IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri Mahavir Singh (JM) & Shri B.R. Baskaran (AM)

I.T.A. No. 161/Mum/2010
(Assessment Year 2006-07)

I.T.A. No. 162/Mum/2010
(Assessment Year 2007-08)

M/s. Maitri Associates M/s. Natvarlal Vepari & Co. Oricon House, 4th Floor 12, K. Debash Marg Mumbai-400 023.	Vs.	DCIT CC-1 9TH Floor CGO Annexe Bldg M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN No.AAGFM6578D

Assessee by	Shri Farrokh Irani
Department by	Shri S. Ravichandran
Date of Hearing	31.8.2016
Date of Pronouncement	2.9.2016

O R D E R

Per B.R. Baskaran (AM) :-

Both the appeals filed by the assessee are directed against the orders passed by learned CIT(A)-36, Mumbai and they relates to A.Ys. 2006-07 & 2007-08.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the order of the Assessing Officer in rejecting deduction claimed u/s. 80IB(10) of the Act in both the years.

3. Learned AR submitted that the assessee is engaged in the business of development of the properties. In both the years the assessee claimed deduction u/s. 80IB(10) of the Act on the profit earned from housing project named 'Dosti Elite'. The assessee had constructed 112 residential flats, out of which 55 flats had built-up area is less than 1000 square ft. and remaining 57 flats had built-up area in excess of 1000 square ft. The provisions of section

80IB(10) of the Act provide a condition for allowing deduction that the area of the flat should not exceed 1000 square ft. Hence the Assessing Officer disallowed the deduction by the assessee u/s 80IB(10) of the Act and the same was also confirmed by learned CIT(A) in both the years under consideration.

4. Learned AR submitted that the assessee should be allowed deduction u/s. 80IB(10) of the Act on proportionate basis on the flats, which are having built-up area of less than 1000 square ft. In support of this proposition he placed reliance on the decision rendered by Hon'ble Madras High Court in the case of Elegant Estates (2016) 383 ITR 49.

5. On the contrary, learned Departmental Representative submitted that learned CIT(A) has decided this issue by following decision rendered by Kolkata Bench of the Tribunal in the case of Bengal Ambuja Housing Development Ltd. (IT Appeal No. 1735/Kol/2005 dated 24.3.2006).

6. We have heard the rival contentions and perused the record. We find merit in the contentions of the assessee, since it is in accordance with the decision of Hon'ble Madras High Court rendered in the case of Elegant Estates (supra). For the sake of convenience we extract below relevant portion of the discussions made by Hon'ble Madras High Court in the above cited case:-

> *2.3 Challenging the order of the Commissioner of Income-tax (Appeals), the assessee had filed an appeal to the Income-tax Appellate Tribunal. The Tribunal had held that the assessee would not be entitled for deduction, under section 80-IB(10) of the Act, proportionately, only in respect of the two flats, which had been built exceeding 1500 square feet. The Tribunal had held that the assessee would be entitled for deduction, under section 80-IB(10) of the Act, in respect of the other flats, which were less than 1500 square feet in extent.*
> *2.4 Aggrieved by the said order of the Income-tax Appellate Tribunal, the appellant has filed the present appeal before this court under section 260A of the Act, raising the following substantial question of law :-*
>
> > *"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee will be entitled for deduction under section 80-IB(10) with respect to income from flats measuring less than 1500 sq. ft. limit and assessee*

will not be entitled for deduction under section 80-IB(10) proportionately only with respect to the income from the 2 flats exceeding the limit of 1500 sq. ft. when the assessee had considered all the flats as forming part of a single project on interpretation of the provisions of section 80-IB(10)(c)."

The learned counsel appearing on behalf of the appellant had submitted that the order passed by the Income-tax Appellate Tribunal is erroneous in law and contrary to the facts and circumstances of the case. The Tribunal had erred in holding that the assessee would not be entitled for deduction, under section 80-IB(10) of the Act, proportionately, in respect of the two flats, which had been built with an extent of more than 1.500 square feet.

4. *The learned counsel had further submitted that the Tribunal had erred in holding that the assessee would be entitled for deduction, under section 80-IB(10) of the Act, in respect of the other flats in the project in question, which were built less than 1500 square feet.*

5. *It had been further submitted that the Tribunal ought to have held that, as per section 80-IB(10) of the Act, the assessee is entitled for the deduction, in respect of the project "Elegant Estate Palmere Gardens" only, if all the residential units in the said project not exceed 1500 square feet in area and even if one unit exceeds the said limit, the assessee would not be entitled for deduction of the entire income from the housing project.*

6. *Per contra, the learned counsel appearing on behalf of the respondent had submitted that the findings of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated February 27, 2015, is right in law, as it is in consonance with the findings of this court, in CIT v. Arun Excello Foundations P. Ltd. [2013] 1 ITR-OL 82 (Mad) ; [2013] 212 Taxman 342 (Mad), wherein, it has been held that the language used in the relevant provision of law does not bar a deduction claim altogether if some of the units sold exceed the specified dimensions.*

In view of the submissions made by the learned counsels appearing on behalf of the appellant, as well as the respondent and in view of the decisions rendered by this court, in CIT v. Arun Excello Foundations P. Ltd. [2013] 1 ITR-OL 82 (Mad) ; [2013] 212 Taxman 342 (Mad), we find that the order passed by the Tribunal, dated February 27, 2015, is correct in the eye of law. Hence, the contentions raised on behalf of the appellant cannot be countenanced. Thus, the question of law raised in the appeal is answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the tax case appeal stands dismissed."

7. Accordingly, by respectfully following the decision of Hon'ble Madras High Court (supra), we set aside the order passed by learned CIT(A) and direct the Assessing Officer to compute deduction u/s. 80IB(10) of the Act in both the years under consideration proportionately in accordance with the decision rendered by Hon'ble Madras High Court (referred supra).

8. In the result, both the appeals filed by the assessee are treated as allowed.

Order has been pronounced in the Court on 2.9.2016

Sd/-	Sd/-
(MAHAVIR SINGH)	(B.R.BASKARAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 2/9/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS