

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 2551/Del/2016  
(Assessment Year : 2010-11)

ACIT Circle – 58(1), New Delhi  PAN No. ABGFS 9748 C <b>(APPELLANT)</b>	Vs.	Shipra Estate Ltd. & Jai Krishan Estate Developers Pvt. Ltd., D-32, Main Vikas Marg, Delhi – 110 009  <b>(RESPONDENT)</b>
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Assessee by	Shri Prakash Dubey, Sr. D.R.
Revenue by	-None--

Date of hearing:	14/07/2021
Date of Pronouncement:	20/07/2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the Revenue is directed against the order dated 04.02.2016 of the Commissioner of Income Tax (Appeals)-19, New Delhi relating to Assessment Year 2010-11.

2. The case file reveals that there was no appearance on behalf of the assessee in the past. Even on the date of hearing, none

appeared on behalf of the assessee nor any adjournment application was filed. The present appeal is an old appeal filed in 2016. Considering the aforesaid facts, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing by the Learned DR.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is a company who filed its return of income for A.Y. 2010-11 on 25.02.2011 declaring total income at Rs.21,44,77,250/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 14.03.2013 and the total income was determined at Rs.31,32,16,815/-.

5. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 04.02.2016 (Appeal No.20/2013-14) granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal:

- “1. The order of the Ld CIT(A) is bad in law and not inconsonance with the facts of the case.
2. The Ld. CIT(A) erred in directing the Assessing Officer to accept “Project Completion Method” by ignoring the fact that the assessee in neither following cash system nor mercantile system Completely.

3. *The Ld CIT(A) has erred in partly allowing the deduction u/s 80IB(1) as the project as a whole does not satisfy the conditions enumerated in the subsection (10) of section 80IB.*
4. *The appellant craves leave to add, allow or amend any or all the ground of appeal before or during the course of hearing of the appeal.”*

6. Before us, at the outset, Learned DR submitted that various grounds has been raised by the Revenue, but the sole controversy is with regard to the allowability of claim of deduction u/s 80IB(10) of the Act.

7. During the course of assessment proceedings, AO noticed that assessee had claimed deduction of Rs.9.87 crore (rounded off) u/s 80IB(10) of the Act on VISTA project situated at Plot No.14, Indirapuram, Ghaziabad. The aforesaid project was divided into 5 sub project namely; (i). VISTA A & B block, (ii) VISTA D & E block, (iii) VISTA B1, B2, B3 block, (iv) VISTA B4, B5, B6 block and (v). VISTA Commercial. AO on perusing the details furnished by the assessee noted that the project was approved by GDA on 02.06.2005. He noted that no separate approval was taken for 80IB project (i.e. VISTA A & B block & VISTA D & E block). He also noted that map approved by GDA contains all the 5 sub blocks. He also noted that as per the provisions of Section 80IB(10), the assessee was required to furnish the date of completion of construction housing project. He noted that though the assessee has furnished completion certificate dated 14.01.2010 but certificate was granted subject to fulfillment of various conditions. He noted that assessee has not

provided any details or evidence regarding fulfillment of those specified conditions. He also noted that as per the condition stipulated u/s 80IB(10), the residential unit should have 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 kilometers from the municipal limits of these cities. He noted that as per the sale deed filed by the assessee in respect of flats on which deduction u/s 80IB of the Act has been claimed, the area mentioned in the sale deed of a corner flat was 1067.74 sq. ft. which was more than the permissible area of 1000 sq. ft. The submission of the assessee that the area mentioned in the agreement was super area and the maximum built up area was only 995.77 sq. ft. was not found acceptable to AO. AO also noted that the whole VISTA project on Plot No.14 has been approved by local authority GDA as one plan. He noted that project VISTA comprises of a commercial project also in the name of VISTA commercial. He was of the view that since VISTA project was an integral part of VISTA housing project, limit specified under clause (d) to Section 80IB must be followed for being eligible to claim of deduction u/s 80IB(10) of the Act. According to him the permissible limit of the commercial area as per clause (d) to Section 80IB was 5% of aggregate built up area or two thousand sq. ft. whichever is less. He was of the view that aggregate built up project area of housing project was 142857.06 sq. mt. and the total built up area or shops was 4003.077 sq. mt. According to him, the built up commercial area should not exceed

5% of the total area (i.e. 76885.03 sq. ft.). In the case of the assessee, since built up commercial area was 76885.03 sq. ft., which is more than 2000 sq. ft., the conditions stipulated in Section 80IB(10) were not been fulfilled. Considering the totality of aforesaid facts, AO denied the claim of deduction of Rs.9,87,39,565/- which was claimed by the assessee u/s 80IB(10) of the Act.

8. AO also noted that assessee has followed project completion method as its accounting policy during the year under consideration and it was also followed in preceding financial year. According to the aforesaid policy the sale was recognized after sale deed was registered to the local authority. AO was of the view that assessee was neither adopting cash nor mercantile basis of accounting. As per the method adopted by the assessee for the year under consideration, on sale of Rs.77.15 crore, profit was Rs.31.30 crore (including deduction of Rs.9.87 crore u/s 80IB). AO noted that in the earlier assessment of the assessee, profit of the assessee has been taxed as per percentage of completion method. According to him, by the method followed by the assessee, the profit that have been offered for taxation were a distorted figure, the profit of the assessee till 31.03.2010 on the basis of percentage completion method was worked out at Rs.113.763 crore (as per the working in the para 4 of the order). He noted that out of the amount of profit of Rs.113.763 crore, profits assessed till A.Y. 2009-10 amounted to Rs.97.83 crore

which have already been taxed. He thus worked out the taxable profit as per the percentage of completion of method at Rs.15.93 crore. He also noted that the method adopted by the Department had not attained finality as CIT(A) has decided in favour of the assessee and the Department was in appeal before the Hon'ble ITAT. He therefore held that since the matter has not attained finality, the income declared by the assessee is taken in order to protect the interest of Revenue for A.Y. 2010-11.

9. Aggrieved by the order of AO, assessee carried the matter before CIT(A), CIT(A) while deciding the issue noted that identical issue was before his predecessor in A.Y. 2009-10 and CIT(A) while deciding the issue in A.Y. 2009-10, had relied on the order of CIT(A) for A.Y. 2008-09. He thereafter by following the order of his predecessor directed the AO to accept the method of accounting consistently followed by the assessee.

10. As far as the deduction u/s 80IB(10) of the Act is concerned, with respect to the flats whose built up area exceeded area prescribed limit of 1000 sq. fit., CIT(A) following the decisions of various Tribunal cited in the order held, that assessee was eligible for proportionate deduction u/s 80IB(10) of the Act in respect of 70 flats out of the 106 flats sold during the year under consideration. On the issue of denial of deduction on account of non-fulfillment of condition under clause (d) of Section 80IB of the Act i.e. the condition relating to the total built up area of the

shopping/ commercial establishment, he has given a finding that the total built up area of commercial establishment works out at 2.90 % of the total built up area and the assessee has complied with the amended provisions of clause (d). He has also given a finding that built up commercial area of the assessee was less than 3% of the built up area and therefore as per the amended Section 80IB(10), assessee has complied with the condition of clause (d) of Section 80IB(d) of the Act. He therefore held that assessee to be eligible to claim deduction u/s 80IB(10) of the Act on 70 Flats out of the 106 flats sold during the year under consideration on proportionate basis. He accordingly directed the AO to verify the calculation of the proportionate deduction claimed by the assessee with respect to 70 eligible flats and allow the deduction. Aggrieved by the order of CIT(A), Revenue is now before us. Before us, Learned DR supported the order of AO.

11. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to allowability of deduction u/s 80IB(10) of the Act. We find that CIT(A) while deciding the issue in favour of the assessee had noted that the facts in the year under consideration were identical to that of A.Y. 2008-09 & 2009-10. We find that against the order of CIT(A) for A.Y. 2008-09 & 2009-10, the Revenue had carried the matter before the Tribunal. The Co-ordinate Bench of Tribunal in ITA No.5614/Del/2012 (for A.Y. 2009-10), ITA No.1950/Del/2012 (for A.Y. 2008-09) and vice versa, vide order

dated 30.05.2016, had dismissed the appeal of Revenue. Before us, the Learned DR could not point out any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the grounds of Revenue are dismissed.**

**12. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 20.07.2021**

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

Date:- 20.07.2021

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**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI