

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI  
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 5166/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer-25(2)(4), C-11, R.No. 103, Pratyaksh Kar Bhavan, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051.	<b>बनाम/ Vs.</b>	M/s. Vandana Properties B-602, Prem Nagar No -6, MCF Udyan Marg Borivali (W) Mumbai-400 092.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AAAFV 3003E
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Lovish Kumar
प्रत्यर्थी की ओर से/Respondent by	:	Shri Sameer Dalal

सुनवाई की तारीख / Date of Hearing	:	29/02/2016
घोषणा की तारीख / Date of Pronouncement	:	16/03/2016

**आदेश / ORDER**

Per Sandeep Gosain, J. M.:

The Present Appeal has been filed by the revenue against the order of Commissioner of Income Tax (Appeals) - 35, dated 01.05.2014 for Assessment Year 2010-2011 on the grounds mentioned herein below.

- “1. *On the facts and in the circumstances of the case, and in law, the ld. CIT(A) erred in allowing the claim of deduction u/s 80IB(10) of the I.T. Act, 1961 of Rs.1,73,73,553/- despite the fact that the assessee do not fulfill the conditions prescribed in this section.*
2. *On the facts and in the circumstances of the case, and in law, the ld. CIT(A) erred in not considering the fact that the commencement Certificate for the for construction activities on the plot was granted on 09.06.1993 i.e. prior to 01.10.1998 which was subsequently extended over the years till 22.04.1998 and certificate issue for wing E is only an endorsement to the earlier commencement certificate.*
3. *On the facts and in the circumstances of the case, and in law, the ld. CIT(A) erred in not considering that the size of land of land on which wing ‘E’ is constructed is less than 1 acre, thus violating the condition required for availing deduction u/s 80IB(10) of the I.T. Act.”*

2. The brief facts of the case are that the assessee engaged in the business as builders and developers. The assessee had claimed deduction u/s.80 IB(10) of the I.T. Act amounting to Rs.1,73,73,553/- on the ground that the assessee had a plot of 2.36 acres at Dev Nagar, Near Bhatia High School, Off Sai Baba Road, Kandivli(W), Mumbai on which 5 wings, viz., A,B,C,D &E were constructed over the years. Commencement Certificate (CC) for the construction activities on the plot was granted on 09.06.1993 for the plinth level which was subsequently extended over the years for entire work of A,B,C&D till 22.04.1998. this CC as further extended for Wing ‘E’ (for which deduction u/s.80IB has been claimed) for the entire work of ‘E’ Wing as per the approved plan dated 11.10.2002, amended on 20.05.2003. On account of sale of flats of Wings A to D, the assessee did not

claim any deduction u/s 80IB(10) of the I.T. Act,1961, but for Wing 'E', the assessee has claimed deduction u/s 80IB (10) for the A.Y. 2004-05 of Rs.71,42,590/-, for A.Y. 2005-06 of Rs.71,73,660/- and for A.Y. 2006-07 of Rs.18,45,226/-. The deduction u/s 80IB(10) had been claimed on the basis of percentage of work completed and occupancy certificate (OC) was not issued. The construction of building "E" was completed on 12.03.2008 as per Completion Certificate dtd.12.03.2008 issued by Local Authority. Full Occupation Certificate in respect of building "E" is issued by Local Authority as per letter dated 31.01.2008. during the year under consideration, the assessee has sold flats in the said building "E" on which net profit is shown at Rs.1,83,15,300/-. The assessee has credited to income and expenditure account on amount of Rs.9,41,748/- on account of interest on I.T. Refund and interest on F.D.

3. The assessee further submitted that the assessee firm has been allowed deduction u/s 80IB(10) of the I.T. Act,1961 by Hon'ble ITAT Mumbai bench and the same was upheld by Bombay High Court. The revenue has filed special petition before the Hon'ble Supreme Court of India. The necessary copies were also filed before the AO and the AO after considering the reply filed by the assessee disallowed the deduction u/s 80IB(10) of the I.T. Act on the ground that

the orders passed by the Hon'ble High Court Mumbai in assessee's own case has not reached finality.

4. Aggrieved by the order of the AO, revenue filed appeal before the CIT(A) and the CIT(A) allowed the appeal filed by the assessee.

5. Aggrieved by the order of the CIT(A), the revenue filed the present appeal before us on the grounds mentioned herein above.

6. At the very outset, Id. AR representing the assessee, submitted that the present case is covered by the assessee's own case as Hon'ble ITAT had already decided the said issue in favour of the assessee for assessment year 2004-05 and in the operative para of Hon'ble ITAT in ITA No.1252/Mum/2007 (A.Y. 2004-05) it has been held that:

*“We have heard the rival contentions and perused the orders. The issue is regarding allowance of deduction u/s 80IB(10) fo the Act with respect to the Building ‘E’ constructed in 2.6 acres of land, where prior to that, buildings A,B,C and D were already constructed. Assessee had claimed deduction u/s 80IB(10) of the Act for the profits on using out of this particular building ‘E’ for the assessment years*

*2004-05 and 2005-06. This was disallowed in the assessment year 2005-06 also and the matter carried in appeal by the assessee before this Tribunal. Vide its order dated 29.4.2009 (supra), the Tribunal held that Wing 'E' was a separate housing project within the meaning of section 80IB(10) of the Act and the said project had commenced after 01.10.1998 and completed before 31.03.2005 making it eligible for deduction u/s 80IB(10) of the Act. It was also held by the Tribunal at para 15 of its order that there was no violation in respect of the size of the plot on which building 'E' was constructed. Respectfully following this for the impugned assessment year also, we hold that the assessee was eligible for claiming deduction u/s 80IB of the Act for its block 'E' building."*

6.1 It was further submitted that even for A.Y. 2005-06, the Hon'ble ITAT in ITA No. 1253/Mum/2007 has also decided the said issue in favour of assessee and the relevant para is reproduced below:

*"We further hold that there is no violation in respect of size of the plot on which building 'E' is constructed. As we have to take into consideration the total size of the plot under development, though part of the projects do not qualify for deduction. We further hold that the*

*conclusion of the A.O. in respect of alleged violation of the area of the flats i.e. flat No.138 and 153 is also baseless and without merit. We, therefore, hold that assessee is entitled for deduction u/s 80IB(10) of the Act as all fundamental conditions are fulfilled by the Assessee. We reverse the order of the CIT(A) and direct the A.O. to grant the deduction to the assessee u/s 80IB(10) of the Act.”*

6.2 It was also submitted that the said decision of ITAT was also challenge by the revenue before Hon’ble High Court and the Hon’ble Bombay High Court in the case of CIT vs. Vandana Properties (2012) 353 ITR 36 (Mum) has dismissed the appeal of the Revenue and uphold the order of ITAT. On the other hand ld. DR relied upon the orders of the AO.

6.3 We have analyse the order of CIT(A). The CIT(A) after considering the case of both the parties has categorically held that the issue with regard to granting of deduction to the assessee u/s 80IB(10) of the I.T. Act has already been decided by the Hon’ble Bombay High Court in the case of the CIT vs. Vandana Properties in favour of assessee. We found that the decision of CIT(A) is based on orders passed by the Hon’ble High Court and apart from relying upon orders of AO, no other arguments or circumstances have been brought before us by the revenue to

controvert or rebut the findings recorded by the CIT(A). Therefore, we see no reason to interfere or deviate from the findings recorded and orders passed by the CIT(A) and therefore, we dismiss the appeal of the revenue.

7. In the result, the revenue's appeal is dismissed.

*Order pronounced in the open court on 16<sup>th</sup> March, 2016*

Sd/-

(Jason P. Boaz)

लेखा सदस्य / Accountant Member

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.03.2016

Ps. Ashwini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**