

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI MANOJ KUMAR AGGARWAL,
AM**

ITA No. 5989/Mum/2014

(A Y: 2010-11)

I.T.O. Ward 4(3), Thane, 6 th Floor, Ashar IT Park, Road 16Z, Thane(W).	Vs.	M/s. Pragati Enterprises, Ground Floor, Aakar Building, Rajhans Residential Complex, Behing D.G. Nagar, Vasai Road (W)
PAN: AAIFP5232B		
Appellant	..	Respondent

Revenue by	..	Shri K. Mohandas
Assessee by	..	Shri Subodh Ratnaparkhi

Date of hearing		27-07-2016
Date of pronouncement		10-08-2016

ORDER

PER MANOJ KUMAR AGGARWAL (AM) :

This appeal has been filed by Revenue for A.Y. 2010-11 assailing the order of Commissioner of Income Tax (Appeals)- II [CIT(A)], Mumbai dated 04/07/2014 raising the following Grounds of Appeal:-

1. *“Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) – II, Thane has failed to appreciate the facts that the project has not been completed within the time period as laid down by the provision of section 80IB (10) of the IT Act, 1961.*
2. *Whether on the facts and in the circumstances of the case and law, the judicial pronouncement on which the Ld. CIT(A) has relied upon has not been accepted by Revenue and SLP filed is pending for disposal before the Hon’ble Supreme Court.*
3. *The appellant prays that the order of the Learned CIT(A) – II, Thane, be cancelled and that of the A.O. be restored.*

2. The facts in brief, are that the assessee is a resident firm and filed its return of income for A.Y. 2010-11 during September, 2010 declaring total income of Rs. 4,20,950/-. The nature of business of assessee firm was building construction & developers. The case was selected for scrutiny assessment which was completed by Assessing Officer (‘AO’) order dated 28/03/2013. The assessee claimed deduction u/s. 80IB(10) amounting to Rs. 71,59,709/- which was disallowed by AO and made sole additions on this account.

3. During the course of the assessment proceedings, the assessee was asked to submit the relevant details in respect of its claim of deduction u/s. 80IB(10) of the Act. Requisite details were furnished. The AO noticed that the commencement certificate dt. 22.2.2005 is in respect of 17 buildings. According to the AO, the assessee only produced part occupancy / completion certificates and failed to produce failed to produce the full occupancy / completion certificates in respect of 17 buildings / entire project. The AO was of the firm belief that entire housing project should have been completed within the prescribed time but as the assessee has failed to do so,

the essential conditions of project completion as laid down by Sec. 80IB(10)(a)(ii) read with explanation (ii) has been violated hence the project is not entitled for Sec. 80IB(10) deduction. The assessee was show caused to explain why the claim should not be denied. The assessee filed a detailed reply vide letter dt. 15.03.2013 which has been extracted by the AO at para-4 of his order.

4. After considering the submissions, the AO was of the opinion that the commencement certificate has been issued in respect of 17 buildings. The occupancy certificates submitted by the assessee are part occupancy certificates and not full occupancy certificate. The AO finally concluded that the assessee has not complied with the mandatory conditions of Sec. 80IB(10). The claim of deduction was denied and hence sole addition of Rs. 71,59,709/- was made to the returned income.

5. The assessee carried the matter before the Ld. CIT(A). It was strongly submitted that out of the total 17 buildings of the project as approved by the local authority, the assessee firm acquired development rights in respect of only one residential building number 5 called 'Ruby' which comprised of three wings namely 'A', 'B' & 'C' having built up area of 8264.69 Sq. Mtrs. The assessee contended that it has completed its building within stipulated period and obtained completion certificate before the due date. It was further submitted that the occupancy certificates are granted building-wise and if all the buildings forming part of the layout are not completed then part occupancy certificates are granted which means that the particular building concern is fully completed but other buildings of the layout are under development.

6. After considering the facts and the submissions, the Ld. CIT(A) relied on relief granted to the assessee under similar circumstances by his predecessor for Assessment Year 2009-2010, and allowed the claim of the assessee.

7. Aggrieved by this, Revenue is before us.

8. The Ld. Department Representative strongly supported the findings of the AO. Per contra, the Ld. Counsel for the assessee (AR) reiterated what has been submitted before the lower authorities. At the outset, AR drew our attention to the stand taken by ITAT in assessee's own case in ITA No. 7020/Mum/2012 under similar circumstances for Assessment Year 2009-2010 and produced a copy of the order for our perusal.

9. We have heard rival contentions and perused material on record. We notice that a stand has been taken by ITAT in assessee's own case for Assessment Year 2009-2010 which is as follows:-

"We have carefully considered the rival submissions and perused the orders of the authorities below. It is an undisputed fact that the entire project is on a plot area of 67225 Sq. mtr for which the building plan was approved by CIDCO, 17 buildings were to be constructed. Out of the entire project, the assessee was awarded the construction of building No. 5 consisting of 3 wings A, B & C. It appears that the AO has proceeded under a wrong belief that the entire 17 buildings have been constructed by the assessee. The fact of the matter is that the assessee has constructed only building No. 5 with A, B & C wings which was on a plot area of more than one acre. This fact is not at all in dispute. The assessee has submitted the completion certificate in respect of the building constructed by it

on which it has claimed deduction u/s. 80IB(10) of the Act. The AO expected the assessee to submit completion certification in respect of all the building which is totally uncalled for and unwarranted. The AO should have restricted his findings only to the project awarded/undertaken by the assessee which is building NO. 5 and should have proceeded by finding whether the assessee has complied with the mandatory condition in respect of building No. 5 only. Since the AO has proceeded completely on misconceived facts, therefore, we restore this issue to the file of the AO. The AO is directed to verify the eligibility u/s. 80IB(10) of the Act in respect of Building No. 5 with A,B & C wings. The AO is directed to verify the sales keeping in mind the Explanation to Sec. 80IB(10) relating to the execution of the housing project as a work contract. Needless to mention, the AO shall give a reasonable and sufficient opportunity of being heard to the assessee.”

10. As the matter is identical in all respect, we find no reason to deviate from the stand taken by assesses order of ITAT and therefore, we restore the matter back to AO to verify the claim of assessee on the above lines/observations.

11. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2016.

Sd/-

**(MAHAVIR SINGH)
JUDICIAL MEMBER**

Sd/-

**(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

Mumbai, Dated: 10/08/2016

PS:- Pooja K.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI