**IN THE INCOME TAX APPELLATE TRIBUNAL**
**PUNE BENCH "B", PUNE**

**BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL MEMBER**
**AND SHRI G.S. PANNU, ACCOUNTANT MEMBER**

**ITA No. 164 & 1438/PN/2007 & 751 & 280/PN/2010**
**(Assessment years: 2003-04 to 2006-07)**

Raviraj Kothari Punjabi Associates
S.No. 68/7/8/9 Behind sopan Baug
B.T. Kawade Patil Road, Ghorpadi
Pune.
PAN AAFFR 1541 N .. Appellant

Vs.

Dy. CIT Cir. 5, Pune Respondent

**ITA No. 1008/PN/2010**
**(Assessment years: 2005-06)**

Asstt. CIT Cir. 5, Pune Appellant

Vs.

Raviraj Kothari Punjabi Associates
S.No. 68/7/8/9 Behind sopan Baug
B.T. Kawade Patil Road, Ghorpadi
Pune.
PAN AAFFR 1541 N .. Respondent

Assessee by : Shri V.L. Jain
Department by : Shri S.K. Singh, CIT DR
Date of hearing: 05-11-2012
Date of pronouncement: 23-11-2012

**ORDER**

**PER G.S. PANNU, A.M.:**

The captioned appeals four by the assessee for A.Ys. 2003-04 to 2006-07 and one by the Revenue for A.Y. 2005-06, are directed against the respective orders of the Commissioner of Income-tax (Appeals)-II Pune which, in turn, have arisen from orders passed by the Assessing Officer, under section 143(3) of the Income-tax Act, 1961 (in short "the Act). Since the issues involved in all these appeals are common, they were heard together and are being disposed off by this consolidated order for the sake of convenience and brevity.

2. In all these, the common point relates to assessee's claim of deduction u/s 80-IB(10) of the Act. The assessee before us, is an Association of Persons which is engaged in the business of promoters, builders and land developers. It undertook development and constructing of a housing project named as 'Citadel' at B.T. Kawde Patil Road, Pune and claimed deduction for the captioned assessment years in respect of profits derived from such project in terms of section 80-IB(10) of the Act. The Revenue has denied the claim of assessee primarily for the reason that the project undertaken by the assessee does not fulfill the conditions prescribed u/s 80-IB(10) of the Act. It was a common point between the parties that the facts and circumstances in the captioned assessment years stand on a similar footing and therefore, we take up for discussion, the facts in relation to assessment year 2003-04 to facilitate adjudication of the dispute.

3. In so far as assessment year 2003-04 is concerned, the relevant facts are that assessee declared total sales in relation to its project 'Citadel' at Rs. 13,97,83,157/- on which net profit in the profit and loss account was shown at Rs. 4,88,52,973/-. After adjusting the brought forward losses of Rs. 48,15,337/-, the gross total income was computed at Rs. 4,40,37,636/- which was claimed as exempt u/s 80-IB(10) of the Act. The assessee's claim for such deduction was denied by the Assessing Officer on two counts. Firstly, as per the Assessing Officer, the project in question consisted of constructed area for shops and commercial establishments and therefore, according to him, it was not a pure housing project which was a requirement of sec. 80-IB(10)(a) of the Act. Secondly, as per the Assessing Officer, the 'built up area' of certain units exceeded the limit of 1500 sq.ft. prescribed in clause (c) of sec. 80-IB(10) and

therefore, the entire project was ineligible for deduction u/s 80-IB(10) of the Act. The aforesaid twin objections have also been affirmed by the CIT(A) and as a result, the assessee is in appeal before us.

4. In so far as the first objection of the Assessing Officer is concerned, the relevant facts can be understood as follows: The project 'Citadel' constructed by the assessee was approved by the Pune Municipal Corporation (in short PMC) vide Commencement Certificate dated 16-7-2002 and the final completion of construction certificate was issued by the PMC on 22-2-2004. The other salient features noted by the Assessing Officer were that the total built up area of all the shops was 13,246.96 (1230.87 sq. mtrs) while the total built up area of all the residential flats was 1,99,299.79 sq. ft. (18,493.94 sq. mtrs). As per the Assessing Officer, the assessee had thus constructed commercial area of 13,248.96 sq. ft. which was 6.67% (approximately) of the total constructed area of the project. In this background, the Assessing Officer held that the same was violative of clause (d) of sec. 80-IB(10) of the Act, inserted by the Finance (No. 2) Act, 2004 with effect from 1-4-2005. According to the Assessing Officer, the assessee had constructed commercial area in excess of 2000 sq.ft. which was the limit prescribed in clause (d) of sec. 80-IB(10) of the Act. According to the Revenue, the aforesaid facts also show that the project was not a pure housing project which was the requirement for availing deduction u/s 80-IB(10) of the Act.

5. On this aspect, the learned counsel for the assessee has vehemently pointed out that reliance placed by the Revenue on clause (d) of sec. 80-IB(10) of the Act inserted by way of Finance

(No. 2) Act, 2004 was misplaced, inasmuch as the said amendment is prospective in nature and not retrospective. Further, it is pointed out that the restriction on the area ear-marked for commercial purposes in a housing project laid down in clause (d) of sec. 80-IB(10) of the Act would not be applicable to the projects which have commenced prior to 1-4-2005, inasmuch as the law as applicable at the time of commencement of the project did not contain such a restriction. It is submitted that Hon'ble Bombay High Court in the case of Brahma Associates Vs. JCI 333 ITR 289 (Bom) clearly laid down that such amended provision did not operate retrospectively and that the same would be applicable from 1-4-2005 prospectively. Apart therefrom, reliance has also been placed on the decisions of Pune Bench of the Tribunal in the case of Opel Shelters Pvt. Ltd. Vs. ACIT (ITA No. 219/PN/2009 for A.Y. 2005-06 vide order dated 31-5-2010, G.K. Builders in ITA No. 1077 and 1078//PN/2010 for A.Y. 2005-06 and 2006-07 vide order dated 30-7-2012 and Bombay Bench of the Tribunal in the case of Hiranandani Akruti JV Vs. Dy. CIT (2010) 39 SOT 498 (Mumbai).

6. On the other hand, the learned DR appearing for the Revenue has defended the stand of the Revenue by pointing out that phraseology of sec. 80-IB(10) contained an expression 'housing project' which would indicate that a project involving commercial area would not fall within the scope of sec. 80-IB(10) of the Act even in the absence of clause (d) of section 80-IB(10) of the Act.

7. On this aspect, we have carefully considered the rival submissions. Admittedly, the assessee has commenced development and construction of its housing project 'Citadel' in terms of approval granted by the PMC which is the prescribed 'local

authority' within the meaning of sec. 80(IB)(10) of the Act. It is also not in dispute that the assessee commenced development and construction of the housing project as per the commencement certificate issued by the PMC dated 16-7-2002. Pertinently, in para 2.3 of the order of the CIT(A), a reference has been made to a communication obtained from the Engineer, PMC dated 6-12-2005 wherein it has been stated that the project in question was approved by PMC as a residential-cum-commercial project. Factually, it is also clear that out of the total constructed area, an area of 13,248.96 sq. ft. is consisting of commercial area which is approximately 6.7% of the total constructed area of the project.

8. At this point, we may refer to clause (d) to sec. 80-IB(10) of the Act which has been inserted by the Finance (No. 2) Act, 2004 w.e.f. 1-4-2005 which reads as under:

> *"the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever isles."*

9. In terms of the aforesaid provision, the case of the Revenue is that the same reflects the meaning of expression "housing project" which is to be understood as a purely residential project not involving any commercial area. Secondly, it is pointed out that the commercial area in the instant case is 13,248.96 sq.ft. which is more than the permissible area of 2000 sq.ft. or 5% of the total built-up area whichever is less as provided in clause (d) of sec. 80-IB(10) of the Act.

10. In our considered opinion, reliance placed by the Revenue on clause (d) to sec. 80-IB(10) of the Act to defeat the assessee's claim for deduction in the present case is quite misplaced. Firstly, the Hon'ble Bombay High Court in the case of Brahma Associates (supra) has laid down that the said provision is prospective and not

retrospective in nature and therefore, it cannot be applied retrospectively. Further, the plea of the Revenue that only a pure housing project is eligible for deduction is also completely misplaced having regard to the judgment of Hon'ble Bombay High court in the case of Brahma Associates (supra). In the case before the Hon'ble Bombay High Court, the project consisted of 15 residential buildings and two commercial buildings and it was noticed that local authority had approved the project as residential-cum-commercial. The Hon'ble Bombay High Court explained that since expression 'housing project' was not defined under the Act, its meaning would have to be gathered from the Rules and Regulations framed by the approving local authority. The Hon'ble High court explained that since a 'local authority' could approve the project to be a housing a project with or without commercial user, it was therefore, the intent of the legislature that deduction envisaged u/s 80-IB(10) of the Act was allowable to such housing projects approved by the local authority without or with commercial user to the extent permitted by the rules of local authority. Though, the assessment year before the Hon'ble Bombay High Court was prior to 1-4-2005, it considered clause (d) of sec. 80-IB(10) of the Act as inserted by the Finance (No. 2) Act, 2004 and held the assessee eligible for deduction u/s 80-IB(10) of the Act. In the instant case before us, the parity of reasoning laid down by the Hon'ble Bombay High Court in the case of Brahma Associates (supra) is wholly applicable. The project before us has been approved by the local authority i.e. PMC as a residential-cum-commercial project and therefore, it qualifies to be seen in the same manner as explained by the Hon'ble Bombay High Court in the case of Brahma Associates (supra). Therefore, the aforesaid objection raised by the Revenue to dis-entitle the assessee from claiming of deduction u/s 80-IB(10) of the Act is untenable.

11. Now, we may take up the second objection raised by the Revenue whereby, it is stated that the built-up area of some of the units exceeded 1500 sq.ft., which was the limit prescribed in clause (c) of sec. 80-IB(10) of the Act. As per the Revenue, since some of the units violated the condition prescribed in clause (c) of sec. 80-IB(10), profits from such project are ineligible for claiming deduction u/s 80-IB(10) of the Act.

12. On this aspect, the facts are that after including the area covered by terrace and balconies, the built-up area exceeded 1500 sq.ft. On this aspect, the CIT(A) has held that expression 'built-up area' has been explained in section 80-IB(14)(a) of the Act to include projections and balconies and therefore, the stand of the Assessing Officer to the effect that some of the residential units violated the conditions prescribed in clause (c) of sec. 80-IB(10) of the Act was in order.

13. In this background, the claim of the assessee is that the project in question commenced prior to 1-4-2005 and therefore, the definition of 'built-up area' prescribed in sec. 80-IB(14)(a) would not apply as the said section was inserted by the Finance (No 2) Act, 2004 w.e.f. 1-4-2005. The learned counsel relied on the following decisions in support of his submission:-

i) ITO Vs. Prime Properties (ITA No. 887, 888 & 889/PN/2010 for A.Y. 2003-04 to 2005-06) vide order dated 26-4-2012
ii) Haware Constructions (P) Ltd. Vs. ITO (2011) 64 DTR (Mum) 251.

14. We have carefully considered the rival submissions. The assessee's claim for deduction u/s 80-IB(10) of the Act has been objected to on account of sub-clause (c) of

section 80-IB(10) of the Act. Sub-clause (c) of section 80-IB(10) of the Act required that in order to be eligible for deduction, built up area of residential units in cities other than Delhi or Bombay shall not exceed 1500 sq.ft. As per the Revenue few residential units contained in the housing project undertaken by the assessee had a built up area exceeding 1500 sq.ft. Since few units violated the condition prescribed in sub-clause (c) of section 80-IB(10) of the Act deduction for the entire project was denied In coming to such computation of built up area, the Revenue has relied upon sub-clause (a) of section 80-IB(14)(a) which explains the expression "built up area' to mean the inner measurement of the residential units at the floor level including the projections and balconies as increased by the thickness of walls but excluding the common areas shared with other residential units. No doubt, on an application of such a definition of built up area, the case set up by the Revenue is potent. So however, in the present case, the issue is as to whether such definition of the built-up area inserted by the Finance (No. 2) Act, 2004 w.e.f. 1-4-2005 is applicable or not. Ostensibly, prior to 1-4-2005, there was no such definition of the expression 'built up area' in the Statute and logically, one had to consider the built up area as per local municipal development Control Rules followed by the approving authorities which in the present case is Pune Municipal Corporation (PMC).In the case before us, the project of the assessee has ostensibly commenced prior to introduction of sec. 80-IB(14)(a) of the Act and therefore, the amendment which has come into effect by way of sec. 80-IB(14)(a) of the Act w.e.f. 1-4-2005 would not affect such a project. The aforesaid proposition is in line with precedent by way of decision of Pune Bench of the Tribunal in the case of G.K. Builders in ITA No. 1077 & 1078/PN/2010 for A.Y. 2005-06 & 2006-07 vide order dated 30-7-2012. In the case of G.K.

Builders (supra) the aforesaid proposition was affirmed following the earlier decisions of the Tribunal in the case of Tushar Developers in ITA No. 165/PN/2007 and 94/PN/2007 for A.Y. 2003-04 and 2004-05 vide order dated 31-5-2011 and Haware Constructions (P) Ltd. Vs. ITO (2011) 64 DTR (Mum) 251. The following discussion in the order of the Tribunal in the case of G.K. Builders (supra) is relevant:-

> *"After going through the above submissions and material on record, we are not inclined to concur with the finding of the CIT(A). The deduction under question has been rejected by the AO and confirmed by the CIT(A) on the ground that it exceeded the prescribed limit with respect to Row House No. 36. Accordingly, the whole project was rejected. The AO has reached to the conclusion after including the terrace area of 108 sq.ft. In Brahma Builders (supra) whether the terrace in built up area comes only w.e.f 1-4-2005 because the decision is introduction in the section w.e.f. the said date. For the period prior to 1-4-2005, no such definition was on the statute and hence, the built up area has to be considered as per the DC rule of the sanctioning authority. The DC rules do not include terrace in the built up area. So the amendment which has come in this regard w.e.f. 1-4-2005 will not affect the projects which have commencement prior to 1-4-2005. This issue has been decided following Tushar Developers in ITA No. 165/PN/2007 and 94/PN/2007 in favour of assessee and in Haware Constructions (P) Ltd. similar view has been taken whereby it was held that Tushar Developers is not includible in built up area of the flat prior to 1-4-2005 and hence for the project commenced before 1-4-2005, terrace is not includible in the built up area. In view of this, assessee is entitled for deduction u/s 80-IB(10) as claimed."*

15. Following the aforesaid observations, we therefore, hold that since the project of the assessee commenced prior to 1-4-2005 the definition of 'built up area' as provided in sec. 80-IB(14)(a) cannot be applied in this case so as to evaluate the condition prescribed in sub-clause (c) of section 80IB(10) of the Act. Under these circumstances, the limit of 'built up' area prescribed in sub-clause (c) of section 80-IB(10) of the Act has to be understood on the basis of local development Rules which does not include terrace/canopy. If the areas covered by the terrace/canopy are excluded, the built up area of the three Row houses in question does not exceed the limit

of 1500 sq.ft. prescribed in sec. 80-IB(10)(c) of the Act. In this view of the matter, the aforesaid objection raised by the Revenue to dis-entitle the assessee from claiming of deduction u/s 80-IB(10) of the Act is untenable. In view of the aforesaid discussions, therefore, we set aside the order of the CIT(A) and direct the Assessing Officer to allow the deduction u/s 80-IB(10) of the Act as claimed by the assessee and the assessee succeeds in its appeal for A.Y. 2003-04.

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16. Now, we may come to the appeals of the assessee for the remaining assessment years of 2004-05, 2005-06 and 2006-07. In these appeals also, the issue pertains to denial of deduction u/s 80-IB(10) of the Act in relation to profits and gains from the project 'Citadel'. The objection of the Revenue to assessee's claim for deduction u/s 80-IB(10) in the aforesaid years is similar to that of the assessment year 2003-04. Such objections have been dealt with by us in the preceding paragraphs while dealing with the appeal for A.Y. 2003-04. Our conclusion in assessee's appeal for A.Y. 2003-04 would squarely apply to the said assessment years also. However, one of the aspects which requires a little discussion is as follows: For the earlier assessment year, the objection of the Revenue based on clause (d) of sec. 80-IB(10) of the Act has been negated by us on the ground that such amendment was made by the Finance (No. 2) Act, 2004 w.e.f. 1-4-2005 and would not operate retrospectively. Since in the assessment year under consideration viz. 2005-06 and 2006-07, the aforesaid amendment is on the statute, the case set up by the Revenue is that the claim for deduction be governed on the basis of such amendment. On this aspect, the point to be considered is as to whether the restriction of 'commercial area' prescribed in sec. 80-IB(10)(d) of the Act as inserted by the Finance (No. 2) Act,

2004 w.e.f 1-4-2005 can be made applicable to a project which has been approved and commenced prior to 1-4-2005. Similar controversy has been the subject matter of consideration by Pune Bench of the Tribunal in the case of Opel Shelters (supra) as also in the case of Hiranandani Akruti JV (supra). In the aforesaid precedents, it has been held that the provisions of sec. 80-IB(10)(d) of the Act, as inserted by the Finance (No. 2) Act, 2004 w.e.f. 1-4-2005, shall apply to the projects commencing on or after 1-4-2005. The primary reason made out is to the effect that the assessee having commenced its project prior to 1-4-2005 in terms of the approval granted by a 'local authority' could not have envisaged the legislative action of putting the restriction contained in clause (d) of sec. 80-IB(10) of the Act w.e.f. 1-4-2005. In this background of the matter, we find that even for A.Y. 2005-06 and 2006-07 the objection of the Revenue is unsustainable. Pertinently, the project of the assessee in question i.e. 'Citadel' commenced development and construction prior to 1-4-2005 and in fact stands completed on 23-2-2004 as noted by the CIT(A) in para 2.1 of the impugned order. Therefore, clause (d) to sec. 80IB(10) of the Act inserted by the Finance (No. 2) Act, 2004 w.e.f. 1-4-2005 cannot be invoked to dis-entitle the assessee's claim for deduction u/s 80-IB(10) of the Act for A.Y. 2005-06 and 2006-07 as well.

17. On the similar parity of reasoning, further objection of the Revenue based on built-up area inserted by the Finance (No. 2) Act, 2005 w.e.f. 1-4-2005 in section 80-IB(14)(a) would also not hinder the assessee's claim for deduction u/s 80-IB(10) for the reason that its project had commenced prior to 1-4-2005. Therefore, appeals for A.Y. 2005-06 and 2006-07 are also allowed.

18. In the result, the appeals of the assessee pertaining to assessment years 2003-04, 2004-05, 2005-06 and 2006-07 are allowed as above.

19. The only appeal now remaining is ITA No. 1008/PN/2010 which has been preferred by the Revenue with respect to A.Y. 2005-06. In this appeal, the solitary grievance of the Revenue is with regard to the decision of CIT(A) that the assessee's claim for deduction u/s 80-IB(10) of the Act in relation to the project 'Citadel Enclave' was justified.

20. In brief, the facts are that in the impugned assessment made by the Assessing Officer dated 31-12-2009 in terms of section 143(3) r.w.s. 264(1) of the Act, deduction u/s 80-IB(10) for Rs. 2,02,18,240/- was denied. The deduction claimed was relating to two projects viz. 'Citadel' and 'Citadel Enclave', Pune. In so far as the claim for deduction relating to the project 'Citadel' is concerned, it was the subject matter of consideration in assessee's appeal in ITA No. 164/PN/2010 which has been dealt with by us in the earlier paragraphs. In this appeal of the Revenue, the claim relates to the deduction claimed for 'Citadel Enclave' which has been allowed by the CIT(A) in the impugned order.

21. The brief background with regard to assessee's claim for deduction relating to project 'Citadel Enclave' is as follows: In the A.Y. 2005-06, originally the assessment was made u/s 143(3) on 26-12-2007 wherein claim of deduction u/s 80-I(B(10) of the Act amounting to Rs. 2,02,18,046/- was denied. The Assessing Officer claimed the two projects as one project in such assessment

proceedings. Further, in relation to 'Citadel Enclave' project the Assessing Officer relied upon the report of the approved valuer to hold that six flats had a built-up area of more than 1500 sq.ft. Against the aforesaid assessment, the assessee moved an application for revision u/s 264 of the Act, before the Commissioner of Income-tax-II Pune (for short CIT – II). The CIT – II vide his order dated 4-5-2008 u/s 264 of the Act, set aside the matter back to the file of the Assessing Officer for purposes of examining deduction u/s 80-IB(10) of the Act with certain directions. Hence, the impugned order passed by the Assessing Officer u/s 143(3) r.w.s. 264 of the Act. In his order, the CIT-II held that the Assessing Officer had not confronted the report of the valuer to the assessee and he therefore, directed the Assessing Officer to get the flats measured again by a Registered Valuer and give proper opportunity to the assessee of being heard. So far as the point regarding the project 'Citadel Enclave' being a continuous project with other project i.e. 'Citadel' was concerned, the CIT-II held that the stand of the Assessing Officer was not correct. In this regard, the CIT-II noticed the order passed by the Assessing Officer in A.Y. 2006-07 u/s 143(3) of the Act dated 31-12-2009 wherein the projects 'Citadel' and 'Citadel Enclave' were treated as single project. The aforesaid dispute has not been raised by the Assessing Officer in the impugned assessment order dated 31-12-2009. The only point on the basis of which the assessee's claim for deduction u/s 80-IB(10) of the Act for the 'Citadel Enclave' project has been denied, is to the effect that the commercial area of this project exceeded 2000 sq.ft. which was violative of clause (d) of section 80-IB(10) of the Act.

22. In appeal before the CIT(A), the assessee contended that the commercial building noticed by the Assessing Officer in the project

'Citadel Enclave' was not owned by the assessee but it was the project carried out by another firm viz. Wide Angle Associates. Secondly, it was further pointed out by the assessee that the aforesaid point raised by the Assessing Officer neither emerged from the original assessment order dated 26-12-2007 and nor out of the order of the CIT-II Pune dated 14-5-2008 passed u/s 264 of the Act. Thus, as per the assessee, the Assessing Officer had travelled beyond the scope of directions contained in the order of the CIT-II passed u/s 264 of the Act in the impugned proceedings. The CIT(A) upheld both the aforesaid pleas of the assessee and accordingly held the assessee entitled for deduction u/s 80-IB(10) of the Act in respect of 'Citadel Enclave' project.

23. Before us, the learned DR appearing for the Revenue has submitted that the CIT(A) has allowed the claim of the assessee on a wrong assumption that the commercial establishments in the project 'Citadel Enclave' belonged to a different firm. The learned DR has relied upon the order of the Assessing Officer in support of the case of the Revenue.

24. On the other hand, the learned representative for the assessee has vehemently pointed out that the action of the Assessing Officer was misconceived, inasmuch as, factually the commercial building in question was not developed by the assessee-AOP but belonged to another firm M/s. Wide Angle Associates, which was supported by a registered development agreement dated 24-12-2003, a copy of which was very much before the Assessing Officer and the same has been rightly appreciated by the CIT(A). In this manner, the claim of the assessee for deduction u/s 80-IB(10) of the Act in relation to the project 'Citadel Enclave' has been defended.

25. We have carefully considered the rival submissions. On the aforesaid aspect, in our considered opinion, the CIT(A) has recorded two findings which have not been assailed by the Revenue in a cogent manner before us. Firstly, as per the CIT(A) the commercial building referred to by the Assessing Officer was not developed by the assessee-AOP, but by another firm M/s. Wide Angle Associates and therefore, such a building cannot be considered as commercial building developed by the assessee in its project 'Citadel Enclave'. Secondly, it has also been recorded by the CIT(A) that such an issue was neither raised in the original assessment order and nor mandated by the CIT-II in his order passed u/s 264 of the Act dated 14-5-2008 and therefore, in the ensuing impugned assessment order, the Assessing Officer could not have gone into the areas which were not covered in the directions contained in the order of the CIT-II Pune passed u/s 264 of the Act. Both the above assertions of the CIT(A) find an echo in para 3.8 of the impugned order which reads as under:

> *"The Assessing Officer has stated that since in the original lay out plan this commercial building was shown and the project was also mentioned as 'residential plus commercial' in the original commencement certificate dated 6-6-2003, the commercial area as treated to be part and parcel of the Citadel Enclave project only. Before the Assessing Officer as well as during the appellate proceedings, it has been explained by the appellant that the commercial building comprising of 22 shops was not a part of the project citadel Enclave but was a project of the firm 'Wide Angle Associates'. For this, the appellant pointed out to the report of the Registered Valuer appointed by the Assessing Officer, and explained that the particular land on which the commercial building was located was transferred by the AOP to the firm M/s. Wide Angle Associates by a Registered Development Agreement dated 24-12-2003, of which a copy was filed before the Assessing Officer as well as during appellate proceedings. Considering this explanation of the appellant, since a part of the land was already transferred to a different firm, M/s. Wide angle Associates, which has in fact constructed this commercial building of 554 sq. mtrs, area having 22 shops, it cannot be included in the 'Citadel Enclave' project of the appellant. This is on merits of the issue. In any case, this issue was not raised in the original assessment order and not mandated by the order u/s 264 dt. 14-5-2008 of*

*the CIT_II, Pune. Therefore, the Assessing Officer cannot go beyond the direction contained in the order u/s 264 and get into new areas. It is therefore, held that the appellant was entitled for deduction u/s 80-IB(10) in respect of Citadel Enclave project, and there was no violation of condition u/s 80-IB(10)(d) for this project."*

26. On the basis of the aforesaid observation of the CIT(A) for which there is no material to negate the same, we find no reason to interfere with the ultimate conclusion of the CIT(A) that the assessee is not eligible for deduction u/s 80-IB(10) of the Act. Thus, the appeal of the Revenue fails.

27. In the result, the appeals of the assessee are allowed while the appeal of the Revenue is dismissed.

Decision pronounced in the open court on 23rd November 2012.

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| Sd/- | sd/- |
| (SHAILENDRA KUMAR YADAV) | (G.S. PANNU) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Pune, Dated: 23rd November 2012
Ankam

Copy to:-

1. Assessee
2. Department
3. The CIT (A)-II Pune
4. The CIT- II Pune
5. The Departmental Representative, "A" Bench, I.T.A.T., Pune.

By Order
//true copy//

Sr. P.S.

I.T.A.T., Pune