

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.1871/AHD/2019
(निर्धारणवर्ष/Asstt. Year: 2012-13)

ITO Ward-3(1)(2), Ahmedabad	Vs.	M/s Parshwanath Corporation Ltd., 50, Harsidhi Chambers, Ashram Road, Ahmedabad-380014 PAN:AAACP9020A
(Applicant)		(Respondent)

Revenue by :	Shri Ashok Kumar Suthar, Sr. D.R.
Assessee by :	Ms. Arti N Shah, A.R.

सुनवाईकीतारीख/**Date of Hearing** : **26/02/2024**
घोषणाकीतारीख/**Date of Pronouncement**: **15/05/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-9, (in short "Ld. CIT(A)"), Ahmedabad order dated 15.10.2019 for A.Y. 2012-13.

2. The revenue has raised following grounds of appeal:

"1. (a) Whether the Ld. CIT(A) has erred in deleting the disallowance of deduction of Rs. 2,19,56,870/- made u/s 80-IB(10) of the Act when he himself agreed with the finding that the built up area of the units was more than 1500 sq.ft. as per DVO's report.

(b) Whether the Ld. CIT(A) has erred in adopting a lump-sum rate of external/internal walls while determining the so called 'carpet area' instead of working out the exact 'built up area' in accordance with clause (a) of sub section (14) of the section 80-IB of the Act.

2. Whether the Ld. CIT(A) has erred in deleting the disallowance of Rs.5,07,076/- u/s 10(2A) of the Act on account of share of profit from M/s Shree Parshwanalh Corporation?

3. *On the facts and circumstances of the case, Ld CIT(A) ought to have upheld the order of the Assessing Officer.*

4. *It is, therefore, prayed that the order of Ld CIT(A) may be set aside and that of the Assessing Officer be restored."*

3. **The first** issue raised by the Revenue is the learned CIT(A) erred in deleting the disallowance of deduction made by the AO under section 80IB(10) of the Act amounting to Rs. 2,19,56,870/- only.

4. The facts in brief are that the assessee, a public company, is engaged in the business of development of residential and commercial complexes. The assessee in the returned filed for the year under consideration claimed deduction under section 80IB(10) of the Act for Rs. 2,52,50,190/-with respect to its residential project namely "Parshwanath Homes". In the original assessment proceedings under section 143(3) of the Act, the AO referred to the DVO to ascertain the total area of the project for finding out total built up area of the residential unit within the limit of 1500 Sq. Ft. as per the provisions of the Act. The report from the DVO was not received till the time limit available to frame the assessment order. However, the AO finally finalized the assessment order under section 143(3) of the Act, dated 31st March 2015 by denying the deduction of Rs. 32,93,320.00 and restricted the deduction Rs. 2,19,56,870/- under section 80IB(10) of the Act after considering the submission of the assessee.

5. Subsequently, after the assessment, the AO received DVO report on 6th April 2015 wherein it was reported that the built-up area of the sample residential unit, not having common wall, was at 1620.61 Sq. Ft. and built-up area of the unit having common wall was at 1596.07 sq. ft. Thus, the AO found that the built-up area of the unit exceeds the required built up area of 1500 sq. ft. as specified under section 80IB(10) of the Act to claim deduction under section 80IB(10)(c) of the Act. Accordingly, the assessment was reopened under section 147/148 of the Act and during the assessment proceedings, the assessee was show-caused why the entire deduction claimed under section 80IB(10) of the Act should not be disallowed.

6. The assessee in response to the notice submitted that on the date of DVO's inspection its engineer was not present. The inspection was carried out in the presence of normal staff only. Furthermore, the DVO did not ask for any explanation with respect to any discrepancy in built up area noticed by him and the DVO made the report on his own. Further, the DVO report does not hold evidentiary value as the same received after the completion of the assessment based on the submission made by the assessee.

7. However, the AO was of the view that the assessee was very much aware about scheduled inspection to be carried out by the DVO about the verification of the project area and built-up area of the units. Thus, it was the duty of the assessee to be present at the scheduled time and avail the opportunity for its submission. The reference to the DVO was made during the original assessment proceedings but due to time baring, the original assessment was made without waiting for the report. Therefore, the contention of the assessee that DVO report has no evidentiary value as the assessment was already made based on its submission is devoid of any merit. The Assessee was given appropriate opportunity to furnish explanation and evidence contrary to the finding of the DVO, but the assessee did not furnish any explanation. Hence, the AO disallowed the entire deduction claimed under section 80IB(10) of the Act as the project of the assessee violated the condition provided under clause (c) of section 80IB(10) of the Act i.e. built area of the units not within the limit of 1500 sq. ft. and added to the total income of the assessee.

8. Aggrieved assessee preferred an appeal to the Id. CIT-A who deleted the addition made by the AO by observing as under:

"On a close perusal of the valuation report dated 31.03.2015 prepared by the District Valuation Officer, it is noticed that the property so inspected on 07.03.2015 has been described to be of a residential project named "Parshwanath Homes", Neminathnagar, Adalaj Co.Op. Housing Society Ltd. on Block No.1356, O.P. No.28, P.P. NO.28/7B at Adalaj T.P.S. No.10, Taluka & District of Gandhinagar. The project consisted of 42 residential units. The D.V.O. has taken the measurements of sample unit nos. 42 and 14 as per layout plan. He has mentioned in item no.7 (comments) that the built up area of each of the residential unit is more than 1500 sq. ft and more particularly as mentioned in table under column no.6 of the valuation report which is reproduced as under:-

Sr. No.	Type	Built up area of Sample Unit Ground Floor in Sq. Ft.	Built up area of Sample Unit First Floor in Sq. Ft.	Built up area of MUMTY at Terrace in Sq. Ft.	Total Built up area in sq.ft.	Remarks
1	Individual unit having no common wall	741.85	779.95	98.81	1620.61	Sample Unit No.42 as per layout Plan
2	Individual unit having common wall	729.58	767.68	98.81	1596.07	Sample Unit No. 14 as per layout Plan

5.4 The DVO has provided the detailed working which has also been reproduced by the appellant through written submission which is once again reproduced as under by using the excel sheet for easy understanding of the dispute over measurement of the units as mentioned above:-

TABLE-A(Single unit with common wall sharing - Twin Bungalows)

Single Unit with common wall(Twin units)	Width	Length	Area in Sq. mtr.	Net area in S. Ft.
As per DVO :Ground Floor	6.765	9.945	67.278	723.910
As per Appellant Ground Floor	6.665	9.860	65.717	707.114
Difference	0.100	0.085	0.009	0.091
As per DVO :Add:	1.150	2.450	2.818	30.316
As per Appellant :Add	0.000	0.000	0.000	0.000

Difference	1.150	2.450	2.818	30.316
As per DVO Less	0.685	3.390	2.322	24.986
As per appellant Less	0.460	3.420	1.573	16.928
Difference	0.225	-0.030	-0.007	-0.073
Net Difference Ground Floor	1.475	2.505	3.695	30.335
Ground Floor as per DVO			67.773	729.240
Ground Floor as per Appellant			64.144	690.186
Difference in area			3.630	39.054
As per DVO :First Floor	6.765	9.945	67.278	723.910
As per Appellant First Floor	U.665	9.860	65.717	707.114
Difference	0.100	0.085	0.009	0.091
As per DVO :Add:	1.150	2.450	2.818	30.316
As per DVO :Add:	0.150	3.390	0.509	5.471
As per DVO :Add:	2.450	0.295	0.723	7.777
Total addition by DVO	3.750	6.135	4.049	43.565
As per Appellant :Add	0.000	0.000	0.000	0.000
Difference	3.750	6.135	23.006	247.547
As per DVO Less	0.000	0.000	0.000	0.000
As per appellant Less	0.760	2.360	1.794	19.299
Difference	-0.760	-2.360	1.794	19.299
Net Difference First Floor	3.090	3.860	11.927	128.339
Mumty(Stain Cabin)				

As per DVO	3.745	2.45	9.175	98.726
As per Appellant	2.58	2.46	6.347	68.292
Difference	1.165	-0.01	-0.012	-0.125
Total Area as per DVO: First Floor			80.502	866.201
Total area as per Appellant". First Floor			70.270	756.106
Difference			10.232	110.094
Total as per DVO for the whole Unit			148.275	1595.441
Total as per Appellant for the whole unit			135.987	
Total Difference			12.288	132.221

TABLE-B(Single Unit without common wall)

Single Unit without common wall	Width	Length	Area in Sq. mtr.	Net area in S. Ft.
As per DVO :Ground Floor	6.880	9.945	68.422	736.216
As per Appellant Ground Floor	6.790	9.860	66.949	720.376
Difference	0.090	0.085	0.008	0.082
As per DVO :Add:	1.150	2.450	2.818	30.316
As per Appellant :Add	0.000	0.000	0.000	0.000
Difference	1.150	2.450	2.818	30.316
As per DVO Less	0.685	3.390	2322	24.986
As per appellant Less	0.460	3.420	1.573	16.928
Difference	0.225	-0.030	-0.007	-0.073
Net Difference Ground Floor	1.465	2.505	3.670	30.326
Ground Floor as per DVO			68.917	741.546
Ground Floor as per Appellant			65.376	703.448
Difference in area			3.541	38.098
As per DVO :First Floor	6.880	9.945	68.422	736.216
As per Appellant First Floor	6.780	9.860	66.851	719.315
Difference	0.100	0.085	0.009	0.091
As per DVO :Add:	1.150	2.450	2.818	30.316
As per DVO :Add:	0.150	3.390	0.509	5.471
As per DVO :Add:	2.415	0.295	0.712	7.666
Total addition by DVO			4.038	43.453
As per Appellant :Add	0.000	0.000	0.000	0.000
Difference	0.000	0.000	0.000	0.000
As per DVO Less	0.000	0.000	0.000	0.000
As per appellant Less	0.760	2.360	1.794	19.299
Difference	-0.760	-2.360	1.794	19.299
Net Difference First Floor	-0.660	-2.275	1.502	16.156
Mumty(Stain Cabin)				
As per DVO	3.745	2.45	9.175	98.726
As per Appellant	2.58	2.34	6.037	64.960
Difference	1.165	0.11	0.128	1.379

Total Area as per DVO: First Floor			81.635	878.396
Total area as per Appellant: First Floor			71.094	764.976
Difference			10.541	113.420
Total as per DVO for the whole Unit			150.552	1619.942
Total as per Appellant for the whole unit			137.945	1484.290
Total Difference			12.607	135.652

5.5 Thus, as per the A.O. and the DVO's report, the appellant would not be eligible for deduction u/s 80IB(10) of the Act for the reason that the total area as per DVO's report for both the types of residential units exceeded the prescribed built up area of 1500 sq. feet whereas the appellant contended that the built up area as defined in section 80IB(14) of the Act and as worked out by the appellant is less than the prescribed limit of 1500 sq. ft. and the deduction should be allowed as per the provisions of section 80IB(10) of the Act. It is also noticed that there is difference in measurement of walls (both in length & width) as mentioned in the above-mentioned table.

5.6 The appellant has contended that the area of 2.82 sq.mtr. added in respect of home and individual units to the total area, which is in respect of cantilever projection, an architectural projection which cannot be utilized in any way by the householder. Similarly, for the first floor area also, the measurement of 1.22 sq.mtr. considered for built up area was also consumed for cantilever projection and architectural projection which can also not be consumed by the householder. It has also been contended that the DVO has not taken the measurement from the inner wall of the residential unit at floor level which has also resulted into excessive area resulting in more than 1500 sq. unit. It has also been contended that the definition of section 80IB(14) for working out the built up area for the purpose of claiming the deduction does not permit such area to be included in the built up area. The definition u/s 80IB(14) provides that:-

"Built up area" means the inner measurement of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common area shared with other residential units"

5.7 The assessment records further revealed that the A.O. has called for the details of lay out plan and floor-wise plans of the tenements as approved by the GUDA which have also been referred to. As per the approved plan, the built up area has been calculated by the GUDA as under:-

As per Guda	Width	Length	Total Area in sq. mtr.	Area of One Unit	Area in Sq. ft.
Ground Floor Area	13.35	17.37	231.89	57.97	623.78
Weather Shed	0.9	2.18	1.96	1.96	21.11
Total Area				59.93	644.89
Less: Duct Area	2.35	3.25	7.64	7.64	82.18
Net Area of Ground Floor			0	52.3	562.71
First Floor Area	13.35	17.37	231.89	57.97	623.78
Weather Shed	0.9	2.18	1.96	1.96	21.11
Total Area			233.85	59.93	644.89
Less: Duct Area	2.35	3.25	7.64	7.64	82.18

Net Area of Ground Floor			0	52.3	562.71
Second Floor Area	13.35	17.37	231.89	57.97	623.78
Weather Shed	0.9	2.18	1.96	1.96	21.11
			233.85	59.93	644.89
Less: Duct Area	3.36	1.11	3.73	3.73	40.13
Net Area of Ground Floor				56.2	604.76
Less: Open Area of Terrace	3.62	6.68	24.16	24.16	260.00
Total Area of second floor				32.04	344.76
Total Built up area				136.64	1470.19

5.8 The GUDA has worked out the built up area for the four units, the walls are commonly shared having length of 17.37 mtrs. as per floor-wise building plan. The detailed working of the each tenement has also been worked out on the basis of measurements of the rooms as per the following table:-

Ground Floor	Width	Length	Area in sq. mtr	Area in sq. ft.
Drawing Room	3.36	4.42	14.851	159.799
Bedroom 1	3.36	3.81	12.802	137.745
Kitchen	2.74	2.12	5.809	62.503
Veranda	2.74	1.27	3.480	37.443
Bathroom	1.4	2.06	2.884	31.032
Toilet	1.22	1.03	1.257	13.521
Total of ground floor			26.231	282.243
First Floor				68.474488
Drawing Room	3.36	4.42	14.851	159.799
Bed room	3.36	3.81	12.802	137.745
Bath room	1.42	2.12	3.010	32.392
Toilet	1.2	2.12	2.544	27.373
Balcony	2.97	1.27	3.772	40.586
Total of first floor			36.979	397.895
	2.35	3.25	7.638	82.180
Second Floor				
Bed Room	3.36	3.81	12.802	137.745
Bath room	1.22	1.03	1.257	13.521
Toilet	1.4	1.03	1.442	15.516
Total on second floor			15.500	166.782
Total Built Area on the basis of room dimensions			78.710	846.921
Plinth area calculation	6.675	7.06	47.126	507.070

5.9 As per the above table, the carpet area (presuming that the walls are not included in the room dimensions) has been worked out to 846.92 sq. ft. and if the same is added approximately by 15%(being an accepted method) to cover the area occupied by the walls etc., the built up area would be 973.95 sq. ft. per residential unit. Further as per approved plan, the plinth area of the single

tenement is 507.70 sq.ft and if entire area of the land is considered for outer boarders and it is multiplied by 2.5 (entire first floor and second floor occupied by the terrace of approximately half of the plinth area), the area of construction would be about 1270 sq. mtrs. The variation between the working of the appellat provided during the course of appellate proceedings and the working provided through valuation report is only of 135.652 sq. ft and if the approved plan is accepted to be more authentic, then the built up area of the individual tenement would be below the prescribed built up area of 1500 sq. ft. and the deduction as claimed u/s 80IB(10) would be allowable as claimed in the return of income and accepted by the A.O. during the course of original assessment proceedings.

6. Considering the above variations and as there is no description in the valuation report, particularly in the handwritten calculation sheet as to why the area has been added and on what account, the reduction has been made and as to why the appellat did not make such addition and only reduced the figures of area as mentioned in the above two tables etc.? Vide this office letter dated 20.08.2019, the DVO has been requested to clarify the certain points as under:-

"No.CIT(A)-9/ABD/PCL/Appeals/2019-20

Date: 20.08.2019

To
The Distric Valuation Officer,
Income Tax Department
Ahmedabad

Sub- Verification of area of the project and dwelling units constructed therein by the Parshwanath Corporation Ltd. - reg.

Ref:- No. CIT(A)-9/PCL/2018-19 dated 18.03.2019.

Please refer to the above.

Vide above referred letter (copy enclosed), you were requested to provide following clarification/explanation with necessary supporting evidences :-

1. Whether the measurement of width and length area/ of carpet area is as per approved plan of the competent authority.
2. Whether the carpet area has been increased by the thickness of the all the internal and external wall with number of internal walls and external walls so considered with the area occupied by each of the walls.
3. What are the additions made and for what account? Provide complete description for each value so added or deducted.
4. Provide complete area of the Mumty (Cabin area) on the terrace calculated by you for arriving at the values in respect of both the type of houses.
5. Whether the common area shared by other occupants jointly such as common walls in the case of twin tenements has been worked out and deducted for the purpose of definition of Section 80IB(14) of the Act.

However, till date no compliance in this regard is received in the office of the undersigned. You are requested to go through the matter and provide the clarifications/explanation as called for at the earliest.

Sd/-
(Nav Ratan Soni)
Commissioner of Income-tax (A)-9,
Ahmadabad.

6.1 *Vide his letter dated 26.08.2019, the DVO has provided the clarifications which have been considered afresh. The clarifications so provided are reproduced as under:-*

Query No.	Query	Explanation provided by the DVO
1	<i>Whether the measurement of width and length area of carpet area is as per approved plan of the competent authority?</i>	<i>Built up area(not the carpet areas) of the sample units of both the types of residential units were measured which were found to be as per the layout plan (refer remarks at para 5.0 of the valuation report)</i>
2	<i>Whether the carpet area has been increased by the thickness of the all the internal and external walls with number of internal walls and external walls so considered with the area occupied by each of the walls?</i>	<i>As stated above, only built up areas were measured, information/details regarding carpet area are not available in the file. However, the carpet area invariably decreases with the increase in the width of internal/external walls. Likewise, it decreases with the increase in the number of internal walls.</i>
3	<i>What are the additions made and for what account. Provide complete description for each value so added or deducted?</i>	<i>Information/details regarding addition/alteration, if any made by the owner/tenant were not recorded (Refer foot note at para 5.0 of the valuation report).</i>
4	<i>Provide complete area of the Mumty(Cabin Area) on the terrace calculated by you for arriving at the values in respect of both the type of houses.</i>	<i>The built up area of mumty of both the types of dwelling units was calculated out to be 98,81 sq. ft. A copy of the calculation sheet for arriving at the built up area available in the file is enclosed herewith.</i>
5	<i>Whether the common area shared by other occupants jointly such as common walls in the case of twin tenaments has been worked out and deducted for the purpose of definition of section 80IB(14) of the Act?</i>	<i>From the area calculations made for the dwelling units, it is apparent that the area of the common walls shared by the occupants of twin tenaments has been duly catered for in arriving at the plinth areas of such units.</i>

6.2 *I have carefully considered the above-mentioned clarifications now provided by the DVO vide his letter dated 26.08.2019. The calculation sheet provided along with above clarifications for the single unit in the scheme known as "Parshwanath Homes" has also been examined afresh. As per this calculation sheet, the total built-up area has been worked out as under:-*

<i>Floor description</i>	<i>Measurement in Sq. mtrs.</i>	<i>Measurement in Sq. Ft.</i>
<i>Ground Floor</i>	<i>68.92</i>	<i>741.85</i>
<i>First floor</i>	<i>72.46</i>	<i>779.95</i>
<i>Mumty</i>	<i>9.18</i>	<i>98.81</i>
Total area	150.56	1620.61

6.3 *Since it has been clarified that the area measured by his office was that of built up area and not carpet area of the sample units of both the type of residential units which were found to be as per the lay out plan. If the above total area of 1620.61 sq. ft. is the built up area, then it has to be reduced by 15% approximately for the space occupied by the internal and external walls as per the accepted practice and in that case, the carpet area would be 1377.52*

Sq. ft. which is also less than the prescribed built up area of 1500 sq. ft. as per the provisions of section 80IB(10) of the Act as mentioned above.

6.4 Considering all the above facts, the ground no.2 of the appeal is allowed for the reason that the built up area as defined u/s 80IB(14) of the Act is worked out at the figure of 1484.29 sq. ft. as per the working provided by the appellant and of 1377.52 sq. ft. as worked out above(based on the calculation sheet provided by the DVO vide letter dated 26.08.2019) which is in any case less than the prescribed carpet area of 1500 sq. ft. per residential unit."

9. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

10. The learned DR before us contended that the DVO after conducting field enquiries has reached the conclusion that the built-up area of the units constructed by the assessee exceeds 1500 square feet and therefore the assessee cannot be allowed the benefit of deduction under section 80IB(10) of the Act.

11. The learned DR also submitted that Id. CIT-A without giving any reason has reduced 15% of the measurements accepted by him so as to bring down the constructed area below 1500 square which is without any basis.

12. On the other hand, the learned AR before us filed a paper book running from pages 1 to 85 and contended that the DVO in his report calculated the area of the units constructed by the assessee by handwriting. Furthermore, the Id. CIT-A observes certain defects in the report furnished by the DVO and therefore, a clarification was sought. The Id. CIT-A, after obtaining clarification from DVO has recalculated the constructed area which was below 1500 per square-feet. Finally, the Id. CIT-A allowed the deduction to the assessee after taking note of all the facts by way of speaking and reasoned order.

13. The learned AR also submitted that as per the Government approved plan the layout of the unit was below 1500 square feet and therefore the same cannot be tinkered based on the DVO report obtained in the absence of the technical person of the assessee.

14. Both the learned DR and the AR before us vehemently supported the order of the authorities below.

15. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the learned CIT-A has given a categorical finding that total built-up area of the units constructed by the assessee as per the GUDA approved plan which is more authentic is less than 1500 sq. ft. i.e. within the prescribed limit to claim the deduction under 80-IB(10) of the Act. Such finding of the learned CIT-A has been reproduced in the preceding paragraph. The same has not been doubted or contradicted based on the cogent materials by the learned DR appearing on behalf of the revenue. Likewise, the revenue has not brought anything suggesting that there was also the violation of the layout plan approved by the Government. The Hon'ble Bombay High Court in the case of PCIT vs. Vardhan Builders reported in 146 taxmann.com 232 has held as under:

"The conclusions drawn by the CIT (Appeals) based on the material on record goes to show that the view expressed and subsequently upheld agreements for sale of flats entered into with the individual buyers. I have already held that the evidence on record does not indicate that the appellant had combined two or more flats. On an overall appreciation of the records and documents, it is seen that:

a.	<i>As per the approved plans of BMC all the flats in 'A' wing of the building are having built up area of less than 1000 sq.ft.;</i>
b.	<i>The plan layout prepared by the architects and approved by BMC show that the area of each of the individual flats is having a built up area of less than 1000 sq.ft. The area measurement given by the appellant in their written submissions, is as per the actual area of each flat on completion of the building construction and the same is also certified by the Engineers of the Mumbai Municipal Corporation.</i>
c.	<i>As per the approved plans each of the individual flats are self contained units having separate drawing room, dining room, kitchen, bed rooms and toilets;</i>
d.	<i>The BMC Authorities have issued an occupancy certificate for the building thereby certifying that the construction and development of the building is as per approved plans;</i>
e.	<i>The individual flats have been separately sold to various buyers as per the registered agreements for sale executed with the buyers;</i>
f.	<i>The Stamp Duty Registration Authorities have registered the agreements as individual flats and have assessed the stamp duty for each of the individual flats;</i>
g.	<i>As per the possession certificate issued to the buyers of flats, the buyers have been given possession separately for each of the individual flats;</i>

h.	<i>As per the electric lines layout for the building, each of the flats has independent electrical wiring connection to the meter room;</i>
i.	<i>Separate water connection, plumbing and sewage disposal lines have been provided for each of the individual flats separately;</i>
j.	<i>As per the certificate of the electric contractor, separate by the Tribunal cannot be in any way said to be a view or a conclusion which is perverse. The question essentially involved in the case, which had to be established beyond any doubt by the Revenue, ought to have been that the respondent had not only built but also sold the residential units, in respect of which the benefit of 100% deduction was claimed with an area of more than 1000 sq.ft., which only then could have justified the action of the Revenue in denying the benefit of 100% deduction under the said provision.</i>

In the present case, however, the revenue has failed to establish that fact. Not only this even the completion certificate could not have been issued by the competent authority, as rightly held by the Tribunal, if there was any violation of the approved plans by the municipal authorities.

13. Be that as it may, we cannot persuade to take a view different from the one which has been taken by the Tribunal, which is an essential finding of fact. For the aforementioned reasons, no substantial question of law arises. The Appeal is dismissed."

16. The above finding of the Hon'ble Bombay High court has been confirmed by the Hon'ble Supreme Court reported in 155 Taxmann.com 391. Thus, there remains no ambiguity that the Government approved layout plan should be the basis for determining the built up area of the units to decide the eligibility of the assessee for the deduction under section 80IB(10) of the Act. As per the GUDA the approved layout of the assessee project the built-up area of the single unit is less than the prescribed limit of 1500 sq.ft. Thus, we hold that the assessee is eligible for deduction under section 80IB(10) of the Act in the given facts and circumstances.

17. In addition to the above, we also note that the learned CIT(A) found certain defects in the report of the DVO and therefore, a clarification was sought about the same. The DVO vide letter dated 26-08-2019 duly replied. Thereafter, Id. CIT(A), after considering all the details in length, decided the issue in favour of the assessee by way of speaking and reasoned order. Even at the time of hearing, the Id. DR has not brought anything contrary to the finding of the Id. CIT-A. Accordingly, in view of the above, we do not find any reason to interfere in the finding of the Id. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.

18. The 2nd issue raised by the revenue in ground No. 2 is that the learned CIT-A erred in granting exemption under section 10(2A) of the Act excessively by the sum of ₹ 5,07,076.00 only.

19. The AO during the assessment proceedings found that assessee is a partner in the firm namely M/s Shree Parshwanath Corporation to the tune of 6% whereas it has shown share of profit at Rs. 21,41,796.00 being 10% share in the partnership firm. Thus, the AO was of the view that the assessee has claimed excessive exemption under section 10(2A) of the Act by 4% being the sum of ₹ 5,07,076.00 which was disallowed by the AO and added to the total income of the assessee.

20. On appeal, the learned CIT-A deleted the addition made by the AO by observing as under:

"7.3 During the course of appellate proceedings, the appellant has filed the copy of partnership deed duly signed by the partners and the share of the appellant company (old name was Parshwanath Housing Finance Ltd. and now changed to Parshwanath Corporation Ltd. from 29.10.2010) has been shown @ 10%. Further the appellant has filed the details of capital investment in various partnership firms and the share of the appellant company in Shree Parshwanath Corporation Ltd, was shown at 10% (page 36 of the paper book). In the computation of total income, the share of profit of Rs. 1,36,26,644/- was disclosed @ 10% along with interest of Rs. 55,41,938/- which has been offered as taxable income. During the course of appellate proceedings, it has been contended by the appellant that the intimation sent to the A.O. was based on a draft partnership deed which was erroneously submitted during the course of assessment proceedings of the partnership firm wherein the profit of 6% was mentioned in the name of the appellant-company. Further, while finalizing the re-opened assessment, the A.O. did not inquire into the issue by calling for the copy of return of the partnership firm, partnership deed etc. and giving a conclusive finding that the appellant was shown a partner for 6% share of profit as per the partnership deed or not?"

21. Being aggrieved by the order of the learned CIT-A, the revenue is in appeal before us.

22. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

23. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the AO

disallowed the exemption claimed by the assessee for ₹ 5,07,076.00 which was excessive as per the deed of partnership. However, the learned CIT-A has given a detailed and reasoned finding that the actual share in the partnership of the assessee is 10% which is evident from the signed partnership deed. At the time of the hearing, the Id.DR did not bring anything contrary to the finding of the learned CIT-A. Thus, we do not want to deviate from the view taken by the learned CIT-A. Hence, the ground of appeal of the Revenue is hereby dismissed.

24. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the Court on 15/05/2024 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 15/05/2024

Tanmay

आदेशकीप्रतिलिपियेपित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation :03/05/2024 (Dictated by Hon'ble Member over his dragon software)
2. Date on which the typed draft is placed before the Dictating Member 03/05/2024
3. Date on which the approved draft comes to the Sr.P.S./P.S. - /05/2024
4. Date on which the fair order is placed before the Dictating Member for Pronouncement /05/2024
5. Date on which the file goes to the Bench Clerk.. : /05/2024
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Dispatch of the Order.....