

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI ' H ' BENCH
MUMBAI BENCHES, MUMBAI

BEFORE SHRI RAJENDRA SINGH, AM & SHRI VIJAY PAL RAO, JM

ITA No.7050/Mum/2010
(Asst Year 2006-07)

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| The Income Tax Officer Ward 15(3)(2), Mumbai | Vs | Harsh Construction 103/104 Anuradha Apts - 1 st Floor TPS Road, Plot no.183 Borivali Mumbai |
| (Applicant) | | (Respondent) |

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| PAN No. | AAAAH 1471K |
| Assessee by | Sh Paresh Gohil |
| Revenue by | Sh Goli Srinivas Rao |
| Dt.of hearing | 22 nd Feb 2012 |
| Dt of pronouncement | 12 th , March, 2012 |

ORDER

PER VIJAY PAL RAO, JM

This appeal by the revenue is directed against the order dated 22.7.2010 of the CIT(A) for the AY 2006-07.

2 We may point out that the assessment year has been wrongly mentioned in the Form no.36 as 2006-07 whereas the impugned order which is the subject matter of the appeal is for the AY 2007-08.

3 The revenue has raised the following grounds in this appeal:

1 "On the facts and in the circumstances of the case, the Id. CIT(A) erred in law in holding that the assessee is entitled to deduction u/s 801B(10) of Rs. 1,90,03,948!- by placing reliance upon the decision of ITAT Special Bench Pune (2009) 30 SOT 155, in the case of Mt Brahma Associates, which has not

been accepted by the Revenue-S and Appeal has been preferred before the Hon'ble Bombay High Court on the question of law involved."

2 "On the facts and in the circumstances of the case and law, the Learned CIT(A) has erred in holding that the assessee is entitled to deduction u/s.801B(10) of Rs. 1,90,03,948/- by placing reliance upon various decisions ignoring the facts that the legislative intention of providing incentive u/s 801B(10) is only on account of affordable residential dwelling units and that no commercial built up area was allowed prior to 01/04/2005

3 "On the facts and circumstances of the case the Id. CIT (A) erred in law in allowing the said deduction, for A.Y. 2007-08, even though the commercial built up area exceeded 2000 sq.ft., while the maximum permissible commercial built-up area is only 2000 sq.ft., which is clearly applicable in terms of clause (d) of section 801B(10) and effective from 01/04/2005"

4 We have heard the Id DR as well as the Id AR of the assessee and considered the relevant material on record. At the outset, we note that the CIT(A) has decided the issue in favour of the assessee by following the order for the AY 2006-07 and particularly following the decision of the Tribunal in the case of JCIT v. Brahma Associates, which was upheld by the Hon'ble jurisdictional High Court reported in 330 ITR 289.

4.1 Since the issue is regarding the disallowance of the claim of the assessee u/s 801B(10) on the ground of commercial establishment in the project, which is covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court (supra) as the pre-amended provisions of sec. 801B(10) are applicable for the AY under consideration. The Tribunal in assessee's own case for the AY 2006-07 has decided the issue in para 9 as under:

"9. We have considered the rival submissions carefully. We find that as far as the first objection raised by the Revenue regarding excess commercial area is concerned, the Hon'ble Bombay High Court in the case of CIT vs. Brahma Associates [supra] while reversing the decision of the Special Bench of the Tribunal in the case of Brahma Associates vs. JCIT 315 ITR (AT) 268 (PN) held as under:

'Held that clause (d) inserted in section 801B[10] with effect from April 1, 2005, is prospective and not retrospective and hence could not be applied for the period prior to April 1, 2005. Since deduction under stion 801B[10] were on the profits derived from the housing projects approved by the local authority as a whole,,: the Tribunal was not justified in restricting the section 801B[10] deduction only to a part of the project. However, in the present case, since the assessee had accepted the decision of the Tribunal in allowing section 8016[10] deduction to a part of the project, the finings of the Tribunal in that behalf could not be disturbed.'

Thus, from the above, it is clear that once the project is approved by the local authorities, then deduction has to be allowed on the whole of the project and, therefore, following this decision, we reject this objection of the Revenue."

5 Accordingly, respectfully following the order of the Tribunal as well as the decision of the Hon'ble jurisdictional High Court, in the case of Brahma Associates (supra), we decide this issue against the revenue and in favour of the assessee.

6 In the result, the appeal filed by the revenue is dismissed.

Order pronounced on this 12th,day of Mar 2012

Sd/

Sd/

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| (RAJENDRA SINGH) Accountant Member | (VIJAY PAL RAO) Judicial Member |
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Place: Mumbai : Dated: 12th, Mar 2012

Raj*

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|---|------------|
| 1 | Appellant |
| 2 | Respondent |
| 3 | CIT |
| 4 | CIT(A) |
| 5 | DR |

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai