

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.2886/Mum/2015  
(Assessment Year: 2010-11)

Income Tax Officer 27(2)(3), Mumbai	vs	M/s Megh Developers 1 <sup>st</sup> Floor, Navdurga Apartments Ogadbbhai lane, MG Road Ghatkopar (E), Mumbai-77
		PAN : AANFM5539M
(Appellant)		(Respondent)

Appellant by	Shri Suman Kumar
Respondent by	Shri K Gopal / Ms. Neha Paranjape Shri Paras Savla

Date of hearing : 12-01-2017  
Date of order : 06 -02-2017

**ORDER**

**Per ASHWANI TANEJA, AM:**

This appeal has been filed by the Revenue against the order of Commissioner of Income-tax (Appeals)-25, Mumbai [hereinafter called CIT(A)] dated 26-02-2015 passed against the assessment order of the AO u/s 142(3) of the Act dated 26-03-2013 for AY. 2010-11 on the following grounds:-

*“1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing deduction u/s 8013(10) of the Act, without appreciating the fact that the project is not eligible for deduction u/s 801B (10) of the Act,*

*2. On the fact and the circumstances of the case and in law, the Ld CIT (A) failed to appreciate the provisions of section 801B (10) of the Act which are very categorical that it is the date of approval of the housing project and not the commencement.*

*3 The appellant prays that the order of the Ld CIT (A) on the above grounds be reversed and that of the Assessing Officer be restored.”*

2. The solitary issue raised in this appeal is with regard to eligibility of the assessee to claim deduction u/s 801B(10) on the housing project developed by it.

3. The brief background is that during the year assessee was engaged in the business of development of the housing project, viz. ‘Platinum Lawns’ at Thane. During the course of assessment proceedings it was held by the AO that the assessee did not complete the housing project within the stipulated period of 5 years and, therefore, he denied the benefit of deduction u/s 801B(10). It was noted by him that the Thane Municipal Corporation sanctioned / approved the project on 28-03-2006. As per provisions of section 801B(10)(a)(iii), the project was to be completed within a period of 5 years from the end of the financial year in which housing project is approved by the local authority. Thus, as per AO, the housing project should have been completed within 5 years from 31-03-2006 i.e. upto 31-03-2011. As per the AO, the occupation certificate of the entire project was obtained on 30<sup>th</sup> March, 2012. Thus, as per AO, this project was not completed within the time, therefore, assessee was not eligible for benefit of deduction u/s 801B(10) and, thus, the deduction was denied to the assessee by the AO in the assessment order passed by him.

4. During the appellate proceedings before Ld. CIT(A), it was submitted by

the assessee that the AO has taken into consideration incorrect date of approval by the local authority and that is how he fell into an error in computing the period of 5 years and consequently, stipulated date of completion has also been computed wrongly by the AO. After considering the submissions of the assessee it was found by the Ld. CIT(A) that the actual date of approval by Thane Municipal Corporation is 05-10-2006 and if 5 years' period is computed from the end of the said financial year, i.e. from 31-03-2007, then the stipulated date of completion would be 31-03-2012. Since the assessee has completed the project before the said date of 31-03-2012, the assessee would be eligible to claim the benefit of deduction u/s 80IB(10). Relevant part of order of Ld. CIT(A) is reproduced below: \_

*"3.6. I have gone through the order of AO as well as the submission made by the appellant. The appellant has been denied the deduction under section 80IB(10) on the ground that according to AO the assessee had acquired sanction of development permission vide VP No.2005/146 TMC/TDD/208 dated <sup>28<sup>th</sup></sup> March 2006, whereas according to assessee the plan was got approved only when the assessee had received sanction of development commencement certificate as per VP No.2005/146 TMC/TDD/208 dated 5th October, 2006. According to AO, the date of approval is the date when sanction of development permission was received as per approval dated 28-03-2006 as stated above. In this regard, it is submitted by assessee that the aforesaid permission specifies the various conditions to be fulfilled and only after that the assessee could carry on such construction after obtaining the sanction for development certificate. The assessee has produced a letter dated 23-06-2011 from Executive Engineer, Town Planning Department, Thane Municipal Corporation, Thane (TMC) which clarifies that the plans submitted by the developer can be said*

*to be approved only when the developer receives the development permission as well as commencement certificate. It is also clarified that as per regulation 3 Part II of Development Contract Regulation, 1994, unless development permission and commencement certificate from the Municipal Commissioner are obtained, the development permission is only a first step in the process of approval, and it cannot be said that on getting the development permission project/plan can be said to have been approved. The TMC in the instant case has in its concluding para has categorically stated that the aforesaid project was said to be approved on 05-10-2006 i.e. the date on which the commencement certificate was granted: " In the instant case since development permission has been granted subject to fulfillment of various basic conditions like permission for use of said plot for non-agricultural purpose etc. without obtaining permission for non-agricultural use and fulfilling the conditions specified in development permission developed is not allowed to carry any development activities. Hence date of obtaining commencement certificate i.e. 05-10-2006 is the date on which plans are said to be approved for commence of work." In view of this statement of the approving authority, I find force in the argument of the assessee that the plans were approved on 05-10-2006 as against 28-03-2006 taken by the AO.*

*3.7. The assessee has also relied on the decision of Hon'ble ITAT, Mumbai in the case of Asha Kashiprasad Ringshia Pandurang Sadan ITA No.2901(Mum) of 2011 which supports the claim of assessee that plan is said to be approved when commencement certificate is received. It is also relevant to note that in assessee's own case for assessment year 2009-10 i.e. in the immediately preceding previous year, the assessee was granted the benefit of deduction u/s.80113(10) after scrutiny. In view of the aforesaid facts, and relying on the decision of Hon'ble ITAT, Mumbai, I am of the considered opinion that assessee's project was approved on 05-10-2006. Accordingly, the assessee is eligible for*

*deduction under section 801B(10) of the Act. Assessing Officer is therefore, directed to allow deduction u/s.801B(10) of the Act of Rs.67,00,857/-."*

5. During the course of hearing before us, it was stated at the outset by Ld. Counsel of the assessee that this issue is now covered in favour of the assessee in view of judgments of the Tribunal which had been relied upon by the Ld. CIT(A). In addition to that he also relied upon the judgment of Mumbai Bench of the Tribunal in the case of S.B. Developers vs ITO ITA No.1767/Mum/2013. Per contra, the Ld. DR fairly stated that as on date the issue stands covered in favour of the assessee.

6. We have gone through the orders passed by the lower authorities and the judgments relied upon before us. During the course of hearing, the Ld. Counsel of the assessee submitted before us the chronology of events which are relevant to decide the issue before us, which are as below:

Dates & Events:

Sr.No.	Date	Event
1.	-	The Appellant is a Partnership Firm, engaged in the business of development housing projects. During the year under consideration Appellant developed a project "Platinum Lawns", Kasar – Vadavali, Thane (West) and claimed deduction under section 801B(10) of the Act.
2.	10.10.2005	The Appellant preferred an application before Thane Municipal Corporation for seeking permission for development of the said project.
3.	28.03.2006	In reply to the said application the Appellant was granted with Development permission of the said by Thane Municipal Corporation vide V.P. No.2005/146/TMC/TDD.208. The permission was granted with subject to the certain conditions which were to be fulfilled before receiving

		approval / sanction for actual construction of project.
4	01.04.2006	The Appellant made application before the Collector for seeking permission to convert its agriculture land into non agriculture land in order to fulfill the conditions laid in the above permission letter.
5	05.08.2006	The Collector has granted permission for using the said land for non-agricultural purposes.
6.	05.10.2006	After fulfilling all the required conditions Appellant obtained Commencement Certificate that is actual approval for construction of the said project.
7.	23.06.2011	The Appellant received a letter from Thane Municipal Corporation explaining that "Development permission" by itself cannot be considered as approval of building plans for construction as such permission is subject to the person fulfilling the requirement with the various conditions listed therein.
8.	30.12.2012	Final Occupation Certificate was received.

7. As per AO, the date of approval by the local authority is 28-03-2006 whereas as per assessee the actual date of approval is 05-10-2006, when assessee obtained commencement certificate after fulfilling all the conditions. According to assessee, this is actual approval for starting construction of the project. Before the commencement certificate was issued, various other legal formalities were yet to be executed on the part of the assessee and all the approvals given by the respective authorities were interim and tentative/provisional approvals and these were subject to various 'ifs and buts'. Assessee was not entitled to commence construction of the project before obtaining the commencement certificate for construction of the project. The assessee has also filed all the approval letters issued by various authorities from time to time. We have gone

through all the documentary evidences brought before us. It is noted that Thane Municipal Corporation issued permission letter dated 28-03-2006 granting development permission to the assessee subject to various conditions and approached other authorities from whom applicable permission / approval was required. After carrying out all the requisite conditions and after obtaining requisite approvals / permissions from other concerned authorities, assessee again approached Thane Municipal Corporation for allowing the assessee to commence the construction of the project. Thereafter, after examining the satisfactory compliance of all the conditions and approval letters granted by other concerned authorities, finally Thane Municipal Corporation granted commencement certificate dated 05-10-2006 giving permission to the assessee to start the construction of the project. It is noted by us that it was clarified by Thane Municipal Corporation vide its letter dated 23-06-2011 that as per section 3 of Development Control Regulations, 1994, no development can be carried out by the assessee unless development permission as well as commencement certificate are obtained by the developer. It was also clarified that both the approvals are required before assessee could start construction of the project. After going through all the facts and circumstances of the case, we concur with the view taken by Ld. CIT(A) that assessee was authorised to start construction of the project only on issuance of commencement certificate by the local authority, i.e. on 05-10-2006. Therefore, it is actual approval letter, as is envisaged u/s 80IB(10)((a)(iii) of the Act. We find that the findings recorded by Ld. CIT(A) are well reasoned and in accordance with law and facts in this case. It is further noted by us that this issue is also covered in favour of the assessee by the judgements of the Tribunal as have been referred to by Ld. CIT(A)

and also relied upon by the Ld. Counsel before us, wherein it has been held that date of approval as envisaged in section 80IB(10)((a)(iii) would be the date when assessee would be entitled to commence the construction of the project as per local law applicable. Thus, in view of the aforesaid discussion and facts of the case, the decision taken by the Ld. CIT(A) is hereby upheld.

**8.** In the result, appeal filed by the Revenue is hereby dismissed.

*Order was pronounced in the open court at the conclusion of the hearing.*

Sd/-	Sd/-
(JOGINDER SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 6<sup>th</sup> February, 2017

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, B-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES