<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई', मुंबई ।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./**ITA No.6910&6912/Mum/2011**

(**निर्धारण वर्ष /** Assessment Year :2007-08 & 2008-09)

M/s Skyline Residency Pvt. Ltd., ACME Compound, Premier Road, Ghatkopar (West), Mumbai-400086	Vs.	ACIT-(OSD)-II, Central Range-7, 4th Floor, Aykar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AABCJ 2532 L**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.7311&7312/Mum/2011**

(**निर्धारण वर्ष /** Assessment Year :2007-08 & 2008-09)

DCIT-(OSD)-II, Central Range-7, 4th Floor, Aykar Bhavan, Mumbai	Vs.	M/s Skyline Residency Pvt. Ltd., ACME Compound, Premier Road, Ghatkopar (West), Mumbai-400086
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AABCJ 2532 L**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Shri Vijay Mehta

राजस्व **की ओर से** /Revenue by : Shri Manjunatha R. Swamy

सुनवाई की तारीख **/ Date of Hearing : 29/10/2015**

घोषणा की तारीख**/Date of Pronouncement 16/12/2015**

<u>आदेश / O R D E R</u>

***<u>PER R.C.SHARMA (A.M)</u>*:**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A), Mumbai, for the assessment years 2007-08 & 2008-09, in the matter of order passed u/s.143(3) of the I.T.Act.

2. Common grounds have been taken in both the years under consideration, therefore, appeals for both the years were heard together

and are decided by this common order. Rival contentions have been heard and record perused. Facts in brief are that the assessee is carrying on business of builder and developers. The company has developed a residential project at Ghatkopar (West) on size of plot exceeding 1 acre. The entire income was claimed as exempt u/s.80IB(10) of IT. Act. The AO rejected assessee's claim u/s.80IB(10) for reason that the area of some of the flats sold by the assessee company is more than 1000 sq.fts..

3. By the impugned order, the CIT(A) directed the AO to allow proportionate deduction u/s.80IB(10). Against the order of CIT(A), both assessee and revenue are in appeals before us.

4. Ld. AR placed on record order of Mumbai Tribunal "J" Bench in the case of Emgeen Holdings Pvt. Ltd., 47 SOT 98, wherein it was held that prior to A.Y.2010-2011, deduction u/s.80IB(10) cannot be declined as long as residential unit has less than specified area as per duly approved plan and is capable of being used for residential purposes on stand alone basis. It was further held that merely because the end user, by buying more than one such unit in the name of family members, has merged those residential units into a larger residential unit of a size which is in excess of specified size i.e. 1000 sq.ft, deduction u/s.80IB cannot be declined in the assessment year falling prior to A.Y.2010-2011.

5. On the other hand, ld. DR argued that most of the flat so constructed was found to be above 1000 sq.ft. on the physical inspection, therefore, there was no reason to allow assessee's claim for deduction

u/s.80IB(10). As per ld. DR the basic qualifying condition for eligibility u/s.80IB(10) is that each and every flat so constructed is below 1000 sq.ft. and when the assessee has not even fulfilled the basic condition, the CIT(A) was not justified in giving partial relief in respect of the flat which was less than 1000 sq.ft.. He further supported the finding recorded by the AO with regard to the size of the flat so found during inspection and as per the advertisement material published by the assessee itself.

6. From the record we found that disallowance was made by the AO on the plea that some of the flats are having size of more than 1000 sq.ft., therefore, assessee is not eligible for claim of deduction u/s.80IB(10). After having the following observation, the CIT(A) directed the AO to allow proportionate deduction in respect of flats having area upto 1000 sq.ft. :-

> *"4.8 It is apparent from the submissions made above by the appellant that there have been plethora of decisions where a view has been expressed that where some residential units do not satisfy the eligibility conditions' u/s.80IB(10), only a proportionate denial of deduction can be considered. At para 5 of the assessment order for A.Y. 2008-09, the Id.AO himself has mentioned that the Revenue is contesting the issue before the Mumbai High Court, Therefore, the Id .AR was asked to furnish the working of deduction u/s.80IB if only a proportionate disallowance was to be considered. His calculation is reproduced hereunder for A.Y. 2007-08 :-*
>
> *ASSESSMENT YEAR 2007-08*

	Carpet	*Built up*	*Saleable*	*Amount*
Total area of 4 bldgs.	*153248*	*173766*	*209819*	*545,310,614*
Total area of 2BHK	*61290*	*69606*	*82800*	*218,877,122*
Balance area of 3BHK	*91958*	*104160*	*127019*	
Ratio of 2 BHK				*40.14%*
Deduction u/s.80IB				*64,597,589*
Proportionate Deduction				*25,597,589*

Balance taxable		*38,669,368*
Tax on above @30%		*11,600,810*
Surcharge @10%		*1,160,081*
Edu. Cess@30%		*348,024*
Less:Prepaid Taxes		*13,108,916*
TDS	*64,928*	
Advance Tax	*5,500,000*	
Self Assessment Tax	*3,500,000*	*9,064,928*
		4,043,988
Add:Int.U/s.		
234B	*1,329,727*	
234C	*603,721*	*1,933,448*
Total tax payable		*5,977,436*
Less; paid on 25.03.09	*1,500,000*	
07.04.2009	*1,000,000*	*2,500,000*
		3,477,436

4.9 Although the Id .AR has relied on various decisions, it is necessary to deal with two of them which are from the jurisdictional Tribunal. It is seen that it in the case of Saroj Sales Organization vs. ITO (2008) 115 TTJ (Mumbai) 485, the Hon'ble ITAT granted deduction for two blocks comprising of 9 wings out of total 11 wings on the ground that each such block complied with the conditions of section 80IB (10). The Tribunal held that combining the two projects into one will lead to a result which manifestly will be unjust and absurd and defeat the very provisions of deduction sections. The assessees have obtained different commencement certificates and started on different period of time. They are separate by time, space and statutory approvals and even in designs, maintenance of separate 'books of account. Therefore, the ITAT held that the Revenue was not right in treating both the projects as one without the facts warranting for such conclusion.

4.10 The Id.AR's reliance on the case of ACIT VS.Sheth Developers (P) Ltd. (2009) 33 SOT 277 (Mum) at the end of his argument is also very relevant. In this case, the Hon'ble ITAT have referred to Special Bench decision in the case of Brahma Associates vJt. CIT [ITA,No.1417 (PN) of 2006] for allowing pro rata relief even where the appellant had utilized space for commercial purpose upto 10% in an approved housing project. Following the ratio laid down in the said judgment, the Hon'ble Tribunal observed as under in the case, of Sheth Developers (P) Ltd.:

> *"Here, the learned assessing officer as well the Commissioner (Appeals) had declined to give the assessee the benefit of section 80IB(10) for the Aishwariya project for the sole reason that some of the units exceeded 1000 sq. ft. and therefore the stipulation contained in clause (c) of sub-section (10) of section 80IB of the Act was not satisfied. However, as aforesaid the Kolkata, Bangalore and Nagpur Benches of this Tribunal had clearly held even where some*

> *of the units exceeded the area limit relief had to be given on pro rata basis. We also find that Special Bench of the Tribunal in the case of Brahma Associates' (supra) allowed pro rata relief, even where' assessee had utilized space for commercial purpose upto the extent of 10 per cent in an approved housing project. Following these, we are of the opinion that assessee is eligible for relief on pro, rata basis in respect of the flats which did not have a built up area exceeding 1000 sq. ft. in respect of Aishwariya project. Thus, the quantum of deduction u/s. 80IB(1 0) in respect of the Aishwariya project for the flats which have built up area less than 1000 sq. ft. has to be worked out on pro rata basis in line with our discussion in the preceding paras. "*
>
> *4.11 Respectfully following the judicial precedents reproduced above as part of appellant's submissions, as also the judgment in the case of M/s. Sheth Developers. (P) Ltd., it is held that only a proportionate disallowance u/s.80IB(10) has to be considered. The ld. AO will check the calculations furnished by the Id .AR before me and reproduced above, and allow proportionate deduction u/s.80IB(10) of the IT Act. This ground of appeal is, accordingly, allowed.*

7. Against the above order of CIT(A), both assessee and revenue are in appeal before us. Revenue is aggrieved for allowing proportionate claim of deduction u/s 80IB(10), whereas assessee is aggrieved for not allowing deduction in respect of individual units having area of 1000 sq. ft. which was treated by the AO and the CIT(A) by combining two flats admeasuring more than 1000 sq. ft. On the issue of allowing claim of deduction in respect of flats having area of 1000 sq.ft. or less but on combining the same exceeds 1000 sq.ft., ld. AR placed on record order of the Co-ordinate Bench of Tribunal in the case of Emgeen Holdings Pvt. Ltd. (47 SOT 98), wherein, exactly similar issue was decided and it was held that amendment made to section 80IB w.e.f 01.04.2010 is prospective in nature, therefore, under pre amended section as long as residential area of individual flat is less than specified area as per duly

approved plan and capable of being used for residential purposes on standalone basis, deduction u/s 80IB(10) cannot be declined in respect of the same merely because end user buy more than one such unit in the name of family members and has merged those residential units into a larger residential unit of a size which is in excess of the specified size of 1000 sq. ft.

8. We have considered the rival contentions and have carefully gone through the orders of authorities below. We also deliberated on the judicial pronouncements cited by ld. AR and DR during the course of hearing before us as well as referred by lower authorities in their respective orders in the context of factual matrix of the case. From the record we find that the assessee is engaged in the business of housing development. During the year under consideration, assessee has developed a residential project at Ghatkopar on size of plot exceeding 1 acre. The said project consists of 3 buildings. Each building has 2 wings. Out of these 3 buildings, 2 buildings have been approved before 31.03.2004. Building No. 1 was approved on 29.03.2004 and Building No. 2 was approved on 18.03.2004. The Building no. 3 has been approved on 12.04.2004 i.e. prior to 31.03.2005. Building No. 1 and 2 have been completed during FY 2006-2007 and accordingly profits and gains arising from the sale of flats in Building No. 1 and 2 have been offered to tax while filing return of income for AY 2007-2008. The Occupation Certificates dated 10.03.2008 for Building No. 1 and 2 have also been

received and placed on record. Building No. 3 was completed during FY 2007-2008 and accordingly the profits and gains arising from the sale of flats in respect of said building were offered while filing return of income for AY 2008-2009. The return of income was filed for the AY 2007-08 wherein the income during the year on project completion method in respect of Building No. 1 and 2 was claimed as exempt u/s 80IB(10) of the Act. In the course of the assessment proceedings the Ld AO proceeded to deny the entire claim made u/s 80lB(10) of the Act for the AY 2007-08. The moot observations of the Ld AO are as under:

> *1. The appellant had combined two or more flats into single residential units and sold them to prospective buyer. Each residential unit after combining the flats has a built up area if more than 1000 sq ft, thereby violating the conditions as specified ujs 80lB(10) of the Act.*
>
> *2. The publicity material impounded during the course of search j survey reveals that the appellant always intended to sale 'flats with area more than 1000 sq ft. The appellant has combined the flats before the possession was given to the buyers and thus, the combination was not at the request of the buyer.*
>
> *3. Physical verification of the project of the assessee company revealed that nearly 30% to 40% flats have only one entry and exit door with area exceeding 1000 sq fts.*
>
> *4. Further, in respect of Building no. 1 and 2, the appellant has produced occupation certificates in lieu of completion certificates.*
>
> *5. With regard to the assessee alternate argument to allowed the proportionate deduction in respect of flats having area less than 1000 sq fts. Based on various tribunal judgments, it was held by the Id. A.G. that the department is contesting the said issue before Hon'ble Mumbai High Court and accordingly the said argument cannot be accepted.*

9. Aggrieved by the said order of the Id. A.O., the assessee had filed an appeal before the Ld CIT(A). The Ld CIT(A) has granted the partial

relief to the assessee and allowed the deduction u/s. 80lB(10) in relation to the those flats which were not combined. However, the CIT(A) found substance in the assessee's alternate submission placing reliance on the ITAT's judgment in the case of M/s ACIT Vs Sheth Developers P Ltd. and Brahma Associates Vs Jt CIT(SB) and allowed proportionate deduction u/s 80IB(10) to the assessee in respect of those flats, which were not combined and where the area of flats does not exceeds 1000 sq.fts.

10. The AR of the assessee contended that the assessee has not violated any of the conditions of section 801B(10) of the Act as relevant for the year under consideration. As far as observations of Id. AO. and Hon'ble CIT(A) with respect to the denial of exemption on the combination of flats, the AR stated as under:

> *1. On the combined reading of the clause (a) and clause (cl. it can be stated that the condition of 1000 sq fts is as per the project approved by the local authority. In the present case, the project plan approved by the local authority clearly demonstrates area of each flat / unit is less than 1000 sq fts.*
> *2. The flats have been combined based on the request made by the buyers requesting for combining flats. The adjacent flats are purchased by different family members. This never means that flats are not constructed as per BMC plans.*
>
> *3. There is separate number for each flat.*
>
> *4. There is separate electric meter. There is separate agreement and there is separate registration.*
>
> *5. The clause (e) and (f) inserted under section 801B(10) of the Act have been inserted w.e.f. AY 2010-11 and thus applies prospectively and not retrospectively.*
>
> *6. Further, with regard to the observations of Id. A.O. that the appellant has produced the occupation certificate and not the completion certificate, it was submitted that in Mumbai jurisdiction Occupation Certificates are akin to the Completion Certificates and*

thus the said argument of the Id. A.O. is without any merits. Further, the condition with respect to completion certificate was made applicable for the projects approved on or after 01.04.2005 and accordingly is not applicable in the present case as in the present case the projects have been admittedly approved prior to 01.04.2005. Building No. 1 was approved on 29.03.2004 and Building No. 2 was approved on 18.03.2004 i.e. both the buildings were approved prior to 31.03.2004 The Building no. 3 has been approved on 12.04.2004 i.e. prior to 01.04.2005. It is well settled proposition that the law that is applicable at the time of approval can only be applied and accordingly the law as amended w.e.f. 01.04.2005 cannot be applied in present case. Reliance for the said proposition is placed on the judgment of Delhi High Court in case of Chd Developers Ltd. reported in 362 ITR 177.

7. Further, observations with regard to Building No. 3 cannot be made applicable in this year i.e. AY 2007-2008 as during this year deduction have been claimed with respect to profits arising from sale of flats in Building No. 1 and 2.

11. The AR of the assessee further placed reliance on the judgment of Mumbai Tribunal in case of DCIT vs. Arcade Bhoomi Enterprises for AY 2006-07 being ITA no. 366/Mum/2010 and also on the order of Mumbai Tribunal in case of ACIT v Arcade Bhoomi Enterprises being MA no. 133/Mum/2012 arising out of ITA no. 366/Mum/2010, wherein the Hon'ble Tribunal following the earlier order of Tribunal in case of Emgeen Holdings (supra) have allowed the identical issue in favour of assessee.

12. In order to further support the argument of the assessee that the amendments made under section 801B(10) w.e.f. 0l.04.2010 are prospective, the AR relied on the judgment of Hon'ble Bombay High Court in case of CIT v. Happy Home Enterprises (Income Tax Appeal No. 308 of 2012) reported in 372 ITR 1/271 CTR 524. It was contended that the conditions of section 80IB(10) of the Act is fulfilled and claim of the assessee cannot be rejected and consequently the appeal filed by the

assessee must be allowed and appeal filed by the department must be dismissed.

13. We found that the AO rejected assessee's claim by observing that some of the flats were of the size more than 1000 sq. ft. During the relevant period, the assessee company sold various flats in the projects known as 'Palmyra', 'Siwan', 'Al Alexandria', 'Tripoli' etc. The AO noticed that adjacent flats were sold to two members of the same family which are nothing but one residential unit having common entrance and no dividing walls and such combined area exceeding more than 1000 sq. ft. Therefore, the AO concluded that the assessee has sold a single flat to two entities so that the area is above 1000 sq. ft., therefore, the terms and conditions u/s. 80IB(10) were held to be not satisfied and the deduction u/s. 80IB(10) was denied for the entire project. The contention of the assessee before the lower authority is that the area of each flat should be measured with reference to the plan approved by the local authority to impute this meaning to 'Residential Unit' with reference to section 80IB(10). For this purpose, the Ld. AR relied on the words 'undertaking developing housing projects approved by local authority'. Therefore, the Ld. AR claimed that if each 'unit' satisfied the condition prescribed u/s. 80IB(10), the assessee is entitled to the deduction so claimed. The Ld. AR further made reference to clauses (e) and (f) inserted after clause (d) of sub-section 10 of section 80IB by the Finance Act, 2009 w.e.f 01.04.2010 wherein further conditions were imposed for making the flat

eligible for deduction u/s. 80IB(10). As per clause (e), if more than one residential unit is allotted to one person and as per clause (f), if it is allotted to a family member, the eligibility lapses. As per our considered view since these conditions have been imposed from A.Y. 2010-11, it has to be concluded that such restriction never existed in the pre amended law.

14. The controversy before us is squarely covered by the decision of co-ordinate bench in the case of Emgeen Holdings Pvt. Ltd. (supra), wherein the Tribunal observed as under:-

> *6. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.*
>
> *7. We find that the deduction u/s.80IB(10) has been declined by the Assessing Officer on the ground that size of the residential unit was in excess of 1,000 sq.ft which, in turn, proceeds on the basis that the flats sold to the family members admittedly by separate agreements, should be treated as one unit. We are unable to approve this approach. We have noted that the size of each flat, as evident from building plan as duly approved by Muncipal authorities was less than 1,000 sq.ft. We have also noted that it is not even revenue's case that each of flat on standalone basis was not a residential unit. Even if flats were constructed or planned in such a way that two flats could indeed be merged into one larger unit, as long each flat was an independent residential unit, deduction u/s.80IB(10) could not be declined. It is important to bear in mind the fact that what section 80IB(10) refers to is 'residential unit' and, in the absence of anything to the contrary in the Income tax Act, the expression 'residential units' must have the same connotations as assigned to it by local authorities granting approval to the project. The local authority has approved the building plan with residential units of less than 1,000 sq.ft, and granted completion certificate as such. That leaves no ambiguity about the factual position. We have further noted that the prohibition against sale of more than one flat in a housing project to members of a family has been inserted specifically with effect from 1st April, 2010, and, in our humble understanding, this amendment in law can only be treated as prospective in effect. What is, therefore, clear is that so far as preamendment position is concerned , as long a residential unit has less than specified area, is as per the duly approved plans and is*

capable of being used for residential purposes on standalone basis, deduction u/s.80IB(10) cannot be declined in respect of the same merely because the end user, by buying more than one such unit in the name of family members, has merged these residential units into a larger residential unit of a size which is in excess of specified size. That precisely is the case before us. While on the subject, it is useful to take note of legislative amendment by the virtue of which legislature put certain restrictions on sale of residential units to certain family members of a person who has been sold a residential unit in the housing project. Section 80IB(10) now provides an additional eligibility condition that in a case where a residential unit in the housing project is allotted to any person being an individual, no other residential unit in such housing project is allotted to any of the following person, namely (i) the individual or the spouse, or the minor children of such individual, (ii) the HUF in which such individual is a karta' (iii) any person representing such individual, the spouse or minor children of such individual, or the HUF in which such individual is a karta. The explanation memorandum explained the legislative amendment as follows: (314 ITR(St) 203)

> *"Further, the object of the tax benefit for housing projects is to build housing stock for low and middle income households. This has been ensured by limiting the size of the residential unit. However, this is being circumvented by the developer by entering into agreement to sell multiple adjacent units to a single buyers. Accordingly, it is proposed to insert new clauses in the said sub-section to provide that the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual, and where the person is an individual, no other residential unit in such housing project is allotted to any of the following person:-*
>
> *(I) Spouse or 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 minor children of such individual or the Hindu undivided family in which such individual is the karta.*
> *This amendment will take effect from the 1st April, 2010 and shall accordingly apply in relation to assessment year 2010-2011 and subsequent years."*

8. It is thus clear that the aforesaid amendment has been brought with prospective effect i.e. from 1st day of April, 2010, and there is no indication whatsoever to suggest that these restrictions need to be applied with retrospective effect. The amendment seeks to plug a loophole but restricts the remedy with effect from 1st day of April, 2010, i.e. AY 2010-2011. The law is very clear that unless provided

in the Statute, the law is always presumed to be prospective in nature. It will, therefore, be contrary to the scheme of law to proceed on the basis that wherever adjacent residential units are sold to family members, all these residential units are to be considered as one unit. If law permitted so, there was no need of the insertion of clause (f) to section u/s 80IB(10). It will be unreasonable to proceed on the basis that legislative amendment was infructuous or uncalled for –particularly as the amendment is not even stated to be 'for removal of doubts'. On the contrary, this amendment shows that no such eligibility conditions could be read into preamendment legal position.

9. As regards the AO's stand that the assessee himself has offered the deduction u/s.80IB(10) in respect of these units during the course of survey proceedings, it is only elementary that neither statement recorded u/s.133A has an evidentiary value, nor a legal claim can be declined only because assessee, at some stage, decided to give up the same. In view of these discussions, and bearing in mind entirety of the case, are of the considered view that the deduction u/s.80IB(10) ought to have been allowed to the assessee entirely. To this extent, we modify the order of the CIT(A) and allow further relief to the assessee.

10. As we have held the admissibility of deduction u/s.80IB(10) in respect of entire project, revenue's grievance against partial relief granted to the assessee is infructuous and academic, we, accordingly, dismiss the same. Grievances against reopening of assessment, in the absence of specific arguments in support of the same, are treated as abandoned and, as such, dismissed.
11. In the result, appeals of the assessee are allowed in the terms indicated above and appeals of revenue are dismissed as infructuous.

15. Similar view has been taken by the Mumbai Bench of Tribunal in the case of Arcade Bhoomi Enterprises (ITA No. 366/Mum/2010) order dated 12.08.2011. It is clear from the above orders of the Tribunal that deduction in respect of flats so combined having area of more than 1000 sq. ft. was to be allowed on the plea that size of each flat as per duly approved plan of municipal authorities was less than 1000 sq. ft., and merely because at the request of buyer of the flat, two flats combined, one of which was owned by the other family members of the buyer deduction

u/s.80IB(10) cannot be declined. It was precisely observed by the Tribunal that even if the flats were constructed or planned in such a way that two flats could indeed be merged into one larger unit, as long as each flat was an independent unit, deduction u/s 80IB(10) cannot be denied. It was also observed that what section 80IB(10) refers to is 'residential unit' and in the absence of anything to the contrary in the Income Tax Act, the expression 'residential unit' must have the same connotations as assigned to it by the local authorities granting approval to the project. Since the local authority have approved the building plan with residential unit of less than 1000 sq. ft and completion certificate as such, there is no reason to decline claim of deduction u/s.80IB(10). The amendment in section 80IB(10) brought w.e.f 01.04.2010 is prospective in nature i.e. w.e.f assessment year 2010-11. Thus, the amended section 80IB(10) provides additional eligibility condition that in case where residential unit in housing project is allotted to any person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely, (I) Spouse or minor children of such individual; (II) The Hindu undivided family in which such individual is the karta; (III) Any person representing such individual. There is no indication that amendment brought w.e.f 01.04.2010 is retrospective so as to put conditions restricting the disallowance even prior to assessment year 2010-11. No doubt the amendment is meant to plug the loop hole but restricts the remedy w.e.f 01.04.2010 i.e. assessment year 2010-11. The

law is very clear that unless provided in the statute, the law is always presumed to be perspective in nature. The relevant assessment year under consideration are assessment year 2007-08 and 2008-09 which are much prior to the amended provisions of section 80IB(10) inserting clause (e) & (f) w.e.f assessment year 2010-11. Now applying the proposition of law so laid down to the facts of the instant case, we find that size of each flat as is evident from the building plan duly approved by Municipal Authorities was less than 1000 sq.ft.. We also find that nowhere the AO or CIT(A) had objected that any of the flats on standalone basis was not a residential unit. Under these circumstances even if assessee had constructed flats in such a way that two flats could indeed be merged into one large unit, as long as each flat was an independent residential unit, deduction u/s.80IB(10) could not be declined. It is very important to mention here that what Section 80IB(10) refers to is “residential unit” and, in the absence of anything to the contrary in the Income Tax Act, the expression “residential unit” must have same connotation as assigned to it by local authorities granting approval of project. There is no dispute to the fact that local authority has approved the building plan with residential units of less than 1000 sq.ft. and the assessee has constructed the flats only as per approved plan. Even in the completion certificate so granted by local authority there is no objection with regard to size of flats so constructed. Thus, there is no dispute with regard to actual construction of flat as per approved plan of local authority. After completion of project,

assessee had applied for completion certificate, only after having physical inspection and measurement of flat, the local authority had issued completion certificate. No where completion certificate mentions any deviation in the size of flats. Furthermore, no defect was pointed out by the AO nor by CIT(A) in the completion certificate.

16. Facts of the instant case are squarely covered by the facts of the case decided by the Tribunal in Emgeen Holdings Pvt. Ltd. (supra). In the instant case also allegation of department was that some of the flats were bought by two family members and they have merged it into one bigger flat. Nothing was brought on record to allege that assessee has constructed a flat of more than 1000 sq. ft., which was actually approved by the local authority while approving the assessee's project. Nothing was also brought on record to disentitle the assessee from the claim of deduction u/s.80IB(10) with reference to completion certificate so filed. Thus, entire profit of assessee is to be allowed deductions u/s.80IB(10).

17. So far as appeal of the revenue against granting partial relief is concerned, we found that the CIT(A) has followed the decisions of ITAT on the issue of allowing proportionate relief. We do not find any merit in revenue's appeal. Furthermore, when the entire project is held by us as eligible for deduction u/s.80IB, the grievance of the revenue against partial relief is dismissed.

18. In the result, appeals of the assessee are allowed and appeals of the revenue are dismissed.

Order pronounced in the open court on this 16/12/2015.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 16/12/2015

प्र.कु.मि/pkm, नि.स/ PS

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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai