

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 78 & 79/Mum/2023  
(Assessment Years: 2009-10 & 2010-11)

M R Developers H-001, Vishnu Prasad Complex, Purushottam Parekh Marg, Virar, Palghar, Maharashtra – 401 303	Vs.	ACIT, Central Circle-3, Thane
PAN/GIR No. AAHFM 1074 D		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Subodh Ratnaparkhi
<b>Revenue by</b>	:	Shri Manish Sareen
<b>Date of Hearing</b>	:	02.03.2023
<b>Date of Pronouncement</b>	:	28.04.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2009-10 and 2010-11.

2. As the facts are identical in both these appeals, we hereby pass a consolidated order by taking ITA No. 78/Mum/2023 as a lead case.

**ITA No. 78/Mum/2023**

3. The assessee has challenged the solitary issue of addition of Rs.77,50,000/- and Rs.69,12,500/- for A.Y. 2009-10 and 2010-11 respectively made by the Assessing Officer (A.O. for short) by denying the assessee the benefit of deduction u/s. 80IB(10) of the Act.

4. The brief facts of the case are that the assessee is a partnership firm engaged in the business of construction activity styled “M/s. M R Developers” having two partners viz. Shri Raveendra V Tendolkar and Shri Moreshwar K Baria. The assessee firm is said to be a sister concern of Ameya Group namely M/s. Ameya Builders and Property Developers, having a common partner Shri Moreshwar K Baria. The assessee filed its return of income dated 24.09.2009, declaring total income at Rs.Nil. The assessee’s case was selected for scrutiny and the assessment order u/s. 143(3) of the Act dated 19.12.2011 was passed by the A.O. where the A.O. disallowed deduction u/s. 80IB(10) claimed by the assessee.

5. In an appeal before the Id. CIT(A), the said claim of the assessee was allowed vide order dated 30.05.2012 and was further upheld by the Tribunal’s order dated 21.12.2016. Pursuant to the search and seizure action u/s. 132 of the Act dated 31.07.2014 carried out at the premises of Ameya Group cases incriminating documents revealing cash transaction pertaining to the assessee were found and seized and the same related to A.Ys. 2009-10 to 2014-15. Notice u/s. 153C dated 30.09.2015 was issued to the assessee for A.Ys. 2009-10 to 2014-15 and the assessee filed its return of income in response to the said notice, declaring additional income of Rs.77,50,000/- and Rs.46,62,500/- for A.Ys. 2009-10 and 2010-11 respectively and had also claimed deduction u/s. 80IB(10) of the Act on the additional income declared and thereby declaring total income at Rs.Nil. The A.O. accepted the additional income declared by the assessee but denied the benefit of deduction u/s. 80IB(10) of the Act. It is observed that from the seized document, the assessee is said to have made cash payments

aggregating to Rs.1,14,00,000/- which the assessee stated that the said seized paper pertains to M/s. M. Baria Developers. The A.O. rejected the contention of the assessee on the ground that along with the said paper, various receipts showing cash payments made to Shri Madhukar Mhatre were also seized which reflect cash payments made by the assessee on various dates in the name of the assessee firm and was duly signed by the receiver of cash on revenue stamp. The A.O. has bifurcated the total payments made to Shri Madhukar Mhatre which aggregated to Rs.90 lacs as below:

<i>Assessment Year</i>	<i>Amount (Rs.)</i>	<i>Remarks</i>
<i>2009-10</i>	<i>46,50,000/-</i>	<i>As per page no. 4 to 14</i>
<i>2010-11</i>	<i>43,50,000/-</i>	<i>As per page no. 15 to 20</i>
	<i>24,00,000/-</i>	<i>Difference of Rs.1,14,00,000/- - Rs.90,00,000/-</i>
<i>Total</i>	<i>1,14,00,000/-</i>	

6. The A.O. held the impugned amount to be unexplained cash payment on the ground that the assessee has failed to prove the source of the cash payment along with another cash payment of Rs.20,000/-. As the assessee itself has offered an additional income of Rs.77,50,000/- for the impugned year, no separate addition was made on the unexplained cash expenditure by the A.O. The A.O. further disallowed the claim of deduction u/s. 80IB(10) of the Act on the said additional income for the reason that the assessee has filed its original return of income after claiming the deduction u/s. 80IB(10) of the Act and since the unaccounted cash receipts has not been offered for tax and the assessee has also not claimed any deduction on the impugned cash receipts. The A.O. also observed that the assessee has enclosed auditor's report in Form No. 10CCB along with its original return of income which has not specified the impugned cash receipts. The A.O. placed his reliance on section 80A(5) of the Act and has relied on various

decisions, wherein it was held that as per section 153A of the Act, no new claim of deduction or allowance can be made in completed assessments.

7. The assessee was in appeal before the Id. CIT(A) challenging the order of the Id. A.O.

8. The Id. CIT(A) confirmed the said addition made by the A.O. on the ground that the seized documents does not pertain to cash expenditure out of 'on-money' received in cash from its project which are eligible for deduction u/s. 80IB(10) of the Act and that the seized documents are only related to cash expenditure which does not relate to on-money receipts from the project eligible for deduction u/s. 80IB(10) of the Act. The Id. CIT(A) further held that the assessee has failed to prove the source of the income and that the same was not eligible for deduction u/s. 80IB(10) of the Act.

9. The assessee is in appeal before us challenging the order of the Id. CIT(A).

10. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee has income only from one activity which is the housing project constructed under the name 'M. Baria Heights' at Manvel Pada Road, Virar (E) and that the said income was eligible for deduction u/s.80IB(10) of the Act. The Id. AR further stated that the income declared in the original return of income was accepted by the lower authorities and was also upheld by the co-ordinate bench. The Id. AR further stated that the additional income declared by the assessee was accepted by the A.O. during the section 153C assessment proceeding and stated that the additional income was the business income of the assessee from the said project. The Id. AR relied on the Tribunal's decision in the case of the sister concern of the assessee in *M/s. Jupiter*

*Construction vs. ACIT* (in ITA Nos. 6620 to 6622/Mum/2019 for A.Ys. 2010-11 to 2012-13 vide order dated 12.11.2021), where the assessee in that case was entitled for deduction u/s. 80IB(10) of the Act. The ld. AR relied on various decisions.

11. The learned Departmental Representative (ld. DR for short) for the Revenue, on the other hand, controverted the said facts and stated that the assessee has given contradictory statement pertaining to the seized paper in which it has stated that it does not belong to the assessee. The ld. DR further stated that the seized document pertains only to the expenditure sheet and not related to any on-money receipts indicating the project name. The ld. DR further stated that the assessee has not proved whether the said expenditure pertain to 'business expenditure' or 'income from other sources'. The ld. DR further stated that the assessee has also not substantiated the fact that the impugned money was on-money receipts for the project in which the assessee claims section 80IB(10) of the Act. The ld. DR reiterated that the decision of the *M/s. Jupiter Construction* (supra) relied upon by the assessee are distinguishable on facts in which case the impugned income pertains to section 80IB(10) of the Act project. The ld. DR relied on the order of the lower authorities.

12. We have heard the rival submissions and perused the materials available on record. It is evident that the seized documents pertain to unexplained cash expenditure incurred by the assessee, which the assessee claims to be on-money received by it in cash for its projects M/s. M. Baria Heights, which is eligible for deduction u/s. 80IB(10) of the Act. Page no. 47 of the assessment order contains the scanned copy of the seized paper which reflects payments made by cheque amounting to Rs.26,00,000/- and the cash

amounting to Rs.1,14,00,000/-. The assessee in its reply vide letter dated 12.07.2016 before the A.O. has stated that the said seized paper pertains to the amounts payable to Shri Madhukar Mhatre by the assessee's partnership firm. The assessee further in its reply has stated that the details of the cheque payment reflecting on the seized paper with names of persons to whom such amounts were paid by M/s. M. Baria Developers and the details of cash payments appearing in the cash flow statement of M. Baria Developers. The assessee further stated that the actual payment to the land owners was Rs.60 lacs and the amount reflected as 'payable' has not been actually paid on the given dates. The assessee has also specified that these were incorrect identification of the seized paper and stands corrected. The A.O. observed that the assessee has failed to explain the source of payment of Rs.1,14,00,000/- to Shri Madhukar Govind Mhatre and held the same to be unexplained along with the unexplained cash expenses of Rs.2,01,000/-. The A.O. rejected the assessee's claim of deduction u/s. 80IB of the Act on the impugned amount by relying on the provision of section 80A(5) of the Act. Since the unaccounted cash receipts have not been offered for tax and also for the reason that there has not been any claim of deduction u/s. 80IB(10) on the said amount, the assessee was to be barred u/s. 80A(5) to claim deduction u/s. 80IB(10) of the Act. It is also observed that in the auditor's report in Form No. 10CCB, the impugned cash receipts are not reflected. The A.O. has further held that the initiation of the search proceeding was not entitled to benefit the assessee for making a new claim of deduction or allowance. The A.O. has relied on the decision of *Suncity Alloys (P) Ltd.* 124 TTJ (Jodhpur) 674 dated 19.08.2009 and *Charchit Agarwal* 129 TTJ (Del) 438 dated 28.08.2009.

13. From the above facts and circumstances of the case, it can be inferred that the assessee after declaring the impugned amount as additional income has made a fresh claim of deduction u/s. 80IB(10) of the Act which was neither claimed in the original return of income filed by the assessee nor in the Form 10CCB of the Act. It is evident that the assessee has made a new claim on the additional income declared by the assessee, pursuant to the search and seizure action. If not for the search action, the additional income would not have been declared by the assessee and perhaps there will be no claim of deduction u/s. 80IB of the Act for the same. The assessee has failed to substantiate the fact that the impugned amount pertain to income of the project which was eligible for deduction u/s. 80IB of the Act. The assessee has failed to discharge its onus in proving the source of the impugned income. The assessee's declaration of additional income was only an afterthought subsequent to the search action. In order to claim the beneficial provision in the Act it is necessary that the assessee comes with clean hands. In the present case in hand, no doubt there has been suppression of the actual income for the purpose of evading tax. Nevertheless, various decisions of the higher forums have held that the assessee is entitled to claim deduction u/s. 80IB(10) of the Act on additional income declared by the assessee subsequent to the search proceedings. The assessee's case would not fall under those decisions for the reason that the assessee has failed to substantiate the source of income and whether it pertains to business income of the assessee was not corroborated by evidence. The decision relied upon by the assessee in the case of *Sheth Developers (P) Ltd.* by the Hon'ble Jurisdictional High Court does not hold good for the present case wherein the A.O. did not have a dispute that the undisclosed income was out of business activity of the assessee. Similar is the case in

*Malponi Estate vs. ACIT* [2014] 44 taxmann.com 242 (Pune-Trib) where there was no dispute that the impugned amount was from the business undertaking of housing project. The assessee has also relied on the decision of the Tribunal in the case of its sister concern in *M/s. Jupiter Construction* (supra) again here the additional income declared by the assessee was said to be the business income derived from the eligible housing project and, hence, the assessee was eligible for deduction u/s. 80IB(10) of the Act. On perusal of the Tribunal's decision for A.Y. 2009-10, in assessee's case it is evident that there was no issue of undisclosed income and the Tribunal has decided the case on different factual matrix. Therefore, the decisions relied upon by the assessee does not support the contention of the assessee considering the facts of the present case. From the above observation, we are of the considered view that there is no infirmity in the order of the Id. CIT(A).

14. In the result, the appeal filed by the assessee in ITA No. 78/Mum/2023 is dismissed.

**ITA No. 79/Mum/2023**

15. As the facts of the case are identical to that of ITA No. 78/Mum/2023, the finding applies *mutatis mutandis* to this appeal also.

16. In the result, the appeal filed by the assessee in ITA No.79/Mum/2023 is also dismissed.

*Order pronounced in the open court on 28.04.2023*

Sd/-

Sd/-

(Prashant Maharishi)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 28.04.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai