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IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER.

ITA No.598/Hyd/2007	**:**	**Assessment Year 2003-04**
ITA No.627/Hyd/2008	**:**	**Assessment Year 2004-05**
ITA No.1192/Hyd/2009	**:**	**Assessment Year 2005-06**

M/s.Maytas Housing P. Limited, Hyderabad	V/s	Asstt. Commissioner of Income-tax Central Circle 1 Hyderabad

(PAN - AACCS 8996 A)

(Appellant) (Respondent)

Appellant by **:** *Shri K.C.Devadas*
Revenue by **:** *Smt. Nivedita Biswas*

Date of Hearing	22.2.2012
Date of Pronouncement	

O R D E R

Per Asha Vijayaraghavan, Judicial Member

These three appeals by the assessee are directed against separate orders of the CIT(A) I, Hyderabad dated 22.3.2007 for assessment year 2003-04; dated 21.1.2008 for assessment year 2004-05; and dated 14.10.2009 for assessment year 2005-06. Since common issues are involved, these appeals are being disposed off with this common order for the sake of convenience.

2. The first common issue involved in these three appeals relates to denial of the claim of the assessee for relief under S.80IB of the Act.

3. Facts relating to this issue, but for the amounts are involved, are common and, the same as taken from the appeal folder for assessment year 2003-04, are that the assessee is engaged in the

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business of construction and sale of flats. Assessee claimed the entire income derived by it form the business of sale of flats as deduction under S.80IB of the Act, 1961. Authorised Representative for the assessee pleaded before the assessing officer that the assessee is eligible for deduction under S.80IB of the Act, as it has complied with the conditions laid down in the section, viz. (a) the extent of site is more than one acre; and (b)the assessee is in the process of constructing residential flats, plinth area of each flat not exceeding 1500 sq. ft. The assessing officer verified and found that the approval of the local authority was obtained on 18.10.1999 for the construction of the flats, and also the extent of area on which the flats are being constructed, exceeded 1 acre. Further, the assessing officer observed that the project is in progress stage as the assessee started construction of the flats. Further, he noted that the assessee is registering semi-finished flats or construction yet to be commenced flats and the amount received is being recognised as sale proceeds. It is also found that no flats were handed over to any customer, as the same were yet to be finished during the accounting year. The assessing officer examined the sale transaction in respect of one sample flat and observed from the documents, that at the first instance, the assessee entered into an agreement of sale; subsequently, the assessee entered into an agreement for development work of flat specifying the work to be executed and the amount to be paid by the purchaser of the flat; and then through a third document, sale of the property is carried out, and in that third document, it is mentioned that the assessee sold the property, as per the agreement entered into with specific area of site along with superstructure (semi-finished flat). The assessing officer concluded that if all the documents are put together and analysed, the following points would emerge.

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"1. The assessee is selling away flats at semi-finished stage leaving much work to be done afterwards. Therefore, it cannot be said that the flat sold by assessee is a residential unit because without constructing further, it would not be in a condition to live in.

2. Though the assessee claimed the entire amount i.e. amount received as per sale deed and the amount received as per development agreement as total consideration, it is clear that the sale consideration is only the amount received as per sale deed. The expenditure on the basis of development agreement entered into."

3.1 In view of the above, the assessing officer held as follows-

(a) the assessee can never be entitled for a deduction u/s. 80IB in respect of the profits derived because of amounts received for development of the property. This is because the Section envisages that the assessee should construct the residential unit not exceeding 1500 sq.ft. , and sell the same. Then only, the assessee will be entitled for deduction as laid down in Section 80IB.

(b) even in respect of profits derived in respect of sale transactions of the flats, as mentioned, the same were sold by the assessee in semi-finished stage itself. It is clear from the information as well as above discussion that the assessee did not sell residential unit, but only a semi finished construction. A residential unit can be defined as a structure where a person can live in. Therefore, as the assessee did not complete the structure, it cannot be said that it is a residential unit where a person can live in. Hence, the claim of the assessee for deduction us. 80IB cannot be allowed as the assessee sold away the flats in semi-finished stage itself."

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4. Aggrieved, the assessee preferred appeals before the CIT(A). The assessee submitted that it has not been laid down in the provisions of the Act that a completed flat alone could be considered for sale so as to enable the assessee to be eligible for deduction. While considering an incentive provision, the rule *'casus omissus'* has to be followed, which suggests that there can be an inference upon a provision but not on any omission. Hence, the assessee objected to the inference drawn by the assessing officer. Further submissions of the assessee before the CIT(A) are as follows-

"2) The conditions laid down as per the provisions of the act are very much satisfied by the appellant to the effect that:

a) the undertaking commenced the development and construction of housing project with effect from 01.07.1989.
b) the date of approval is 18.10.1999 for phase-II undertaken by the appellant company (since phase-I was already completed by another company M/s. Satyam Homes Pvt. Ltd. before the incorporation of the appellant company).
c) As per the provisions of section 80IB of the Act, the construction must be completed before 31.3.2008, since the appellant company was approved before 01.04.2004. The condition is in progress, for the assessment year under consideration.
d) The local authority granting the approval is Quthbullapur Municipality (Jeedimetla Village, R.R. District. Pin Code No.500 055) and HUDA.
e) The approval was obtained only once i.e. on 18.10.1999, for the project.
f) Since construction work is in progress, the completion certificate will be issued only upon the completion of entire phase-II. At present, some units are completed as residential units, some others are in semi-finished and some are yet to be constructed.
g) The project area is 1.92 acres in respect of phase-II and hence it (area) is in excess of 1 acre as laid down by the provisions of section 80IB of the Act.
h) All the residential units in phase-II being situated in Hyderabad, are below 1500 sq. ft., thus satisfying the condition that they are well within the maximum built up area in Hyderabad, i.e., 1500 sq. ft as per the provisions of section 80IB of the Act.

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i) The built up area for commercial purpose is well with in the limits i.e. not exceeding 5% of the aggregate built up area of housing project or 2000 sq.ft, whichever is less as per the provisions of section 80IB of the Act.

2)

a) That in order to be eligible to deduction u/s. 80IB of the act, it is not necessary that a flat should be completed so as to make it habitable.

b) The provisions of sub-section (1) of section 80IB of the Act, spells out that the profits from the business of building of house projects is eligible to deduction u/s. 80IB of the Act, subject to the fulfilment of certain conditions. It is demonstrated that all the conditions were fulfilled. There is no finding to the contrary.

c) The benefit of deduction u/s. 80IB of the Act cannot be denied on the ground that the construction is semi-finished or construction yet to be commenced.

d) The Assessing officer made an adverse inference that the appellant would be eligible to deduction u/s. 80IB of the Act, only in respect of the completed flats but not in respect of semi-finished flats and/or profits derived from the business activity, viz. construction of housing project, subject to the fulfilment of the conditions.

e) The appellant also submits that as per the rule of "casus omissus" there can be an inference only upon a provisions of the Act and not otherwise.

f) It was not the case of the Assessing officer that there was violation of the conditions laid down by the provisions of section 80IB of the Act, in terms of sub-section (10). There is no finding of the Assessing officer that the conditions laid down in the statute have not been fulfilled by the appellant, so as to deny the eligibility to deduction u/s. 80IB of the Act.

3.

a) The appellant in support of its submission, places relies upon the case law of Bajaj Tempo (SC) 196 ITR 188, wherein Hon'ble Supreme Court had an occasion to hold that incentive provisions should be interpreted liberally in favour of tax payer.

A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restrictions on it too has to be construed so as to advance the objective of the provision and not to frustrate it.

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b) the appellant also places reliance upon the case of Vegetable Products Vs. CIT s88 ITR (SC) 192, wherein the Hon'ble Supreme Court had an occasion to deliberate its view that "if the language is plain, the fact that the consequence of giving effect to it may lead to some obsurd result is not a factum to be taken into account in interpreting a provision. It is fo5r the legislature, to step in and to remove the obsurdity. On the other hand, if two reasonable constructions are possible that construction which favours the assessee must be adopted."

5.

a) The appellant therefore further submits that the reasonable construction that would favour the appellant must be adopted particularly in the light of absence of such condition while granting the benefit of deduction u/s. 80IB of the Act, in the appellant's case.

b) The assessing officer cannot infer something that was not spelt out in the provisions and/or statute so as to deny the claim of the appellant.

6.

a)The appellant company therefore submits that the conditions laid down by the provisions of section 80IB of the Act was satisfied. The benefit u/s. 80IB of the Act, cannot be denied by the Assessing officer for the mere reason that a residential unit is not completed, or is in the semi finished state or yet to be constructed stage. The undertaking is eligible to 100% deduction of the profits derived in the previous year relevant to the assessment year from such housing project since the activity is that the business of developing and building housing project as per the provisions of sub-section 10 of section 80IB of the Act.

b) The view of Assessing officer that the benefit of deduction u/s. 80IB is available only in respect of completed structure is not correct. The appellant humbly submits that there is no provision in the act more particularly u/s. 890IB restricting the benefit of deduction only in respect of finished /completed flats as wrongly viewed by the Assessing officer. "

5. The CIT(A) after taking note of the provisions of S.80IB (10) of the Act, and the findings of the assessing officer and the supporting his stand, observed that clause (c) of S.80IB(10) has two limbs, and they are (1) housing project should be residential units and (2) each residential unit should not be more than 1500 sq. ft. built up area. He held that the assessee, in the present case, by selling the

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flats in semi-finished stage, the first limb of the provision of clause (c) has been violated. According to him, the assessee could claim deduction under S.80IB(10) on development, construction and sale of 'residential unit' and not by selling 'semi-finished structure'. He opined that semi-finished structure is not capable of residence and could not be termed as 'residential unit' and hence the conditions specified in clause (c) have been violated. The CIT(A) held in para 5.3 and 5.4 of the impugned order as follows-

> ***"5.3 As per facts narrated by the Assessing officer, the assessee seems to have sold the semi-finished construction to the individual owners and develops the property by virtue of a separate agreement entered into with such individual owners. Under such situation the assessee no longer remains a developer, but becomes a contractor to the individual owners and has to finish the unit as per the requirement and individual taste of the individual owners Accordingly, profits made by the assessee after sale of semi-finished units from further development of the unit could not be included in the profits eligible for deduction u/s. 80IB, since the assessee no longer remains a developer as mentioned in clause (a), but has become a contractor to the individual owner of the semi[-finished unit.***
>
> ***5.4 In view of the same, I concur with the views of the Assessing Officer that appellant is not eligible for deduction u/s. 80IB and accordingly confirm the order to this extent."***

6. Aggrieved, assessee is in appeal before us.

7. The learned counsel for the assessee, reiterating the contentions urged before the lower authorities, submitted that the assessee is very much entitled for the relief under S.80IB of the Act. He placed reliance on the Circular Instruction No.4 of 2009 dated 30.6.2009, which is as follows:-

> "*Under sub-section (1) of section 80_IB an undertaking developing and building housing projects is allowed a deduction of 100% of its profits derived from such projects if it commenced the project on or after 01/10/1998 and completes the construction within four years from the financial year in which the housing project is approved by the local authority.*

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2. Clarifications have been sought by various CCsIT on the issue whether the deduction u/s 80-IB(1) would be available on a year to year basis where an assessee is showing profit on partial completion or if it would be available only in the year of completion of the project u/s 80-IB(1).

3. The above issue has been considered by the Board and it is clarified as under:-
a) The deduction can be claimed on a year to year basis where the assessee is showing profit from partial completion of the project in every year.
b) In case it is late, found that the condition of completing the project within the specified time limit of 4 years as started in section 80-IB(1) has not been satisfied, the deduction granted to the assessee in the earlier years is should be withdrawn.

4. The above Instruction will override earlier clarification on this issue contained in Member(R)'s D.O. letter No. 58/Misc./2008/CIT(IT&CT) dated 29/04/2008 and Member (IT)'s D.O. Letter No. 279/Misc/46/08-ITJ, dated 02/05/2008.

5. This may kindly be brought to the notice of all the Assessing Officers in your charge".

8. The learned counsel for the assessee relied on the Direct taxes Notification and circular (2002-2005) wherein it has been directed that extension of the time limit for obtaining approval of housing projects for the purposes of tax holiday under S.80IB and allowing deduction for re-development/reconstruction in some areas, it has been mentioned as follows:

"….However, a time limit has been introduced for completion of housing project, where development and construction has commenced or commences on or after 1.10.1998. Such housing project approved by the local authorities before 1.4.2004 has to be completed on or before 31.3.2008 and the housing project approved on or after 1.4.2004 should be completed within four years from the end of financial year in which the project is approved by the local authority. …."

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This above amendment takes effect from 1.4.2005 and applies in relation to assessment year 2005-06 and subsequent years. With respect to the assessment year 2003-04, the learned counsel for the assessee relied on the relevant portion of the Circular, which is reproduced hereunder-

> ***"47. Extension of the time limit for obtaining approval and removal of condition for completion of approved housing project for the purpose of tax holiday under section 80-IB***
>
> ***"47.1 Under the existing provision of sub-section (10) of section 80-IB, a deduction equal to one hundred per cent of the profits of an undertaking engaged in developing and building housing projects is allowed. The deduction is available to the housing projects approved by a local authority before the 31st day of March, 2001 and which are completed before the 31st day of March, ,2003.***
>
> ***47.2 With a view to allow new housing projects to avail the benefit of tax holiday under this provision, the time limit for obtaining approval from the local authority has been extended to 31st March, 2005. Further, to rationalize the provision, the time limit for completion of the project has been omitted.***
>
> ***47.3 The amendments have been brought into effect retrospectively from 1st April, 2002 and have been made applicable to the assessment year 2002-03 and subsequent years".***

9. The learned counsel for the assessee relied on the decision of the Hyderabad Bench of the Tribunal in the case of Nagarjuna Homes, Hyderabad (ITA No.722/Hyd/2009 and Anr. In cross appeals for assessment year 2005-06), wherein, vide order dated 30.10.2010 it has been held that the CBDT vide circular No.30.6.2009 clarified that the deduction could be claimed on year to year basis, where assessee is showing the net profit from the partial completion of the project in every year. In case it is found that the assessee has not completed the project within four years, the deduction granted in earlier years shall be withdrawn. In view of this Circular, the Tribunal held, it is not necessary for the assessee to complete the entire project

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in a particular year. Even on partial completion of the project, the assessee is eligible for deduction under S.80IB of the Act. Therefore, it is concluded that the assessee can claim deduction under S.80IB(1) on year to bear basis in view of the circular of the CBDT dated 30.6.2009 land the assessee would be eligible for deduction under S.80IB(10) of the Act.

10. Learned counsel for the assessee also relied on the decision reported at 108 TTJ 789, wherein the Bench has concluded that the provisions of S.80IB(10) are very clear. Therefore, the conditions laid down in the provisions of S.80IB, as the undertaking has commenced or commences development or construction of housing project on or after 1st day of October, 1988; the project is on the size of a plot of land which has a minimum area of one acre; and (3) residential unit has a maximum built up area of 1,500 sq. ft.

11. The learned counsel for the assessee also relied on the unreported decision of the Mumbai Bench of the Tribunal in the case of Nirupama K.Shah V/s. ITO (in ITA No.348Mum/2010 for assessment year 2006-07 dated 18.11.2011), wherein, in the context of the provisions of S.54F, it has been held that amounts paid for completion of flat purchased in semi-finished condition, pursuant to a tripartite agreement entered into by the assessee with the contractors and the builder forms part of cost of new house even though such agreement was entered prior to agreement for purchase of house.

12. The learned Departmental Representative supported the orders of the lower authorities and relied on the following case laws:-

(a) Rajesh Surana Vs. CIT, 306 ITR 357 Raj.

(b)D.P. Mehta Vs. CIT, 251 ITR 529

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13. We have considered the rival submissions and perused the orders of the lower authorities. The circular of the CBDT dated 30.6.2009, relevant portion of which has been extracted hereinabove, makes it very clear that deduction under S.80IB(10) of the Act can be claimed on year to year basis, where the assessee is showing the profits from partial completion of the project in each year. In case it is found alter that the project was not completed within four years, the deduction granted to the assessee in earlier years shall be withdrawn. The case of Nagarjuna Homes of the coordinate Bench of this Tribunal dated 30.9.2010, which interpreted as above and followed the above circular of the CBDT, squarely applies to the facts of the present case.

14. The stand of the Revenue with regard to semi-finished condition of the flat is devoid of merit, in as much as what is sought to be constructed and sold by the assessee is a residential unit and what is sought to be purchased by the individual buyer is the ownership of a residential unit, and registration of flats in semi-finished condition is only to facilitate the convenience of the parties and agreement for development and completion of the balance works in relation to the flats registered, is only an incidental formality to protect the interests of the parties to the transaction, which need not be viewed as fatal to the claim of the assessee for relief under S.80IB of the Act. Ultimately, the entire work from the stage of commencement of the project to the stage of making the residential unit habitable has been carried out by the assessee only, and the Revenue has no dispute whatsoever on this count.

15. It is settled position of law that while interpreting taxation statutes, more importantly, incentive provisions thereof, liberal interpretation is called for. The approach while interpreting such

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provisions should be to advance the cause for which such provision have been incorporated, and not to frustrate the same. For this proposition, we may refer to the ratio laid down by the Apex Court in the case of Bajaj Tempo(196 ITR 188), wherein it has been held, at page 193 of the Reports(196 ITR) as follows-

> ***"...A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. In Broach District Co-operative Cotton Sales, Ginning & Pressing Society Ltd. v. CIT [1989] 177 ITR 418 (SC), the assessee, a co-operative society, claimed that the receipts from ginning and pressing activities was exempt under section 81 of the Income-tax Act. The question for interpretation was whether the co-operative society which carried on the business of ginning and pressing was a society engaged in 'marketing' of the agricultural produce of its members. The court held that the object of section 81(1) was to encourage and promote growth of co-operative societies and consequently, a liberal construction must be given to the operation of that provision. And since ginning and pressing was incidental or ancillary to the activities mentioned in section 81(1), the assessee was entitled to exemption and the proviso did not stand in his way. In CIT v. Strawboard Manufacturing Co. Ltd. [1989] 177 ITR 431 (SC), it was held that the law providing for concession for tax purposes to encourage industrial activity should be liberally construed. The question before the court was whether strawboard could be said to fall within the expression 'paper and pulp' mentioned in the Schedule relevant to the respective assessment years. The court held that since the words 'paper and pulp' were mentioned in the Schedule, the intention was to refer to the paper and pulp industry and since the strawboard industry could be described as forming part of the paper and pulp industry, it was entitled to the benefit."***

16. We may also refer to the ratio laid down by the Apex Court in the case of Vegetable Products V.s. CIT(88 ITR 192), wherein it has been held that while interpreting the statutory provisions *'if two reasonable constructions are possible that construction which favours the assessee must be adopted'*.

17. When the developer is offering profits under percentage completion method, the estimated profits that the developer will have on completion of the project is spread over the earlier years and offered every year a percentage of that profit based on percentage of

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project completed that years. Obviously except in the last year, the assessee will be offering income even though the project (and in the individual flats) would not have been completed. As clarified in the Circular such profits offered are also entitled relief u/s 80IB. The AO is at liberty to determine the correct profit under the percentage completion method and also withdraw the relief granted, if, at a later period of time on completion of the project, if the assessee has not complied with any of the requirements of section 80IB(10) of the Act.

18. In view of the above discussion, we restore the claim of deduction of the assessee for relief under S.80IB of the Act, to the file of the AO with a direction to decide the issue following the said findings and in accordance with law after providing reasonable opportunity of being heard to the assessee in the matter. Thus, this ground of appeal raised in all the appeals under consideration is treated as allowed for statistical purposes.

18. In AY 2003-04, the assessee raised an additional ground of appeal, which relates to estimate of profits and arises directly out of the order of CIT(A) where the CIT(A) confirmed the action of the AO in estimating the profit @ 8% as against 5% disclosed by the assessee.

19. After considering the submissions of the parties, we have admitted the said additional ground raised by the assessee. The assessee effected sales flats to the tune of Rs.3,42,57,600/-. The AO considered 5% to be too low in this line of business. The AO, after scrutinizing vouchers produced by the assessee in respect of various expenditure incurred, found that certain expenditure were not completely verifiable and not all details were available in respect of expenditure. He, therefore, adopted rate of 8% for estimating profit as against 5% adopted by the assessee. On appeal, the AR of the

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assessee submitted before the CIT(A) that on completion of the project the impact of estimate on the total profit on the project would get synchronized in the year of completion and therefore, estimate @ 8% is not justified and not supported by any material evidences. After considering the submissions of the assessee, the CIT(A) held as under:-

> *"4.2 I have considered the submissions of the appellant. Even though the total profit will be properly computed for the project is completed in the intervening period some profit accrues to the assessee for which a reasonable method has to be followed to determine such profit. The appellant has adopted the rate of profit at 5% without any basis. The judicial consensus appears to be towards estimating net profit @ 8% to 10%. In respect of turnover of up to Rs. 40 lakhs net profit is presumed to be @ 8% u/s 44AD. Considering the totality of the circumstances, I do not find any objection in the method of estimate adopted by the AO and accordingly income has correctly been estimated by him @ 8%. "*

20. We have heard both the parties and perused the record as well as gone through the orders of the authorities below. We find that in this line of business, the Tribunal has been consistently holding that the profit to be estimated at 8% and, therefore, we do not find any reason to interfere with the order of the CIT(A), therefore, the same is hereby upheld and this ground of appeal of the assessee is dismissed.

21. In AY 2004-05, the Ground No. 2 raised by the assessee is as follows:

> "The learned CIT(A) having clearly held that the total profit will be properly computed only after the project is completed erred in holding that some profit accrues in the intervening period and further erred in confirming the estimate of the profit @ 8% which is wholly unsustainable."

22. The business income of the assessee has been estimated at 8% equal to Rs. 41,14,392/- by the AO, and the same was confirmed by the CIT(A). We have already held in AY 2003-04 that 8% estimation of

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profit at 8% is standard rate adopted in all the cases in this line of business, therefore, we confirm the order of the CIT(A) on this issue.

23. Ground No. 3 in AY 2004-05 is directed against the action of the CIT(A) in confirming the disallowance made by the AO of an amount of Rs. 3,92,900/- expended towards construction of a temple in the housing project.

24. The AO noted that the assessee debited an amount of Rs. 3,92,000/- towards construction of temple within the housing project. The AO was of the view that the assessee was not under any obligation to construct a temple for the residents and accordingly the amount spent for construction of a temple was not considered and disallowed the said expenditure as not for the purpose of business as required u/s 37(1) of the Act. On appeal, before the CIT(A) the assessee submitted that it was not necessary to enter into agreements with each of the residents for providing temple to make it eligible for business expenditure u/s 37(1). The said submission was not found favour with the CIT(A), therefore, he confirmed the action of the AO on the ground that the expenditure will be allowed only when it is necessary for the business and not otherwise and construction of a temple was not provided in the agreements with the prospective buyers of the flats and it amounts to a religious and/or charitable activity on the part of the assessee, not eligible for deduction u/s 37(1) of the Act. Aggrieved, the assessee is in appeal before us.

25. We have heard both the parties and perused the record as well as gone through the orders of the authorities below. We are of the view that construction of temple is for welfare of the employees to instill spirituality to lead peaceful life, therefore, the expenditure incurred towards construction of temple is a part of the housing

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project, which is allowable as capital expenditure, as has been held by the Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle India Ltd., 134 ITR 458 (P&H). We, therefore, set aside the order of the CIT(A) and allow the expenditure claim of the assessee of Rs. 3,92,000/- towards construction of temple as capital expenditure. Thus, this ground of appeal of the assessee is dismissed.

26. Ground No. 4 in AY 2004-05 is directed against the action of the CIT(A) in confirming the disallowance of an amount of Rs. 5,24,000/- expended towards cost of lift incurred by the assessee.

27. The AO had disallowed an amount of Rs. 5,24,000/- towards cost of lifts since the bill was raised on dated 23/03/2005 not related to the assessment year under consideration. Before the CIT(A), the submission of the assessee was that the payments were made in advance during the previous year relevant to AY under consideration. The CIT(A) observed that payments in advance could be made at various points of time but as long as it is not supported by bills raised by the supplier or the supplies made, the advance cannot be considered as expenditure. He, therefore, held that since bill had been raised during the FY 2004-05, the expenditure is debitable to the books of account only in FY 2004-05 relating to AY 2005-06 and in view of the same, the CIT(A) confirmed the disallowance made by the AO.

28. After hearing the parties and perusing the record as well as the orders of the authorities below, we find that the assessee failed to substantiate its claim by producing the bills raised by the supplier in AY 2004-05 and other evidence to prove that the expenditure is relating to AY 2004-05. Therefore, in the interest of justice, we set aside the issue to the file of the AO to give one more opportunity to the

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assessee to prove its claim by of material evidence that the claim is pertaining to the year under consideration. The AO shall decide the issue after examining the details/evidence, which will be filed by the assessee before him, and in accordance with law after providing reasonable opportunity of hearing to the assessee. The assessee is directed to file bills/evidence, etc. in support of it's claim. Thus, this ground of appeal is treated as allowed for statistical purposes.

29. Ground No. 1 in AY 2005-06 is against the action of the CIT(A) in sustaining the disallowance of Rs. 19,939/- being the expenditure incurred on lighting of the temple in the housing project is unsustainable in law.

30. We have held in ground No. 3 in AY 2004-05(supra) that the expenditure towards building of the temple is an allowable expenditure as a part of housing project. As the temple would be incomplete without lighting and the lighting is essential for the building, we are of the opinion that the expenditure of Rs. 19,939/- towards lighting of the temple is allowable as business expenditure. Therefore, we set aside the order of the CIT(A) and delete the disallowance made by the AO on this count. Accordingly, this ground is allowed.

31. Ground No. 3 in AY 2005-06 is directed against the action of the CIT(A) in restricting the ad-hoc disallowance to Rs. 2.00 lakhs on account of expenditure incurred under the head raw materials, labour and land development expenses.

32. The AO noted that on verification of bills and vouchers in respect of raw material purchased, land development expenses and labour cost for construction, it was found that some of the expenditure was not supported by proper bills and they were booked to the profit and loss

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account by way of self-made vouchers. The AO held that the authenticity and correctness of some of the expenditure is at doubt. He, therefore, disallowed a sum of Rs. 3 lakhs from the expenditure incurred on raw material, Rs. 1 lakh from the land development expenses and Rs. 1,50,000/- from the construction labour account. Thus, the total expenditure comes to Rs. 5,50,000/-. On appeal, the CIT(A) following the similar disallowance made by the AO at Rs. 2.00 lakhs under the said three heads in AY 2006-07, restricted the disallowance to Rs. 2 lakhs. Aggrieved, the assessee is in appeal before us.

33. Before us, the learned counsel for the assessee contended that it is not proper to make the ad-hoc disallowance by the AO and restricting the same by the CIT(A) was also incorrect. Since the assessee did not dispute the fact that in the line of its business, it is not always possible to maintain proper bills and vouchers, certain amount of disallowance is called for. Therefore, the CIT(A) has rightly sustained the disallowance of Rs. 2,00,000/- in respect of raw material purchased, land development expenses and labour cost for construction, therefore, the order of the CIT(A) is hereby upheld and this ground of appeal is dismissed.

34. In AY 2003-04 & 2004-05, the assessee raised a ground regarding charging of interest u/s 234-B of the Act. Charging of interest u/s 234-B is consequential in nature, therefore, the AO is directed accordingly.

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35. In the result, all the three appeals under consideration are treated as partly allowed for statistical purposes.

Order pronounced in the court on 26/04/2012.

Sd/-	Sd/-
(Chandra Poojari)	**(Asha Vijayaraghavan)**
Accountant Member.	**Judicial Member.**

Dt/- 26th, April, 2012

Copy forwarded to:

1. M/s. Maytas Housing Pvt. Ltd., Ramaraj Nagar, N.H. 7, Jeedimetla, Hyderabad.
2. Asst Commissioner of Income-tax, Central Circle-1, Hyderabad
3. Commissioner of Income-tax(Appeals) –I, Hyderabad
4. Commissioner of Income-tax, Central, Hyderabad
5. Departmental Representative , ITAT, Hyderabad

B.V.S.