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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.2481 & 2482/Del/2011
Assessment Years: 2005-06 & 2006-07

DCIT, Central Circle-6, Room No.334, ARA Centre, Jhandewalan Extn., New Delhi.	Vs	Sahara India Sahkari Awas Samiti Ltd., Sahara Bhawan, 1, Kapoorthala Complex, Aliganj, Lucknow. PAN: AAGFS9137D

CO Nos.221 & 222/Del/2011
(ITA Nos.2481 & 2482/Del/2011)
Assessment Years: 2005-06 & 2006-07

Sahara India Sahkari Awas Samiti Ltd., Sahara Bhawan, 1, Kapoorthala Complex, Aliganj, Lucknow. PAN: AAGFS9137D	Vs.	DCIT, Central Circle-6, Room No.334, ARA Centre, Jhandewalan Extn., New Delhi.
(Appellant)		(Respondent)

Assessee by	:	Shri Ajay Vohra, Sr. Advocate & Shri Divyam Mittal, Advocate.
Revenue by	:	Shri Satpal Gulati, CIT, DR
Date of Hearing	:	08.06.2021
Date of Pronouncement	:	19.07.2021

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ORDER

PER R.K. PANDA, AM:

ITA Nos.2481 & 2482/Del/2011 filed by the Revenue are directed against the separate orders dated 25.02.2011 of the CIT(A)-1, New Delhi relating to assessment years 2005-06 & 2006-07 respectively. The assessee has filed the Cross Objections bearing CO Nos.221 & 222/Del/2011 against the appeals filed by the Revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.2481/Del/2011 for A.Y. 2005-06 (By Revenue)

2. Facts of the case, in brief, are that the assessee is a cooperative society of Sahara India group and is engaged in the business of development and construction of residential and commercial units. It filed its return of income on 30th March, 2007 disclosing total income of Rs.50,24,995/- after claiming deduction of Rs.11,68,72,431/- u/s 80IB(10) of the IT Act, 1961.

3. During the course of assessment proceedings, the AO noted that the assessee has executed a developer agreement with M/s Sahara India Commercial Corporation Ltd. (SICCL) on 21st Sept. 1999. He analysed the salient features of the agreement vis-à-vis the provisions of section 80IB(10) of the Act and observed that the assessee is not eligible to claim the deduction u/s 80IB(10) since it does not fulfill the conditions laid down in section 80IB(10) of the Act. According to

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the AO, as per section 80IB(10)(d) inserted by Finance (No.2) Act, 2004 w.e.f. 01.04.2005:

(a) the built up area of the shops and commercial establishments cannot exceed 5% of the aggregate built up area or 2000 sq. ft. whichever is less and the project developed by the assessee comprised of 30,300 sq. ft. of commercial establishment which exceeds the prescribed limit.

(b) the assessee was to obtain a completion certificate prior to 31st March, 2008 and the assessee did not produce such certificate.

(c) The assessee cannot be regarded as a developer since it was not actively involved in the development and construction works due to non-employment of capital and labour for the purpose of development and construction.

4. He, therefore, asked the assessee to show cause as to why the claim of deduction u/s 80IB(10) should not be disallowed. The assessee, in its reply submitted that it commenced development and construction activities of housing project on or after 1st day of October, 1998, which is evidenced from the assessee's site lay out plan approved by Lucknow Development Authority. The project is on the size of a plot which is having area of more than one acre. The layout plan has been approved by the local authority well before the due date i.e. 31-03-2005 and it also satisfies the conditions as each residential unit which is built and sold in the relevant financial year has a maximum built up area of less

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than 1500 sq. ft. It was further submitted that the provisions of section 80IB(10) of the base year in which the lay out plan of the assessee was approved, shall be applicable to the assessee and according to the provision laid down in the base year, the construction and development activities were carried out by the assessee. It was accordingly submitted that the assessee has rightly claimed deduction u/s 80IB(10) of the IT Act, 1961.

5. However, the AO was not satisfied with the arguments advanced by the assessee. He observed that provisions of section 80IB(10)(d) was inserted by Finance (No.2) Act, 2004 w.e.f. 01.04.2005 applicable to A.Y. 2005-06. As per the said provision, the built-up area of the shops and other commercial establishments included in the housing project should not exceed five per cent of the aggregate built-up area of the housing project or 2000 sq. ft., whichever is less. Further, in the instant case, such total area of commercial and shopping units in the project aggregates to 30300.16 sq. feet which is way beyond the permissible limit of 2000 sq. feet to avail the said deduction. Further, post amendment, vide Finance (No.2) Act, 2004, the undertaking shall be eligible for this deduction in that previous year relevant to any Assessment Year when it has commenced development and construction of the housing project on or after 01-06-1998 and also completes such construction and procure completion certificate in respect of such housing project issued by the local authority. Since, in the instant case, the assessee society has been unable to procure such a certificate, which has been made mandatory after the

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amendment w.e.f. 01.04.2005 i.e for A.Y. 2005-06 and, subsequently, the assessee society is not eligible for claiming the deduction.

6. The AO further noted that the assessee society has contracted out the development and construction work to its flagship company i.e M/s Sahara India Commercial Corporation Ltd.. According to the AO, since 80IB(10) deduction is allowable to an undertaking where it employees capital and labour for the purpose of development and construction and since the assessee society is not actively involved in the development and construction work, therefore, the assessee is not eligible for the deduction. He further noted that a perusal of booking application forms shows that these are addressed to M/s Sahara India Commercial Corporation Ltd. and not to the society. He observed that the assessee has authorized SICCL to collect the money from the prospective purchasers/allottees directly for or on behalf of the assessee. He, therefore, held that the assessee society is not engaged in the development and construction of housing project and, therefore, is not eligible for claiming deduction u/s 80IB (10) of the Act. In view of the above, the AO rejected the claim of deduction u/s 80IB(10) of the Act and determined the total income of the assessee at Rs.12,18,97,430/-.

7. In appeal, the CIT(A), allowed the claim of the assessee. While doing so, he noted that so far as the objection of the AO that the built-up area of the shops and other commercial establishments exceeds 5 per cent of the aggregate built-up area of the housing project or 2,000 sq. feet, whichever is less and that the assessee has

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not obtained the completion certificate prior to 31st March, 2008 and the assessee did not produce such certificate is concerned, these conditions were not in existence on the date when the approval was granted by the Development Authority. Therefore, the said conditions cannot apply to the project which was approved prior to 01.04.2005. So far as the third objection of the AO is concerned, i.e., the assessee cannot be regarded as developer since it was not actively involved in the development and construction work due to non-employment of capital and labour for the purpose of development and construction, he held that appointment of SICCL as a contractor for the development and construction of the project cannot lead to the conclusion that the development and construction was not carried by the assessee. He accordingly allowed the claim of the assessee.

8. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

> "On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:-
>
> 1. The order of the Ld. CIT(A) is not correct in law and facts.
> 4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in allowing the claim of Rs. 11,68,72,431/- u/s 80IB(10) of the Income Tax Act, 1961.
>
> 5. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.ö

8.1 The assessee has filed the CO by raising the following grounds:-

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õ1. That the Id. CIT(A) is fully justified in allowing the claim of deduction under section 80IB(10) of the Income Tax Act on the facts and circumstances of the case as well as law.

2. That the order of the Id. CIT(A) deserves to be upheld on the facts and circumstances of the case as well as law.

3. That the respondent craves leave to add, alter, amend or withdraw any or all the grounds of cross-objections on or before the date of hearing.ö

9. The ld. DR strongly challenged the order of the CIT(A) in allowing the claim of deduction u/s 80IB(10) made by the assessee. He submitted that the AO has rightly rejected the claim of deduction u/s 80IB(10) since the assessee does not meet the conditions prescribed u/s 80IB(10) of the IT Act. He submitted that the aggregate built up area of the shops and commercial establishments in the project developed by the assessee comprised of 30300 sq. ft. which far exceeds the area prescribed under the Act at 5% of the aggregate built up area or 2000 sq. ft. whichever is less. Referring to the assessment order, the ld. DR submitted that the assessee did not claim to have obtained the completion certificate which is a necessary condition as per section 80IB(10) of the Act and, therefore, the AO rightly did not allow the claim of deduction u/s 80IB(10) of the Act. He submitted that the conditions were inserted by the Finance Act, 2004 w.e.f. 01.04.2005 applicable to assessment year 2005-06 and onwards. Since the years under consideration are A.Y. 2005-06 and 2006-07, therefore, the aforesaid conditions are applicable to the facts of the present case. So far as the issue of completion certificate is concerned, the ld. DR, referring to the letter filed on 10.11.2008

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before the AO for A.Y. 2006-07 submitted that as per the said letter, the assessee was in process to obtain completion certificate from Lucknow Development Authority. This shows that even upto 10.11.2008, i.e., the date of filing of the aforesaid letter, the certificate was not there with the assessee. He submitted that the assessee in the instant case also failed to submit the copy of the application made to the competent authority for issuance of completion certificate. He submitted that the assessee did not produce the said application for issuance of certificate to the competent authority or the certificate issued by the said authority before the ld.CIT(A) who passed the order u/s 254 of the Act.

10. Referring to the decision of the Hon'ble Allahabad High Court in the case of Arif Industries Ltd., order dated 7th April, 2017, reported in 80 taxmann.com 374, which incidentally is the jurisdictional High Court, he submitted that the Hon'ble High Court at para 61 of the order has held that no developer can claim vested right to complete a housing project in indefinite period. The court observed that the right arising from section 80IB(10) is coupled with the obligation or duty to complete the project in a specified timeframe and if a developer does not complete housing project within specified time, will not receive that benefit. While holding so, the Hon'ble Allahabad High Court has relied on the decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Global Reality, reported in 379 ITR 107.

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11. The ld. DR further submitted that there is no doubt to the fact that the assessee's project got approval before 01.04.2004, however, it could not obtain the completion certificate from the prescribed authority before 31.03.2008 as per the requirement of section 80IB(10). Further, the assessee also could not show cause that it did apply before the local authority well before 31.03.2008 to seek the completion certificate. The letter of the assessee written to the AO clearly highlight that the issue of completion certificate was in process even in 2011. Relying on various decisions, he submitted that in absence of issue of completion certificate of the project within the stipulated time, the assessee is not entitled to claim deduction u/s 80IB(10) of the Act. So far as the other objection of the AO that the assessee has contracted out the developers and construction work to its flagship company i.e., SICCL is concerned, the ld. DR submitted that the application forms for booking were addressed to SICCL which also collected money from the prospective buyers/allottees on behalf of the assessee. This conclusively proves that the assessee was not engaged in development and construction of housing project and, therefore, not eligible for deduction u/s 80IB(1) of the Act. He submitted that there was no employee on the rolls of the assessee which is evidenced by the audit report, therefore, the claim of the assessee being a developer does not hold good.

12. So far as the additional evidences filed by the assessee are concerned, the ld. DR submitted that the assessee, for the first time, has filed the additional evidences

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before the Tribunal on 15.11.2018. The AOøs assessment order is dated 24th December, 2007 while the order of the CIT(A) is dated 25th October, 2011. More than six years have elapsed even from the date since the order was passed by the CIT(A). He further submitted that the authenticity of the additional evidences is very much doubtful since the completion certificate claimed to have been issued by the developer i.e., SICCL is dated 14th March, 2008 while the acknowledgement issued by the assessee to the developer is dated 18th March, 2008. He submitted that had this document been authentic, both these documents must have been in the possession of the assessee well before the order was passed by the CIT(A) which was passed on 25th October, 2011, i.e., after more than 3 ½ years of the completion certificate. Therefore, these evidences being produced at such a later stage just to establish that the project was completed on or before 31.03.2008 which is one of the conditions specified after the amendment to section 80IB(10) w.e.f. 01.04.2005 remains doubtful. Referring to the following decisions, he submitted that the application for the additional evidence should not be entertained:-

(i) Jawahar Lal Jain (HUF) vs. CIT (2015) 59 taxmann.com 374 (P&H);

(ii) Shivangi Steel (P) Ltd. vs. ACIT (2014) 42 taxmann.com 393 (Agra-Trib.)

13. So far as the denial of deduction u/s 80IB(10) is concerned, the ld. DR supported the order of the AO and relied on the following decisions:-

(i) Tapadia Constructions Ltd. vs. ACIT, 86 taxmann.com 252 (Pune-Trib.);

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(ii) Fortuna Foundations Engineer & Consultants P. Ltd. vs. ACIT, 155 TTJ 501; &

(iii) ITO vs. Everest Home Construction (India) P. Ltd., 139 ITD 1 (Mumbai)

14. The ld. Counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that the condition of built up area of the shops and commercial establishments cannot exceed 5% of the aggregate built up area or 2000 sq. ft., whichever is less is inserted in section 80IB(10)(d) of the Act, vide Finance (No.2) Act, 2004 w.e.f. 01.04.2005 is applicable for projects approved after 01.04.2005 and not to those projects which are approved on or before 01.04.2005. Referring to the decision of the Honøble Supreme Court in the case of CIT vs. Sarkar Builders, reported in 375 ITR 392 and in the case of CIT vs. Vatika Township Pvt. Ltd., reported in 367 ITR 466, he submitted that the Honøble Supreme Court in these decisions has held that the conditions prescribed u/s 80IB(10)(d) cannot be applied to projects approved prior to 01.04.2005. Therefore, the allegation of the AO that the assessee does not fulfill the condition of built up commercial area is not applicable to the assessee and, therefore, the denial of deduction u/s 80IB(10) on this issue is not justified.

15. So far as the condition for obtaining completion certificate on or before 31st March, 2008 is concerned, the ld. Counsel referred to the provisions of section 80IB(10(a)(i) r.w. Explanation (ii) and submitted that the above mentioned condition was introduced vide Finance (No.2) Act, 2004 w.e.f. 01.04.2005 and the

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same was not in existence when the project was approved by the development authority on 26th March, 2003. The said condition was, thus, prospective and not applicable to projects approved prior to 01.04.2005. For the above proposition, the ld. Counsel relied on the following decisions:-

(i) CIT vs. CHD Developers Ltd., 362 ITR 177 (Del);

(ii) PCIT vs. Sahara States Gorakhpur, 418 ITR 168 (Allahabad);

(iii) Sahara Estates, Hyderabad AOP vs. DCIT, ITA No.1886/Hyd/2011

16. The ld. Counsel, referring to the following additional evidences, submitted that the project was completed prior to 31st march, 2008:-

(i) Letter from M/s Sahara India Commercial Corporation Ltd to the assessee dated 14/03/2008 [Pg 5 of additional evidence compilation]

(ii) Letter from the assessee to M/s Sahara India Commercial Corporation ltd dated 18/03/2008 [Pg 6 of additional evidence compilation]

(iii) Architect certificate dated 15/09/2009 along with the official translation [Pg 7 and 8 of additional evidence compilation].

17. He submitted that apart from the above, the assessee, during the course of assessment proceedings for A.Y. 2006-07, vide letter dated 10.11.2008, copy of which is placed at page 10 of the paper book had submitted that the assessee is in the process of obtaining the completion certificate from the Lucknow Development Authority which proves that the project was completed well on time, but, the

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certificate could not be obtained prior to 31st March, 2008. Therefore, the AO was not justified in denying the claim of deduction u/s 80IB(10) for not obtaining the completion certificate on or before 31st March, 2008.

18. So far as the allegation of the AO that the assessee is not a developer is concerned, the ld. Counsel submitted that the assessee was a developer which is discernible from the agreement entered into and merely appointing SICCL as a contractor for development and construction of the project cannot lead to the conclusion that the said activities were not carried on by the assessee society. Referring to the following decisions, the ld. Counsel submitted that since the assessee is bearing the entire risk and responsibilities relating to the project and SICCL was appointed only to execute the project, therefore, the assessee ought to be considered as the developer:-

(i) ACIT vs Paras Buildcall Pvt Ltd: 57 taxmann.com 112 (Del-Trib) [refer page 58 of caselaw Paperbook];

(ii) B.T.Patil & Sons Belgaum Construction Pvt Ltd vs ACIT: 126 TTJ 577 (Mum) [refer page 70 of caselaw Paperbook];

(iii) CIT v. Radhe Developers: 341 ITR 403 (Guj HC) [refer page 118 of caselaw Paperbook]

(iv) Sugam Construction Pvt Ltd vs ITO: 56 SOT 45 (Ahd ITAT)(URO) [refer page 133 of caselaw Paperbook]

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19. So far as the stand of the AO that the booking application forms of flats were addressed to SICCL and not to the assessee and that the assessee has authorized SICCL to collect the money form the purchasers of flats directly on behalf of the assessee is concerned, he submitted that merely because certain procedural formalities relating to the collection of booking application forms and money from the buyers were delegated to SICCL would not render SICCL as a developer of the project since the money collected by SICCL was on behalf of the assessee only and on the authorization of the assessee and not in its independent capacity. Therefore, the delegation of certain formalities regarding collection of booking application forms and money on behalf of the assessee would not cease the assessee company as being registered as a developer of the project.

20. The ld. Counsel for the assessee submitted that the conditions of eligibility of the section 80IB(10) of the Act were tested and satisfied/allowed in the first year of claim of deduction, i.e., A.Y 2003-04 and 2004-05 and, therefore, the same is not open for examination in the subsequent years in absence of change in factual position. The ld. Counsel for the assessee relying on various decisions submitted that without disturbing the assessment for the initial year it is not open to the Revenue to make disallowance of such deduction in subsequent year Relying on a series of decisions, filed in the case law compilation, he submitted that though the principle of *res judicata* does not apply to income tax proceedings, it is well settled that if there being no change in facts or in law as compared to earlier and

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subsequent years the position accepted/determined by the Department needs to be followed even on the principle of consistency. He accordingly submitted that the order of the ld.CIT(A) being in consonance with law should be upheld and the ground raised by the assessee should be dismissed.

21. So far as the decisions relied on by the ld. DR in the case of Arif Industries (supra) is concerned, the ld. Counsel submitted that the Hon∅ble Allahabad High Court has relied on the decision of the Hon∅ble MP High Court in the case of Global Realty (supra). However, the decision of the MP High Court in the case of Global Realty has been stayed by the Hon∅ble Supreme Court vide order dated 08.07.2019. He also filed a copy of the order of the Hon∅ble Supreme Court staying the proceedings. Referring to the decision of the Hon∅ble Supreme Court in the case of PCIT vs. Majestic Developers, reported in 431 ITR 49, the ld. Counsel submitted that the Hon∅ble Supreme Court in the said decision has held that certificate of registered certified architect is sufficient for proving the completion of the project within the specified time.

22. So far as the CO filed by the assessee is concerned, he submitted that the same is merely in support of the order of the CIT(A).

23. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, is a co-operative society engaged in the

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business of development and construction of residential projects since the year 2000. A development agreement dated 21.09.1999 was entered into between the assessee and M/s Sahara India Commercial Corporation Ltd., wherein the assessee appointed SICCL to construct Sahara States, Lucknow and Sahara Grace, Lucknow projects. The project map was approved on 26th March, 2003 by the Lucknow Development Authority. In the return filed for the impugned assessment year, the assessee claimed deduction of Rs.11,68,72,431/- u/s 80IB(10) of the IT Act, 1961. We find, the AO rejected the claim of deduction u/s 80IB(10) on the ground that:

(a) the built up area of the shops and commercial establishments is 30300 sq. ft. which far exceeds the area prescribed under the Act at 5% of the aggregate built up area or 2000 sq. ft. whichever is less;

(b) the assessee was to obtain a completion certificate prior to 31st March, 2008 and the assessee did not produce such certificate; and

(c) The assessee cannot be regarded as a developer since it was not actively involved in the development and construction works due to non-employment of capital and labour for the purpose of development and construction.

24. We find, in appeal, the ld. CIT(A) allowed the claim of deduction made by the assessee u/s 80IB(10) of the Act. So far as point No. (a) and (b) above are concerned, the ld.CIT(A) held that these conditions were not in existence on the

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date when the approval was granted by the Development Authority. Therefore, the said conditions cannot apply to the projects which were approved prior to 01.04.2005. So far as the third objection is concerned, the ld.CIT(A) held that appointment of SICCL as a contractor for the development and construction of the project cannot lead to the conclusion that the development and construction was not carried by the assessee. It is the submission of the ld. DR that when the assessee has not show caused that it did apply before the local authority well before 31.03.2008 to seek the completion certificate, the assessee did not fulfill one of the conditions i.e., obtaining the completion certificate prior to 31st March, 2008. It is also his submission that the additional evidences filed by the assessee are not in accordance with the Rule 29 of ITAT Rules, 1963. According to the ld. DR, the completion certificate claimed to have been issued by the developer, SICCL dated 14th March, 2008 which was acknowledged by the assessee on 18th March, 2008 was never produced before the AO or CIT(A) who passed the order much after the issuance of such certificate and no reason has been given by the ld. Counsel as to why such letter was never produced before the lower authorities. It is also the submission of the ld. DR that the assessee in the instant case has contracted out the development and construction work to its flagship company M/s Sahara India Commercial Corporation Ltd. and the application forms for booking were also addressed to SICCL who incidentally collected money from the prospective buyers/allottees on behalf of the assessee. This according to ld. DR conclusively proves that the assessee society was not engaged in development and

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construction of housing project and, therefore, not eligible for deduction u/s 80IB(10) of the IT Act, 1961.

24.1 So far as the first objection of the Revenue is concerned that the built up area of shops and commercial establishments far exceeds the area prescribed under the statute is concerned, the issue stands settled in favour of the assessee by the decision of the Honøble Supreme Court in the case of Sarkar Builders, 375 ITR 392 and CIT vs. Vatika Township Private Ltd., reported in 367 ITR 466 wherein it has been held that restriction on extent of commercial space in housing project imposed by way of amendment to section 80IB(10) w.e.f. 01.04.2005 does not apply to housing projects approved before 01.04.2005 even though completed after 01.04.2005. Since, in the instant case the housing project was admittedly approved before 01.04.2005, therefore, the first allegation of the Revenue that the aggregate built up commercial area far exceeds the prescribed limit is not applicable to the assessee.

24.2 So far as the second objection of the Revenue is concerned, i.e., completion of the project on or before 31.03.2008 is concerned, it is the submission of the ld. Counsel that the project was completed before 31st March, 2008 in view of the following additional evidences:-

(i) Letter from M/s Sahara India Commercial Corporation ltd to the assessee dated 14/03/2008 [Pg 5 of additional evidence compilation]

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(ii) Letter from the assessee to M/s Sahara India Commercial Corporation ltd dated 18/03/2008 [Pg 6 of additional evidence compilation]

(iii)Architect certificate dated 15/09/2009 along with the official translation [Pg 7 and 8 of additional evidence compilation],

25. Since these documents were never produced before the lower authorities and were filed before the tribunal for the first time in the shape of additional evidences, therefore, we admit the additional evidences filed in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963 and deem it proper to restore the issue relating to completion of the project prior to 31st March, 2008 to the file of the AO for adjudication of this issue i.e., completion of the project prior to 31st March, 2008. The AO shall examine the documents and any other details that he may require and decide the issue as per fact and law after giving due opportunity of being heard to the assessee.

26. So far as the third allegation of the Revenue that the assessee is not a developer is concerned, we find the condition of developer was decided and allowed in the initial years of claim, i.e., in the A.Y. 2003-04 and 2004-05 which is evident from the order of the CIT(A) for A.Y. 2005-06. Therefore, we find merit in the argument of the ld. Counsel that the same is not open for examination in subsequent year in absence of change in the factual position. In our opinion, without disturbing the assessment for the initial assessment year it is not open to the Revenue to make disallowance of such deduction in subsequent year by taking

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a contrary stand. Further, merely appointing SICCL as a contractor for development and construction of the project, in our opinion, cannot lead to the conclusion that the said activities were not carried on by the assessee society. Since the assessee is bearing the entire risks and responsibilities relating to the project and SICCL was appointed only to execute the project, therefore, in the light of the ratio of various decisions relied on by ld. Counsel for the assessee, the assessee ought to be considered as a developer and cannot be denied the benefit of deduction u/s 80IB(10). So far as the allegation of the revenue that the booking application forms of the flats were addressed to the SICCL and not to the assessee and that the assessee has authorized SICCL to collect money from purchasers of flats directly on its behalf is concerned, we find merit in the argument of the ld. Counsel that merely because certain procedural formalities relating to collection of booking application forms and money from the buyers were delegated to SICCL, it would not render SICCL as the developer of the project since the money collected by SICCL was on behalf of the assessee only and on the authorization of the assessee and not in its independent capacity. Therefore, in our opinion, delegation of certain formalities regarding collection of booking application forms and money on behalf of the assessee would not cease the assessee company as being rendered as a developer of the project.

27. In view of the above discussion, the objection No. 1 and 3 by the AO while denying the benefit of deduction u/s 80IB(10) are rejected since the assessee, in

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our opinion has fulfilled the condition regarding built up area of shops and commercial establishments and the assessee in our opinion is a developer. However, the third objection relating to obtaining of completion certificate prior to 31st March, 2008 is restored to the file of the AO for fresh adjudication in view of the additional evidences filed by the assessee as per para 24.2 above. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

CO No.221/Del/2011 (A.Y. 2005-06)

29. The grounds raised by the assessee in the CO are merely in support of the order of the CIT(A). Since one of the issues raised in the grounds raised by the Revenue has been allowed for stastical purposes, therefore, the CO filed by the assessee is dismissed.

ITA No.2482/Del/2011 (A.Y. 2006-07)

30. The grounds raised by the Revenue reads as under:-

> "On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:-
>
> 1. The order of the Ld. CIT(A) is not correct in law and facts.
> 4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in allowing the claim of Rs. 5,19,52,369/- u/s 80IB(10) of the Income Tax Act, 1961.
>
> 5. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.ö

31. After hearing both the sides, we find the grounds raised by the Revenue for the impugned assessment year are identical to the grounds raised for A.Y. 2005-06.

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We have already decided the issue and the issue relating to obtaining of completion certificate on or before 31.03.2008 has been restored to the file of the AO for fresh adjudication in the light of the additional evidences filed. Following similar reasonings, this issue is also restored to the file of the AO for fresh adjudication in the light of our direction therein. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

CO No.222/Del/2011 (A.Y. 2006-07)

32. The grounds raised in the CO filed by the assessee read as under:-

> õ1. That the Id. CIT(A) is fully justified in allowing the claim of deduction under section 80IB(10) of the Income Tax Act on the facts and circumstances of the case as well as law.
>
> 2. That the order of the Id. CIT(A) deserves to be upheld on the facts and circumstances of the case as well as law.
>
> 3. That the respondent craves leave to add, alter, amend or withdraw any or all the grounds of cross-objections on or before the date of hearing.ö

33. After hearing both the sides, we find the grounds raised by the assessee in the CO are merely in support of the order of the CIT(A). Since one of the issues raised in the grounds raised by the Revenue has been restored to the file of the AO, the CO filed by the assessee is dismissed.

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34. In the result, both the appeals filed by the Revenue are allowed for statistical purposes and the COs filed by the assessee are dismissed.

The decision was pronounced in the open court on 19.07.2021.

Sd/-	Sd/-
(SUCHITRA KAMBLE) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 19th July, 2021

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi