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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA Nos. 299 & 300/Hyd/2012
Asst. Years: 2005-06 & 2006-07

M/s Sainath Estates Pvt. Ltd., Hyderabad (PAN: AAFCS0211D)	**V/s.**	**Dy. Commissioner of Income-tax, Hyderabad.**
(Appellant)		**(Respondent)**

ITA Nos. 379 & 380/Hyd/2012
Asst. Years: 2003-04 & 2004-05

Dy. Commissioner of Income-tax, Hyderabad.	***V/s.***	***M/s Sainath Estates Pvt. Ltd., Hyderabad (PAN: AAFCS0211D)***
(Appellant)		*(Respondent)*

Appellant by **:** *Shri V. Sridhar*
Respondent by **:** *Shri M. Ravindra Sai*

Date of Hearing	12/12/2012
Date of Pronouncement	08/02/2013

O R D E R

Per Saktijit Dey, Judicial Member:

Appeals being ITA No. 299 & 300/Hyd/12 filed by the assessee and appeals being ITA No. 379 & 380/Hyd/12 by the Department are directed against separate orders of CIT(A). As identical issues are involved in these appeals, they were

clubbed and heard together and, therefore, a common order is passed for the sake of conveyance.

2. We will first deal with assessee's appeal in ITA No. 299/Hyd/2012 pertaining to assessment years 2005-06.

3. Ground No. 1 is general in nature, hence, no adjudication is required.

4. In Ground No. 2,3 & 4 the assessee has challenged the disallowance of deduction claimed u/s 80IB(10) of the IT Act, by the Assessing Officer and sustained by the CIT(A).

5. Briefly the facts of the issue are that the assessee a pvt. Ltd. company is engaged in the business of construction of residential complexes. For the assessment year in dispute the assessee had filed its return on 01/11/2005 declaring total income of Rs. 3,85,000/- after claiming deduction u/s 80IB(10) of an amount of Rs. 86,84,567/-. Initially the assessment was completed u/s 143(3) of the Act accepting assessee's claim of deduction u/s 80IB(10) vide assessment order dated 28/12/2007. A search and seizure operation u/s 132 of the Act was conducted in the business premises of the assessee on 17/03/2009. Consequent upon the search operation, a notice was issued u/s 153A of the Act on 03/12/2009 calling for a return of income. In response to the notice u/s 153A of the Act, the assessee submitted its return on 01/02/2010 by admitting total income of Rs. 3,85,000/- after claiming deduction u/s 80IB(10) of the Act, as was done in the original return filed by it. In course of the assessment proceedings, which ensued in response to notice u/s

153A of the Act, the Assessing Officer noticed that the assessee has claimed deduction u/s 80IB(10) of the Act in respect of construction of a housing project in the name and style of "Manasa Sarover Heights – II". In a note given in the return of income, the assessee had stated that the housing project has been built on a total area of land of 4 acres and the maximum area of each flat is between 1200 to 1500 sq.ft. The Assessing Officer was of the view that the deduction u/s 80IB(10) can be availed if all the preconditions mentioned therein are fulfilled. The Assessing Officer however had observed in the assessment order that the assessee did not furnish any information called for to show that the preconditions mentioned in sec. 80IB(10) have been fulfilled. The Assessing Officer found that the assessee had neither obtained and submitted a certificate in the prescribed form(Form No. 10CCB) from its auditor nor a completion certificate from the local authority had been submitted. The Assessing Officer came to a conclusion that as the assessee is not the owner of land and has not fulfilled the preconditions laid down in section 80IB(10) of the Act, claim of deduction u/s 80IB(10) cannot be allowed. The assessee being aggrieved of the disallowance of deduction claimed u/s 80IB(10) preferred an appeal before the CIT(A).

6. In course of hearing of the appeal before the CIT(A), the assessee contended that it had fulfilled all the preconditions as laid down u/s 80IB(10) for claiming deduction. The assessee further contended that it is not a requirement under the provision that the assessee must be owner of the land. The only requirement being the assessee must be engaged in developing and building the housing project subject to the conditions laid down in the said project. It was

further contended by the assessee that during the year under consideration, the assessee had only one project, which is Manasa Saorver Heights – II. It was contended that for this project permission was granted in June 2004 and the land on which the project was built was to the extent of 4 acre and the maximum built up area of each unit is within 1500 sft. It was further contended that there is no prescribed format of completion certificate, however, Municipal assessment of individual flat owners was submitted claiming that the housing project was completed. The CIT(A) after considering the submissions of the assessee and examining materials on record noticed that as per the amendment brought into to section 80IB(10) by Finance Act, 2004 with effect from 01/04/2005 there is a material change to the provision by introducing new eligibility criteria. As per the amended provision, one of the condition is the date of completion of the housing project shall be the date on which the completion certificate is issued by the local authority. The CIT(A) was of the opinion that the purpose of introducing the condition of production of completion certificate issued by local authority is to ensure that every housing project has been constructed with all permissions and followed the bye-laws and allowed setbacks as prescribed in the sanction order issued by the competent authority. Therefore, mere filing of house tax assessment of individual flat owners does not prove that the housing project was constructed with all permissions and without any violation. The CIT(A) observed that it is the responsibility of the municipal authority to ensure the housing projects which come up in the towns and cities are as per norms for better living conditions and not to encroach on the public property and to ensure that a design and construction in tune with the notifications issued by the competent authority from time to

time. The CIT(A) came to a conclusion that special deductions as contemplated in the Income-tax Act are to be allowed after strict compliance of eligibility criteria only. Therefore, without such completion certificate issued by the competent authority the housing project cannot be said to be complete in all respects. The CIT(A) held that for claiming deduction u/s 80IB(10), the assessee has to produce the completion certificate from the local authority and the individual house tax assessments cannot substitute the substantial condition imposed as per law. The assessee having failed to submit the completion certificate, deduction u/s 80IB(10) cannot be allowed. On the aforesaid conclusion, the CIT(A) sustained the disallowance.

7. Still aggrieved, the assessee is in appeal before us.

8. The learned AR through his submissions made orally at the time of hearing as well as in the writing filed before us has more or less reiterated the stand taken before the CIT(A). The learned AR submitted before us that the entire issue of claim of deduction u/s 80IB(10) was examined during the assessment proceedings u/s 143(3) and after duly verifying all the facts and materials the Assessing Officer had allowed the deduction claimed u/s 80IB(10). The learned AR submitted that the proceedings u/s 153A are beneficial to the revenue just like the provisions of section 147 and are aimed at gathering escaped income of the assessee and the same cannot be allowed to be converted as 'revisional' or 'review' proceedings. The learned AR relying upon various judicial pronouncements submitted before us that when the claim of the assessee has been examined and accepted u/s 143(3) and assessments have been concluded the Assessing Officer in the

proceedings u/s 153A cannot again require the assessee to submit audit report and certificate of the Accountant in Form 10CCB, so as to reexamine the claim of the assessee with regard to deduction u/s 80IB(10). The learned AR submitted that therefore the only issue before the Assessing Officer for considering the claim of allowability of deduction u/s 80IB(10) is in respect of furnishing of completion certificate from the concerned authority. The learned AR submitted that there is no practice of issue of completion certificate by the concerned authorities in respect of the buildings approved by it and the IT Act has also not prescribed any format of completion certificate for 80IB(10). The learned AR submitted that the assessee has fulfilled all the preconditions as required for claiming deduction u/s 80IB(10). The project is on a land measuring more than 3 acres, the assessee is the owner of the land and the individual residential unit are less than 1500 sft. that besides housing project was approved in the June, 2004 by the competent authority and the project was completed within the prescribed period is evident from the fact that municipal tax assessments in case of individual flat owners have been completed. This proves the fact that the project was complete during the relevant financial year and within the prescribed time. In support of such contentions, the learned AR drew our attention to page 94 to 103 of the paper book. The learned AR submitted that the turnover of each of the project disclosed in the return of income would also support the fact that the project has been completed. The learned AR submitted that section 80IB(10) is a beneficial provision of tax incentive and should be interpreted liberally so as to confer the benefit keeping in view the intention of the legislature and object behind the introduction of the provision. In this context, the learned AR relied upon the CBDT Circular No.

5/2005, dated 15/07/2005 explaining the amendment to section 80IB(10). In support of his contention, the learned AR relied upon the following decisions:

1. Petron Engineering Construction (P) Ltd. V. CBDT [1989] 175 ITR 523 (SC)
2. Pandian Chemicals Ltd. V. CIT [2003] 262 ITR 278 (SC)
3. CIT V. N.C. Budharaja & Co. & Anr.etc. [1993] 204 ITR 412 (SC).
4. Union of India V. Wood Papers Ltd. [1991] 83 STC 251: AIR 1991 SC 2049
5. SJR Builders V. ACIT, [2010] 3 ITR (Trib) 569 (Bang.)
6. ArunExcello Foundations (P) Ltd. V. ACIT, [2008] 166 Taxman 53 (Cehnnai)
7. Brahma Associates V. JCIT, (OSD) Circle 4, Pune [2009] 119 ITD 255 (Pune)(SB), [2009] 30 SOT 155 (Pune)(SB).
8. Ramsukh Properties V. DCIT, [2012] 25 Taxmann.com 558 (Pune)
9. ITO, Ward-4(3), Bangalore V. Mahaveer Calyx [2012] Taxmann.com 181 (Bang).

9. The learned AR drawing support from the ratio laid down in the aforesaid decisions submitted that the intention of the legislature behind the explanation requiring to submit completion certificate is that the project should be completed within the time. The learned AR submitted that as explained in CBDT Circular the intention of the benefit provided u/s 80IB(10) is to encourage housing projects with a view to bridge the gap between the demand and supply of the houses and, therefore, the completion of the project meeting the stated objective of the legislature in the form of delivery of houses

to the end users is intended compliance of section which has been proved with the municipal assessments of the individual flat owners. These municipal assessments would not be possible unless the project is complete and occupied by the end users. The learned AR also drew our attention to a completion certificate issued by the licensed architect in support of the contention that the project was complete by 03/10/2006.

10. The learned Departmental Representative, countering the submissions of the learned AR, submitted that when the statute provides that a particular deduction has to be allowed on fulfillment of certain conditions then it has to be interpreted strictly and in accordance with statutory language. The learned Departmental Representative submitted that the provision as contained u/s 80IB(10) was amended by the Finance Act, 2004 with effect from 01/04/2005 substituting the provision as was there earlier. As per the amended provision the deduction under the provision is to be allowed if such undertaking has commenced or commences development and construction of the housing project after the 1st day of October, 1998 and completes such construction within 4 years from the date of approval of the housing project as approved by the local authority. The explanation to the above said clause makes it mandatory that the date of completion of the housing project shall be the date on which the completion certificate in respect of such housing project is issued by the local authority. The learned Departmental Representative submitted that an Explanation once enacted as part of existing provision becomes part and parcel of such provision from the date of the provision itself. The learned Departmental Representative submitted that the true import and

scope of an explanation is to remove obscurity or vagueness and to provide additional support to the dominant object and to fill in gaps. The object of the explanation is to interpret the true purpose and intent of the enactment. The learned Departmental Representative in this context relied upon the following decisions:

1. Bengal Immunity Company Ltd. V. State of Bihar, 6 STC 446 (SC).
2. CIT V. Orissa Cement Ltd., 254 ITR 24 (Delhi)
3. Kerala Agricultural Income Tax Act. V. Plantation Corporation of Kerala Ltd., 247 ITR 155 (SC).

11. The learned Departmental Representative referring to the object behind the introduction of the Explanation to clause (a) of section 80IB(10) submitted that the date of approval of the local authority and date of completion as certified by the local authority is used to stress that the project should be in accordance with the regulations in force. The learned Departmental Representative submitted that, thus, there is a specific purpose for which approval and certification of local authority is insisted and this being intent of legislature, no other interpretation is possible. The learned Departmental Representative submitted that when there is no ambiguity in the provisions of statute it cannot be interpreted in a different manner to confer benefit on the assessee. For such proposition the learned Departmental Representative relied upon the decision of the Hon'ble Supreme Court in case of IPCA Laboratories Ltd. V/s. DCIT, 266 ITR 521. The learned Departmental Representative submitted that the principle of beneficial interpretation would apply only in a case where the court is in doubt about true scope and ambit of the provision. When a meaning of the word is clear and unambiguous the court has to give effect to it

whatever be the consequences. In this context, the learned Departmental Representative relied upon the decision in the case of Indian Rayon Corporation Ltd. V/s. CIT, 231 ITR 26.

12. We have considered the rival submissions of the parties and perused the material on record. We have carefully applied our mind to the decisions relied upon by the parties. Undisputed fact are that the assessee for the assessment year under dispute has claimed deduction u/s 80IB(10) of the Act towards housing project, namely, Manasa Sarover Heights – II, developed and constructed by it. The deduction claimed has been disallowed by the Assessing Officer and such disallowance was sustained by the CIT(A) on the ground that the assessee has failed to furnish the completion certificate issued by the local authority in terms with the Explanation to Clause (a) of section 80IB(10). Before going into the merits of the disallowance, it will be necessary, at this stage, to look into the provision contained u/s 80IB(10) as existed during the relevant assessment year:

> *"10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, [2008] by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—*
>
> *(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—*
>
> *(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;*
>
> *(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004*

[but not later than the 31st day of March, 2005], within four years from the end of the financial year in which the housing project is approved by the local authority;

[(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.]

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided *that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;*

(c) the residential unit has 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 kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; [***]

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed [three] per cent of the aggregate built-up area of the housing project or [five thousand square feet, whichever is higher];]

[(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

(i) the individual or the spouse or the minor children of such individual,

(ii) the Hindu undivided family in which such individual is the karta,

(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.]

[Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).]"

13. A reading of the aforesaid provision makes it clear that an assessee will be entitled to claim deduction under the said provision if he fulfills all the conditions mentioned therein. Clause (a)(ii) of the aforesaid provision, which is relevant for our purpose, provides that in a case where housing project has been approved by the local authority on or after the 1st day of April, 2004 and has been completed within 4 years from the end of the financial year in which the housing project has been approved by the local authority would be entitled for deduction. Explanation-II to the aforesaid clause however puts a rider that the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority. Therefore, it is apparent that as per clause (a),

deduction u/s 80IB(10) in respect of a housing project shall be available to the assessee, provided the project is approved by the local authority after 01/04/2004 and has been completed within a period of 4 years and such completion has been certified by the local authority. The use of the word 'shall' in Explanation-II makes the furnishing of completion certificate issued by the local authority mandatory to prove that the development and construction of the Housing Project is complete in all respects. It is the contention of the learned AR that the Explanation – II should not be interpreted strictly but a liberal interpretation has to be given to achieve the object of the provision. It has further been contended that if other evidences produced indicate completion of the project then deduction cannot be disallowed only because of non-furnishing of completion certificate issued by the local authority. Such contention of the learned AR cannot be accepted in view of the clear language employed in the statutory provision. As has already been stated herein before the aforesaid amended provision was introduced to the statute by the Finance Act, 2004 with effect from 01/04/2005. Earlier to it, the provision as contained u/s 80IB(10) did not require furnishing of a completion certificate issued by the local authority. Therefore, the intention of the legislature in bringing such a provision requiring production of completion certificate issued by the local authority cannot be overlooked or brushed aside for conferring a benefit upon the assessee only for the sake of liberal interpretation. The requirement of completion certificate assumes importance for removing the possibility of deviation from the sanctioned plan and to see to it that the project has been constructed in accordance with the sanctioned approval. It is settled principle of law that when the language of a provision is clear and

unambiguous then there is little scope to interpret it in a different manner. The Hon'ble Supreme court in case of IPCA Laboratories Ltd. V/s. DCIT (supra) has held that even though a liberal interpretation has to be given, the interpretation has to be as per wording of the section. If the wordings of section are clear, then benefits, which are not available under section, cannot be conferred by ignoring or misinterpreting words in the section. The Hon'ble Supreme Court in case of Petron Engg. Construction Pvt. Ltd. V/s. CBDT, 175 ITR 523 held that liberal interpretation of an incentive provision can be resorted to only when it is possible without impairing the legislative requirement and the spirit of the provision. Where the phraseology of a particular provision takes within its sweep the transactions which are taxable, it is not for the courts to strain and stress the language so as to enable the taxpayer to escape the tax. The Hon'ble Supreme Court, again in case of Pandian Chemicals Ltd. V/s. CIT, 262 ITR 278 observed that Rules of interpretation would come into play only if there is any doubt with regard to the express language used in the provision. Where the words are unequivocal, there is no scope for importing the rule of liberal interpretation of an incentive provision. The Hon'ble Supreme Court in case of CIT V/s. N.C. Budharaja and Another, 204 ITR 412 held that liberal interpretation of an incentive provision should not do violence to plain language. The object of an enactment should be gathered from a reasonable interpretation of the language used therein. Considered in the light of the aforesaid principle of law, the language used in Clause (a) of section 80IB(10) is clear and unambiguous enough to leave any scope for interpreting it in a different manner to confer benefit upon the assessee. To a specific query from the Bench in course of hearing of appeal with regard to obtaining completion certificate from the local authority,

the learned AR only submitted a copy of the application made for occupancy certificate and a certificate of the licensed architect. These documents, however, does not prove the completion of the housing project. The learned AR also could not explain the reasons for non-issuance of completion certificate by the local authority. If the furnishing of the completion certificate to prove the completion of the project is not to be insisted upon then the purpose for bringing such a provision to the statute becomes redundant. If the furnishing of completion certificate from the local authority is to be considered as not mandatory then in every case the assessee will come up with one plea or the other for not furnishing the completion certificate while claiming deduction u/s 80IB(10) of the Act. In that event, the intent and purpose of enacting such a provision will not be fulfilled. Similarly, the municipal assessment of the individual flat owners or sale of flats cannot be a substitute for the completion certificate issued by the local authority. These facts does not conclusively prove that the entire project was complete in all respects. These documents certainly cannot be considered to be in compliance with the statutory provision.

14. The decision of the Hon'ble Gujarat High Court in case of CIT V/s. Tarnetar Corporation [2012] 210 Taxman 206 relied upon by the assessee is not applicable to the facts of the present case as in that case there was no doubt with regard to completion of the project whereas in the appeal before us the assessee has failed to prove conclusively that the housing project was complete in all respects for entitling it to claim deduction u/s 80IB(10). The other decisions relied upon by the assessee in this context are also found to be factually distinguishable. In case of Mahaveer Calyx ((supra)) the

Income-tax Appellate Tribunal Bangalore Bench has not at all considered the applicability of explanation to clause (a) of 80IB(10). In fact in case of Brahma Associates V/s. JCIT, 119 ITD (Pune) (SB) has held that the conditions laid down in the amended provision of section 80IB(10) would apply prospectively from the AY 2005-06. In our view, the decisions relied upon by the assessee are of not much help to it if considered in the light of the principles laid down by the Hon'ble Supreme Court as discussed herein before. So far as the assessee's contention to the effect that the entire issue of claim of deduction u/s 80IB(10) was considered in the original assessment completed u/s 143(3) is concerned, though the learned AR did not pursue this issue seriously at the time of hearing, suffice it to say such contention is not acceptable in view of the decision of the Hon'ble Jurisdictional high Court in the case of Mr. Gopal Lal Bhadruka V/s. DCIT, Hyderabad dated 11/05/2012, 2012-TIOL-357-HC-AP-IT wherein it was held that for the purpose of computing income u/s 153A/153C of the Act, the Assessing Officer is not required to confine himself only to the material found during the course of search operation. Considering the totality of the facts and circumstances in the light of the judicial pronouncements and keeping in view the relevant statutory provision as contained u/s 80IB(10), we are of the view that the assessee is not entitled to claim deduction under the said provision as the completion certificate issued by the local authority certifying the completion of the project has not been submitted by the assessee. Accordingly, we sustain the order of the CIT(A). The grounds raised by the assessee are dismissed.

ITA No. 300/Hyd/2011 for AY 2006-07 – assessee's appeal

15. Ground No. 1 is general in nature. Ground Nos. 2, 3 & 4 wherein the assessee has challenged the disallowance of deduction claimed u/s 80IB(10) of the Act are identical to ground Nos. 2 & 3 in assessee's appeal No. 299/Hyd/12 (supra). In view of our decision in said appeal No. 299/Hyd/12, we hold that the assessee is not entitled to claim of deduction u/s 80IB(10) of the Act. Accordingly, the order of the CIT(A) on this issue is confirmed and the ground Nos. 2, 3 & 4 are dismissed.

16. Ground No. 5 relates to the determination of income from house property at Rs. 2,10,39,214/- by the Assessing Officer.

17. Briefly the facts of the issue are that in course of the assessment proceedings the Assessing Officer noticed that the assessee had disclosed income under the head 'house property' of an amount of Rs. 5,95,000/- on account of property leased out to M/s Bhagyanagar Hotel Pvt. Ltd. for Rs. 12.00 lakhs per year. The Assessing Officer was of the view that the said building is palatial club in the heart of the city by name 'Chiran Court Club' at Begumpet. The Assessing Officer observing that in the assessment order dated 19/12/2008 passed u/s 143(3) the net house property income was estimated at Rs. 2,10,39,214/-, held that the net annual value of the property as quantified at Rs. 2,10,39,214/- in the assessment order u/s 143(3) should be added back to the total income while completing the assessment u/s 153A also. The assessee

challenged the addition made on account of ALV of the house property before the CIT(A).

18. The CIT(A) while disposing of the assessee's appeal on this issue held that since the addition was made in the original assessment completed u/s 143(3), the Assessing Officer is not correct in making fresh addition in the proceedings u/s 153A of the Act.

19. After hearing the submissions of the parties on this issue, we fully agree with the conclusion of the CIT(A). The same addition having already been made in the original assessment completed u/s 143(3) it cannot be added once again in the assessment completed u/s 153A of the Act. So far as legality/validity of the addition made in the assessment order passed u/s 143(3) is concerned, since the same is not in dispute before us, we cannot adjudicate on the issue. Since the CIT(A) has categorically held that the addition of Rs. 2,10,39,214/- cannot be made in the assessment completed u/s 153A of the Act, the ground raised by the assessee is misconceived and not maintainable. Accordingly, this ground is dismissed.

ITA No. 379/Hyd/12 for AY 2003-04 – appeal by the revenue

20. The only issue arising out of the grounds raised by the revenue is with regard to CIT(A) allowing assessee's claim of deduction u/s 80IB(10) of the Act.

21. Briefly the facts are that during the relevant FY the assessee had developed a housing project, namely, Manasasarover Heights – I. In the return of income filed for the assessment year under dispute the assessee declared total income of Rs. 6,30,000/- after claiming deduction u/s 80IB(10) of the Act. Initially, the assessment was completed u/s 143(1) and thereafter the assessment was reopened twice u/s 147 of the Act and assessment orders were passed u/s 143(3) read with section 147 on 20/04/2006 and 09/05/2007. Subsequently a search and seizure operation was carried out in the business premises of the assessee on 17/03/2009. As a result of search operation, a notice was issued u/s 153A of the Act. In response to the notice, the assessee filed the return of income admitting the total income as per the original return filed by it after claiming deduction u/s 80IB(10) of the Act. In course of the assessment proceedings pursuant to notice u/s 153A, the Assessing Officer disallowed the claim of exemption by observing that inspite of repeated show cause notice the assessee has not furnished any details regarding the housing project, the assessee has not furnished any information regarding fulfillment of conditions stipulated in section 80IB(10), the assessee has not furnished the completion certificate/occupancy certificate to claim the deduction. It was further observed by the Assessing Officer that the assessee has not obtained the certificate in Form 10CCB from its auditor for fulfilling the conditions prescribed in the Act. The Assessing Officer was further of the opinion that the assessee being only a builder and not the owner of the housing project, it is not entitled to avail deduction u/s 80IB(10).

22. The assessee being aggrieved of the disallowance of deduction u/s 80IB(10), preferred an appeal before the CIT(A).

23. The CIT(A) after considering the submissions of the assessee and examining the material placed before him came to a conclusion that the provision contained u/s 80IB(10) as it stood during the relevant assessment year did not require furnishing of a completion certificate from the local authority. The CIT(A) further observed that the assessee has fulfilled all the conditions of section 80IB(10) as it existed in the statute book at the relevant time which are, i) the development and construction of the project was started after 1st October, 1998, ii) the project is on plot of land of more than 1 acre, and iii) the residential units are having built up area of less than 1,500 sq.ft. The CIT(A) further observed that the provision contained u/s 80IB(10) nowhere prescribed that for availing deduction u/s 80IB(10) the undertaking must be the owner of the land. So far as the allegation of the Assessing Officer that the assessee has not furnished the auditor's report, the CIT(A) observed that in the original scrutiny assessment the issue was verified and the claim of deduction was allowed by the Assessing Officer. On the basis of the aforesaid findings, the CIT(A) allowed the claim of deduction u/s 80IB(10).

24. The learned Departmental Representative supporting the grounds raised before us submitted that as the assessee did not submit the audit report in form 10CCB before the Assessing

Officer the disallowance made by the Assessing Officer should have been sustained by the CIT(A).

25. The learned AR, on the other hand, strongly supported the order of the CIT(A).

26. We have heard the rival submissions and perused the material on record. As is evident from the assessment order the Assessing Officer has disallowed the claim of deduction u/s 80IB(10) on the ground that the assessee has not submitted the audit report in form no. 10CCB, the assessee has not submitted the completion certificate from the municipality and the assessee has not furnished information with regard to fulfillment of the condition u/s 80IB(10). The conditions for claiming deduction u/s 80IB(10) as it existed during the relevant assessment year are that the housing project should be approved by the local authorities before 31st March, 2005 and undertaking has commenced the development and construction of the housing project after 1st day of October'98, the project is on a plot of land which has a minimum area of 1 acre and residential unit has a maximum built up area of 1500 sft. As would be clear from the aforesaid conditions there was no requirement for furnishing a completion certificate from the municipal authority. In that view of the matter, the claim of deduction u/s 80IB(10) cannot be denied for not submitting the completion certificate from the local authority. Similarly, it is not a requirement under the Statute that the undertaking must be owner of the land for claiming deduction u/s 80IB(10). However, it is a fact that the Assessing Officer has rejected

the claim of deduction u/s 80IB(10) by alleging that the assessee has not furnished any information or evidence with regard to the housing project and whether the conditions for claiming deduction u/s 80IB(10) have been fulfilled. The Assessing Officer had further alleged that the assessee had not submitted and not obtained auditor's certificate in Form No. 10CCB. Though, it is seen from the assessment order dated 09/05/2001 passed u/s 143(3) read with section 147 for the impugned assessment year there is a recording of fact by the Assessing Officer that the assessee had produced the auditor's certificate in Form 10CCB. If the assessee is in possession of the auditor's certificate in Form 10CCB, then, the same could have been produced before the Assessing Officer in course of assessment proceeding u/s 153A of the Act. The CIT(A), as it appears from his order has not accepted the Assessing Officer's allegation with regard to non furnishing of information and evidence towards fulfillment of the conditions u/s 80IB(10) by observing that the issue has been verified in the original scrutiny assessment proceedings. IN our opinion, that cannot be a ground for not furnishing the required information and evidence as called for by the Assessing Officer during the proceeding u/s 153A of the Act. In the aforesaid view of the matter, we deem it fit and proper to remit the matter back to the file of the Assessing Officer who shall consider the claim of deduction u/s 80IB(10) afresh after affording a reasonable opportunity of being heard to the assessee. It is open for the assessee to produce all the information and evidence in support of its claim of deduction u/s 80IB(10). The Assessing Officer shall consider all the information and evidences that may be

produced by the assessee and decide the issue keeping in view the observations made by us hereinabove. The grounds raised by the department are allowed for statistical purposes.

ITA No. 380/Hyd/12 for AY 2004-05 – appeal by the revenue

27. Ground Nos. 1 & 2 wherein the Department has challenged the order of the CIT(A) in allowing assessee's claim of deduction u/s 80IB(10). As the issue raised in the grounds and the facts involved are identical to the issues and facts involved in grounds raised in revenue's appeal for AY 2003-04 (supra), following our decision in revenue's appeal NO. 379/Hyd/12 on this issue (supra) we remit the matter for this year also to the file of the Assessing Officer for fresh determination keeping in view our direction in ITA No. 379/Hyd/12 and after affording reasonable opportunity of being heard to the assessee. Accordingly, the grounds raised are allowed for statistical purposes.

28. Ground Nos. 3 & 4 relate to the action of the CIT(A) in directing the Assessing Officer to determine the income from house property by applying the rate of 7% on the investment of the assessee subject to cost inflation index.

29. Briefly the facts are that in course of assessment proceedings the Assessing Officer noticed that the assessee has disclosed income from house property at Rs. 6,59,811/- on account of property leased out to M/s Bhagyanagar Hotel Pvt. Ltd. for Rs. 9,00,000/- per year. The Assessing Officer found

that the property consisted of 14,940 sq. yards of land situated in the heart of the city with palatial building. Considering this fact the Assessing Officer came to a conclusion that the income from house property admitted by the assessee in the return of income is very meager. The Assessing Officer therefore following the conclusion arrived at by him in the assessment order passed u/s 143(3) read with section 147 dated 24/03/2006 for the AY 2003-04 determined the income from house property at Rs. 1,46,97,893/-. The Assessee challenged the determination of the house property income filed an appeal before the CIT(A).

30. The CIT(A) following the order passed by the Income-tax Appellate Tribunal, Hyderabad Bench on identical issue for the assessment years 2003-04, 2004-05 and 2005-06, directed the Assessing Officer to determine the income under the head income from house property by applying the rate of 7% on the investment of the assessee subject to cost inflation index and also further investments made by the assessee on the property during the year under consideration.

31. Aggrieved, the revenue is in appeal before us.

32. We have heard the arguments of both the parties and perused the record. It is quite evident from the assessment order that the Assessing Officer has determined the income from house property by following the market rate method as per the assessment order passed u/s 143(3) read with section 147 dated 24/03/2006 for the assessment year 2003-04. It is a

fact on record that the said assessment order passed for the assessment year 2003-04 along with assessment orders passed on similar lines for the assessment year 2002-03 and 2005-06 were subject matter of appeal before the Income-tax Appellate Tribunal, Hyderabad Bench in ITA Nos. 1182 and 1183/Hyd/2008 and 1713/Hyd/08. The Tribunal in its order dated 23rd October, 2009 directed the Assessing Officer to recompute the income from house property by following the return on investment method, applying the rate of 7% on the assessee's investment in the property as enhanced by applying the cost inflation index applied for the respective years to arrive at the ALV for the relevant assessment year. The facts being identical, since the CIT(A) has followed the direction of the Income-tax Appellate Tribunal while directing the Assessing Officer to recompute the income from house property, we do not find any reason to interfere with the same. The order of the CIT(A) on this issue is sustained. The grounds raised are dismissed.

33. In ground No. 5, the department has challenged the action of the CIT(A) in deleting the addition made by the Assessing Officer on account of disallowance of 10% of the expenditure.

34. Briefly the facts are that in course of assessment proceedings, the Assessing Officer noticed that the assessee had debited a sum of Rs. 1,44,67,342/- as construction expenses and a further sum of Rs. 41,45,172/- as administrative and general expenses. Since the assessee failed to furnish the details of the expenditure claimed with

supporting evidence in-spite of several opportunities being given the Assessing Officer disallowed 10% of the total expenditure claimed under both the heads which amounted to a sum of Rs. 18,61,251/-.

35. The first appellate authority after considering the submissions of the assessee was of the view that the Assessing Officer has rejected the claim of the assessee purely on a hypothetical basis without pointing out any specific discrepancy in the claim of the assessee. The CIT(A) observing that the assessee has maintained proper books of account and the same were audited by an accountant and in absence of any specific defects pointed out by the Assessing Officer, no disallowance of expenditure can be made.

36. We have heard the submissions of the parties on the issue and perused the relevant material on record. It is a fact on record that the Assessing Officer has disallowed 10% of the expenditure claimed since the assessee did not produce the necessary details along with supporting evidence in respect of the expenses claimed. The CIT(A) has deleted the addition made by observing that the Assessing Officer has not pointed out any specific defect. When the assessee has not submitted the details called for by the Assessing Officer, he was left with no option but to disallow part of the expenses on ad-hoc basis. Therefore, the CIT(A) was not justified in allowing the expenditure claimed by the assessee in toto. Considering the totality of the facts and circumstances, we are of the view that a disallowance of 5% of the expenditure under both the heads

would serve the purpose. We order accordingly. The ground raised by the department is partly allowed.

37. In the result, appeals filed by the assessee being ITA Nos. 299 & 300/Hyd/12 are dismissed and appeals filed by the revenue being ITA No. 379/Hyd/12 is allowed for statistical purposes and the appeal being ITA No. 380/Hyd/12 by the revenue is partly allowed.

Order pronounced in the court on 08/02/2013.

Sd/-	Sd/-
(Chandra Poojari)	**(Saktijit Dey)**
Accountant Member	**Judicial Member**

Hyderabad, Dtd. 8th February, 2013.

kv
Copy forwarded to:

1. M/s Sainath Estates Pvt. Ltd., C/o M/s V. Sridhar & Co., CAs., 12-2-823/A/78, Geeta Apts, Santoshnagar Colony, Mehadipatnam, Hyderabad – 500 028
2. DCIT, Central Circle - 2, 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.
3. CIT(A)-I, Hyderabad
4. CIT-(Central), Hyderabad
3 Departmental Representative, ITAT, Hyderabad.