आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

आयकर अपील सं. / ITA No. 570/PN/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. D.S. Kulkarni Developers Ltd.,
1187/60, Jangali Maharaj Road,
Shivajinagar,
Pune – 411005 .... अपीलार्थी/Appellant

PAN: AAACD6431H

Vs.

The Addl. Commissioner of Income Tax,
Range – 1, Pune .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nikhil Pathak
प्रत्यर्थी की ओर से / Respondent by : Smt. Pooja Rastogi

सुनवाई की तारीख / **Date of Hearing : 14.10.2015**		घोषणा की तारीख / **Date of Pronouncement: 28.10.2015**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This appeal filed by the assessee is against the order of CIT(A)-I, Pune, dated 24.01.2014 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1] The learned CIT(A) erred in denying the deduction u/s 80 IB(10) in respect of the profits derived from housing projects - DSK Sundarban and DSK Vishwa Phase-V Meghmalhar Phase-I without appreciating that all the conditions laid down u/s 80IB(10) were complied by the assessee and hence, there was no reason to deny the deduction u/s 80IB(10) in respect of profits derived from the above referred projects.

2] The learned CIT(A) erred in holding that the appellant was not entitled to claim deduction u/s 80IB(10) of Rs.99,67,125/- in respect of the profits derived from the housing project - DSK Sundarban on the ground that the commercial area in the said project exceeded the limit prescribed in section 80IB(10) and therefore, the deduction was not available to the appellant.

2.1] The learned CIT(A) erred in holding that -

a. As there was a consolidated approval and common layout plan in respect of the residential and amenity area, for the purposes of section 80IB(10), the project included both residential and commercial area and hence, the deduction was not available to the assessee.

b. The area of commercial establishments in the form of Amenity Space exceeded the maximum limit for commercial area prescribed under the provisions of section 80IB(10)(d) and hence, the deduction u/s 80IB(10) was not allowable in respect of the profits derived from the said housing project.

3] The learned CIT(A) failed to appreciate that the Amenity Space - I and Amenity Space - II were independent projects and not part of the residential project constructed by the assessee and hence, there was no reason to deny the deduction u/s 80IB(10).

3.1] The learned CIT(A) erred in not appreciating that the assessee was under an obligation as per the Development Control regulations to develop Amenity Space - I and Amenity Space - II for the purposes of general public utility and hence, the same were developed independently of the housing project- DSK Sundarban and therefore, there was no reason to deny the deduction u/s 80IB(10) of the Act in respect of the above project.

4] The learned CIT(A) erred in denying the deduction u/s 80IB(10) of Rs.1,18,79,470/- in respect of the profits derived from the housing project - Meghmalhar Phase -1.

5] The learned CIT(A) erred in holding that the projects Meghmalhar Phase - I and Meghmalhar Phase - II were one integrated housing project and hence, since the assessee had not completed the construction of Meghmalhar Phase - II project, the deduction u/s 80IB(10) was not allowable to the assessee.

6] The learned CIT(A) erred in not appreciating that Meghmalhar Phase - I and Meghmalhar Phase - II consisted of two separate projects and since all the conditions laid down u/s 80IB(10) were satisfied in respect of the project Meghmalhar Phase I, the deduction u/s 80IB(10) could not be denied in respect of the said project.

6.1] Without prejudice to the above grounds, the assesse submits that the building nos. C,D,E,F,K,L,M,N,R,S,T,U,V and W comprising the Meghmalhar phase - I were constructed on a land area of more than 1 acre and since, these buildings independently satisfied all the conditions laid down u/s 80IB(10) of the Act, there was no reason to deny the deduction u/s 80IB(10) in respect of the profits derived from the above buildings.

7] Without prejudice to the above grounds, assuming without admitting that the assessee had not complied with the various conditions laid down in

section 80IB(10), the deduction should have been allowed on a proportionate basis in respect of the part of the project complying with the conditions laid down in section 80IB(10).

8] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

3. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal is squarely covered by the order of Tribunal in assessee's own case relating to assessment years 2007-08 to 2009-10, wherein an identical issue as before the Tribunal was raised. The issue raised in the present appeal is against denial of deduction under section 80IB(10) of the Act.

4. Briefly, in the facts of the present case, the assessee had claimed the said deduction under section 80IB(10) of the Act in respect of various projects including DSK Sundarban and DSK Vishwa Phase-V – Meghmalhar Phase - I. The Assessing Officer while completing assessment had denied the aforesaid deduction in the hands of assessee in respect of above two projects. In relation to the first project i.e. DSK Sundarban though the assessee had complied with all the conditions laid down under section 80IB(10) of the Act vis-a-vis the area of flats along with projections being less than 1500 sq.ft., the project having been completed within four years from the date of commencement and also there being no commercial units in the said project, but the Assessing Officer noted that there was amenities space – I and amenities space – II on west side and east side respectively, measuring 4904.01 meters, which was an integral part of the plan sanctioned by the District Collector in respect of plot 'A'. Since the amenities space – I and amenities space – II existed in the very lay out plan of the housing project DSK Sunderban and the said commercial space including shops were part and parcel of the said project, the Assessing Officer held the assessee to have violated the conditions laid down under section

80IB(10) of the Act since the built up area of commercial establishment of the project was more than 56000 sq.ft. The claim of the assessee that two projects were separate, was not accepted by the Assessing Officer.

5. The CIT(A) upheld the order of Assessing Officer, against which, the assessee is in appeal before us.

6. We find that an identical issue of claim of deduction under section 80IB(10) of the Act in respect of DSK Sunderban arose before the Tribunal in assessee's own case in ITA Nos. 723 to 725/PN/2013 & 769 to 771/PN/2013 relating to assessment years 2007-08 to 2009-10 and vide order dated 31.07.2014, it was observed as under:-

> *"2.5 After going through the rival submissions and material on record, we find that the issue before us is with regard to the claim u/s.80IB(10) of the Act in respect of DSK Sunderban. In this year, the assessee has claimed deduction u/s.80IB(10) of Rs. 3,51,55,308/- in respect of the profits derived from the housing project DSK Sundarban. As stated above, the said project is situated in the Revenue estate of Hadapsar, Pune. The said land was beyond the limits of Pune Municipal Corporation. The Collector had given sanction for the said project and the N.A. order was passed on 06.03.2006 as discussed above. The assessee has constructed a residential project named DSK Sundarban comprising of buildings A to H. The total plot area of the residential project is 24,520.05 sq. mtrs. The stand of the assessee has been that it has constructed a residential project and the same is eligible for deduction u/s 80IB(10) of the Act. The Assessing Officer has not accepted the contention of the assessee in this regard. According to him, the Collector had given sanction for development of plot 'A' which includes Amenity Space of 4904.01 sq. mtrs. According to revenue authorities, the Amenity Space is part of the project constructed by the assessee and therefore, the Assessing Officer has stated that the commercial area has exceeded the limit specified in section 80IB(10). The Assessing Officer refers to the master lay out wherein the Amenity Space was included in the same lay out. He also refers to the fact that the assessee has shown shops available in the project DSK Sundarban. Considering the above facts, the Assessing Officer has held that the commercial area included in the said project exceeded more than 2000 sq. ft. and therefore, the assessee was not entitled to claim deduction u/s 80IB(10). The CIT(A) has confirmed the order of the Assessing Officer. The CIT(A) refers to the order of the Collector, Pune granting N.A. permission. According to the CIT(A), the Collector has granted permission to the assessee to convert 47,323 sq. mtrs. out of the total land of 50525 sq. mtrs for non agricultural use. The CIT(A) has stated that the sanction of the Collector is for non agricultural use and permission for construction of buildings was subject to certain conditions. The CIT(A) refers to clause 12 of the sanction granted wherein it was mentioned that the use of land is permitted for construction of residential buildings and shops. The CIT(A) has held that the permission given by Collector is for mixed use i.e. both residential*

and commercial construction. According to the CIT(A), the permission for construction of residential houses was intrinsically linked to the sanction received by the assessee for commercial use. Thus, the CIT(A) has rejected the contention of the assessee and has held that the Amenity Area is part of the residential project and therefore, the assessee has violated the condition laid down in section 80IB(10). Accordingly, the CIT(A) has confirmed the disallowance in question.

2.5.1 We find that the stand of the assessee has been that it owned total land of 50,525 sq. mtrs. Out of the total land, the Collector has granted N.A. permission to convert land admeasuring 47,323 sq. mtrs. which consists of Plots A, B, C and E. A copy of the N.A. permission dated 06.03.2006 is placed on pages 22 - 28 of the Paper Book filed by the assessee. On perusal of the Layout plan of Plot A, we find that the total area of Plot A is 32,693.40 sq. mtrs. The copy of the lay Out Plan of Plot 'A' is placed on page 29. Out of the total area, the housing project DSK Sundarban comprising of Buildings A to H is constructed on an area of 24,520.05 sq. mtrs. Further, the Amenity Space I and II was constructed on a total area of 4914.01 sq. mts as evident from the lay out. As discussed above, there is no dispute that the Layout Plan is common for both. However, the Building Plans of the residential project i.e. Buildings A to H are separately sanctioned. The copy of the said building plan is placed on pages 30-31 of the Paper Book filed by the assessee. The net plot area mentioned while sanctioning the plan is 24,520.05 sq. mtrs. at which buildings 'A' to 'H' were conceived. The Building Plans for the Amenity Space were sanctioned separately and the relevant plans are placed on pages 32-35 of the Paper Book filed by the assessee. In the said Building Plan of the Amenity Space I, the plot area mentioned is 2053.24 sq. mtrs. and in the Building Plan of Amenity Space II, the plot area mentioned is 2850.77 sq. mts. Thus, the Building Plans of the residential and the Amenity Space are sanctioned separately. The CIT(A)'s harpings on the permission of the Collector in order to justify that, the Collector had granted permission for use of land for residential and commercial purposes. This is not in dispute. The issue is that the permission of layout by the Collector is for the land admeasuring 47,323.09 sq. mtrs as stated above. It was a general permission granting non agricultural use for the land and the same could not be termed as a sanction for constructing housing project on the said land. The building plans were sanctioned separately for the residential and the amenity space. The building plan for the residential project wing 'A' Sunderban is placed on pages 30 of the Paper Book. Similarly for sanctioned plans in respect of other wings for example wing 'H' on plot 'A' has been placed on pages 31 of the Paper Book filed by the assessee. The amenity space and residential project in plot 'A' with wings A to H are separated by compound wall.

2.5.2 Considering the fact that the building plans were separately sanctioned, the assessee stated that the amenity space cannot be considered as part of the residential project. The plot area in respect of the building plan for the amenity space refers to the plot of land on which the amenity space was constructed and not the plot of land on which the residential project was constructed. Considering the above facts, the assessee stated that the amenity space - I and amenity space - II are independent projects and not part of the residential project. The assessee has claimed that he has paid taxes on the profits arising on sale of amenity space and no deduction u/s 80IB(10) has been claimed, which is not disputed by the revenue authorities.

2.5.3 The facts emerged from the above discussion that there is no dispute with regard to the building plans for the residential and amenity space were sanctioned independently as discussed above. This fact has not been disputed by the lower authorities. However, revenue authorities have denied

the deduction on the ground that there was a common layout plan. There is a difference between layout plan and building plan. The layout plan is only a conceptual plan giving general idea of the development of the land while building plans are the plans as per which construction is permitted as per the details sanctioned in the said plan. Since the building plan was sanctioned independently for the residential and amenity space, so they are independent of each other. If there is a common layout plan but independent building plan, the project approved under separate building plan is to be considered as an independent project and not part of the larger project. This view is fortified by the ratio of following decisions:

a. *Appoorva Properties and Estates Pvt. Ltd. [ITA No. 113/PN/07]*
b. *Aditya Developers [ITA No. 791 & 792/PN/08]*
c. *Ankit Enterprises [ITA No. 1146/PN/l0]*
d. *Brigade Enterprises Pvt. Ltd. [119 TTJ 269 (Bang)]*
e. *P. V. Mahadkar & Associates [ITA No. 1117/PN/l0]*

2.5.4 We also find that Pune Bench in the case of M/s. Shroff Developers vs. ITO in ITA No.754/PN/2010, wherein building plan on the amenity spaced has been sanctioned separately as an independent unit, hence otherwise also it was to be treated as independent project. The assessee took the stand that housing project does not mean that there should be the group of buildings and even a single building may constitute a housing project. The Assessing Officer disallowed the claim on the ground that the commercial area in the said project exceeded 2000 sq. ft. In that case also, the Collector had sanctioned amenity space and had contended that the amenity space was an independent project. In appeal, the Tribunal after considering the facts has held that the building plan for amenity space was sanctioned separately and therefore, it constitutes an independent project and accordingly, the deduction was allowed by observing as under:

> *"8. We have heard the rival submissions of the parties and perused the record. The main plank of the argument of the Ld. Counsel is that the amenities space cannot be equated with commercial space and even if assuming it is a commercial space but still as the assessee's project is sanctioned prior to 01-04-2005, the limitation put on the maximum commercial area in any housing project is not applicable to the assessee's project as the original lay out and buildings plan were first sanctioned on 14-06-2004. He submits that amenities building which is said to be commercial is an independent building and is built up on specific marked area of 1230 sq. mtrs. which is an independent plot carved out of the total area of 8200 sq. mtrs. He submits that initially the project was on the plot of land of 4300 sq. mtrs. but subsequently adjoining plot was acquired and hence, the separate demarcation was made. He relied on the decision of the Hon'ble High Court of Gujarat in the case of Manan Corporation Vs. CIT 78 DTR 205 (Guj) and CIT Vs. Brahma Associates 333 ITR 289 (Bom). He submits that assuming without going into controversy whether it is a single project or independent project otherwise also the assessee's project sanctioned prior to 01-04-2005, the assessee is not hit by the definition of the built up are which is applicable to the project which have been approved after 01-04-2005. Alternatively we pleaded that the prorata deduction may be allowed by excluding the area covered under the amenities space. For that proposition he relied on the following decision:*
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> a) *M/s. G K Associates Vs. ITO (ITA No. 1137/PN/2010) (Para 7)*

b) *M/s. Aditya Developers Vs. DCIT (Pune) (ITA No. 791/Pn/2008) (Para 6 & 7)*

c) *Magarpatta Township Development & Construction Co. Vs. DCIT (Pune) (ITA No. 822/Pn/2011) (Para 22 & 24)*

d) *M/s. Rahul Construction Co. Vs. ITO (Pune) (ITA No. 1250 /Pn/2009) (Para 8 to 10)*

e) *Runwal Multihousing (P) Ltd. Vs. ACIT (Pune) (ITA No. 1015/Pn/2011) (Para 21.3)*

f) *Devi Construction Co. Vs. ACIT (Pune) (ITA No. 1390/Pn/2010) (Para 8)*

g) *Jayant M Lunavat Vs. ACIT (Pune) (ITA No. 229/Pn/2010) (Para 5.2,5.4 & 5.5)*

9. Per contra the Ld. DR supported the orders of the authorities below. We find that the assessee's original lay out and building plan was sanctioned for first time on 14-06-2004 i.e. before 31-03-2005 (Page 12 of the Paper Book). It appears that subsequently the assessee acquired some additional land and the original plan was revised and in the sanctioned lay out 15% space of the total area is reserve for amenities building. The Ld. Counsel pointed out that till today not a single unit in the amenities space is sold out. The further argument of the Ld. Counsel is that housing project is very brought term and amenities building itself is the independent building.

10. Let us deal with the argument of the assessee going with the case of the Assessing Officer that the amenity building is nothing but it is commercial building only and part of the assessee's housing project. In this case the assessee's original layout and the building plan were sanctioned on 14-06-2004 even if the N.A. order of the plot is dated 16-09-2003 (copy of the plan placed at Page Nos. 13 and 14 of the Compilation). As per the layout plan sanctioned on 14-06-2004, the total area of the plot is shown at 4100 Sq. Mtrs. and area under the amenity space 15% i.e. 615 Sq. Mtrs. It appears that subsequently the assessee sought the revision in the sanctioned layout and plan but the area of the plot was 4100 Sq. Mtrs. Till 01-04-2005 the assessee has not done anything on the plot. It appears that the assessee acquired the adjoining land and filed the further revised plan and layout for the approval to the local authority and the approval was given to the said plan on 05-08-2006. In the said layout the total area of the plot is shown at 8400 Sq. ft. (copy of the plan and layout is at Page Nos. 28 and 30 of Compilation). From this factual aspect, it can safely be concluded that in fact the plan sanctioned on 05-08-2006 is almost a new plan and it was not merely the revision of the existing plan, even though in the application to the local authority the assessee has stated revision of the plan and layout. In consequence of acquisition of the additional land, the area of the amenities space was also increased so it cannot be said that the plan sanctioned on 05-08-2006 is only the revised plan. We are unable to accept the argument of the Ld. Counsel that as the project was sanctioned on 16-06-2004, hence the definition of the built up area introduced in Sec. 80IB(10) by the Finance (No. 2) Act, 2004 w.e.f. 01-04-2005 is not applicable. After anxiously perusing the documents on record, including the layout plan and other permissions, in our opinion the effective sanctioned to the assessee's housing project is on 05-08-2006 and hence, the assessee was very much aware regarding the change in law and he

could have also accordingly made the changes in the plan and layout. We find no merit on the first argument of the assessee in respect of the applicability of the definition of the built up area introduced in Sec. 80IB(10) w.e.f. 01-04-2005. We hold that amendment introduced to Sec. 80IB(10), putting, ceiling on commercial area is applicable to the assessee's project.

11. Now we address the next limb of the argument of the Ld. Counsel i.e. amenities space itself is a separate project. We find force in the said contention of the assessee. As per the information on record, we find that the assessee was required to reserve 15% area of his plot for amenities space even though the Ld. Counsel has taken lot of efforts to convince that amenity building is different than commercial building but we prefer not to go into the said controversy. We are examined this issue on the different contention of the assessee that amenities space for amenity building is a project itself. On the perusal of the layout and plan, it is undisputed fact on record that from the first approved layout, the assessee has shown 15% area reserve in plot of land as amenities space. The argument of the Ld. Counsel is that the local authority in terms of DC Rules and Maharashtra Regional Town Planning Act, 1966 (in short "MRTP Act") mandates that if the plot area is more than 1 acre in the residential zone then amenities space to the extent of 15% of the plot area shall have to be provided in the layout. The Ld. Counsel also referred to Sec. 22 of the MRTP Act, 1966 to impress his argument on the point that the reservation of the amenity space is governed by the relevant statute and is not the matter of choice of the developer. The assessee has also filed the copy of the sanctioned plan of the amenity building on the reserve space of 1230 Sq. Mtrs. which is place at Page No. 40 of the Compilation. We further find that for the construction of the building of the amenity space separate permission has been granted by the District Collector being competent local authority vide order dated 07-06-2008. If the building on the amenity space has been granted specific permission separately, in our opinion it partake the character of independent project and cannot be tagged with the assessee's other projects. The Ld. Counsel also submitted that not a single unit in the said building has been sold till today even though given on lease and no profit from the amenity building space is included in the eligible profit on which the deduction u/s. 80IB(10) has been claimed. The Ld. Counsel has relied on the plethora of the decisions on this limb of argument but in our opinion the decision of the Hon'ble jurisdictional High Court in the case of CIT Vs. Vandana Property 353 ITR 36 (Bom) is applicable to the facts of this case. We, accordingly, hold that the amenity building is an independent project itself and it cannot be tagged with other projects of the assessee. We, further hold that the assessee has not violated any of the conditions of Sec. 80IB(10) to gain eligibility for claiming the deduction and hence both the authorities below erred by denying the deduction to the assessee. We, accordingly, allow the assessee's claim of deduction on the above reason and direct the Assessing Officer to allow the deduction u/s. 80IB(10). We also make it clear that as the amenity building is treated as an independent project, the assessee is not entitled to include the profit earned from the sale of any of the unit in the said building for claiming the deduction u/s. 80IB(10).

12. In the result, the assessee's appeal is allowed."

2.5.5 In view of the above discussion, the facts of Shroff Developers (supra) are identical to the facts of the assessee's case and accordingly, amenity space 1 and 2 should be considered as separate and independent project. Regarding the objection of the Assessing Officer in the website of assessee company, the assessee itself has shown shops available in DSK Sundarban

project. The issue is not relevant to decide whether the residential and amenity space are separate projects or one and the same. So long as the building plans are independently sanctioned, two projects are separately and accordingly, disallowance was not rightly rejected on this account. Accordingly, the Assessing Officer was not justified in rejecting claim of the assessee under the provisions of section 80IB(10) of the Act in respect of DSK Sundarban. The Assessing Officer is directed accordingly. Similar issue arose with regard to DSK Sundarban in assessee's appeals in ITA Nos.724 & 725/PN/2013 for A.Ys.2008-09 & 2009-10 respectively. Facts being similar, so following the same reasoning, the Assessing Officer is directed to allow the assessee's claim of deduction u/s.80IB(10) of the Act with regard to Project DSK Sundarban."

7. The Tribunal held that the building plans for the residential and amenities space were sanctioned independently and merely because a common lay out plan was passed by the authorities, does not disentitle the assessee to the claim of deduction under section 80IB(10) of the Act in respect of the residential buildings, for which the building plans were sanctioned separately from the building plans of amenities space.

8. The facts and issues arising before us are identical to the facts before the Tribunal and following the same parity of reasoning, we hold that the assessee is entitled to the claim of deduction under section 80IB(10) of the Act in respect of DSK Sunderban.

9. Further, second issue raised before us is in respect of deduction claimed under section 80IB(10) of the Act of the housing project Meghmalhar Phase – I. Under the said project, building plans were sanctioned for building Nos.A to W and row houses. The details of the building sanctioned as per the revised plan dated 15.10.2008 were as under:-

Building	Details	Status
A,B,G,H,I,J,O, P	P + 1 Floor	Not yet started and will not be complete before March 2011

C,D,E,F, K,L,M,N,R,S,T,U, V,W (14 building)	P + 7 Floors	Completed and Completion Certificate given by Gram Panchayat Kirkitwadi dated 31.1.2011
22 Row Houses	G + 1 Floor	Not yet started and will not be completed before March 2011

10. The case of the assessee before the authorities below was that the buildings for which sanction was received from the Corporation for parking + seven floors constitute the eligible project, against which it had claimed deduction under section 80IB(10) of the Act. The buildings for which sanction was received for parking + first floor and 22 row houses were not part of the eligible project. The Assessing Officer however, rejecting the claim of assessee held that all the buildings from 'A' to 'W' and 22 row houses were part of the same project and since all the buildings were not completed and the built up area of the proposed row houses exceeded 1500 sq.ft., hence, the assessee was not entitled to the claim of deduction under section 80IB(10) of the Act.

11. The CIT(A) confirmed the order of Assessing Officer.

12. We find that an identical issue arose before the Tribunal in assessee's own case (supra) in respect of claim of deduction under section 80IB(10) of the Act of housing project Meghmalhar Phase – I. The Tribunal vide para 3.2 to 3.4 has observed as under:-

> *"3.2 According to the CIT(A), the contention of the assessee that there were 2 separate projects, namely Meghmalhar Phase -1 and Meghmalhar Phase - II is not correct. Relying upon the permission of the Collector while sanctioning the layout plan, the CIT(A) has stated that since the assessee has not been able to complete construction of all the buildings, the project was not complete and therefore, the deduction u/s 80IB(10) is not allowable to the assessee.*

3.3 In this regard, the stand of the assessee has been that there was no reason to deny deduction in respect of the project Meghmalhar Phase - I. The Assessing Officer and the CIT(A) have held that the buildings A to W and 22 row houses constitute one single project. In this regard, the stand of the assessee has been that the buildings for which sanction was received for Parking + 7 floors constituted the housing project. The said buildings occupied land area of more than one acre. The other buildings wherein sanction was received for Parking + 1 floor, the construction had not started since it was not found economically viable to construct a building with only one floor. In commercial sense, the eligible housing project constituted only those buildings wherein the sanction was received for parking + 7 floors and the construction was carried out as per sanctioned building plan which is not in dispute. The dispute is with regard to completion as per sanctioned plan. In this regard, we find that the term 'housing project' is not defined in the Income Tax Act but the Hon'ble Bombay High Court in the case of Vandana Properties [(2013) 353 ITR 36 (Bom)] has held that housing project would mean a building or a group of buildings. Secondly, Hon'ble High Court has held as under:

> *"The next argument of the Revenue is that to avail of the deduction under section 80-IB(10), the housing project must be on the size of a vacant plot of land which has minimum area of one acre. In the present case, there are five buildings (A, B, C, D and E) on a plot admeasuring 2.36 acres, hence, the proportionate area for each building would be less than one acre and, therefore, the benefit of section 80-IB(10) could not be granted in respect of the housing project consisting the "E" building.*
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> *As rightly contended by the counsel for the assessee and the intervenors, section 80-IB(10)(b) specifies the size of the plot of land but not the size of the housing project. The size of the plot of land, as per section 80-IB(10), must have minimum area of one acre. The section does not lay down that the plot having minimum area of one acre must be a vacant plot.*
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> *The question, therefore, to be considered is, whether the Revenue is justified in reading the expression "plot of land" in section 80-IB(10)(b) as "vacant plot of land" ?*
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> *The object of section 80-IB(10) in granting deduction equal to one hundred per cent. of the profits of an undertaking arising from developing and constructing a housing project is with a view to boost the stock of houses for lower and middle income groups subject to fulfilling the specified conditions. The fact that the maximum size of the residential unit in a housing project situated within the city of Mumbai and Delhi is restricted to 1000 square feet clearly shows that the intention of the Legislature is to make available a large number of medium size residential units for the benefit of the common man. However, in the absence of defining the expression "housing project" and in the absence of specifying the size or the number of housing projects required to be constructed on a plot of land having minimum area of one acre, even one housing project containing multiple residential units of a size not exceeding 1000 square feet constructed on a plot of land having minimum area of one acre would be eligible for section 80-IB(10) deduction. If the construction of section 80-IB(10) put forth by the Revenue is accepted, it would mean that if on a vacant plot of land, one housing project fulfilling all conditions is undertaken, then deduction would be available to that housing project and if thereafter several other housing projects are undertaken on the very same plot of*

land, the deduction would not be available to those housing projects as the plot ceases to be a vacant plot after the construction of the first housing project. Such a construction if accepted would defeat the object with which section 80-IB(10) was enacted.

Moreover, plain reading of section 80-IB(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 80-IB(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.

Apart from the above, the Central Board of Direct Taxes (CBDT) by its letter dated May 4, 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 January 1, 2001, and to state that the additional housing project on existing housing project site can qualify as infrastructure facility under sections 10(23G) and 80-IB(10) provided it is taken up by a separate undertaking, having separate books of account, so as to ensure that correct profits can be ascertained for the purpose of section 80-IB 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 fulfils 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 sections 10(23G) and 80-IB (10)."*

From the aforesaid letter of the Central Board of Direct Taxes, it is clear that for the purposes of section 80-IB(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 80-IB(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 80-IB(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 80-IB(10), the deduction thereunder cannot be denied to all those housing projects. Section 80-IB(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 the other conditions becomes entitled to section 80-IB(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."

In view of above, the building for which sanction was received for Parking + 7 floors constitute a housing project on standalone basis and eligible for claiming deduction u/s.80IB(10) of the Act as claimed by the assessee.

3.4 We also find that Hon'ble Madras High Court in the case of Viswas Promoters Pvt. Ltd. vs. ACIT, (2013) 255 CTR 149 (Mad) has held that the expression 'housing project' is not defined in section 80-IB(10) of the Act, and, by referring to the definition of 'housing project' under Explanation to section 80HHBA of the Act observed that the expression 'housing project' under section 80-IB(10) of the Act refers to any 'building' other than 'road', 'bridge' or other structure. According to the ratio of Viswas Promoters Pvt. Ltd. (supra) each block in a larger project has to be taken as an independent building and hence a 'housing project' for the purpose of considering the claim of deduction u/s. 80-IB(10) of the Act. The ratio of Viswas Promoters Pvt. Ltd. (supra) supports the facts of the assessee case, wherein, the profits derived from parking + 7 buildings should be allowed as deduction u/s.80IB(10) of the Act. We also find that the ITAT Pune in the case of Runwal Multihousing Pvt. Ltd. [ITA No. 1015 - 1017/PN/11] wherein the Tribunal has held that whatever portion completed by the assessee which satisfies the conditions prescribed u/s.80IB(10) is eligible for deduction. Similar view has been taken by ITAT Mumbai in the case of Mudhit Gupta [51 DTR 217]. In view of above in the absence of any definition of housing project, the Assessing Officer and the CIT(A) were not justified in holding that all the buildings sanctioned in the revised plan dated 15.10.2008 constitute the housing project as discussed above. In view of above discussion, the choice is for the assessee to determine which buildings would form part of the housing project and the conditions laid down in Section 80IB(10) of the Act should be checked vis-a-vis those buildings with respect to which the deduction is claimed. Since the assessee has completed all the buildings for which sanction is received for parking + 7 floors and all the conditions laid down in Section 80IB(10) of the Act were complied with, the assessee is entitled for claiming deduction u/s.80IB(10) of the Act. It is settled legal position that beneficial provisions have to be interpreted liberally in favour of assessee. Regarding the contention of the Assessing Officer that the built up area of the row houses exceeded 1500 sq. ft. is not relevant since the row houses do not form part of the eligible housing project. In view of above discussion, the Assessing Officer is directed to allow the assessee's claim of deduction u/s.80IB(10) of the Act in respect of Parking + 7 floors of DSK Vishwa Phase-V, Meghmalhar Phase-I project as independent project. This view is fortified by the decision of Vandana Proprties (supra). This takes care of assessee's appeal in ITA Nos.724 and 725/PN/2013 for A.Y. 2008-09 and 2009-10 on the issue."

13. The issue arising before us is identical to the issue before the Tribunal and following the same parity of reasoning and where the assessee had completed all the buildings, for which sanction was received for parking + seven floors and further all the conditions laid down under section 80IB(10) of the Act

were complied with, then the assessee is entitled to the claim of deduction under section 80IB(10) of the Act. The Assessing Officer is directed to compute the said deduction under section 80IB(10) of the Act in line with the directions of Tribunal in assessment years 2007-08 to 2009-10. Thus, the grounds of appeal raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced on this 28th day of October, 2015.

Sd/-	**Sd/-**
(PRADIP KUMAR KEDIA)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th October, 2015.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Pune;
4. आयकर आयुक्त / The CIT-I, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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