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

BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM

ITA No.4190/Mum/2016
(**Assessment Yea3r :2012-13**)

M/S. Aarti Projects and Constructions, Ackruti Trade Centre, Road No.7, Marol MIDC, Andheri(E), Mumbai-400021	Vs.	DCIT – 5(1), Mumbai
PAN/GIR No.		**AAEFA5526F**
Appellant)	..	**Respondent**)

Assessee by	Shri Vijay Mehta with Shri Dharmesh Shah
Revenue by	Shri R.P.Meena
Date of Hearing	**17/11/2016**
Date of Pronouncement	**05/01/2017**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

This is an appeal filed by the assessee against the order of CIT(A) for the assessment year 2012-13, in the matter of order passed u/s.143(3) of the IT Act.

2. The only grievance of assessee relates to decline of claim of deduction u/s.80IB(10) of the Income Tax Act.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is engaged in the business of real estate development, construction of building and slum rehabilitation. During the year under consideration, the assessee undertook construction of tenements under Slum Rehabilitation

Scheme of the Government of Maharashtra ('the said Scheme' in short) so as to enable the State to provide shelters to slum dwellers, for which consideration was paid in the form of FSI. The FSI thus awarded as consideration for the construction activities undertaken under the said Scheme could either be utilized for construction of sale buildings on situ (on the same plot), or sold in open market as such, or in the form of Transferable Development Rights (‘TDR' in short). During the year under consideration, the assessee had claimed deduction u/s, 80-IB(10) of the act which was arrived at after reducing the cost involved in the construction of rehabilitation buildings from the consideration received for the FSI granted by the State and which was sold to third parties as permitted under the said scheme. However, AO declined assessee’s claim of deduction on the plea that the profit claimed as deduction u/s 80-IB(10) of the Act was not derived from the housing project but from sale of unutilized FSI. For arriving at his conclusion the AO has relied upon the judgment of Hon’ble Supreme Court in the case of Liberty India vs. CIT (317 ITR 218) and Hon’ble Gujarat High Court in the case of CIT vs. Moon Star Developers (367 ITR 621).

5. The AO further observed that since the FSI sold formed part of the project under development, the project could not be said to be completed and, therefore, deduction u/s. 80-IB(10) of the Act was not allowable.

6. As per AO since the FSI sold to each of the persons mentioned in paragraph 2.1.5 of the assessment order was in excess of 1000 sq. ft

there was violation of S. 80-IB(10)(iii)(c) of the Act. It was also observation of AO that the persons to whom FSI was sold were closely related with the assessee and, therefore, it was sold with intention to defraud the revenue, wherein the FSI was sold at very high rates so as to avail excessive deduction u/s.80-IB(10) of the Act.

7. By the impugned order CIT(A) confirmed the action of the AO observing that the rehabilitation building and sale of buildings are part of the same project, therefore, profit claimed as deduction u/s.80IB(10) of the Act was attributable to and not derived from sale of unutilized FSI and sale component of the housing project. Against this order of CIT(A) assessee is in further appeal before us.

8. It was vehemently argued by learned AR that the profit so earned by assessee on the rehabilitation project represented the consideration received for sale of unutilized FSI, therefore, eligible for claim of deduction u/s.80IB(10).

9. In support of claim of deduction, learned AR relied on the following judicial pronouncements.

- ITO v. M/s. Suraksha Realtors for AY. 2007-08 in ITA No. 4223/Mum/2010 dated 21.10.2011
- ITO v. M/s. Suraksha Realtors (Anik) for AY. 2008-09 in ITA No. 6760/Mum/2011 dated 12.09.2012
- ITO v. Sonasha Enterprises for AYs. 2007-08 and 2008-09 in ITA Nos. 4911 & 4912/Mum/2010 dated 31.10.2011

- DCIT v. Sonasha Enterprises for A.Y. 2009-10 in ITA No. 5292/Mum/2011 dated 08.06.2012
- Judgment of the Hon'ble Bombay High Court in CIT v. Sonasha Enterprises

10. On the other hand, learned DR submitted that profit claimed as deduction u/s. 80-IB(10) of the Act was not derived from the housing project; there was violation of S. 80-IB(10)(iii)(c) of the Act; the project of rehabilitation of building and sale of building were one and not separate; and that as per the interpretation of the phrase 'derived from' made in Liberty India v. CIT [317 ITR 218 (SC), the profit under consideration could not be considered as derived from housing project eligible for such benefit. It was further contended that what was sold in the cases considered by the Hon'ble Tribunal as relied upon by learned A.R. was TDR and not FSI and, therefore, they were distinguishable.

11. We have considered rival contentions and carefully gone through the orders of the authorities below and material placed before us. We had also deliberated on the judicial pronouncements referred by lower authorizes in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. From the record we found that the assessee was awarded a slum rehabilitation project on C.S. No. 47 (Pt.) of Lower Parel Division of Keshavrao Khade Marg, identified as Rajiv Nagar CHS by the Slum Rehabilitation Authority ('SRA' in short) in 2004 for which Letter of Intent (‘LOI’in short) was issued by the Executive

Engineer vide No. SRA/Ch. E/10/GS/ML/LOI dated 16.09.2004 under D.C. Regulation No. 33(10) ['DCR 33(10)' in short] and Appendix-IV of amended D.C. Regulations granting 2.58 FSI out of which maximum FSI of 1.66 could be consumed on the plot subject to the terms and conditions stipulated therein. The LOI originally issued was subsequently amended, and a revised one sanctioning FSI of 2.636, out of which FSI of 2.41 could be consumed on the plot, was issued on 06.12.2010. Copies of the original LOI dated 16.09.2004 and the revised one dated 06.12.2010 were placed on pages 18-25 and 26-36 of PS No. 1. As per the revised LOI, the built-up area of the rehabilitation buildings was 2,911.41 sq. mtrs. The FSI received as consideration for the habitats constructed under the said Scheme could either be utilized for construction of saleable area in situ (on same plot of land) by developer, or sold to third parties for monetary value. In case both of the options mentioned above were not availed of, the other avenue for the assessee was to sell it off as Transferable Development Rights (‘TDR' in short) to third parties as permitted under clause (v) of DCR 33(1) which reads as under:

> *V) The entire sale Built-up Area need not be constructed in-situ and full sale component or part thereof can be taken as TDR if there are physical or economic constraints.*

12. Upon completion of construction of the rehabilitation buildings as per the terms and conditions specified in the revised LOI to the satisfaction of SRA in 2010, the assessee became entitled to construct

the saleable area of 2,209.84 sq. mtr on the basis of the FSI granted as consideration in situ or, in the alternative to sell it off as such, or in the form of TDR by virtue of clause (v) of DCR 33(1) extracted above. The assessee, therefore, made the requisite application to SRA on 08.12.2010 and it was granted by issuance of Commencement Certificate dated 04.10.2011. The assessee, thereafter, had disposed off the FSI received as consideration for construction of the rehabilitation tenements as permitted vide clause (v) of DCR 33(10) to third parties rather than undertaking construction of saleable area. In the premises, the profits realised by the assessee from the sale of the FSI did qualify for deduction u/s. 80-IB(10) of the Act. The provisions of S. 80-IB(10) of the Act did not mandate that for the purpose of availing the benefit the assessee should construct the tenements on the strength of the FSI received as consideration, however the assessee has a liberty to sell them off for monetary value and then find out the profit so as to make it 'derived from' the housing project. If that were the intention of the Legislature, the provision would have been drafted accordingly as in the case of S. 80-HHC of the Act, according to which the sale proceeds of the goods exported out of India are to be brought into homeland in convertible foreign exchange. Accordingly, the objection against the claim that the profit under consideration was not derived from the housing project was misplaced.

13. Exactly similar issue has been considered by Co-ordinate Bench in case of Suraksha Realtors in I.T.A.No.4223/Mum/2010 vide order dated 21/10/2011 and observed as under:-

> *The Assessee partnership firm, M/S. Suraksha Realtors, is engaged in development of buildings and residential houses. The firm had undertaken one such construction activity of construction of 343 residential tenements on a plot of land situated at plot - A, Survey No.57, CTS NO.251 A, Village Anik, Chembur, Mumbai, incidentally such housing project was a slum related project. The housing project was developed on a plot of land admeasuring 4550.67 sq. meters (1.13 acre) i.e. on a plot of land admeasuring over 1 acre. All the tenements constructed were of an area at 225 sq. ft. carpet area (about 270 sq. ft. of built up area) which were less than 1000 sq.ft. per tenement. Such tenements were constructed in four buildings and all the tenements were handed over to the Slum Re-development Authority (SRA). The scheme of sale of flats was under SRA and was governed by Development Control Regulation (DCR) of MCGM under Rule 33(10).The Assessee had earned a profit of Rs 24,98,25,645/- during the year. The same was claimed as deduction u/s 80IB (10). The other condition as to date of commencement, approvals from local authorities, and pronouncement of occupation certificates were fully met as per the provisions of section 80IB(10), The claim of the Assessee u/s 80IB(10) was made as the Assessee had met with all the conditions prescribed under the section. Under the scheme the new homes are given to slum dwellers free of cost and all the tenements constructed for slum dwellers are handed over to the SRA formed under The Maharashtra Slum Areas (Improvement).Clearance and Redevelopment) Act, 1971. The construction activity were governed under DC regulation 33(10). The scheme required to construct and hand over the new homes. Since the SRA did not have sufficient funds and as per the scheme devised the payment was agreed to be made in the form of TDR part of which shall be required to be consumed for construction of tenements for slums and part of which shall be unutilized and shall be available for sale in the 'open market.' Thus sale consideration in the entire housing project was in the form of TDR.*
>
> *The next objection of the AO is the profit on sale of TDR was “attributable to” “to the Assessee" and was not "derived from" developing and building housing project. Since the profit earned*

on sale of TDR was only incidental, it cannot be considered as income from the project and shall not be eligible for deduction u/s 80IB(10). The Assessee had received various amounts on sale of TDR and such sale of TDR was credited to the profit and loss account. The issue is whether the sale of TDR was "attributable to", but not "derived from" developing and building housing project.

TDR stands for Transferable Development Rights. Development Control Regulation (DCR) 34 states that under certain circumstances the development potential of the plot land may be separated from the 'land itself and' can be made available to the owner of the land in the form of Transferable Development Rights.

From the aforesaid clause, one can make out that such consideration received from SRA was consideration for sale of 343 tenements received in the form of FRC/TDR. The TDR was received as sale consideration and and hence the value of the TDR or the amount realised from the sale of the TDR is nothing but sale consideration received / receivable for development of the tenements. It is income directly derived from the sale of tenements. Such TDR were not attributable, to such sale.

The issue is whether income earned on sale of TDR was a direct income on sale of the 355 tenements and whether such income was derived from the housing project or not. The AO has on relying on three Supreme Court judgments concluded that the income earned by the Assessee was incidental and ancillary and such income shall not be eligible for the claim of deduction u/s 80IB(10). In all those cases the exporter had received export incentives from the Government. The exporter has sold their goods and realised consideration for the sale of goods. This has been accepted as income derived from exports. However the Government had formulated schemes for giving incentives to exporters. These incentives does not accrue or arise from sale and export of the goods. It arises from the assessee being the exporter In the circumstances the Apex Court held that the incentives are not directly connected with the consideration receivable from the sale of goods and hence cannot be considered as derived from exports. The Apex Court in the case of CIT v Baby Marine Exports (290 ITR 323), has held that premium received by the supporting manufacturers from export Houses- over and above the FOB value of goods constitute an integral part of the sale price realised from the Export House and the supporting manufacturer is entitled to relief u/s 80HHC on such premium also. From these judgements it is clear that whatever has been received by assessee as consideration for the development of tenements should be considered as income derived from the project. The consideration can be money or

> *money's worth. Instead of giving sale consideration in cash, the SRA has got TDR allotted to the Assessee. Therefore the value of the TDRs allotted to the Assessee (determined on the basis of the price realised from the subsequent sale of the TDRs) would constitute the sale consideration realised. SRA confirms such mode of payment in clause 16 and 17 of the agreement. Thus TDR was received as money or money's worth as consideration from SRA. Supreme Court in the case of CIT vs George Henderson & Co. Ltd (1967) 66 ITR 622(SC) that in case of an exchange the money's worth of the property received in exchange constitutes the consideration for the property parted in exchange. Therefore, the value of the TDRs received in exchange for the development of the tenements should be taken into account for the purpose determining the relief u/s.80IB (10).*

14. ITA Mumbai Bench followed the same decision in the assessment year 2008-09 vide order dated 12/09/2012.

15. Exactly under similar facts and circumstances, the Tribunal directed the AO to allow claim of deduction u/s. 80IB(10) in the case of Sonasha Enterprises ITA No.4911 & 4912/Mum/2010 vide order dated 31/10/2011. The precise observation of Tribunal was as under:-

> *"5.2 As regard the last contention of the revenue is that the assessee is not a builder and the income received by sale of TDR and not by sale of housing project is concerned, we find that there is no dispute about the fact that the assessee received the TDR as a consideration against the development of the project in question. We further note that the TDR was received only for residential portion of the housing project and not for the commercial establishment. Thus, when the TDR received by the assessee was immediately sold and the sale consideration was shown as receipt from the housing project, then, there is no other element in the said receipt against the sale of TDR other than the income from housing project.*"

16. Above order of the Tribunal was followed by ITAT 'E' Bench in assessee's own case for the assessment year 2009-10 in ITAT No.5292/M/2011 vide order dated 08/06/2012.

17. ITAT 'G' Bench in case of Akruti City Limited vide order dated 21/10/2011 has considered the same issue with regard to allowability of

Section 80IB(10) deduction in respect of sale proceed of FSI and held that profit arising from sale of FSI was allowable for exemption u/s.80IB(10).

18. Now coming to the decision relied on by CIT(A) in the case of Moon Star Developers (367 ITR 621), wherein Hon'ble High Court found that assessee was earning because of purchase and sale of land and not because of the construction carried out in the weaker section of the society which is a legislative intention behind Section 80IB(10). Moreover in that case, the income from sale of unit was independent of the income from sale of unutilized FSI. In this case the assessee purchased the land which was having huge FSI. The assessee consumed only a very small part of available FSI and constructed certain residential tenements thereon. The project was sold and consideration was realized in cheque. It was found in that case that the consideration realized by the assessee was primarily towards unutilized FSI and not for the construction carried out. In effect, the assessee purchased the land (having some FSI) and sold the land after carrying out marginal construction and realized the consideration which was mainly for unutilized FSI. As a matter of fact, it was found that the assessee was earning because of purchase and sale of land/FSI and not because of the construction carried out for the weaker section of the society, which is the legislative intention behind S. 80-IB(10) of the Act. In view of these facts, the Hon'ble Gujarat High Court held that assessee was not eligible for deduction u/s.80IB(10) in respect of profit

so earned on sale of unutilized FSI. However, in the instant case before us, the assessee had fully utilized the FSI as per the rehabilitation scheme. The consideration for construction of the rehabilitation building was received in the form of FSI which could either be used for sale, or for construction of the sale building. Unlike the facts of the case before the Hon'ble Gujarat High Court, the assessee had not acquired any land with FSI. The assessee's case was that the receipt of the consideration for developing housing project in the form of FSI which was encashed and converted by the assessee in monetary terms by sale of the said FSI. We had verified the P & L account of the assessee which reflects that the only source of Revenue out of the construction carried out was sale consideration of FSI. Accordingly, profit earned by assessee was entirely due to construction activity and not due to purchase and sale of land / FSI.

19. The facts of the case of Moon Star Developers was entirely different where only 10% of the project was completed. However, in the assessee’s case, entire project was constructed and completed to the satisfaction of Slum Rehabilitation Authorities (SRA), a Government body. In the case of Moon Star Developers, the consideration was primarily received for sale of unutilized FSI where as consideration in the instant case was received for handing over the constructed tenements to the Slum Rehabilitation Authorities free of cost. In the case of Moon Star Developers, consideration was received in the form of cash / cheque where as in the case of assessee, the consideration

was by way of FSI after handing over constructed tenements to the Slum Rehabilitation Authorities.

20. Since the judgment of the Hon'ble Gujarat High Court in CIT v. Moon Star Developers (367 ITR 621) in which the ratio laid down in Liberty India v CIT (317 ITR 218 SC) was relied upon for the revenue was distinguished and shown to be inapplicable to the facts of the case, the attempt of AO to take support from that apex Court judgment was devoid of merit. Thus, the orders of the Hon'ble Tribunal are squarely applicable to the facts of the case of the assessee and the fact that there the profits arose out of sale of TDR was not a distinguishable feature. Conceptually, there is no difference between the Transferable Development Rights (TDR) and Floor Space Index (FSI). Both represent permissible construction area. The only difference between the two is while TDR can be transferred from one project/piece of land to another, FSI has to be used in situ, i.e. on the same piece of land. In the cases relied upon by the assessee as well as in the present case, the TDR/FSI was received as a consideration for construction carried out by the assessee in respect of rehabilitation building. Therefore, the decisions relied upon by the assessee are squarely applicable to the facts of the present case.

21. Now coming to the objection raised by the lower authorities to the effect that the FSI sold was part of the project under development, therefore the project itself was incomplete, therefore, on such

incompleted project the assessee was not eligible for deduction u/s.80IB(10).

22. From the record, we found that the Commencement Certificate dated 04/10/2011 and permission for construction of the saleable area under the said Scheme would not have been issued in case the project meant for rehabilitation of the downtrodden was incomplete. Thus, the FSI for construction of the saleable area was the 'consideration' for undertaking construction of the rehabilitation buildings and by no stretch of imagination the revenue could have assumed that the State would have given the consideration before completion of construction of the awarded project. In any case, as per the proviso below clause (b) in S. 80-IB(10) of the Act neither clause (a) concerning completion of the project, nor clause (b) relating to the size of the land applies to a project constructed for rehabilitation of slum dwellers. Accordingly, the objection raised by Revenue authorities are devoid of any merit. However, the CIT(A) in his order inferred that the project undertaken by the assessee was not covered under DCR 33(10) as notified by the CBDT in Notification No. 67/20-10 dated 03.08.2010, as according to him, it was effective from the date of its publication, i.e. 03.08.2010 and, therefore, the assessee could not take benefit thereof since the project undertaken by it was approved much anterior, i.e. on 16.09.2004. The CIT (A) had also inferred that the other notification dated 05.01.2011 would also be of no help to the assessee since it pertained to scheme for slum redevelopment prepared by the Maharashtra Government u/s.

37(2) of the Maharashtra Regional Town Planning Act, 1966 and published vide Notification No. TPS-1891/973/CR-49/93A/UD-13 dated 26.02.2004 and the slum rehabilitation project undertaken by the assessee was not covered under the said scheme.

23. With regard to the above, we found that the said Notification was followed by a corrigendum dated 05.01.2011, a copy of which was placed on page 43 of PB No. I, by which the effective date of the first notification was made as '01.04.2004' in place of 03.08.2010. Thus, the aforesaid objection raised by the CIT (A) in ignorance of the corrigendum Notification No. 67/2010 dated 05.01.2011 is not tenable. Thus, the CIT(A) by placing reliance on an incorrect notification erroneously concluded so, once the aforesaid corrigendum notification is applicable, as per proviso to S. 80-IB(10)(b) of the Act, clause (a) directing completion of the project within four years from the date of approval, and clause (b) stipulating the area of the land on which the tenements are constructed would not be applicable. Since the project was approved on 16.09.2004, i.e. prior to 01.04.2005 the case of the assessee was covered by the judgment of the Hon'ble Supreme Court in the case of CIT v. Sarkar Builders (375 ITR 392).

24. Now coming to the objection of the AO to the effect that FSI sold to each of the person was in excess of 1000 sq.ft which was in violation of Section 80IB(10)(iii)(c) of the Act, we found that this objection of the AO was misconceived. The stipulation of limitation of the area of the constructed tenements prescribed in clause (c) of Section 80IB (10)((iii)

of the Act is concerned with the residential units constructed and not for sale of FSI received as consideration towards the cost of construction undertaken. We found that the tenements so constructed under the said scheme was much below the ceiling fixed under the statute i.e., 250 sq.ft. In inferring that there was breach of the condition prescribed u/s. 80-IB(10)(c)(iii) of the Act the Assessing Officer mistook the area of FSI sold to the area of the tenements constructed. Thus, the objection raised by AO with regard to the area is also devoid of any merit.

25. The AO has also objected to the price at which FSI were sold to the party on the plea that they were related to the assessee. In this regard, the AO observed that the purchasers of the FSI were closely related to the assessee and, therefore, it was an attempt to defraud the revenue also. We had carefully gone through the sale made to each and every party and we found that Smt. Kantarani Gulati was an independent buyer and she was erroneously mentioned as a related party. Similarly, Shri Hafeez Contractor was, and still is, a renowned Architect and the fact as to how he and Smt. Pearl Contractor were considered as related parties is a mystery. In so far as Smt. Kunjal Shah and Smt. Falguni Shah were concerned, they were not partners of the assessee but were having 7.03% and 8.74% shareholding in M/s. Hubtown Limited which was 27.25% stakeholder in the assessee. Therefore, the stake of Smt. Kunjal Shah and Smt. Falguni Shah were only to the extent of 1.91% and 2.38% respectively. As regards Shri Rushank Shah, he was having only 5% stake and, hence, none of the parties was closely associated

with the assessee, as assumed by AO. However, we do not find any material having been brought on record by the AO to prove close connection between the buyers and the assessee, and any 'arrangement' between the parties so as to produce more profit to the assessee. For this purpose reliance can be placed upon the order of the Hon'ble Tribunal in the case of ACIT v. Ishwar Manufacturing Co. (P) Ltd [157 ITD 883, 890 (Chandigarh).

26. With regard to the observation of the AO to the effect that FSI sold was at inflated rates, we found that all the sales were at 'arm's length'. The rates at which FSI were sold to Smt. Kantarani Gulati and Shri Hafeez Contractor, who were independent and unrelated parties, were Rs.82,364/- (incorrectly mentioned by the Assessing Officer as Rs. 67,545/-) and Rs.72,874/- respectively, as against Rs.85,437/- to Shri Rushank Shah having 5% shareholding. In so far as Smt. Kunjal Shah and Smt. Falguni Shah having 1.91% and 2.38% stakes respectively through M/s. Hubtown Limited, it was sold at Rs.83,552/- and Rs. 83,543/- respectively. In view of these comparison the inference drawn by the Assessing Officer that the FSI sold was at inflated rates was contrary to his own record.

27. We further observe that stamp duty rate applied by the AO was not conclusive but at the most indicative. Even S.50C of the Act permits valuation by DVO which itself was an indicator that stamp duty rate was not conclusive and in support of this contention reliance can be placed upon the order of the Hon'ble Tribunal in the case of group concern

M/s. Ackruti City Ltd v. DCIT in ITA Nos. 4875 and 4813/Mum/2009 dated 21.10.2011, which has attained finality. Thus, the charge of inflated sale was contrary to the facts on record.

28. From the record, we also found that in the instant case buyers had the benefit of use of the land for which no cost was to be incurred and on which they could have constructed 1,26,427 sq.ft as against FSI of 20,201 sq.ft. Thus, taking into account the sale consideration of Rs.164.25 crores, the correct rate per sq.ft. works out to be Rs.12,992/- only, detailed working of which was also placed on record and duly verified by us.

29. From the record we also found that group concern of assessee M/s. Ackruti City Ltd. (formerly Akruti Nirman Ltd.) has undertaken various slum rehabilitation projects in various suburbs in Mumbai. Slum Rehabilitation Authority gives FSI in lieu of construction of slum rehabilitation building as consideration in kind. The consideration of said FSI is offered to tax and the profit derived therefrom was claimed as deduction u/s. 80IB (10) of the Act. Ackruti has claimed such deduction in various years. The AO has accepted eligibility of revenue from sale of FSI /TDR. AO, however, denied deduction u/s.80IB(10) of the Act for want of compliance of other pre-conditions of Section 80IB(10).These matters went up to Hon'ble Tribunal and in all these years, Hon'ble ITAT has upheld the claim of said deduction u/s. 80IB(10) of the Act. Subsequently the Dept. filed appeal before Hon'ble Bombay High Court against the orders of Tribunal raising the question

that profits derived by assessee from housing project are eligible for deduction u/s.80IB(10) of I.T. Act. Hon'ble Bombay High Court has dismissed this appeal of the Dept. vide its order dated 09/01/2013 relying on its earlier decision dated 20/03/2012 in case of Vandana Properties. Thereafter, the Dept. preferred SLP before Hon'ble Supreme Court. These matters were tagged along with other matters. The Hon'ble Supreme Court has dismissed the SLP vide its order dated 30/04/2015. Thus the decision of Hon’ble Bombay High Court has attained finality.

30. In view of the above discussion, we do not find any merit for decline of claim of deduction u/s.80IB(10). Accordingly, AO is directed to allow the same.

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

Order pronounced in the open court on this 05/01/2017

Sd/- **(RAVISH SOOD)** **JUDICIAL MEMBER**	**Sd/-** **(R.C.SHARMA)** **ACCOUNTANT MEMBER**

Mumbai; Dated 05/01/2017
Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT,
Mumbai