the law does not bound any assessee to getting completion certificate for entire project. The Legislature had used the expression 'the residential unit' in clause (c) of section 80IB(10) of the Act and omitted to use of the expression 'each residential unit'. The omission is deliberate, because in several sections of the Act and under the Income-tax Rules, 1962, the Legislature has expressly used the word 'each'. Further, the expression used 'housing project' in Explanation (ii) of sub clause (iii) of clause (a) of section 80IB(10) of the Act and omitted to use of the expression 'entire housing project'. Here also the omission is deliberate, had there been a case where legislature bounds the assessee to get completion of entire project the same would have been clearly mentioned in the statute.

3.1.3 *Now the only moot question which arises out here is that whether the appellant can be granted proportionate relief for the part of completed work within the purview of provisions of section 80IB(10) of the Act. In this regard I would like to place reliance on the decision of Hon'ble ITAT Pune in the case of Ramsukh Properties vs DCIT ITA No 84/PN/2011 dated 25.07.2012 wherein Hon'ble ITAT has allowed prorata deduction u/s 80IB(10) of the Act for the project of assessee which was approved for 205 flats and construction was completed for 173 flats within the specified period. The operative portion of the order is reproduced here under:-*

"We agree to proposition put forward by Ld. Departmental Representative that plain reading of section 80IB(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."

*Similar view was taken by Hon'ble Pune ITAT in the case of **Shewale & Sons Pune vs ITO** ITA No 443/Pune/2016 dated 12.03.2020 wherein prorata deduction for 48 completed units was given against 60 approved units. The relevant extract of decision is as under:-*

*"6. The brief facts on the issue are that the assessee had permission to commence construction in respect of 60 flats, the PMC granted completion certificates only in respect of 48 flats. The assessee has himself submitted before the Revenue Authorities that completion certificates for the balance 12 flats are yet to be received from the PMC and that the PMC has withheld the completion certificate pending the surrender of the area of the D.P Road. The Assessing Officer held that the initial permission being given to the 60 flats the assessee has, therefore, failed to complete the project within 4 years from the ends of the financial year in which the project was approved i.e.31.03.2009. Therefore, deduction u/s.80IB (10) of the Act is also not admissible to the assessee for not having completed the project during the eligible period. The assessee on the other hand states that even though the occupancy certificate for these 12 flats have not been granted by PMC, in fact, these 12 flats are constructed and completed as per approved building plan. The assessee has placed on record electricity bills and property tax payment challens for these 12 flats and has placed reliance on the decision of the Hon"ble Bombay High Court in the case of **CIT Vs. Hindustan Samuh Awas Ltd. (2015) 377 ITR 150 (Bom.)** for the proposition that where the application was filed in time the delay in obtaining the completion certificate was not attributable to the assessee and he cannot be penalized.*

7. The Ld. CIT(Appeals) observed that the facts of the instant case are distinguishable from those before the Hon"ble High Court in as much as here though the application was made in time the Municipal Corporation knowingly did not grant completion for 12 flats on which it had some objection. It is quite clear from the scheme of the section as well as the various High Court pronouncements and also the recent

*decision of the Hon“ble Supreme Court in the case of **CIT Vs. Sarkar Builders, CA No.4476 of 2015** that the project has to commence as certified by the local Municipal Authorities and its completion also has to be certified by the same authority.*

The Ld. CIT(Appeals) after considering the assessment order, submissions of the assessee and facts of the case has held as follows:

“4.6.1 Reference is again made on this issue to the decision of ITO Vs. Satyanarayan Ramswaroop Agarawal (2014) 50 taxmann.com 111 Pune which has very similar facts. The operative portion of the order is reproduced below:

“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. DCIT, 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 80IB(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. 80IB(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 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." Therefore, respectfully following the decision of the ITAT, Pune the appellant is allowed deduction only in respect of 48 flats out of the 60 flats. Thus, the deduction should be restrained to 80% out of the total deduction claimed."

Therefore, the Ld. CIT(Appeals) allowed deduction in respect of 48 flats out of 60 flats and for the balance 12 flats regarding whom completion certificate was not obtained by the assessee, deduction u/s.80IB(10) of the Act was disallowed.

8. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case. We

observe that it is settled position of law that within stipulated time, application has to be made before the concerned authority and again within specified time, the project has to be completed and after completion, the Municipal Authority/local authority has to give a completion certificate only then the deduction u/s.80IB(10) of the Act is justified.

8.1 In this case, the Ld. CIT(Appeals) in his order relying on the decision of the Co-ordinate Bench of the Tribunal, Pune (supra.) has given deduction in respect of those flats for which the essential ingredients of Section 80IB(10) of the Act has been complied with by the assessee specially completion certificate. However, regarding balance 12 flats, there was no completion certificate obtained from the concerned authority and therefore, the deduction u/s.80IB(10) of the Act has been rightly denied in respect of those 12 flats. The facts further demonstrate that the assessee has accepted disallowance made by the Assessing Officer for assessment year 2009-10 and paid the entire demand and has not filed an appeal against that order. The Explanation of the provision clearly states 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.” This signifies that in order to get deduction under the relevant provision, after completion of the project, completion certificate has to be obtained from the concerned authority i.e. Municipal Corporation etc. which cannot be done away with. This becomes the fundamental requirement of this provision since prior to receiving the completion certificate whatever work is done, it cannot be said that the project has been completed and there has to be some authoritative check and finding about the completion of the project which is thereafter fit for residing etc. Therefore, we do not find any infirmity with the findings of the Ld. CIT(Appeals) and the same is hereby upheld.

3.1.4 *Thus, from the above discussion, it is evidently clear that the appellant is entitled for prorata deduction for completed units within the meaning of provisions of section 80IB(10) of the Act.*

3.1.5 *The ld AO has also alleged that the completion certificate submitted by the appellant was for residential units and not for housing project as envisaged in the Act. It is apt here to mention that Hon'ble Karnataka High Court in the case of **PCIT vs Majestic Developers** (2020) 426 ITR 0175 (Kar HC) has held that the contentions of the revenue that completion certificate needs to be issued by the local authority as prescribed u/s 80IB(10) of the Act cannot be accepted. The said order has also been affirmed in Apex Court in the case of **PCIT vs Majestic Developers** (2021) 431 ITR 49 (SC) wherein it was held that the proof of completion of the project within specified time must be satisfied in terms of local state Act. In the instant case, the MP Municipal Corporation Act has no provision for issuing completion certificate of a project and section 301 of the Act provides that the*

builder should send a notice in writing to the authorities informing completion of work and thereafter the Commissioner will inspect and issue an occupancy certificate. Since, there exists no special provision for issuing completion certificate in local state act, the ld AO cannot insist on producing a completion certificate in accordance with the provisions of section 80IB(10) of the Act.

3.1.6 *Considering the above discussion facts and law, it has been found that it is an undisputed fact that the appellant had completed construction of 178 residential units within the stipulated time period as per the provisions of section 80IB(10) of the Act. It has also been found that 33 plots were mortgaged as per the requirement of the approving authority at the time of initial approval of the project under consideration. 31 plots were de-mortgaged by the local authority before 31.03.2012 and the appellant completed the construction of residential units on them within the time frame allowed as per the Act. Remaining two plots had been released by the municipal authorities after 31.03.2012. Considering the fact, it is evident that the situation was not under the control of the appellant. Completion of the project was depended upon the rules and procedure of the local authority. Therefore, for its no fault, the appellant should not be suffered. It will not be justified to withdraw entire deduction for not completing construction of two units for which the appellant was not responsible. Thus, the appellant is entitled for deduction of profit derived from sale of at least 178 units. In view of the above discussion, the appellant is eligible for the deduction of profit derived from sale of residential units in the year under consideration where completion certificate was issued before specified date as per section 80IB(10) of the Act. However, the ld AO is directed to disallow claim of deduction u/s 80IB(10) of the Act with respect of two units as discussed above in the respective years. Accordingly, the ld. AO is directed to allow deduction of Rs.10,81,30,132/- in the year consideration. Therefore, appeal on these grounds is **allowed.**”*

10. Before us, the Ld. DR representing the revenue made a detailed submission and supported the action of Ld. AO and disagreed with the decision of Ld. CIT(A). The Ld. DR started his pleadings by inviting our attention to the provision of section 80-IB(10)(a)(iii) which is reproduced below:

“(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) XXX
- (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.”*

Analyzing this, the Ld. DR argued that the body of section clearly prescribes that the “housing project” must be completed within five years from the end of the financial year in which the “housing project” is approved and further the Explanation to section also prescribes 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. Ld. DR submitted that the phraseology of section leaves no doubt in interpretation in as much as the words “housing project” have been used at multiple places, which clearly demonstrate that the entire “housing project” must be completed within the specified time.

11. Then, the Ld. DR distinguished the legal decisions adopted by Ld. CIT(A) for giving relief to the assessee. We extract below those decisions and the analysis presented by Ld. DR:

- (a) Ramsukh Properties Vs. DCIT, ITA No. 84/PN/2011 dated 25.07.2012 (ITAT-Pune):

It was held:

“We agree to proposition put forward by Ld. Departmental Representative that plain reading of [section 80IB\(10\)](#) 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. Assesses 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 the 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".

Ld. DR submitted that in this decision, there was a revision of approved-plan of the housing project, but in the present-case of assessee there is no such revision. Hence the decision is not applicable.

(b) Shewale & Sons Pune Vs. ITO, ITA No. 443/Pune/2016 dated 12.03.2020 (ITAT Pune):

It was held:

"6. The brief facts on the issue are that the assessee had permission to commence construction in respect of 60 flats, the PMC granted completion certificates only in respect of 48 flats. The assessee has himself submitted before the Revenue Authorities that completion certificates for the balance 12 flats are yet to be received from the PMC and that the PMC has withheld the completion certificate pending the surrender of the area of the D.P Road. The Assessing Officer held that the initial permission being given to the 60 flats the assessee has, therefore, failed to complete the project within 4 years from the ends of the financial year in which the project was approved i.e.31.03.2009. Therefore, deduction u/s.80IB (10) of the Act is also not admissible to the assessee for not having completed the project during the eligible period. The assessee on the other hand states that even though the occupancy certificate for these 12 flats have not been granted by PMC, in fact, these 12 flats are constructed and completed as per approved building plan. The assessee has placed on record electricity bills and property tax payment challans for these 12 flats and has placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Hindustan Samuh Awas Ltd. (2015) 377 ITR 150 (Bom.) for the proposition that where the application was filed in time the delay in obtaining the completion certificate was not attributable to the assessee and he cannot be penalized."

Ld. DR submitted that in this decision, the construction-permission was withheld by local authority due to surrender of the area of 12 flats, but in the present-case of assessee there is no such surrender. Hence, the decision is not applicable.

12. With these submissions, the Ld. DR strongly contended that the Ld. AO has rightly disallowed the deduction to assessee and the Ld. CIT(A) has wrongly reversed the action of Ld. AO, accordingly he urged to uphold the disallowance.

13. Per contra, the Ld. AR initially drew our attention to certain facts with reference to the documents placed in the Paper-Book. He carried us to Page No. 40 to 43 of the Paper-Book where a layout plan of 180 units dated 02.11.2006 approved by local-authority is placed. Then, he carried us to Page No. 44 to 59 where different permissions granted by the local-authority from time to time during the period 24.03.2007 to 16.05.2011 for construction of flats (except Flat No. 151 and 152) have been accorded. Then, he carried us to Page No. 60 of the Paper-Book where a copy of the completion-certificate dated 31.03.2012 issued by local-authority is placed, according to which the construction of 178 units had been completed. Thereafter, the Ld. AR carried us to Page No. 116 to 132, where a copy of the "Mortgage Release Deed" executed by and between the local-authority and the assessee is placed. On Page No. 2 to 5 of this Release-Deed, it is clearly mentioned that total 33 Units were held by local-authority under mortgage in terms of Madhya Pradesh Nagar Palika Coloniser Regulations, 1998; out of which 31 plots were released from time to time and the remaining two plots, being No. 151 and 152, were released on 30.05.2012 / 26.02.2015. Ld. AR also carried us to subsequent Page No. 133 to 137 and demonstrated that ultimately the local-authority granted construction-permission over those 2 plots on 27.12.2012 / 14.09.2015 after release of mortgage. With these clinching evidences, the Ld. AR submitted that it is true that the layout plan was for 180 units but we need to look further. He submitted that project consisted of 180 units, but out of those 180 units a total of 33 units were held by local-authority under mortgage in terms of statutory law i.e. Madhya Pradesh Nagar Palika Coloniser Regulations, 1998 and out of those 33

mortgaged units, 2 units were not released till 31.03.2012 and that is the sole reason that the assessee was not able to construct those 2 units.

14. Then, the Ld. AR submitted that the decision in **Ramsukh Properties (supra)** and **Shewale & Sons Pune (supra)**, relied upon by Ld. CIT(A) are not against assessee as claimed by Ld. DR; in fact those decisions support the case of assessee. Ld. AR submitted that in **Ramsukh Properties (supra)**, the Hon'ble ITAT observed "*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.*" Further, in **Shewale & Sons Pune (supra)** the Hon'ble ITAT observed "*The brief facts on the issue are that the assessee had permission to commence construction in respect of 60 flats, the PMC granted completion certificates only in respect of 48 flats. The assessee has himself submitted before the Revenue Authorities that completion certificates for the balance 12 flats are yet to be received from the PMC and that the PMC has withheld the completion certificate pending the surrender of the area of the D.P Road.*" Thus, the Ld. AR submitted, it is very much clear that in both of those cases, a few units of the project could not be completed due to the reason beyond control of assessee, but however the assessee completed the remaining portion of the project which was within his own control. Ld. AR submitted in the present-case too, the assessee had to mortgage 33 plots to local authority in terms of statutory regulations and the local authority did not release 2 plots by 31.03.2012. Therefore, the reason of non-construction over those 2 plots by 31.03.2012 was beyond the control of assessee; but, however, the assessee completed rest of the 178 units which were within his control. Thus, according to Ld. AR, the rationale adopted by Hon'ble ITAT

in **Ramsukh Properties (supra)** and **Shewale & Sons Pune (supra)**, is very much applicable to assessee.

15. With these submissions, Ld. AR strongly pleaded that the assessee has rightly claimed deduction and the Ld. CIT(A) has also allowed the same after considering all these factual aspects and the abovementioned decisions in his order. Hence, there is no infirmity in the order of Ld. CIT(A) and his action must be upheld.

16. We have considered rival submissions of both sides and perused the material held on record, the provisions of section 80-IB(10) and the judicial precedents to which our attention has been drawn. At the outset, we find a strong merit in the submission of Ld. DR that the section 80-IB(10) clearly prescribes that the “housing-project” must be completed within the specified time. In fact, that is also the intention of the Parliament that entire project as approved by local-authority must be completed. Further, we need to rule out the proposition that even if a part of the project is completed, deduction is allowed because if that is permitted, a person may complete say 40% of the project and still claim proportionate deduction of 40% without serving the purpose of the legislation. Therefore, to that extent, we agree with the Ld. DR. Now, turning to the present-case, it is on record that the project consisted of 180 units out of which the assessee had completed 178 units by specified-date. Ordinarily, in such a scenario, the deduction may not be allowable but we have to go further to look into the facts and not just stop here. In the present case, as noted above, 33 plots were held by local authority under mortgage in terms of statutory regulations and those plots were released from time to time as per their laws and systems. It is further evident from the documents placed in the Paper-Book that 2 plots were not released uptill 31.03.2012 i.e. the specified date in section 80-IB(10); they were released after 31.03.2012. In such a case, the non-construction

of those 2 units was not within the control of assessee. As a matter of fact, we even do not find any mala fide on the part of assessee in not completing those 2 units; rather the assessee has duly completed 178 units and there were only 2 units which could not be constructed for the reason of mortgage held by local authority. This situation is clearly in line with the decisions in **Ramsukh Properties (supra)** and **Shewale & Sons Pune (supra)**. Needless to emphasize that the facts of one case may differ from other, which is very common, but it is the underlying rationale which is relevant. Therefore, the position of assessee certainly fits in those decisions. Hence, we do not agree with the submission of Ld. DR that those decisions are not applicable to assessee; on the contrary we agree with the submission of Ld. AR that those decisions clearly apply to assessee. That brings us to conclude that the line of reasoning adopted by Ld. CIT(A) in allowing deduction to the assessee does not suffer from any kind of infirmity. We, thus, uphold his action and dismiss the grounds raised by revenue.

17. In view of above discussion and for the reasons stated therein, the Revenue's ITA for AY 2012-13, 2013-14 and 2014-15 are hereby dismissed.

ITA No. 37/Ind/2022 – Revenue's appeal for AY 2017-18:

18. The revenue has raised 8 grounds in this appeal.

Ground No. 1 to 6:

19. These grounds relate to the deduction u/s 80-IB and are identical to the grounds raised in ITA for AY 2012-13, 2013-14 and 2014-15. Hence, our findings / conclusion made therein, as stated above, will apply *mutadis mutandis*. Therefore, applying the same, we dismiss ground No. 1 to 6.

Ground No. 7 to 8:

20. These grounds relates to the addition of Rs. 27,52,340/- and Rs. 20,00,000/- on account of undisclosed/suppressed profit on sale of a bungalow. The revenue has raised following grounds:

“7. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 27,52,340/- made by Assessing Officer in AY 2017-18 on account of undisclosed profit ignoring the judgement of Hon’ble Supreme Court in case of M/s Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana wherein Hon’ble SC has held that sale of immovable property is to be recognized through registered sale-deed.

8. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 20,00,000/- made by Assessing Officer in AY 2017-18 on account of suppression of sale.”

21. During assessment-proceeding, the Ld. AO observed that the assessee has executed a registered sale-deed dated 29.03.2017 of Bungalow No. 15 in favour of Shri Amar Singh (buyer) for Rs. 42,00,000/-. The Ld. AO observed that the sale-deed was dated 29.03.2017 which showed that the sales had taken place in the previous year 2016-17 relevant to the AY 2017-18 but the assessee had not declared such sale in its books of account. Accordingly, Ld. AO computed cost of the bungalow at Rs. 14,47,660/-, deducted the same from sale price of Rs. 42,00,000/- shown in registered-deed and thus made an addition of Rs. 27,52,340/- on account of undisclosed income. The Ld. AO further observed that the assessee had actually received a sum of Rs. 62,00,000/- from Shri Amar Singh [which is disclosed as “Advance for booking” in books of account] and not Rs. 42,00,000/- as shown in the registered-deed, therefore an income of Rs. 20,00,000/- had been suppressed. Thus, he made a further addition of Rs. 20,00,000/-.

22. We find that the Ld. CIT(A) has discussed the findings of Ld. AO as well as his own observations and conclusion on this issue and thereafter deleted the twin-additions by observing and holding thus:

“3.2.2 I have considered the facts mentioned in the assessment order and submissions of the appellant. The ld AO has estimated the profit on sale of bungalow at Rs. 27,82,340/-. The ld AO found that cost of six bungalows in D K Cottage project was Rs. 86,85,957/-. Accordingly, the cost of one bungalow has been worked out to Rs. 14,47,660/-. Hence, profit on sale of bungalow to Shri Amar Singh was determined at Rs. 27,52,340/- (Rs. 42,00,000/- - Rs. 14,47,660/-). On perusal of filed written submission and assessment order it was found that the appellant before the ld AO as well as before me has taken same plea that the sales is recorded in profit and loss account only when possession of the property is transferred to the buyer and the same modus operandi has been adopted in earlier years also which has been accepted by the AO. In the case of Shri Amar Singh the registry of bungalow No 15 was done on 29.03.2017, however, possession of the bungalow was transferred in the month of April, 2017. As per appellant the registry of the property is got done at any stage of the construction as per requirement of the buyer for loan or otherwise. However, the sale is recognized at the possession is handed over to the buyer. The same modus operandi has been followed by the appellant since its inception. In order to verify the claim, the appellant vide letter dated 07.12.2021 was required to furnish explanation with supportive documentary evidences regarding the modus operandi being adopted for recording sales in books of account. the appellant in reply on 10.12.2021 filed submissions with supportive documentary evidences viz copy of sales accounts from 01.04.2012 to 31.03.2013, copy of registered sale deed, details of payments, copy of possession letter issued to Shri Praveen Kishor Gupta, Shri Ashwini Arora, Shri jagdish Arora and Mrs Meenakshi Dhoot. On perusal of evidences filed by appellant the following observations have been made:-

Name of the customer	Date of registration	Full payments received on or before	Date of possession	Date of recognition of sales
Mr Praveen Kishore Gupta	21.03.2012	16.03.2012	31.05.2012	31.05.2012
Mr Ashwini Arora	30.03.2012	29.03.2012	28.05.2012	28.05.2012
Mr Jagdish	25.04.2011	25.04.2011	30.05.2012	30.05.2012

Arora				
Mrs Meenakshi Dhoot	24.10.2011	20.10.2011	31.05.2012	31.05.2012

From the above, it is evidently clear that the appellant has been recording sales after the possession is handed over to the buyer. Thus, the appellant has followed same modus operandi in the year under consideration as followed during the AY 2012-13 where no adverse finding has been made by the AO in the modus operandi being adopted by the appellant for recording sales in its books of accounts. Therefore, the accounting system consistently followed by the appellant should not be disturbed.

3.2.3 *The ld AO has also alleged that the appellant has not followed proper accounting principles for revenue recognition as per Accounting standard 9 of the ICAI. The ld AO has also made reference of para 11 and 10 of Accounting Standard 9 in para 6.1 of the assessment order, as per which revenue from sales or services should be recognized when the requirements as to performance set out in paragraph 11 & 12 are satisfied. Before parting I find it important to discuss the paragraph 1 & 2 of the said accounting standard. As per para 1 of AS-9, the standard is concerned with recognition of revenue arising out of ordinary activities of the enterprises from sales of goods, rendering services and use by others of enterprise resources yielding interest, royalties and dividends. However, para 2 of AS-9 provides exception for recognition of revenues in cases where special considerations apply such as **revenue from construction contracts**, revenue from hire-purchase, lease agreements, revenue from government grants and revenue from insurance companies arising from insurance contract. Clearly, the revenue arising from construction contract has kept in category where special considerations are applied. The case of appellant also falls under such category and therefore, Accounting standard 9 has no applicability in the case of appellant.*

3.2.4 *Nevertheless, the appellant has recorded the impugned sale in its books of account in AY 2018-19, when possession of the property was handed over to the buyer. The AO before making addition in AY 2017-18 ought to have reduced income of AY 2018-19, which has not been done in AY 2018-19. The addition made by the AO in AY 2017-18 has resulted into double taxation which is not permissible in the eyes of law. Further, the appellant has offered the amount under consideration for taxation by recording this transaction in its regular books of account maintained for AY 2018-19. Therefore, it is not justifiable to make addition of profit on sale of the bungalow under consideration.*

3.2.5 *Furthermore, the ld AO made an addition of Rs. 20,00,000/- on account of amount received over and above sale consideration. The ld AO found that the appellant has received total sum of Rs. 62,00,000/- as advance from*

booking from Shri Amar Singh, however, the registry was done at Rs. 42,00,000/- only. The appellant during appellate proceedings has filed copy of ledger account of Shri Amar Singh. On perusal of the same, it was found that the sale was made at Rs. 62,00,000/- and the said amount is fully recorded in books of accounts. Thus, the ld AO was factually incorrect by adopting only registered sale as sale consideration and not the entire amount received by appellant which was against registry and construction and the same is fully recorded in books of accounts in AY 2018-19.

3.2.6 *In view of the above discussion, the ld AO was not justified in making impugned additions in the hands of appellant. Thus, addition made by the ld AO amounting to **Rs. 27,52,340/-** & **Rs.20,00,000/-** are **deleted**. Therefore, appeal on these grounds is **allowed**.”*

23. Before us, both sides made their respective contentions for and against the actions of the Ld. CIT(A). After a careful consideration, we observe that the Ld. CIT(A) has adequately and elaborately dealt with the issue at length and given a well-reasoned order. Hence, we hardly need to repeat the same. We only suffice to conclude that there is no infirmity in the order of Ld. CIT(A) whereby he has deleted the additions. Being so, these grounds of revenue are also dismissed.

24. With this, the revenue's appeal for AY 2017-18 is also dismissed.

ITA No. 24/Ind/2022 – Assessee's appeal for AY 2017-18:

25. The assessee has raised 3 grounds in this appeal.

Ground No. 1 to 2:

26. These grounds relate to the addition of Rs. 32,37,000/- and Rs. 2,68,900/- made by Ld. AO on account of undisclosed cash loans given by assessee to different persons and interest earned thereon. The grounds raised by assessee read as under:

“1. That on the facts and in the circumstances of the case of the assessee, the Ld. Commissioner of Income-tax was not justified in confirming the addition of Rs. 32,37,000/- based on loose papers without any corroborative evidence to constitute it as income.

2. That on the facts and in the circumstances of the case of the assessee the Ld. Commissioner of Income-tax was not justified in confirming the addition of Rs. 2,68,900/- based on loose papers without any corroborative evidence to constitute it as income.”

27. Facts *qua* these additions are such that a survey u/s 133A was conducted upon the assessee on 08.02.2019 wherein the authorities seized a diary marked as “BI-01” containing Page No. 1 to 47, scanned copies of a few pages of diary have been reproduced in the assessment-order. After perusal of diary, the Ld. AO framed a view that the diary contained details of cash-loans given by assessee to different persons and interest received thereon. The Ld. AO made a brief list of such transactions which is also noted on Page No. 7 of assessment-order. When the Ld. AO confronted the assessee to explain the transactions, the assessee submitted that neither the diary belonged to it nor any of the figures have been written by it. The assessee also submitted that the diary seems to have been inadvertently left in its premises by some other person.

28. However, the Ld. AO rejected assessee’s submissions with the reasoning that (i) the diary was found in possession of assessee and therefore section 292C got attracted according to which the diary is presumed to be owned by assessee; (ii) the date-wise entries of transactions mentioned on Page No. 6 of the diary are duly initialed by Shri D.K. Goyal, partner of assessee; (iii) the name of Shri Neeraj Goyal, partner of assessee, appears in the diary at Page No. 15 which also demonstrates that the diary is related to assessee; (iv) in the statement recorded on 08.02.2019 during the course of survey, Shri D.K. Goyal, partner of assessee, accepted that the signature in diary “looks like my signature”. Finally, the Ld. AO made an addition of Rs. 32,37,000/- on account of undisclosed cash-loans and Rs. 2,68,900/- on account of interest earned thereon.

29. During first-appeal, the assessee made a detailed submission before Ld. CIT(A), which is incorporated in the appeal-order, as under:

“3.3.1 *The appellant during the course of appellate proceedings has filed written submissions which are reproduced as under:-*

4. Ground NO 4: **That the learned A.O has erred in law and on facts, by making an addition of Rs 32,37,000 to the total income of the appellant on the basis of loose papers without showing any corroborative evidences to constitute it as income u/s 69A.**

A survey was conducted in the premises of the assessee in February 2019. One diary named as BI-01 containing 47 pages was found and impounded during the survey. There were various figures appearing in the said diary which was read by the AO as cash loan given and interest and repayment received by the assessee. Details of the alleged loans given and the alleged interest received is tabulated by the AO in Para 08 of his order.

It was submitted before the AO that the diary did not belong to the assessee and was left in the office of the assessee by some unknown visitor and hence the assessee was unable to submit any explanation of the entries appearing in the diary.

The assessee in his statement recorded during survey when asked specifically about certain persons named in the diary made a categorical reply to Q-16 that he does not know anything about the transactions mentioned in the name of “Dinesh Chandwani”. In reply to Q-17 the assessee made a categorical statement that he does not know about the transactions mentioned in the diary and does not know “Dinesh Chandwani”, Balkumar(Bhaiya), Lokarpan, Babu Kumar, etc.

Thus, in the statement recorded during the survey proceedings itself the assessee had expressed its total ignorance about the persons named in the diary and/or the transactions mentioned therein. Thus, these replies themselves established that the diary/transactions did not belong to the assessee.

This fact is otherwise also established from the following facts:

- i. The assessee firm have never indulged itself in any money lending activity and this fact is duly established from past records.*
- ii. No excess cash was found during survey to indicate any possibility of the assessee having any unrecorded cash through which such type of activity can be undertaken.*

- iii. *The diary at Page 26 contains mention of name of “Neeraj Goyal D.K 9826020191”. Mr. Neeraj Goyal is one of the partners of the firm. The firm or its partners are not realistically expected to keep a record of his telephone number with suffix of “D.K.” against his name and obviously such record will be maintained by some person who will not recognise him from the name itself and would recognise his name only when it is related to the firm “D.K”*
- iv. *The diary contained various names and telephone numbers and it was confirmed in the statement recorded during survey by the partner, that he is not aware of the transactions and further that he does not know the persons named in the diary.*

The assessee is enclosing here with copy of an affidavit from the partners of the firm confirming that the diary does not belong to the assessee firm and that the assessee is not aware of the persons named in the diary or the transactions recorded therein. It may be submitted that this affidavit has already been submitted before the AO during the assessment proceedings for A.Y 2018-19 and is already a part of records.

The AO did not bring on record any material to controvert the above facts and went on to treat the diary as belonging to the assessee firm based on the following observation:

- a. *The diary was found at the premises of the assessee, was got signed by the survey team by the partner at the first and last page.***

This observation in itself means nothing and no inference could have been drawn from this fact that the diary and its transactions belonged to the assessee.

- b. *Any valuable/article/book found at the premises is to be presumed to be related to the firm by virtue of provisions of section 292C and the onus to prove that the diary did not belong to the assessee was on the assessee.***

The assessee had submitted various facts as mentioned above indicating that the diary did not belong to it. The assessee also confirmed during recording of statement u/s 133A in reply to Q-16 & 17 that he is not aware of the transactions mentioned and he does not know the persons named in the diary.

Thus, the initial onus casted on the assessee was duly discharged and it was for the AO to have brought on record some material to substantiate that the diary belonged to the assessee.

It would be accordingly appreciated that the additions were made simply on presumption that the diary belonged to the assessee as it

was found during survey in its premises ignoring the fact that such presumption stood rebutted by the assessee through the statement made during survey itself and other facts brought to the knowledge of the AO during assessment proceedings.

In this regard the assessee relies on the following judgments:

*i. The Allahabad High Court in the case of **Ajay Gupta v CIT (2019) 106 CCH 0162** have held that*

“10. We have heard counsel for the parties and perused the material on record. It is not in dispute that two loose papers were found during search from the premises of assessee, however, during block assessment proceedings, the assessee had denied the documents and statement was recorded by Deputy Director of Investigation, he had submitted that he had no concern with the said documents, so seized. Further, the A.O. while passing the assessment order had only on basis of the loose papers found during search made addition to the undisclosed income of assessee while the entries of said papers remained uncorroborated.

*11. This Court, in the case of **CIT, Kanpur Vs. Shadiram Ganga Prasad, 2010 UPTC 840** has held that the loose parchas found during search at the most could lead to a presumption, but the department cannot draw inference unless the entries made in the documents, so found are corroborated by evidence.*

12. As, Section 132(4A) of the Act provides that any books of account, documents, money, bullion, jewellery or other valuable articles or things found in possession or in control of any person in course of search may be presumed to be belonging to such person, and further, contents of such books of account and documents are true. But this presumption is not provided in absolute terms and the word used is "may" and not "shall", as such the revenue has to corroborate the entries made in the seized documents before presuming that transactions so entered were made by the assessee. Presumption so provided is not in absolute terms but is subject to corroborative evidence.

13. In the present case, Tribunal only on basis of presumption under Section 132 (4A) of the Act, reversed the finding of CIT (A), without recording any finding as to how the loose sheets which were recovered during search, were linked with the assessee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding by the CIT (Appeals)”

*ii. It may further be submitted that the Delhi Bench of the ITAT in the case of **Raj Pal Singh Ram Autar v ITO (1991) 36 TTJ 544** held that:*

“Para 4.4: However, even without the availability of such statutory presumption as contained in s. 132(4A) during the course of regular assessment proceedings, the initial onus of proving that the assessee was not its owner was on the assessee, as it is an admitted fact that the said paper was found and seized from the debris in the shop premises belonging to the assessee firm. The seized paper merely contained certain figures, rate and the consequent calculation. It does not bear the name of the assessee or any one else. It is true that where a person is found in possession of anything, the onus of proving that he was not its owner was on that person but such a presumption is a rebuttable presumption and the same can be dislodged or rebutted by such person. In the present case the assessee has categorically stated that the paper does not belong to him, the entries recorded therein do not relate to him and the same is not in the hand writing of any of the partners or employees or any connected person. Such a denial coupled with surrounding circumstances that the seized paper is not in the hand writing of the of the partners or employees or any connected person. Such a denial coupled with the surrounding circumstances that the seized paper is not in the hand writing of the partners or employees, it does not contain the name of the assessee clearly supports the assessee's contention that the initial onus lying upon the assessee was successfully dislodged by them”

Similarly, the Delhi bench of the ITAT in the case of Mrs. Asha Devi v ACIT (2006) 101 TTJ 0332 have held that

“...Where there was a denial coupled with the surrounding circumstances that the seized paper was not in the handwriting of the partners or employees, and it did not contain the name of the assessee, this factum clearly supported the view that the initial onus lying on the assessee was successfully dislodged. In this view of the matter, the contention of the counsel for the assessee apropos the initial presumption having been rebutted and apropos the assessee being unable to prove the negative, is justified.”

During the assessment for A.Y 2019-20, the assessee had specifically requested the AO vide Para 2 of his submission dated 06.09.2021 to issue summons to the persons named in the diary. The AO was requested that

“You are requested to issue summons to the persons named in the diary to get the fact verified whether any of those persons is related to the assessee or its business in any manner”

However, the AO failed to take any action on it.

c. Page No 6 is duly signed by him against the date wise transaction and the assessee accepted during survey that the signature appearing on the page is same as his signature.

The partner of the assessee firm has never stated that the signatures on the seized paper belongs to him. He mentioned that they seem to be similar to his signatures. It may be mentioned that it was not very probable for the assessee to have retained any receipt/payment acknowledged by him under his signature with him as such record is expected to be retained by the person receiving or making the payment. Further there was no presumption that the signatures belonged to the assessee/partners simply because the diary was found in the possession of the assessee/its staff.

In this regard the assessee places reliance on the decision of the Gujarat High Court in the case of Usha Kant n Patel v CIT (2006) 282 ITR 553 where the court held that:

“Thus obviously the signatures Sec. 132(4A) of the Act lays down that during the course of search where any books of account, other documents, money, etc. are or is found in the possession or control of any person, it may be presumed : (1) that such books of account, etc. belong to such person; (2) that the contents of such books of account and other documents are true; and (3) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person, or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person’s handwriting, etc. On a plain reading of the aforesaid provision, it is apparent that cls. (i) and (ii) raise a presumption that the books of account belong to the person searched, or the person from whose possession or control the books are recovered or found, and that the contents of such books are true. However, when it comes to cl. (iii) of s. 132(4A) of the Act, it raises a presumption in relation to the signature and the handwriting to be of the person in whose handwriting the books, etc. are purported to be, or a reasonable assumption may be raised that the books, etc. are signed by or are in the handwriting of any particular person. The distinguishing feature is, the clause does not necessarily raise a presumption qua the person searched or from whose possession the books are found. The language employed in cls. (i) and (ii) is "such person", meaning thereby the person searched or from whose possession or control the books are found. As against that, the language employed by cl. (iii) talks of raising a presumption in relation to "any particular person", who may be the person searched, or may not necessarily be the person searched. In a given case, the books might bear the name of the owner and yet they may be found in possession of, or control of another person. Then, in such an eventuality the presumption as to the signature and handwriting would arise against the person in

whose name the books stand. By way of illustration, judicial note can be taken note of the fact that books of account are handed over to persons who work as part-time accountants, and in such circumstances, the presumption has to be in relation to the person whose transactions are reflected in the books and such transactions cannot be presumed to have been carried out by the person who writes the accounts”.

d. During survey proceedings the assessee never claimed that the diary does not belong to them.

The assessee during survey made a specific reply in Q-16 and Q-17 that he does not know about the transactions mentioned in the diary or the persons named therein. This fact itself tantamount to the assessee saying that the diary does not belong to him. No material was brought on record by the survey team or the AO to controvert this factual statement made by the assessee.

Further the survey team/AO were expected to conduct the exercise of taking statements of the person whose name and telephone numbers were appearing in the diary and could have called these persons using the vast powers available to them under the Act to find out whether any of those persons were related to the assessee firm or any of its partners specially when the assessee has consistently been denying any knowledge or relation of such persons. It would also not be unreasonable to presume that such basic exercise was carried out by the survey team as well as well as the AO and as no material favourable to the revenue was found, the details of such enquiry was not brought on records.

No collaborative material is brought on record by the AO to justify the presumption that the diary belonged to the assessee.

- i. It is an undisputed fact that the noting appearing in the diary are not in the hand writing of any of the partners of the assessee and/or any of the employees of the assessee firm. No such allegation has been made by the survey team during the survey or the AO during the assessment proceedings.*
- ii. It is not in dispute that the assessee has not indulged himself in any money lending activity till date.*
- iii. No evidence was found during survey indicating that the assessee has indulged into any unrecorded transactions including sale, purchase or any other unrecorded transaction.*
- iv. No unexplained cash or stocks were found during survey.*
- v. No evidence of the assessee having earned any unrecorded income was found.*

- vi. *As per the disclosed profits from the business of builders the assessee has disclosed a Net profit in excess of 50 percent of its turnover in past years as well in the current years which leaves no scope to doubt that the assessee might have earned any unrecorded income from the business.*
- vii. *The survey team/AO has not brought on record details of any information collected by him based on the investigation/verification of the details appearing in the diary. This indicates that the enquiries made did not yield any information supporting the contention of the department or the AO did not make any enquiry with the persons named in the diary even though the telephone number of the persons were duly appearing against the respective names.*
- viii. *The additions have been made by the AO under the deeming provisions of section 69. Deeming provisions are to be strictly applied and in this case, the AO was required to establish that the loans and advance was given by the assessee and the said finding could not have been based simply on presumption. Reliance in this regard is placed on the judgment of the*
 - a. *Gujarat High Court in the case of Usha Kant n Patel v CIT (2006) 282 ITR 553 where the court held that:*

Para 12 to 16: *The AO made addition under s. 69 and the CIT(A) found that there was no basis to hold that the investments, if any, were made in the financial year corresponding to the assessment year under consideration. The Tribunal has dealt with this issue in a very cursory manner. The Tribunal lost sight of the fact that s. 69 opens with the words "where in the financial year immediately preceding the assessment year, the assessee has made investment....." Therefore, in the first instance it was incumbent upon the authority to establish that there were investments made by the assessee; that such investments were not recorded in the books of account maintained by the assessee; and that, such investments had been made in the financial year immediately preceding the assessment year in question. Unfortunately, despite the CIT(A) having recorded a categorical finding, the Tribunal has failed to appreciate the said finding and dealt with the same without giving cogent reasons. If the Tribunal found that the said finding was not correct, it was necessary for the Tribunal to have recorded reasons for reversing the same. The observation of the Tribunal that the difficulty as to financial year had to be finalised in accordance with the provisions and the date of search and seizure is too general and vague. It does not indicate anything. The Tribunal's order does not record any findings. In fact, the Tribunal is hardly aware, it appears, as to what the requirements of s. 69 are, and if it is aware, it has consciously chosen to ignore the same. It could not have done so in*

the face of the finding recorded by CIT(A) on this issue. Even if the contention of Revenue that provisions of s. 132(4A) are available to Revenue during course of regular assessment proceedings is accepted for the sake of argument, yet nonetheless, the pre-requisite conditions of s. 69 cannot be given a go-by and have to be met with. Therefore, even if the presumption available under s. 132(4A) can be raised against the assessee the ingredients, by way of pre-requisite conditions of s. 69 have to be satisfied and cannot be presumed to have been established on the basis of s. 132(4A) simpliciter. In light of what is stated hereinbefore the impugned order of Tribunal is held to be incorrect in law, in the facts and circumstances of the case and material on record. The Tribunal was not justified in remanding the matter to the CIT(A). It was necessary for the Tribunal to have dealt with the applicability of provisions of s. 69 together with provisions of s. 132(4A) after dealing with the reasons given by CIT(A). The appeal shall stand restored to the file of the Tribunal and the Tribunal shall rehear the appeal after giving adequate opportunity of hearing to both the sides.—[Prem Dass vs. ITO](#) (1999) 152 CTR (SC) 79 : (1999) 236 ITR 683 (SC) applied.

b. Delhi Bench of the ITAT in the case of Raj Pal Singh Ram Autar v ITO (1991) 36 TTJ 544 wherein the bench held that:

“4.3 *Let us also examine the ingredients of s. 69 dealing with unexplained investments. Before invoking the provisions of s. 69 it will be necessary to ensure the fulfilment of all the conditions precedents as to the existence of such unexplained investment. The provisions can be invoked only if it is factually found that the assessee has made investment in the money-lending business and the assessee and none else was the owner of such unexplained investment. It will have to be further established that the amount has not been recorded or is in excess of the amount recorded in the books of accounts and the assessee offers no explanation about such amount or the explanation offered by him is not satisfactory. The amount of such unexplained investments may be deemed to be the income of the assessee for such financial year in which the assessee made such unexplained investments. The facts must be found to clearly bring a case within the aforesaid deeming provision and it will have to be established that all the above circumstances do factually exist”*

iii. Decision of the Mumbai Bench of the ITAT in the case of S.P. Goyal v DCIT (2002) 77 TTJ (Mumbai)(TM) 1 where in the bench held that addition made on mere suspicion without any corroborative evidence was liable to be deleted.

Thus, no collaborative evidence of any type has been brought on record by the AO to justify that the assessee have indulged in the

stated alleged transactions or have done any money lending activity at any time.

It may be submitted that on similar facts the Jurisdictional Indore bench of the ITAT in the case of ACIT v Dilip Kumar Mahendra Kumar Jain, ITA No 809/IND/2019, (2021) 41 ITJ 506 (Indore ITAT) have held the addition to be unjustified.

Under the circumstances the addition made is requested to be deleted.

1. Ground NO 5: ***That the learned A.O has erred in law and on facts; by making an addition of Rs 2,68,900 to the total income of the appellant on the basis of loose papers without showing any corroborative evidences to constitute it as income u/s 69A.***

As detailed above in our submission to ground no 4 of the appeal, the diary does not belong to the assessee and consequently no addition is warranted on the basis of transactions reported in the diary.”

30. However, the Ld. CIT(A) was not convinced and therefore upheld the additions by observing and holding thus:

“3.3.2*I have considered the facts mentioned in the assessment order and submissions of the appellant. The ld AO has invoked provisions of section 292C of the Act and held that initial onus lies on appellant to prove that the article/books does not pertain to appellant. Further, the transactions mentioned on page no 06 of BI-01 were duly signed by Shri D K Goyal (major partner of the appellant firm). As per the provisions of section 292C of the Act, the content of such document, found and impounded from the possession of the appellant are true and correct. I have gone through the impounded material BI-01, pages 1 to 47 and found that on page no 6, the initials of Shri D K Goyal, one of the partners in the assessee firm are appearing. I have also gone through the statement of Shri D K Goyal recorded on 08.02.2019 during the course of proceedings u/s 133A of the Act. The contents of the above mentioned diary were confronted to Shri D K Goyal and he always stated that “सर मैं याद करके आपको उसके बारे में बता पाऊँगा और अभी मुझे याद नहीं आ रहा है”. Further, when he was confronted with the initials made by him on page no 6 of BI-01 he stated that “इसमें सिगनेचर मेरे जैसे लग रहे हैं मैं आपको उसके बारे में याद करके बताऊंगा”. The reply of the Shri D K Goyal was evasive. By submitting affidavit in this regard, the appellant cannot escape from the onus cast upon him as per the provisions of section 292C of the Act. In the course of assessment proceedings, the ld AO has also decoded the various entries appearing on this impounded material. These details*

have been mentioned on page no 11 and 12 of the assessment order. The ld AO has given following reasons to reject the contentions of the appellant on the BI-01:

- “(i) Page no 6 of BI-01 (the page from where the notings in the diary has started) is duly signed by him against the datewise transaction on the page. The assessee during the statement recorded under oath accepted that the signature appearing on the page is same as his signature.....*
- (ii) At page No 15 of BI-01, the name of another partner of the assessee firm, Shri Neeraj Goyal appears, which shows that the diary is related to them.*
- (iii) The partner of the assessee firm, Shri D K Goyal while recording his statement under oath was asked about the entries in the BI-01 and its meaning, but Shri D K Goyal failed to provide any valid answer....*
- (iv) The contention of the assessee firm that the diary is not related to it is not accepted as the issue was never raised during the survey proceedings. Shri D K Goyal never denied that the diary BI-01 is related to them.*
- (v) Assessee Mr DK Goyal himself signed on the impounded BI-01 paper page no 6 and during the survey proceedings assessee has stated that signature mentioned in the paper is looks like mine signature. Now, how can assessee deny the ownership of the document/papers.”*

*During the course of assessment proceedings as well as appellate proceedings the appellant never explained the contents of the above impounded material because these are the unrecorded transactions of the assessee which it would never like to explain. I have found that the impounded material reveals that the appellant has been engaged in the activity of giving cash loans and earning interest thereon in account manner. I am in agreement with the ld AO that disowning the BI-01 is nothing but an afterthought of the assessee to avoid any proceedings under the Act. I agree with the views of the ld AO that such impounded material contain details of unaccounted cash loan transactions and interest earned on these cash loans by the appellant. In view of the above discussion, the ratio of various judgments cited by the appellant are not applicable in the present facts and circumstances. Accordingly, the addition of **Rs. 32,37,000/- & Rs. 2,68,900/-** are hereby **confirmed**. Therefore, appeal on these grounds is **dismissed**.”*

31. Before us, the Ld. AR strongly reiterated the submission of assessee made before lower authorities that the diary did not belong to the assessee

and must have been left by someone else at the premise of assessee. To support this version, Ld. AR carried us to Page No. 26 of the diary (Page No. 218 of the Paper-Book) and demonstrated that the name and phone number of Neeraj Goyal, partner of assessee, is mentioned thereat. Ld. AR posed a strong question "How can the name of assessee's own partner and that too with mobile phone number be mentioned in the diary?" Ld. AR further argued that the handwriting is of someone else and not of assessee's persons. Ld. AR also contested that no enquiry was made by authorities from the persons whose phone numbers were mentioned in the diary. Ld. AR also drew our attention to Page No. 194 of the Paper-Book where a copy of the affidavit dated 10.06.2021 duly sworn by Shri D.K. Goyal, partner of assessee, was filed to lower authorities wherein Shri Goyal has made following averment:

"4. The above referred polythene bag does not belong to the firm and seemed to have been left unintendedly by some unidentifiable visitor to our premises and was retained by us with an intention to return it to its rightful owner, if and when someone comes looking for it."

With these submissions, Ld. AR strongly contested that the diary does not belong to the assessee, which is a fact, and must be accepted.

32. Ld. DR opposed the submissions of Ld. DR; reiterated the observations made by lower-authorities and prayed to uphold the addition.

33. We have considered rival submissions of both sides and perused the material held on record. Firstly, we observe that the assessee has been claiming all through, from the very beginning itself, that the diary did not belong to it; thus it cannot be said to be an afterthought. Secondly, there is a weightage in the submission of Ld. AR that if the diary belonged to assessee, why would there be name and phone number of its partner in the list of other persons mentioned in the diary. Thirdly, the revenue-

authorities have not made any enquiry from the persons named in diary. Fourthly, Shri D.K. Goyal has given an affidavit containing the sworn statement that the diary did not belong to the assessee and it was left by someone else and this averment is in furtherance of what was being stated by assessee from very beginning. Thus, having regard to these factors, we are inclined to accept the version of assessee. Accordingly, we hold that the additions made by lower-authorities are not sustainable. Being so, we delete the same. These grounds of assessee are allowed.

Ground No. 3:

34. This ground relates to the addition of Rs. 25,00,000/- made by Ld. AO based on a loose-paper seized during survey. The ground raised by assessee reads as under:

“3. That on the facts and in the circumstances of the case of the assessee the Ld. Commissioner of Income-tax was not justified in confirming the addition of Rs. 25,00,000/- based on loose papers without any corroborative evidence to constitute it as income.”

35. Facts *qua* this addition are such that during the course of survey, a document marked as “LPI-01-Page No. 39” was seized from the premise of assessee. The said document was an original cheque dated 10.06.2016 of Rs. 25,00,000/- of M/s Shree Palace Hotel. The Ld. AO framed a view that the said cheque represents a liability owed by M/s Shree Palace Hotel towards the assessee, which in turn indicates that the assessee has given a cash-loan of Rs. 25,00,000/-. Accordingly, Ld. AO made an addition.

36. During first-appeal, the assessee made submission to Ld. CIT(A). But the Ld. CIT(A) was not convinced with the submission of assessee, therefore upheld addition by observing and holding thus:

“3.4.2 I have considered the facts and law mentioned in the assessment order and submissions of the appellant. As a matter of fact page no 39 of LPI-01 i.e a cheque with No 000287 of HDFC Bank duly signed by authorized representative of M/s Shree Palace Hotel a Unit of Mayank

*Builders of Rs. 25,00,000/- was found and impounded during the course of survey from business premises of appellant. The appellant had denied of any knowledge about the said cheque. As per the provisions of section 292C of the Act, the content of such document, found and seized from the possession of the appellant are true and correct. It was duty of the appellant to explain this issue. No assessee would like to disclose truth on such type of transaction or activity which are out of books. The appellant adopted the same attitude in the proceedings under the Act. As per discussion made in foregoing paras wherein it has been clearly established on the basis of impounded material BI-01 that the appellant was engaged in the activity of giving cash loan and earning interest thereon, the copy of original cheque issued by M/s Shree Palace Hotel also indicates the same unrecorded business of the appellant. The appellant never explained about this cheque to the satisfaction of the AO during the assessment proceedings. On the basis of facts and circumstances of the case the ld AO has rightly held that the appellant used to give cash loan and keep blank cheque of the respective amount. Accordingly, the amount of Rs. 25,00,000/- has been advance to the said party in cash and a black cheque has been taken for the same amount. This transaction has never been recorded in regular books of account of the appellant. I am agree with the views of the ld AO that such impounded material contain the unaccounted income of the appellant and the ld AO was fully justified in making addition in the hands of appellant. Accordingly, the addition of **Rs. 25,00,000/- in AY 2017-18** is hereby **confirmed**. Therefore, appeal on this ground is **dismissed**.”*

37. Before us, the Ld. AR reiterated the same submission as made before lower authorities. He submitted that the assessee is engaged in the business of sale of flats and bungalows and the cheque was received for a proposed deal, which ultimately could not materialize. Ld. AR also argued that there is no iota of corroborative evidence found by authorities which could indicate that the said cheque was given to acknowledge the liability of cash-loan. Ld. AR also contested that the authorities have not made any enquiry from M/s Shree Palace Hotel and just made addition on sheer presumption basis.

38. Per contra, Ld. DR defended the orders of lower authorities. He submitted that the original cheque was found in possession of assessee, which could only mean that the person giving it acknowledged a liability. Ld. DR also submitted that the transaction represented by cheque was not

at all recorded in the books of assessee, therefore in such circumstances the lower authorities have rightly made / confirmed the addition.

39. We have considered rival submissions of both sides and perused the material held on record. We observe that a cheque of Rs. 25,00,000/-, duly signed by M/s Shree Palace Hotel was found in possession of assessee, there is no dispute about it. However, we also find weightage in the twin-objections raised by Ld. AR that (i) there was no corroborative evidence at all to demonstrate that the said cheque represented a cash-loan given by assessee and (ii) the authorities have not made any enquiry from the issuer of cheque. Faced with such a situation, we are of the view that the authorities have made addition only on presumption basis, without any evidence and without making enquiry at all. It is a settled law that the presumption, how so ever strong, cannot be an evidence. Being so, we do not find any valid justification to uphold the addition. We, therefore, direct the Ld. AO to delete the addition. This ground of assessee is allowed.

40. With this, the assessee's appeal for AY 2017-18 is allowed.

41. Resultantly, all appeals of revenue are dismissed and the assessee's appeal is allowed.

Order pronounced as per Rule 34 of ITAT Rules, 1963 on 31.01.2023.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 31.01.2023

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	23.1.23
2.	Date of typing & draft order placed before the Dictating Member	23.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	23.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	