



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.709/PUN/2023  
Assessment Year : 2006-07

Skyline Developers, D-444, Clover Centre 7, Moledina Road, Pune 411 001 Maharashtra PAN : AASFS6230J	Vs.	Income Tax Officer, Ward-4(5), Pune
Appellant		Respondent

Appellant by	:	Shri Pramod S. Shingte
Respondent by	:	Shri Amit Bobde
Date of hearing	:	10.12.2025
Date of pronouncement	:	20.01.2026

**आदेश / ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned appeal at the instance of assessee pertaining to A.Y. 2006-07 is directed against the order dated 23.03.2023 framed by National Faceless Appeal Centre, Delhi (NFAC) arising out of assessment Order dated 06.02.2014 passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (in short 'the Act').

2. Registry has pointed out that there is delay of 21 days in filing of the appeal before this Tribunal. Assessee has filed an affidavit explaining the reasons which gave rise to delay and the contents of said Affidavit reads as under:

*"1. Ours firm has filed its return of income for A.Y. 2006-07 on 27/10/2006, which has been processed u/s 143 (1).*



2. Case is reopened u/s 147 by issuing notice u/s 148 dated 20/03/2013.

3. Learned Assessing Officer has passed Assessment Order u/s 143(3) rws 147 dated 06/02/2014 and assessed the income at Rs. 11,61,57,413.

4. Against this assessment order our firm has preferred an appeal before Learned CIT Appeal, and Learned CIT Appeal has passed the order u/s 250 dated 23/03/2023.

5. Against this order firm wanted to file an appeal accordingly prepared the documents and also transferred Rs.10,000/- to tax consultant account for the payment of appeal fee.

6. It was informed to us by the Tax Consultant that currently Payment is to be made through E-Portal under the tab E-Pay tax and said tab for A.Y. 2006-07 do not give the option of "300- Self Assessment Tax". In support of the Same they have also given us the screenshot which is attached as Annexure No-1 to this affidavit. In spite of raising specific grievance still issue was not resolved yet.

7. Accordingly, after several attempts the tax has been paid by changing the year as 2007-08 where in such option of payment "300- self assessment tax' was available and accordingly on 9th June 2023 appeal fee challan was paid.

8. Further, on 12th June 2023 an application was made to the Income Tax Officer ward 4, Pune requesting him to change the year on the said challan (Copy is enclosed at Annexure No.2)

9. Due to this reason the appeal which ought to have been filled by 22/05/2023 was filed on 12th June 2023 causing there by delay of 21 days. Prayer is made to condone the delay."

3. Having gone through the above reasons, we are satisfied that 'reasonable cause' prevented the assessee to file the appeal within the stipulated time. We note that the delay is not intentional and assessee would not have gained from filing



the appeal with a delay. We therefore in light of judgments of Hon'ble Apex Court in the case of *Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107* and in the case of *Inder Singh Vs. State of Madhya Pradesh judgment dated 21.03.2025 (2025 INSC 382)* condone the delay of 21 days in filing of the instant appeal before this Tribunal and admit the appeal for adjudication.

4. Assessee has raised following grounds of appeal :

*"1. On the facts and in the circumstances of the case and in law, the Learned Assessing Officer erred in assessing the appellant income at Rs.11,61,57,413 by passing order under section 143 rws 147 of the IT Act 1961, by rejecting appellant's submission and contentions in this regard*

*2. On the facts and in the circumstances of the case and in law, the Learned Assessing Officer have erred in rejecting appellants plea that on the bases of incorrect advise received from the tax consultant your appellant has inadvertently offered the ready reckoner value of the deal as income and further claimed of deduction under section 80IB(10) of IT Act incorrectly, Lower Authorities have merely rejected 80IB(10) claim but failed to appreciate the fact that no income has accrued to assessee and also ignored the fact that only real income can be taxed.*

*3. On the facts and in the circumstances of the case and in law, the Lower authorities erred in rejecting the appellant submission of incorrect advice by concluding that no action is taken against the tax consultant in our humble opinion the plea needs to be understood objectively as assessee's bonafide action needs to be appreciated, and particular inaction cannot result into taxing unreal income.*

*Your appellant craves for to add, alter, amend, modify, delete all above or any grounds."*

5. Brief facts of the case are that the assessee is a partnership firm engaged in the business as Builders and Developers. Nil income declared in the return of income for



A.Y. 2006-07 on 27.10.2006 after claiming deduction u/s.80IB(10) of the Act at ₹11,61,57,413. Return processed u/s.143(1) of the Act. Thereafter, the case reopened for scrutiny after obtaining approval for reopening from Additional CIT, Range-4, Pune and notice u/s.148 of the Act dated 20.03.2013 duly served upon the assessee. The main reason for reopening is that the assessee has made a wrong claim of deduction u/s.80IB(10) of the Act. Ld. Assessing Officer observed that the assessee during the year has entered into an Agreement with Kausar Baug Society on 12.04.2000 followed with a Deed of confirmation cum Supplemental Agreement on 15.05.2005 for development of piece of land held by the Kausar Baug Cooperative Society Ltd. The assessee acquired the land at Kondhwa Khurd, Pune from Kausarbaug Coop. Housing Society vide Development Agreement dated 12.05.2005 and in lieu thereof assessee was required to construct and handover the flats on the area of 2,40,000 sq.ft. built up for the Members of the society. The balance land owned by the society measuring 4,63,103 sq.ft. was allowed to be developed by the assessee for which the assessee entered into Joint Venture Agreement with Brahma Builders vide Agreement dated 21.03.2006. The Joint Venture is known in the name of Brahma Skyline Developers to carry on the business of developing a housing project on the said property. Now for the year under consideration, i.e.F.Y. 2005-06 the assessee furnished the return along with Tax Audit Report on Form No.10CCB. During the course of reassessment proceedings carried out after issuance of notice u/s.148 of the Act assessee again furnished the details along with copy of Joint Venture Agreement, It was submitted that the Revenue sharing model of the assessee with Brahma Builders is 32:68.



In other words, Brahma Builders will undertake the construction for entire scheme of Joint Venture including Joint planning and sale of Joint Venture flats and will get 68% of the gross sale proceeds and on the other hand assessee will get 32% of the gross sale proceeds which will be further utilised for doing the construction of the flats on 2,40,000 sq.ft. area for the Members of the society. During the course of the reassessment proceedings, assessee filed the details exhibiting that a valid claim of deduction u/s.80IB(10) of the Act has been made. However, ld. Assessing Officer did not allow the claim of deduction u/s.80IB(10) of the Act observing as follows:

*“6. The assessee's submission has been considered. The assessee is a member of Brahma-Skyline JV, a joint venture between Brahma builders and Skyline Developers. The Brahma Skyline JV is engaged in building a housing project "Emerald County" at Kausar Baug Kondhwa Khurd, Pune. The project was first commenced on 3 March 2007 and completed on 4th Nov.2009. M/s Skyline Developers has introduced land admeasuring 38200 sq. mtrs and M/s Brahma Builders has agreed to develop and construct upon the land. Accordingly Brahma Skyline JV was formed for developing the housing project. It is observed that the JV has not maintained any books of accounts or filed any return of income. In the agreement it is mentioned that books of accounts of the JV shall be maintained in similar type of the business or mercantile basis and the same shall be audited. It is further stated that the revenue sharing arrangements at 32:68 is intended to compensate the two parties for their respective contribution and expenses incurred.*

*7. Para 13 of the JV agreement reads as under:*

*"The first and second party agrees that as consideration for jointly developing the said property the parties have mutually confirmed that the outlay of the First Party to the Joint Venture shall be the said property and the second party shall invest the entire requisite wherewithal, capital and efforts to implement the building project to complete the same together with all infrastructural development at their own cost and responsibility and on its own account. The parties have determined to share the gross sale proceeds received from the sale of the units and from all saleable areas including parking, terrace, garden and any other specified or unspecified areas whatever as consideration save and except the amount/item specified hereinafter in the ratio 32:68 i.e. 32% to the first party and 68% to the second party It is understood and agreed between the*



*parties that the revenue sharing arrangement of 32:68 is intended to compensate the two parties for their respective contribution and expenses incurred."*

7. *It is pertinent to note that the members of the JV have determined to share the gross sale proceeds received from the sale of the units and from all saleable areas including parking, terrace, garden and any other specified or unspecified areas whatever as consideration save and except the amount/item specified hereinafter in the ratio 32:68 i.e. 32% to the first party and 68% to the second party.*

8. *Deduction u/s Section 80IB(10) is available to an undertaking engaged in developing and building housing project subject to certain conditions laid down in the Act. Amount of deduction is 100% of the profit from such business. In the present case the assessee has only provided the land and the construction activities are being taken care of by Brahma Builders. The assessee and Brahma Builders have formed a JV in the name of Brahma-Skyline JV to execute the aforesaid housing project. Whatever may be the revenue sharing module between the members of the AOP the income has to be determined on the basis of principles of accounting and consumption with the provisions of Income tax Act. It is seen that the undertaking which has built and developed the housing project does not have the PAN, has not filed any return of income since formation of the JV. It was the JV only which could have claimed the deduction u/s 80IB (10) and allowability or otherwise of the same would have been considered in the JV's case. The assessee is not entitled to claim any deduction independently as it is not a Builder and Developer of the housing project. The assessee has merely introduced land and has not performed the role of builder and developer of a housing project. Thus, there is no question of allowing of claim of deduction u/s 80IB(10) of Rs. 11,61,57,413/ in this case. Accordingly, Rs. 11,61,57,413/- claimed as deduction u/s 80IB(10) of the Act has been disallowed and added to the total income of the assessee under the head Business Income. As the assessee has concealed this income by furnishing inaccurate particulars of income, penalty proceeding u/s 271(1)(c) of the Act is separately initiated."*

6. Aggrieved assessee preferred appeal before Id.CIT(A). During the course of appellate proceedings before Id.CIT(A) it was stated that in the year under consideration the project was not commenced and only a Joint Venture Agreement was entered. However, the assessee grossly erred in treating the stamp duty valuation mentioned in the Joint Development Agreement at ₹11,33,80,800 as Revenue for the year and was



erroneously shown as income on Receipt side of profit and loss account even though it was a notional figure adopted by the stamp duty valuation authority and accordingly shown net profit for the year at ₹11,32,54,065.92 and claimed deduction u/s.80IB(10) of the Act at ₹11,61,57,413. However, ld.CIT(A) after discussing the contentions made by the assessee dismissed the assessee's appeal observing as follows :

*"12. Facts of the case and material available on record have been gone through. The appellant partnership firm M/s Skyline Developers (appellant), filed its ITR for A.Y. 2006-07 on 27.10.2006 declaring NIL income, after claiming deduction u/s 80IB of Rs.11,61,57,413/-. Subsequently, notice u/s 148 was issued on 20.03.2013, in response to which, the AR of the appellant attended from time to time and furnished the details. The appellant acquired land at Sl. No. 12, 11 and 30 at Kondbwa Khurd, Pune from Kausarbang Co-op Housing Society vide a Development Agreement dated 12.05.2005. As per this agreement, it constructed flats on 2,40,000 sq. fit. area and handed over flats to the members of the Society over the years. The balance land was developed by appellant and M/s Brahma Builders as per Joint Venture Agreement dated 21.03.2006 (Brahma-Skyline Developers). The appellant claimed deduction u/s 80IB(10) of Rs. 11,61,57,413/- on income from this Joint Venture Agreement. The AO accordingly, asked the appellant to furnish copy of ITR acknowledgement, computation sheet, BS, TAR, Form No. 10CCB copy of Joint Venture Agreement, detailed note on 80IB(10). As per reply, the revenue sharing was that Brahma Builders to get 68% of Gross Sale Proceeds while, appellant to get 32% of the gross sale proceed.*

*13. The condition required for deduction u/s 80IB were fulfilled in the capacity of Joint Venture. As per this agreement, it was laid down that JV shall maintain books of accounts which shall be audited. However, Joint Venture did not obtain PAN or file its ITR despite the fact that it was JV only, which could have claimed the deduction as in individual capacity. neither the appellant firm nor Brahma Builder was eligible or fulfilling the requirements.*

*14. The appellant only provided the land and the construction activities was done by Brahma Builders. The deduction u/s 80IB(10) is available to an undertaking engaged in developing and building housing project. Only the Joint Venture fulfilled the eligibility conditions for getting deduction benefit. Reliance is placed on rationale in the cases of:-*

- 1. Discoverture Solutions (India) (P) Ltd. vs DCIT- [2023] 147 taxmann.com 262 (Orissa) Export oriented undertaking (Section 10A v. Section 10B) Assessment year 2011-12*



ITA No.709/PUN/2023  
Skyline Developers

*Assessee filed return and claimed deduction under section 10A During assessment proceedings, assessee was asked to file tax computation sheet and Assessing Officer noticed that assessee had been claiming deduction under section 10B since its incorporation -Pursuant to show cause notice, assessee stated that it had wrongly claimed deduction under section 10A instead of section 10B and wrong form was filed for claiming exemption Assessing Officer disallowed deduction claimed by assessee on grounds that Form 56F with respect to deduction under section 10A was filed by assessee instead of Form 56G with respect to deduction under section 10B Whether since assessee did not satisfy mandatory requirement of filing Form-56G as per section 10B(5), exemption under section 10B could not allowed - Held, yes [Para 19] [In favour of Revenue].*

*Thus, it can be seen that even if deduction is claimed in wrong section u/s 10A instead of 10B, then also the claim was denied, whereas, in the case of the appellant, the deduction was not claimable at all by the appellant.*

*1. Dilip S. Dahanukar vs ACIT - [2001] 117 Taxman 241 (Bombay) wherein it was held that whether since reasons recorded clearly indicated that there was material on basis of survey and statements of persons to show that assessee had wrongly claimed deduction, there was no reason to interfere with impugned notice issued under section 148-Held, yes,*

*1. Jeans Knit (P.) Ltd. vs. DCIT [2013] 38 taxmann.com 112 (Karnataka) wherein it was held that where sister concern could not make claim for deduction under section 10B after expiry of specified period, assessee-company was incorporated to which business and assets of sister concern were transferred and assessee claimed deduction under section 10B, said claim being wrong, would form 'reasons to believe' so as to initiate reassessment (This case is Affirmed in [2014] 50 taxmann.com 319 (Karnataka))*

*15. The appellant contends that AO has erred in treating the Stamp Duty Valuation (SDV) of Rs.11,33,80,800/- as income of the appellant, which as per appellant was erroneously shown as income on receipt side of Profit & Loss account, whereas it was a notional figure adopted by the SDV authority. The logic given by appellant is faulty as it was the partner of the appellant who himself signed the ITR and audit reports and claimed such a deduction. A deduction cannot be claimed on a notional figure unless any activity is undertaken. There are so many entities doing developer business but not all are claiming deduction as their working is as per regular business norms. Further, when the registering authority worked out market value of the said transaction and levied stamp duty. the same was paid without any issues. Further, as pointed out in the remand report that no action was taken against the auditors and no documentary proof was given that how the firm was wrongly advised. The appellant, in terms of the Joint Venture Agreement, had*



*absolutely no right to claim deduction u/s 80IB(10) and the case laws relied are distinguishable, as here it involves a substantial amount of deduction claim and not merely an accounting entry. Hence, the action of the AO in disallowing the claim of deduction u/s 80IB(10) at Rs. 11,61,57,413/- is sustained and the grounds raised by the appellant are dismissed.”*

7. Aggrieved assessee is now in appeal before this Tribunal.

8. Ld. Counsel for the assessee stated the important facts along with its submissions praying for the deletion of the impugned disallowance and the same reads as under :

*“1. Introduction and Background*

*1. M/s. Skyline Developers ("Skyline") is a partnership firm engaged in the business of builders and developers.*

*2. Skyline entered into a Development Agreement with Kausar Baug Co-Operative Housing Society on 12/04/2000 (confirmed on 12/05/2005) to construct buildings for the society members and, in lieu thereof, secured the right to develop a building project on the balance land*

*3. Subsequently, Skyline entered into a Joint Development Agreement (JDA) with Brahma Builders ("Brahma") on 21/03/2006. The JDA stipulated a profit-sharing ratio of 32% for Skyline and 68% for Brahma from the sale proceeds.*

*4. The actual project commencement date was 03/03/2007, and it was completed in the Financial Year (FY) 2008-09.*

*5. It was mutually agreed between the JV partners that the project would adhere to the provisions of Section 801B(10) of the Income Tax Act, 1961, to avail the benefit of the corresponding deduction.*

*2. Facts Pertaining to the Impugned Assessment Year (AY 2006-07)*

*1. Erroneous Accounting Entry: While finalising accounts for FY 2005-06 (AY 2006-07), the then Tax Consultant of Skyline erroneously advised that, as the project was eligible for Section 801B (10) deduction, the firm should offer its income in that year and claim the entire profit as exempt.*

*2. Turnover & Profit Claimed: Relying on this incorrect advice, a sum of Rs.11,33,00,800/- (value adopted for stamp duty as per the 21/03/2006 agreement) was accounted for as Turnover. A profit of*



ITA No.709/PUN/2023  
Skyline Developers

Rs. 11,32,54,065/- was worked out and accordingly deduction was claimed u/s 80IB (10) in the Return of Income filed on 27/11/2006

3. *Absence of Project Activity/Accrual of Income:* It is crucial to note that since the JDA was executed on 21/03/2006, no major activities regarding the housing project were carried out by either Skyline or Brahma before 31/03/2006 (the end of FY 2005-06). Consequently, no income had legally accrued to Skyline in AY 2006-07, and the firm was not eligible to claim deduction u/s 80IB (10) in that year.

### 3. Subsequent and Actual Accrual of Income

1 The project was effectively completed in AY 2009-10 and AY 2010-11. Skyline offered the actual income from the project in these years:

Sr.No.	A.Y.	Turnover	Profit (Claimed u/s.80IB(10))
1	2009-10	₹9,67,83,200	₹1,05,72,657
2	2010-11	₹16,10,60,000	₹49,47,079
	Total	₹25,78,43,800	

2. The deduction claimed u/s 80IB (10) on the actual profits offered in these subsequent years (AY 2009-10 and AY 2010-11) has been allowed by the Hon'ble ITAT, Pune, vide orders dated 10/01/2018 (in ITA No. 1503/PUN/2014) and 12/09/2019 (in ITA No. 1695/PUN/2017), respectively.

### 4. Reassessment Proceedings and Grounds for Deletion

1. Reassessment proceedings u/s 147 for AY 2006-07 were initiated on 20/03/2013

2. During reassessment and subsequent appellate proceedings, it was consistently explained that the turnover recorded in AY 2006-07 was an inadvertent error based on an incorrect professional advice, as the real income from the project had not accrued.

3. The core contention is that mere incorrect accounting entries due to erroneous advice cannot create 'real income' where none has accrued, especially when the project had not even commenced substantial activities by the end of the financial year.

4. *Risk of Double Taxation:* The total actual turnover from the project, being Rs.25,78,43,800/-, has already been offered by Skyline and accepted by the Revenue in AY 2009-10 and AY 2010-11. If the erroneously recorded turnover of Rs.11,33,00,800/- in AY 2006-07 is also considered, it will indisputably lead to double taxation of the same project income.

### 5. Conclusion and Prayer

In light of the foregoing facts:



ITA No.709/PUN/2023  
Skyline Developers

*The income shown in AY 2006-07 was based on an erroneous accounting entry and was not the real income accrued to the Appellant in that year, as substantial project activities commenced much later.*

*The actual income from the project has already been offered and assessed (with the 80IB (10) deduction being allowed) in the subsequent and correct years, i.e.. AY 2009-10 and AY 2010-11.*

*Considering the turnover for AY 2006-07 in the computation of total income will result in the clear and illegal double taxation of the same revenue stream.*

*The Appellant, M/s. Skyline Developers, therefore, humbly prays before the Hon'ble Bench to appreciate the facts and circumstances of the case, uphold the principle of 'Real Income', and delete the assessed income as finalized by the Learned Assessing Officer for AY 2006-07, thereby preventing double taxation.*

*For this act of kindness, your Appellant shall be highly obliged.*

9. Ld. Counsel for the assessee also submitted that the Joint Development Agreement with Brahma Builders was entered on 21.03.2006, i.e. just seven days prior to the close of the financial year in question and the housing project actually commenced on 03.03.2007 and was completed in subsequent years and further the assessee has offered the income during the year of receiving the share of the sale proceeds as agreed in the Joint Development Agreement and after claiming the expenditure incurred for constructing flats for the Members out of the remaining profits deduction u/s.80IB(10) has been claimed after duly fulfilling the conditions provided under the said section. It was also submitted that the notional entry which was credited during the year under consideration has been subsequently written off in the books and in support the reference was made to various documents placed in the paper book running into 262 pages and also the gist of the treatment of advance and sale proceeds received from Brahma Skyline



Joint Venture and the adjustment of Revenue received against it and also squaring off the notional Revenue figure of ₹11,33,80,800.

10. So far as the validity of reopening of the assessment year under consideration is concerned, ld. Counsel for the assessee made no specific contention and only stated that the return was processed u/s.143(1) of the Act and merely made a general statement that reassessment proceedings are invalid and that ld. Assessing Officer erred in rejecting the assessee's submissions and contentions in this regard.

11. On the other hand, ld. Departmental Representative vehemently argued supporting the finding of ld.CIT(A) and stated that assessee has itself made a claim of deduction u/s.80IB(10) of the Act in the income tax return and also furnished Audit Report inspite of the fact that conditions required to be fulfilled u/s.80IB(10) has not been complied and that share of profit has also been apportioned to the partners capital account and assessee has failed to explain about the fate of such sharing of profit by the partners and their subsequent adjustment in the books of account.

12. We have heard the rival contentions ld. and perused the record placed before us. So far as Ground No.1 raised by the assessee challenging the validity of the reassessment proceedings is concerned, we find that assessee's return was not selected for regular scrutiny and has been processed u/s.143(1) of the Act. In the return, assessee had made a claim of deduction u/s.80IB(10) of the Act on account of income alleged to be earned from the Brahma Skyline Joint Venture Agreement. Ld. Assessing Officer based on the



information came to know that no such housing project was commenced during the year under consideration and that assessee has made a wrong claim of deduction u/s.80IB(10) of the Act. This information was received by the Assessing Officer from independent sources as well as subsequent assessment proceedings carried out in the case of assessee and he had formed reason to believe that assessee has made wrong claim of deduction u/s.80IB(10) of the Act. We are therefore of the view that valid notice u/s.148 of the Act has been issued recording proper reasons and there was certainly reason to be believe that income has escaped assessment in the form of deduction u/s.80IB(10) of the Act. We therefore hold that issuance of notice u/s.148 of the Act as well as reassessment proceedings are valid. Ground No.1 raised by the assessee is dismissed.

13. Ground Nos. 2 and 3 revolve around the merits of the case regarding the disallowance of deduction/s.80IB(10) of the Act. Assessee in the instant case is a partnership firm entered into a Development Agreement with Kausar Baug Cooperative Housing Society on 12.03.2000 which was subsequently confirmed on 12.05.2005. Kausar Baug Cooperative Housing Society owned land at S.No.12, 11 and 30 Kondhwa Khurd, Pune. On the part of this land admeasuring 2,40,000 sq.ft. assessee was required to construct the flats for the Members of the society. Towards consideration for constructing the flats the Members of Kausar Baug Cooperative Housing Society did not gave any money to the assessee but they allowed the assessee to develop the balance land admeasuring 4,63,103 sq.ft. for residential purposes and the profits earned there from can be utilised by the assessee for constructing the flats



for the Members on the area of 2,40,000 sq.ft. Now the assessee further entered into a Joint Venture Agreement with another builder namely Brahma Builders on 21.03.2006 and under the detailed Joint Venture Agreement with a name Brahma Skyline Developers and that Brahma Builders will incur the cost of construction of flats on the area admeasuring 4,63,103 sq.ft against sale consideration of such flats at 68% of the sale proceeds and the remaining 32% share given to the assessee firm Skyline Developers. Against the sale proceeds of 32%, the assessee firm shall incur the cost for constructing the flats for Members of the society. Now for the year under consideration when the Development Agreement was entered by the assessee with Brahma Builders on 21.03.2006 the stamp duty value mentioned in such Joint Venture Agreement is ₹11,33,80,800. Brahma Skyline Developers project was commenced on 03.03.2007 completed on 04.11.2009. Now in the return of income filed by the assessee deduction u/s.80IB(10) has been claimed on the said notional value mentioned in the Joint Development Agreement with Brahma Builders at ₹11,33,80,800. Deduction u/s.80IB(10) of the Act is allowable if the assessee complies to the conditions prescribed in the said section which reads as under :

*“(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*



ITA No.709/PUN/2023  
Skyline Developers

*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.*



ITA No.709/PUN/2023  
Skyline Developers

*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).”*

14. Now from perusal of the above sub-section (10) of section 80IB, the said section starts with the phrase “that this deduction is allowable in case of any undertaking Developing and Building Housing projects approved before 31.03.2008 by local authority followed by various other conditions prescribed in the said section. So the deduction u/s.80IB(10) is allowable firstly when the project is approved and thereafter when the construction is carried out and then Completion certificate is received from the local authority subject to other conditions regarding the built up area, plot size etc. Now for the year under consideration, neither the housing project in question was approved and therefore no construction of housing project commenced. It was only seven days before the close of the year when Joint Development Agreement was entered. This fact has not been controverted by the Revenue authorities at any stage that for the year under consideration assessee has started the housing project. So it remains an admitted fact that only the notional income has been credited to the profit and loss account based on the stamp duty valuation of the Joint Development Agreement and there being no actual transaction of construction of housing project, sale of flats or other conditions which requires to be complied prior to claiming deduction u/s.80IB(10) of the Act. Ld. Counsel for the assessee fairly admitted that even though Audit Report on Form 10CCB has been submitted along with the return but that is only for the notional income. In other words, there is no real income earned by the assessee and only on the advice



of the Accounting experts such entries have been made in the books of account and further the deduction has been claimed u/s.80IB(10) of the Act. The Real Income principle or Real income theory is a foundational concept in income tax law that indicates that tax should be levied only on the income that has actually accrued or been received by an assessee, rather than on hypothetical or notional income. The principle prioritizes the substance of a transaction over its formal accounting entries.

15. Now under the given facts of the case certainly there is no real income earned/accrued to the assessee during the year and only the notional income has been credited to the profit and loss account. Question raised by the Revenue authorities during the course of hearing that when the assessee has shown net profit during the year under consideration and has also distributed the same to its partners then how this accounting entry has been subsequently treated in the books. Ld. Counsel for the assessee in order to explain this treatment in the accounts has made reference to the key figures of the profit and loss account, current assets, profit distributed/amount debited to partners capital account balance from A.Y. 2006-07 to A.Y.2010-11 and the said details are mentioned below :



ITA No.709/PUN/2023  
Skyline Developers

SKYLINE DEVELOPERS					
Asses year	Group	Head of Income	Debit	Credit	
2006-07	Profit and Loss A/c	Revenue		11,33,80,800.00	
	Current assets	Brahma Skyline JV	11,33,80,800.00		
	Profit		11,32,54,065.92		
	Partner Capital A/c	Profit trf		11,32,54,065.92	
2007-08	Current assets	Brahma Skyline JV	11,33,80,800.00		
	Current Liability	Advance from BSJV		11,82,08,620.00	
2008-09	Current assets	Brahma Skyline JV	11,33,80,800.00		
	Current Liability	Advance from BSJV		20,39,91,956.17	
2009-10	Profit and Loss A/c	Revenue		9,67,83,200.00	
	Current Asset	Brahma Skyline JV			
		Opening Balance	11,33,80,800.00		
		Revenue	9,67,83,200.00		
		Trf JV	-5,00,000.00		
		<b>Closing Balance</b>	<b>20,96,64,000.00</b>		
Current Liability	Advance from BSJV		22,85,41,534.00		
2010-11	Profit and Loss A/c	Revenue		15,90,60,600.00	
	Current Asset	Brahma Skyline JV			
		Opening Balance	20,96,64,000.00		
		Revenue	15,90,60,600.00		
		Less :Advances recd	22,85,41,534.00		
		Trf to Security deposit	2,68,02,266.00		
		Trf to capital account	11,33,80,800.00		
		<b>Closing Balance</b>	<b>0.00</b>		
	Current Liability	Advance from BSJV			
		Opening Balance		22,85,41,534.00	
		Trf to Current Asset		22,85,41,534.00	
			<b>Closng Balance</b>	<b>0.00</b>	
		Security Deposit BSJV			
Trf from Current asset			2,68,02,266.00		
Trf JV			12,00,578.00		
	<b>Closing Balance</b>	<b>2,80,02,844.00</b>			

16. The above concise details have been further got verified by the Id. Counsel for the assessee from the Audited financial statements placed in the paper book and going from these details we find that notional income which was credited to the profit and loss account during A.Y, 2006-07, and debit balances was created in the name of Brahma Skyline Developers for the very same account and thereafter during A.Y. 2010-11 this amount was squared up and transferred to



capital account. In other words, this balance was firstly credited to the partners capital account during A.Y. 2006-07 but then debited to partners capital account during A.Y. 2010-11. Apart from the treatment of this notional income entry all the other transactions entered with Brahma Skyline Joint Venture regarding receiving of security deposit, receiving of sale proceeds against 32% share has duly been accounted for and the assessee has considered the same in its gross turnover for A.Y. 2009-10 and 2010-11 and after deducting the cost incurred has claimed the deduction u/s.80IB(10) of the Act at ₹1,05,72,657 and ₹49,47,079 for A.Y. 2009-10 and 2010-11 respectively. Revenue authorities have also accepted the turnover of the assessee during A.Y. 2009-10 and 2010-11 totalling to ₹25.78 crore approx. These facts bring us to a conclusion that the turnover in the form of notional income assessed in A.Y. 2006-07 if again assessed to tax then it will amount to double taxation because the actual sale proceeds from the Brahma Skyline Developers Joint Venture has already been shown in the profit and loss account for the respective years and there is no dispute about the correctness of the turnover shown by the assessee for these two years.

17. We therefore are of the considered view that the notional income shown in A.Y. 2006-07 is merely erroneous accounting entry and not a real income accrued to the assessee as the substantial project activities commenced much later and since the actual income from the project in question has been offered to tax by the assessee in the correct assessment years, there is no real income during A.Y. 2006-07 and therefore, there cannot be any claim u/s.80IB(10) of the Act. We therefore delete the impugned addition/disallowance made by



ITA No.709/PUN/2023  
Skyline Developers

the Assessing Officer u/s.80IB(10) of the Act. Finding of ld.CIT(A) on merits is set aside. Ground Nos. 2 and 3 raised by the assessee are allowed.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 20<sup>th</sup> day of January, 2026.

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 20<sup>th</sup> January, 2026.  
Satisfy

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.