

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
**BEFORE SMT. KAVITHA RAJGOPAL, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No. 3138/Mum/2024 (A.Y.2015-16)**

**M/s. Vandana Properties,**

B 602, Prem Nagar No. 6,  
MCF Udyan Marg, Borivali  
West, Mumbai – 400 092

PAN: AAAPV3003E

..... Appellant

Vs.

**CIT (A) /NFAC Delhi**

Kautilya Bhavan, BKC,  
Mumbai- 400 051

..... Respondent

Appellant by	:	Shri Sameer Dalal, Ld. AR
Respondent by	:	Ms. Rajeshwari Menon, Ld. DR
Date of hearing	:	31/07/2024
Date of pronouncement	:	19/08/2024

**ORDER**

**PER GAGAN GOYAL, A.M.:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 16.05.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

*The Ld. CIT (A) has erred in upholding disallowance of claim of deduction u/s. 80-IB of Income-tax Act, 1961 of Rs. 97,52,932/- on following grounds:*

*The Ld. CIT(A) has wrongly considered that A.O has rightly disallowed the claim of deduction u/s.801B(10), in view of departments 'review petition' before the Hon'ble Apex Court for recalling the order passed in the appellants case in SLP(C) No.31861/2012 & 1568/2013 dt.28/04/2015.*

*The Ld. CIT (A) has not appreciated the fact that A.O has neither submitted copy of so called 'review petition', nor mentioned registry number of any such petition in his assessment order, nor furnished any copy of decision/judgement of Hon'ble Supreme Court in that regard. Your appellants states and submit that upon surfing at 'online search' no such 'petition' visible as ever filed. Moreover, department has never served to your appellant any copy of so called such petition nor furnished copy of any decision by Hon'ble Supreme Court in favour of the department.*

*The Ld. CIT has not considered the order passed by Hon'ble Bombay High Court viz CIT v/s Vandana Properties (2012)353 ITR-36(BOM) against the department.*

*Hon'ble ITAT, Mumbai for A.Y.2010-11 vide Order Nos. ITA No. 5166/Mum/2014 and vide combined order for A.Y. 2011-12 & 2012-13 ITA Nos. 1396 & 1397/Mum/2016 has upheld the decision in favour of assessee i.e. your appellant herein.*

*The aforesaid judgements delivered by various forums in favour of your appellant during earlier years are arising from the same 'housing project' and profits derived there from allowed as exempted. In view of the above your appellant most respectfully states and submit that the year under consideration (A.Y 2015-16) in this appeal is very well 'covered matter' in favour of your appellant for consideration of Hon'ble ITAT and nothing survives in favour of the department. Your appellant therefore prays the Hon'ble ITAT to set aside the impugned order No. ITBA/NFAC/S/250/2024-25/1064925951(1) dated 12th day of May, 2024 passed by CIT (A).*

*Your appellant craves leave to add, to alter or to withdraw any ground or grounds of appeal on or before the date of hearing.*

2. The brief facts of the case are that the assessee partnership firm filed its return of income on 28.09.2015 declaring total income at NIL. The case of the assessee was selected for scrutiny. The assessee is engaged in the business of building development and construction. During the year under consideration the assessee has claimed deduction u/s. 80IB (10) of the Act amounting to Rs. 97,

52,932/-. The case of the assessee was assessed at Rs. 97, 52,930/- after disallowing the deduction u/s. 80IB (10) of the Act claimed by the assessee. The assessee being aggrieved with the order of the AO passed u/s. 143(3) of the Act preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO. The assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds of appeal taken before us. During the course of the assessment proceedings the A.O observed that the assessee had claimed deduction under Section 80IB (10) of the Act of Rs. 97, 52,930/-. The brief facts, as regards the claim of deduction u/s. 80IB (10) of the Act raised by the assessee, in its return of income lies in a narrow compass. The assessee owned a plot of 2.36 acres at Devnagar, Near Bhatia High School, off. Sai Baba Road, Kandivali (W), Mumbai, on which 5 wings A, B, C, D & E were constructed over the years. Commencement Certificate for the construction activities on the plot was granted to the assessee on 09.06.1993 for the plinth level which was subsequently extended over the years for entire work of A, B, C & D wing till 22.04.1998. The Commencement Certificate was further extended for wing "E" (for which deduction under Sec. 80IB (10) of the Act was claimed) for the entire work as per the approved plan dated 11.10.2002, which was amended on 20.05.2003. That on account of sale of flats of Wings A to D, the assessee had not claimed any deduction under Section 80IB (10) of the Act, but for the wing "E" the assessee had claimed deduction under Section 80IB (10) of the Act for the A.Y.s 2004-05, 2005-06 and other subsequent assessment years. The assessee had raised the claim of deduction under Sec. 80IB (10) of the Act on the basis of

percentage of work completed. The construction of building "E" was completed as per the completion certificate dated 12.03.2008 issued by the local authority. The full occupation certificate in respect of Building "E" was issued by the local authority as per its letter dated 31.01.2008. The assessee during the year under consideration had sold flats in Building "E" and had claimed deduction in respect of the income derived there from under Sec. 80IB (10) of the Act.

4. The A.O during the course of the assessment proceedings, holding a conviction that the conditions contemplated under the said statutory provision were not found to be satisfied by the assessee, therefore, called upon the assessee to explain as to why the deduction claimed by it under Section 80IB (10) of the Act of Rs. 97,52,930/- may not be disallowed. The A.O was of the view that the assessee had failed to satisfy the conditions contemplated under Section 80IB(10) of the Act, on three grounds, viz. (i) that as the Building "E" was only a part of the project which had commenced in the year 1993 as per the Commencement Certificate dated 09.06.1993, therefore, the approval of the Building "E" was just an endorsement of the original Commencement Certificate dated 09.06.1993; (ii) the size of the Plot on which the Building "E" was constructed was less than 1 acre; and (iii) the provisions of Section 80IB (10) of the Act was clearly restricted to only one project on minimum area of 1 acre. The submissions of the assessee in support of its claim for deduction under Section 80IB (10) of the Act did not find favour with the A.O. The A.O on the basis of his aforesaid conviction concluded that as the Commencement Certificate for the plot of land on which the assessee had constructed A, B, C, D & E wings was granted in 1993 and block "E" was only an endorsement on the Commencement

Certificate, therefore, it could safely be concluded that the assessee had commenced the construction before 01.10.1998. It was further observed by the A.O that as the size of the plot of land on which A, B, C, D & E wings were constructed was 2.36 acres, therefore, the area apportioned in respect of Block "E" was found to be less than 1 acre. The submission of the assessee that its claim of deduction under Section 80IB(10) of the Act for A.Y 2004-05 and A.Y 2005-06 was accepted by the Hon'ble High Court of Bombay vide its order passed in the case of CIT-25, Vs. M/s. Vandana Properties (2012) 353 ITR 36, (Bom), also did not find favour with the A.O, for the reason that the said decision of the Hon'ble High Court was not accepted by the department and a Special Leave Petition (for short "SLP") against the same was filed before the Hon'ble Supreme Court. The A.O on the basis of his aforesaid observations disallowed the claim of deduction raised by the assessee under Section 80IB (10) of the Act and assessed its income at Rs. 97,52,930/-.

5. It is observed that the Hon'ble High Court of Bombay in its order dated 28.05.2012 had dismissed the appeal of the department and decided the issue in favour of the assessee. It was further observed that the Special Leave Petition (for short "SLP") filed by the department before the Hon'ble Supreme Court was also dismissed and the order of the Hon'ble High Court of Bombay was upheld. We are of the considered view that as the matter as regards the entitlement of the assessee towards claim of deduction under Section 80IB(10) of the Act had finally been decided in the favour of the assessee, therefore, there was no justification for disallowing the same during the year under consideration.

6. In its order vide para 4.4 the AO held as under:

*“With due respect to the decision of the Hon’ble Supreme Court, the question of law involved in the case of the assessee is different with the question of law decided by the Hon’ble Supreme Court in the case of CIT(C), Pune vs. M/s. Veena Developers in SLP (C) No. 22450/2011 vide order dated: 28.04.2015 and hence the department filed a review petition before the Hon’ble Supreme Court for recalling of the order passed in the assessee’s case in SLP (C) No. 31861/2012 and 1568/2013 Dated: 28.04.2015.*

From the above it is clear that as far as the assessment of assessment year under consideration is concerned the only reason why deduction was not allowed was because the decision of the ITAT and Hon’ble High Court Bombay allowing the deduction to the appellant had not reached finality, **as the same is pending before the Hon’ble Supreme Court under a review petition.** However the order of the Hon'ble Supreme Court of India has been received wherein order of the Hon'ble Bombay High Court has been confirmed hence, there is no justification for disallowing claim of deduction under section 80(IB)(10) of the Act in the case of the appellant and department does not have any legal right as on today to ignore the orders of Hon’ble Supreme Court, Jurisdictional High Court and coordinate benches.

7. Apart from the above, the Central Board of Direct Taxes (CBDT) by its letter dated 4th May 2001 addressed to the Maharashtra Chamber of Housing Industry has stated thus:

*“The undersigned is directed to refer to your letter No.MCHI:RSA:m:388/19799/3 dated 1st January 2001 and to state that the additional housing project on existing housing project site can qualify as infrastructure facility under Section 10(23G) of the Act and 80IB (10)of the Act provided it is taken up by a separate undertaking, having separate books of accounts, so as to ensure that correct profits can be ascertained for the purpose of Section 80IBof the Act and also to identify receipts and repayments of long term finances under the provisions of Section 10(23G) of the act, separately financing arrangements and also, if it separately fulfils all other statutory conditions listed in Sections 10(23G)of the*

*Act and 80(B(10)of the Act. With regard to your query regarding the definition of Housing Project, it is clarified that any project which has been approved by a local authority as a housing project should be considered adequate for the purpose of Section 10(23G) of the Act and 80IB (10)of the Act."*

8. From the aforesaid letter of CBDT, it is clear that for the purposes of Section 80IB (10) of the Act it is not the mandate of the Section that the housing project must be on a vacant plot of land having minimum area of one acre and that where a new housing project is constructed on a plot of land having minimum area of one acre but with existing housing projects would qualify for Section 80IB (10)of the Act deduction. Therefore, it is clear that on a plot of land having minimum area of one acre, there can be any number of housing projects and so long as those housing projects are approved by the local authority and fulfil the conditions set out under Section 80IB (10) of the Act, the deduction thereunder cannot be denied to all those housing projects. Section 80IB (10)of the Act while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having minimum area of one acre. As a result, significance of the size of the plot of land is lost and, therefore, the assessee subject to fulfilling other conditions becomes entitled to Section 80IB (10)of the Act deduction on construction of a housing project on a plot having area of one acre, irrespective of the fact that there exist other housing projects or not. In these circumstances, the decision of the Tribunal in rejecting the contention of the Revenue regarding the size of the plot cannot be faulted.

9. In view of the above, respectfully following the decision of the Hon'ble Apex Court, Jurisdictional High Court and number of decisions in favour of the

assessee's own case, **we allow the ground raised by the assessee and the AO is directed to delete the addition of Rs. 97,52,930/-.**

**10. In the result, the appeal filed by the assessee is allowed.**

Order pronounced in the open court on 19<sup>th</sup> day of August, 2024.

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 19/08/2024

*Dhananjay, Sr. PS*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

(Asstt. Registrar)

**ITAT, Mumbai**