IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV,
JUDICIAL MEMBER, AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No. 1567/PN/2011
(Assessment Year: 2007-08)

I.T.O. Ward 2, Ratnagiri Appellant

Vs.

Shri Vijaykumar Kanhaiyalal Oswal
Shanti Super Market
Ram Lane
Ratnagiri 415 612
PAN AABPO 0351 P .. Respondent

Appellant by: Shri Y.K. Bhaskar
Respondent by: Shri M.K. Kulkarni
Date of Hearing : 10-07-2013
Date of order : 15.07.2013

ORDER

PER SHAILENDRA KUMAR YADAV, JM:

This appeal by the Revenue is directed against the order of the CIT(A)- Kolhapur dated 10-10-2011 for A.Y. 2007-08 raising the following grounds:-

"1. In the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 42,43,183/- made by AO on account of disallowance of deduction u/s 80-IB(10) of the Act without appreciating fact that the AO has identified the defects in fulfillment of requirements to eligible the assessee for claiming deduction u/s 80-IB(10) of the Act.

2. In the facts and circumstances of the case the ld. CIT(A) erred in considering that the Municipal Council did not issue completion certificate in respect of the project fully but issued for partial completion, without appreciating fact that the AO had brought on record the fact by recording the statements of the Contractor and the assessee.

3. In facts and circumstances of the case the ld. CIT(A) has erred in considering that the condition of built up area 1500 sq. ft. for deduction u/s 80-IB(10) of the Act is not

> fulfilled by the assessee, without appreciating fact that the AO had brought on record the fact by visiting the site of the project and recording the statements of the Contractor and the assessee."

2. The assessee has undertaken to build a project viz Shanti Residency Project in Ratnagiri. The plan was approved by the Ratnagiri Municipal Corporation vide No. OD/RNP/SABA/868/6767 dated 15-3-2007. This was a revised plan submitted by the assessee which was approved by Ratnagiri Municipal Corporation. The total construction area as per the revised plan was 25893 sq.ft. as against 34253 sq.ft. approved in the original plan. Therefore, the approved area for consideration was found to be 25893 sq.ft. However, the total FSI in respect of the building remained at 34253 sq.ft. and the occupants could develop the FSI available to them as per the sale deed. The assessee completed the project in two installments. The assessee started construction activities and completed the work of 17 bungalows for which occupation certificate was granted on 24-5-2007. The second lot of 10 bungalows was completed subsequently and occupation certificate for the same was given on 15-2-2008. Since the project had started after 1-4-2004 and was completed before 31-3-2008, the assessee claimed a deduction u/s 80-IB to the tune of Rs. 42,43,183/-. This amount was added back and not allowed as deduction u/s 80-IB of the Act.

3. The Assessing Officer visited the premises of the assessee sometimes in financial year 2009 and a statement of Shri Nawathe, contractor was recorded. Thereafter, the Assessing Officer concluded that the project was not completed in respect of 27 bungalows. The Assessing Officer observed that the plan was certified by the Ratnagiri Municipal Corporation for 34170 sq.ft. whereas the actual built up area of the assessee was 25893 sq.ft. The Assessing Officer also observed that the occupancy/possession certificate dated 5-12-2008 was a "part completion" certificate. He

concluded that the Ratnagiri Municipal Corporation did not issue occupancy/possession certificate for the entire project and disallowed the claim of the assessee.

4. The matter was carried in appeal before the first appellate authority wherein the claim of the assessee was allowed. The same has been opposed before us on behalf of the Revenue.

5. The learned DR submitted that the CIT(A) was not justified in deleting the addition of Rs. 42,43,183/- made by the Assessing Officer on account of disallowance of deduction u/s 80-IB(10) of the Act without appreciating the fact that the Assessing Officer has identified the defects in fulfillment of requirements to eligible the assessee for claiming deduction u/s 80-IB(10) of the Act. The CIT(A) also erred in considering that the Municipal council did not issue completion certificate in respect of the project fully but issued for partial completion without appreciating the fact that the Assessing Officer had brought on record the fact by recording the statements of the contractor of the assessee. The CIT(A) also erred in considering that the condition of built up area upto 1500 sq.ft. for deduction u/s 80-IB(10) of the Act was not fulfilled by the assessee without appreciating the fact that the Assessing Officer had brought on record the fact by visiting the site of the project and recording the statements of the contractor of the assessee. Accordingly, the order of the CIT(A) be set aside and that of the AO be restored. On the other hand, the learned Authorised representative supported the order of the CIT(A) who has allowed

the claim of the assessee u/s 80-IB(10) of the Act amounting to Rs. 42,43,183/-.

6. After considering the rival submissions and perusing the material on record, we find that the assessee has undertaken to build a project viz. Shanti Residency Project in Ratnagiri. The possession of the bungalows was given before the month of March 2008. The occupancy /possession certificate was also issued on 15-2-2008 which clearly stated that the bungalows have been constructed according to the revised approved plan dated 1-3-2007. There was a large gap between 15-2-2008 and the date of visit to the premises by the Assessing Officer. There is nothing on record to suggest that the extra construction or merging of bungalow nos. 9 and 10 was done by the assessee before the occupancy/possession certificate was issued. There is also nothing on record which could lead to an inference that the occupancy certificate in respect of work completed as per the revised approved plan was incorrect. In fact, the assessee did not have any control over the occupants once occupation is given to them. In case, the occupants choose to modify their property in any way which does not confirm with the approved layout, in such a situation, it has to be seen that such modifications were carried out by the developer builder even before the occupancy/possession certificate was issued and property was given in possession with illegal construction. Further, the Assessing Officer has not examined the owners of these row houses/bungalows who would be the best persons having

knowledge about the actual fact of construction of the premises. Under the facts and circumstances, the CIT(A) was justified in holding that the built up area of bungalow nos. 9, 10 and 17 was not more than 1500 sq.ft. These bungalows were constructed according to the revised construction plan especially when the Municipal authorities have certified that the construction was carried out according to the revised approved plan only. Subsequent changes, if any, in the plan would not debar the assessee from claiming deduction u/s 80-IB(10) of the Act.

7. In the result, the appeal of the Revenue is dismissed.

Pronounced in the open Court on this 15th July 2013

Sd/-	sd/-
(R.K. PANDA)	(SHAILENDRA KUMAR YADAV)
Accountant Member	Judicial Member

Pune, Dated: 15th July 2013
Ankam
Copy to:-

1) Assessee
2) Department
3) The CIT(A) Kolhapur
4) The CIT- Kolhapur
5) The DR, "A" Bench, I.T.A.T., Pune.
6) Guard File

By Order

Senior Private Secretary,
I.T.A.T., Pune