

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

**Before Shri Inturi Rama Rao, Accountant Member  
&  
Shri Prakash Chand Yadav, Judicial Member**

ITA No.927/Coch/2024 : Asst.Year 2009-2010  
ITA No.928/Coch/2024 : Asst.Year 2010-2011  
ITA No.942/Coch/2024 : Asst.Year 2012-2013

The Assistant Commissioner of Income-tax Corporate Circle 1(1) Kochi.	v.	Skyline Builders Skyline House, NH Bypass Ernakulam – 682 028. <b>PAN : AAMFS8117N.</b>
(Appellant)		(Respondent)

Appellant by : Sri.Sundarasan S, CIT-DR  
Respondent by : Sri.P.M.Veeramani, CA

<b>Date of Hearing : 22.05.2025.</b>	<b>Date of Pronouncement : 26.05.2025</b>
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**ORDER**

**Per Prakash Chand Yadav, JM :**

The present appeals of the Revenue are arising from separate the orders of the learned Commissioner of Income-tax (Appeals) Kochi-3 [“CIT(A)” for short] all dated 30.07.2024, and relates to the assessment years 2009-2010, 2010-2011 and 2012-2013.

2. Since common issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order, for the sake of convenience. We take ITA No.927/Coch/2024 for Asst.Year 2009-2010, as a lead appeal for discussion and adjudication, and the decision arrived at

therein would *mutatis mutandis* apply to the other appeals, as well.

3. All these appeals are delayed by 47 days. For the reasons mentioned in the condonation petition, we hereby condone the delay of 47 days and proceed to decide these appeals by way of this consolidated order for the sake of convenience.

4. The brief facts of the case as coming out from the orders of the authorities below are that the assessee is a partnership firm carrying on the business of builder and developer in Ernakulam District. It has filed its return of income on 29<sup>th</sup> September, 2009 declaring an income of Rs.41,03,170. Thereafter the case of the assessee was picked up for scrutiny. During the course of assessment proceedings, the Assessing Officer did not grant deduction u/s.80IB(10) of the Act on the ground that the assessee is not a contractor within the meaning of sec.80IB(1), rather has executed work contract, and hence, not eligible for deduction u/s.80IB(10) of the Act. Aggrieved with the order of the AO, the assessee filed an appeal before the CIT(A). The CIT(A) after considering the facts and circumstances, allowed the appeal of the assessee by observing as under:-

*“4.3 I have considered the observations of the AO and the submissions of the appellant. In this regard, it needs to be stated that as per the statute, the appellant is eligible for deduction if the construction is completed. If the construction is fit for occupation, then it implies that the same is completed. Moreover, the certificate of the local body to that effect is also available on record and as per the same the project was completed before 31/03/2009, i.e., within the time permitted*

by law. Therefore, the conclusion drawn by the AO in this regard is erroneous and hence not sustainable.

4.4 Further, the AO in para 11 of the order has stated that - "Although, the extent of land jointly for both projects, Aster and Lavender, is of 221.498 cents, but it is giving impressions that Aster project, shown as Block A in the approved plan, is having land area of less than one acre or 100 cents". The appellant has contended that the conclusion/inference of the AO is erroneous. In this regard, the appellant has filed the following submissions/explanation.

"The approved plan Block A (Aster) and Block B (Lavender) is furnished herewith. We may submit that the observation of the AO is not supported by facts. We would like to explain as follows:

*The projects Aster and Lavender are in land extending 221,498 cents.*

*The section does not specify that each projects should be on a vacant land of one acre. The section does not prohibit more than one project in land extending more than one acre. The section does not specify the size or the number of projects that are required to be undertaken on a plot having a minimum area of one acre.*

*The appellant has developed two projects Aster and Lavender on a plot of land extending 221.498 cents and this conditions laid down in 801B(10) is satisfied and appellant is eligible for deduction."*

*In support of its contention, the appellant has relied upon the following judicial pronouncements:-*

*CIT Vs Vandana Properties [353 ITR 36 Bombay]*

*CIT Vs. Voora property Developers Private Limited [373 ITR 317 Mad]*

4.5 With regard to the above, it needs to be stated that the appellant has developed two projects on a plot of land extending 221.498 cents (2.2 acres). The provisions of section 801B(10) sub-section (b) which specifies the minimum area required for the project states that "the project is on the size of a plot of land which has minimum area of one acre". As argued by the appellant, the section does not specify that each projects should be on a vacant

*land of one acre. It also does not prohibit more than one project in land extending more than one acre. Further, the section also does not specify the size or the number of projects that are required to be undertaken on a plot having a minimum area of one acre. Moreover, the finding given by the AO at para 11 of the assessment order that "it is giving impressions that Aster project, shown as Block A in the approved plan, is having land area of less than one acre or 100 cents", is not based on fact but rather a mere impression/inference. The above finding by the AO is not sustainable in view of the judicial pronouncements and detailed discussion made earlier in this order.*

*5. While framing the assessment, the AO at para.14 of the order has observed that "the claim of the assessee for the deduction u/s.801B in the return filed on 29/09/2009 was Rs.9,29,37,725/-. While computing the deduction u/s. 801B, the assessee has taken into account other income such as interest, rent and miscellaneous income under Schedule 13. But the assessee is not allowable to take the benefit of deduction u/s. 801B for other incomes such as interest, rent and miscellaneous income."*

*5.1 During the course of appellate proceedings, the appellant submitted that- "the observation made by the AO is based on wrong appreciation of facts. We have furnished the audit report in Form 10CCB which includes project wise profit and loss account and copy of the same is furnished herewith. As per the project-wise profit and loss account attached to the audit report, only the income from the construction project is considered as income. The observation of the AO that interest, rent and miscellaneous income are included in the profit from the project is not correct".*

*5.2 With regard to the above, it needs to be stated that the deduction claimed by the appellant is on the basis of the audit report in form 10CCB which includes project-wise profit and loss account. The AO, in the order has stated that income such as interest, rent and miscellaneous income have been claimed as deduction u/s.801B but has not specified/quantified such amounts which are not allowable. Considering the above facts, the comment made by the AO is not justified and hence not sustainable.*

*6. Regarding the argument of the appellant that the AO misconstrued the nature of the business activity of the appellant on the basis of the nomenclature in the P&L, it needs to be stated that*

*just by following the nomenclature, one cannot establish the nature and character of a business activity. The whole set of facts and circumstances related to the business activity of the appellant is to be considered in toto while arriving at such decision. This has been reiterated in many judicial pronouncements. Hence, the AO is not justified in his conclusion that the appellant is to be treated as a "Works Contractor" as the purported sales receipts are shown as "Contract Receipts" in its P&L account.*

*6.1 Further, it needs to be stated that the eligibility for deduction u/s.80IB(10) in the case of builders was considered and analysed in detail by the Hon'ble ITAT Cochin Bench, in the case of Desai Homes Vs. DCIT, in ITA.29/Coch/2014 and Kalpaka Builders Private Limited Vs. Addl.CIT in ITA.139/Coch/2015. The Hon'ble ITAT has examined in detail the circumstances that could differentiate between a developer/builder and a works contractor. The relevant extract of the Hon'ble ITAT is reproduced hereunder for ready reference.*

*"We have considered the rival submissions on either side and also perused the material available on record. It is not in dispute that the assessee owned 159.685 cents of land. The assessee obtained the building permission from the respective local bodies. The assessee conceived the project of housing and constructed the same. As a developer of the housing project, the flats were sold to the prospective individual buyers. The question arises for consideration is in the facts and circumstances of the case, whether any works contract is involved? The contention of the revenue is that the prospective purchasers awarded the works to the assessee. We are unable to accept the contention of the revenue. When the land was owned by the assessee and the building permission was obtained by the assessee from the local body, an individual purchaser of a flat cannot allot any work to the assessee. It is for the assessee to construct the building as per the approved plan and thereafter hand over the physical possession of the property to the prospective purchaser. As rightly submitted by the Id. representative for the assessee when a prospective purchaser intends to purchase the flat on the 16th floor of the building, the assessee could not hand over the flat on sixteenth floor unless the sixteenth floor of the building was constructed. Some of the flats in some of the floors may remain to be sold also. But the assessee has to construct the entire building as per the approved plan and create infrastructure facilities like parking area, drainage facility, drinking water facility, fire extinguishment, lift, etc. These facilities cannot be provided by the individual purchaser of a*

*particular flat. This Tribunal is of the considered opinion that the assessee being the owner of the land and developer of the housing project constructed the flat by creating all infrastructure facilities and sold the same to the individual purchasers. The individual purchasers cannot award any work to the assessee. In fact, it is not the choice of the individual purchasers to award work to the assessee. The individual purchaser has to purchase the flat only from the construction made by the assessee. When the purchasers have no choice of selecting the builders for construction on a project being developed by the assessee, this Tribunal is of the considered opinion that the purchaser cannot award any work to the assessee. Therefore, the contention of the Id.DR has no merit at all."*

*6.2 As in the case of Desai Homes, in the instant case also, the appellant is the owner of the land on which the building project was undertaken. Again as in the case of Desai Homes the appellant had also obtained the approval for construction from the respective local body and made further construction and maintenance of the common area as per the plan and mandate of the appellant. After building the project as per the approved plan, the flats are sold to the individual customers by the appellant itself. The scenario was similar in the case of Desai Homes. Hence, it can safely be concluded that the projects under consideration were conceived and executed by the appellant. In the above context, as ruled by the Hon'ble jurisdictional ITAT in the case of M/s. Desai Homes (supra). "The individual purchasers cannot award any work to the assessee. In fact, it is not the choice of the individual purchasers to award work to the assessee. The individual purchaser has to purchase the flat only from the construction made by the assessee". Just by the fact that two simultaneous agreements were drawn (one for land and one for construction) in the case of the appellant as against a composite agreement drawn in the case of Desai Homes does not materially alter the nature or character of the business of the appellant from being a builder/developer. Hence, the conclusion drawn by the AO that the facts of the case of the appellant are different from that of Desai Homes is erroneous. Accordingly, the decision of the AO treating the appellant as a "Works Contractor" as against a "Builder/Developer" is not correct.*

*6.3 Therefore, considering the facts of the case in instant appeal and also in respectful obedience to the decision of the Hon'ble jurisdictional ITAT cited above, the addition made by the AO by disallowing the claim of deduction u/s.80IB is to be deleted."*

5. Aggrieved with the order of the CIT(A), the Revenue has come up in appeal before us and relied upon the orders of the authorities below. Besides this, the learned DR also relied upon the judgment of the Hon'ble Supreme Court in the case of K.Raheja Development Corporation v. State of Karnataka (2005) 141 STC 298 (SC) for the proposition that the assessee is a work contractor and not an Independent contractor.

6. After considering the rival submissions, we are of the view that there is no error in the judgment of the CIT(A) so far as the reliance of the learned DR in the case of K.Raheja Development Corporation (supra), is concerned. We observe that recently the Hon'ble Gujarat High Court in the case of CIT v. Vishal Developers (2014) 52 taxmann.com 514 (Gujarat) has considered the judgment of K.Raheja Development Corporation (supra) and held that the same is not applicable under the provisions of Income-tax Act. The Hon'ble Gujarat High Court has held that the definition of "works contract" as interpreted by the Hon'ble Supreme Court does not make a distinction based on who carries on the construction activity and held that even owner of the property may also be said to be carrying on a work contract if he enters into an agreement to construct for cash, deferred payment or other valuable consideration. Respectfully following the verdict of the Hon'ble Gujarat High Court, cited supra, we dismiss these appeals of the Revenue.

7. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced on this 26<sup>th</sup> day of May, 2025.

**Sd/-**  
**(Inturi Rama Rao)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Prakash Chand Yadav)**  
**JUDICIAL MEMBER**

Cochin; Dated : 26<sup>th</sup> May, 2025.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin