

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI VIKAS AWASTHY, JM AND SHRI PRADIP KUMAR KEDIA, AM

**आयकर अपील सं. / ITA Nos. 583 & 2086/PN/2012**  
**निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10**

Bhujbal Brothers Construction Company,  
Bhujbal House, S. No. 28, Karve Nagar,  
Pune – 411052  
PAN : AAGFB7974A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle – 3, Pune

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No. 1920/PN/2013**  
**निर्धारण वर्ष / Assessment Year : 2010-11**

Bhujbal Brothers Construction Company,  
Bhujbal House, S. No. 28, Karve Nagar,  
Pune – 411052  
PAN : AAGFB7974A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle – 3, Pune

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos. 707 & 2115/PN/2012**  
**निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10**

Dy. Commissioner of Income Tax,  
Circle – 3, Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Bhujbal Brothers Const. Co.,  
Office No. 21-22, ‘A’ Wing,  
Damodar Villa, S. No. 32, 31,  
Near Kothrud, Pune – 29  
PAN : AAGFB7974A

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri S.K. Rastogi

सुनवाई की तारीख / Date of Hearing : 29-09-2015

घोषणा की तारीख / Date of Pronouncement : 30-09-2015

### **आदेश / ORDER**

#### **PER VIKAS AWASTHY, JM :**

These are five appeals, three appeals are by the assessee and two appeals are by the Revenue. ITA No. 583/PN/2012 has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-II, Pune dated 05-12-2011 for the assessment year 2008-09. The Revenue has filed cross appeal in ITA No. 707/PN/2012 for the assessment year 2008-09. The appeal of the assessee in ITA No. 2086/PN/2012 is against the order of Commissioner of Income Tax (Appeals)-II, Pune dated 15-06-2012 for the assessment year 2009-10. The Revenue in ITA No. 2115/PN/2012 has filed cross appeal against the same order of Commissioner of Income Tax (Appeals). ITA No. 1920/PN/2013 filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-II, Pune dated 15-05-2013 for the assessment year 2010-11. Since, the facts in all the impugned assessment years and the issues raised in the appeals are similar, these appeals are taken up together for adjudication. The assessee in all the three appeals have impugned the findings of Commissioner of Income Tax (Appeals) in disallowing deduction u/s. 80IB(10) of the Income Tax Act, 1961, claimed by the assessee in respect of project 'Damodar Residency'. On the other hand the Revenue in its appeals have challenged the findings of Commissioner of Income Tax (Appeals) in allowing deduction u/s. 80IB(10) to the assessee in respect of housing project at 'Bhujbal Township'.

2. The brief facts of the case as emanating from the records are :  
The assessee is a builder and a developer. The assessee had developed two residential projects, one at 'Bhujbal Township' and the other at 'Damodar Residency'. The project Bhujbal Township is situated in S. No. 67, Kothrud, Pune on land measuring 40,700 Sq. Mtrs. The entire property on which the project is developed is an ancestral property of Bhujbal Family. The assessee is a partnership firm, consisting of two Bhujbal brothers and their family members. In the mutual understanding with larger family, an area of 4,902 Sq. Mtrs. out of the total area of 40,700 Sq. Mtrs. was allocated to the assessee firm vide registered agreement dated 13-04-2006 and 21-08-2007. In Bhujbal Township total 26 buildings were to be constructed out of which 3 buildings i.e. building no. B5, B9 and B2 came to the share of the partners of the assessee firm. The assessee was in complete control, ownership and domain of the aforesaid 3 buildings. The assessee claimed deduction u/s. 80IB(10) in respect of the buildings in Bhujbal Township in the assessment year 2007-08. However, the same was denied by the Assessing Officer on the ground that the plot of land on which the housing project is constructed is less than 1 acre i.e. less than the minimum area specified under the provisions of section 80IB(10) of the Act. The Commissioner of Income Tax (Appeals) vide order dated 22-02-2011 accepted the claim of the assessee and held that the assessee is eligible to claim deduction u/s. 80IB(10) on the housing project comprising in Bhujbal Township. Against the findings of Commissioner of Income Tax (Appeals), the Department carried appeal to the Tribunal in ITA No. 641/PN/2011 for the assessment year 2007-08. The Tribunal upheld the findings of Commissioner of Income Tax (Appeals) and dismissed the appeal of the Revenue vide order dated 25-02-2013.

In the impugned assessment years i.e. assessment years 2008-09 and 2009-10, the assessee claimed deduction u/s. 80IB(10) in respect of housing project situated at Bhujbal Township. The Assessing Officer disallowed the claim of the assessee on the ground that the Department has not accepted the decision of the Tribunal and has filed appeal before the Hon'ble Bombay High Court.

2.1 The second project on which the assessee had claimed deduction u/s. 80IB(10) is at 'Damodar Residency' comprising in S. No. 8, Kothrud, Pune. In the said housing project total seven buildings were proposed to be constructed i.e. from A1 to A5, B1 and B2. Buildings A1 to A5 are residential, whereas buildings B1 and B2 are commercial. The assessee entered into a development agreement with the owners of the land in respect of buildings A2, A3 and part of B1 out of the total property comprising in S. No. 8 at Kothrud measuring 14,400 Sq. Mtrs. The total area of land which was acquired by the assessee for buildings A2, A3, open space, internal road and building B1 is 4371 Sq. Mtrs. The assessee claimed deduction u/s. 80IB(10) in respect of residential buildings A2 and A3 in the assessment years 2008-09, 2009-10 and 2010-11. During the course of assessment proceedings for the assessment year 2007-08, the property was referred to the DVO. The DVO vide report dated 14-12-2009 observed that the total area of the plot on which the project Damodar Residency is developed is 14,400 Sq. Mtrs. and the gross area of the plot after deduction is 12,300 Sq. Mtrs. The assessee has claimed the area of plot on which the buildings A2, A3 and B1 are constructed as 4370.92 Sq. Mtrs. but there is no separate sanction or demarcation of the land on which the buildings A2, A3 and B1 are constructed. There is no separate demarcation by way of sub-division of the plot on which residential buildings are constructed and developed by the assessee. The DVO further observed

that since share of the assessee is undivided there cannot be separate open space pertaining to buildings A2, A3 and B1. Based on the report of DVO the Assessing Officer rejected the claim of the assessee for deduction u/s. 80IB(10). The Assessing Officer held that the area of plot in the case of Damodar Residency is 4010 Sq. Mtrs. which is less than 1 acre and hence, the housing project of the assessee is not eligible for deduction u/s. 80IB(10). Similar reasons were given by the Assessing Officer for denying deduction u/s. 80IB(10) in the assessment years 2009-10 and 2010-11.

Aggrieved by the assessment order for the respective assessment years, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order allowed the claim of assessee with respect to the housing project at 'Bhujbal Township' by placing reliance on the decision of the Tribunal in assessee's own case for assessment year 2007-08 decided on 25-02-2013. However, in respect to 'Damodar Residency' the Commissioner of Income Tax (Appeals) upheld the findings of the Assessing Officer. Now, the assessee is in appeal against the findings of Commissioner of Income Tax (Appeals) in disallowing the claim of deduction u/s. 80IB(10) on the housing project 'Damodar Residency' and the Revenue is against allowing deduction u/s. 80IB(10) on the housing project at 'Bhujbal Township'.

3. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted, that the authorities below have erred in coming to the conclusion that the total area of plot on which buildings A2, A3 and B1 have been constructed is less than 1 acre. The assessee has claimed deduction only in respect of residential buildings i.e. buildings A2 and A3 which are constructed on the plot measuring 4100 Sq. Mtrs. The

conversion of 1 acre is 4047 Sq. Mtrs. Thus, the buildings on which the assessee had claimed deduction is more than 1 acre. As far as building B1 is concerned, it is a commercial complex. The same is located separately from the buildings A2 and A3. The assessee is having only 1/5<sup>th</sup> share in building B1. During the impugned assessment years the building B1 has not come into existence and this fact has been highlighted by the DVO in his report. The authorities below have time and again referred to the plot measuring 4010 Sq. Mtrs. which is factually incorrect. These measurements have been wrongly mentioned in the orders of the authorities below. The area of the plot on which the residential buildings A2 and A3 are constructed is 4100 Sq. Mtrs. Even otherwise the total area on which the project Damodar Residency is being developed is approximately 3 acres. The residential buildings constructed and developed by the assessee are part of the larger project. It is an undisputed fact that the assessee has complied with all other conditions as envisaged u/s. 80IB(10). Accordingly, the assessee is eligible to claim deduction u/s. 80IB(10). In support of his submissions the ld. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Vandana Properties reported as 353 ITR 36 (Bom) and on the decision of Hon'ble Madras High Court in the case of CIT Vs. Sanghvi and Doshi Enterprise reported as 29 taxmann.com 386 (Madras). As regards the appeals filed by the Revenue, the ld. AR contended that the issue raised by the Department in its appeals is squarely covered in favour of the assessee by the order of Tribunal in the assessee's own case for the assessment year 2007-08 decided on 25-02-2013 in ITA No. 641/PN/2011.

4. Shri S.K. Rastogi representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) in disallowing the claim of deduction u/s. 80IB(10) in respect of housing

project Damodar Residency. The ld. DR submitted that the area of project developed by the assessee has not been specifically earmarked. Moreover, the share of the assessee is still undivided and the assessee is not the owner of land on which the project has been developed. The DVO has specifically stated in his report that buildings A2, A3 and B1 are part of one project. The assessee has not been able to demonstrate the existence of separate project and the size of plot. The assessee has not been able to show that the housing project developed by the assessee comply with the condition of minimum size of the plot i.e. 1 acre, as required u/s. 80IB(10) of the Act. The ld. DR strongly relied on the order of Commissioner of Income Tax (Appeals) as regards the findings on the project 'Damodar Residency' and prayed for dismissing the appeals of the assessee. In so far as the appeals by the Revenue, the ld. DR relied on the order of Assessing Officer and prayed for reversing the findings of the Commissioner of Income Tax (Appeals) in respect of housing project of the assessee at 'Bhujbal Township'.

5. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. The assessee has developed two residential projects, one at Bhujbal Township in S. No. 67 at Kothrud wherein three residential buildings i.e. B2, B5 and B9 were developed by the assessee and the second residential project at Damodar Residency in S. No. 8, Kothrud, Pune. Bhujbal Township is developed on land measuring approximately 10 acres and Damodar Residency is developed on land measuring 3 acres. The assessee has claimed deduction u/s. 80IB(10) on the housing projects which are integrated part of the larger housing projects.

6. In so far as the residential project comprising of buildings B5, B9 and B2 in Bhujbal Township is concerned, the issue whether the



assessee is eligible to claim deduction u/s. 80IB(10) on the said buildings was raised before the Co-ordinate Bench of the Tribunal in ITA No. 641/PN/2011 by the Department. The Tribunal upheld the findings of the Commissioner of Income Tax (Appeals) and held that the assessee is eligible to claim deduction u/s. 80IB(10) on the said project. The relevant extract of the findings of the Tribunal is as under:

*“5. We have heard the rival submissions of the parties and perused the record. The assessee has filed the paper book which has been also perused. It is seen that the project is situated in survey no.67 and consist of the building B- 5, B-9 & B-2. The survey no.69 is having the area of 40,700 sq.mtrs. and the entire property belong to Bhujbal family and it is the ancestral property. The present assessee firm is consisting of the family members as partners. There was a MOU with the bigger Bhujbal family and an area of 4902 sq.mtrs. out of the total area of 40700 sq.mtrs. in the survey no.67 was acquired by the said Partnership firm for the development vide agreement dated 13.4.2006 and 21.8.2007 which is also duly registered with the sub-registrar. The assessee firm proceeded to construct the building no.B-5, B-9 & B-2 on the said area. Admittedly in the agreements, the open space is shown at 1628 sq.ft. in addition to area covered by the internal roads i.e. 2017.87 sq.mtrs. As per the document on record, the project is situated on the piece of land admeasuring 4902 sq.mtrs. We find that the A.O. is influenced with the report of the Department Valuation officer (DVO). The DVO has referred to 26 buildings in the plot admeasuring 40700 sq.mtrs. but the said area belong to the Bhujbal family or Bhujbal (HUF). Out of the said area, 4902 sq.mtrs. has been acquired by agreement by the assessee firm. In our opinion, we have to only consider the project on which the assessee has claimed the deduction u/s 80IB(10) of the Act, more particularly, in the context of the area of the plot. We find that the finding of the A.O. is erroneous on this issue. The Ld. CIT(A) has explained the area statement in his order which does not require any interference. We accordingly, confirm the order of the Ld. CIT(A).”*

7. The Assessing Officer has denied the benefit of section 80IB(10) to the assessee on the residential project at Bhujbal Township only on the ground, that the Department has filed appeal against the order of Tribunal before the Hon'ble High Court. The ld. DR has not brought before us any order staying the order of the Tribunal or reversing the



findings of the Tribunal by the Hon'ble Jurisdictional High Court. We respectfully follow the order of Co-ordinate Bench and dismiss the appeals of the Revenue. Thus, we hold that the housing project of the assessee at Bhujbal Township is eligible for deduction u/s. 80IB(10) of the Act.

8. In respect of housing project at Damodar Residency is concerned the deduction u/s. 80IB(10) has been denied primarily on two counts – (i) the area of the housing project is less than 1 acre, and (ii) the land on which the housing project has been developed does not belong to the assessee. So far as the first objection of the Revenue is concerned it is an undisputed fact that the project Damodar Residency is being developed on a total area of land admeasuring 14,400 Sq. Mtrs. On the said land, total 7 buildings have been approved i.e. A1 to B5 which are residential and buildings B1 and B2 that are commercial. The development agreement dated 06-06-2007 vide which the assessee has acquired development rights in respect of buildings A2 and A3, open space, internal road and building B1 on land measuring 4371 Sq. Mtrs. has not been disputed by the Revenue. A supplementary agreement dated 12-05-2008 was executed between the owners and the assessee confirming the lay out plan of the total plot of land on which buildings A2, A3 and B1 and open area was to be developed by the assessee. As per the lay out plan the area on which buildings A2 and A3 were developed is measuring 4100 Sq. Mtrs. The assessee has claimed deduction u/s. 80IB(10) in respect of residential buildings A2 and A3 only. Thus, the total area of plot on which the residential project is developed by the assessee stands on land measuring more than 1 acre (conversion 1 acre = 4047 Sq. Mtrs.). Even if the project developed by the assessee is considered as the part of the larger project even then the area of plot is much more than the minimum area specified under

the provisions of section 80IB(10) of the Act. There is no bar to claim deduction u/s. 80IB(10) on the housing project which has been developed on a plot of land having area more than 1 acres, even if some other residential projects are already in existence thereon.

9. The Hon'ble Bombay High Court in the case of CIT Vs. Vandana Properties (supra) has held that the provisions of section 80IB(10) does not mandate that the housing project should be on a vacant plot having minimum area. The housing project is eligible for deduction u/s. 80IB(10) subject to fulfilling other conditions, if it is on a plot where other housing projects are already in existence. The relevant extract of the judgment of the Hon'ble High Court in the case of CIT Vs. Vandana Properties (supra) reads as under:

*“27. Moreover, plain reading of Section 80IB (10) does not even remotely suggest that the plot of land having minimum area of one acre must be vacant. The said Section allows deduction to a housing project (subject to fulfilling all other conditions) constructed on a plot of land having minimum area of one acre and it is immaterial as to whether any other housing projects are existing on the said plot of land or not. In these circumstances, construing the provisions of Section 80IB (10) by adding words to the statute is wholly unwarranted and such a construction which defeats the object with which the Section was enacted must be rejected.*

*28. Apart from the above, the Central Board of Direct Taxes (CBDT) by its letter dated 4th May 2001 addressed to the Maharashtra Chamber of Housing Industry has stated thus:*

*“The undersigned is directed to refer to your letter No.MCHI:RSA:m:388/19799/3 dated 1<sup>st</sup> January 2001 and to state that the additional housing project on existing housing project site can qualify as infrastructure facility under Section 10(23G) and 80IB (10) provided it is taken up by a separate undertaking, having separate books of accounts, so as to ensure that correct profits can be ascertained for the purpose of Section 80IB and also to identify receipts and repayments of long term finances under the provisions of Section 10(23G), separately financing arrangements and also, if it separately fulfills all other statutory conditions listed in Sections 10(23G) and 80(B(10)). With regard*

*to your query regarding the definition of Housing Project, it is clarified that any project which has been approved by a local authority as a housing project should be considered adequate for the purpose of Section 10(23G) and 80IB(10)"*

*29. From the aforesaid letter of CBDT, it is clear that for the purposes of Section 80IB(10) it is not the mandate of the Section that the housing project must be on a vacant plot of land having minimum area of one acre and that where a new housing project is constructed on a plot of land having minimum area of one acre but with existing housing projects would qualify for Section 80IB(10) deduction. Even otherwise, the argument of the Revenue does not stand to reason because, in the city of Mumbai where there is acute space crunch, it is difficult to find a vacant plot having minimum area of one acre and even if few such plots are existing it cannot be said that Section 80IB (10) deduction was intended to give benefit only to the undertakings who construct housing projects on those few plots. Therefore, it is clear that on a plot of land having minimum area of one acre, there can be any number of housing projects and so long as those housing projects are approved by the local authority and fulfill the conditions set out under Section 80IB(10), the deduction there under cannot be denied to all those housing projects. Section 80IB(10) while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having minimum area of one acre. As a result, significance of the size of the plot of land is lost and, therefore, the assessee subject to fulfilling other conditions becomes entitled to Section 80IB(10) deduction on construction of a housing project on a plot having area of one acre, irrespective of the fact that there exist other housing projects or not. In these circumstances, the decision of the Tribunal in rejecting the contention of the Revenue regarding the size of the plot cannot be faulted."*

10. So far as the objection of the Department that the land on which the housing project is developed is not owned by the assessee and is still undivided, we do not find any merit. The Hon'ble Madras High Court in the case of CIT Vs. Sanghvi and Doshi Enterprise (supra) has held that ownership of land is not a criteria to decide status of developer to claim deduction u/s. 80IB(10). The provisions of section 80IB(10) does not require that the developer who owns the land is only eligible to claim deduction u/s. 80IB(10).

11. Thus, in the facts of the case and the case laws discussed above, we are of the considered view that the authorities below have erred in coming to the conclusion that the housing project of the assessee at Damodar Residency is not eligible to claim deduction u/s. 80IB(10) of the Act. The appeals of the assessee are allowed in all the three impugned assessment years and the Assessing Officer is directed to grant deduction u/s. 80IB(10) to the assessee on the housing project at Damodar Residency.

12. In the result, the appeals of the assessee for assessment years 2008-09, 2009-10 and 2010-11 are allowed and the appeals of the Revenue for assessment years 2008-09 and 2009-10 are dismissed.

Order pronounced on Wednesday, the 30<sup>th</sup> day of September, 2015.

Sd/-  
(Pradip Kumar Kedia)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(Vikas Awasthy)  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> September, 2015  
RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-II, Pune
4. आयकर आयुक्त / The CIT-II, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune