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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 327/2016**

PR.COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Through: Mr Rahul Chaudhary, Senior Standing counsel with Mr Raghvendra Singh, Junior Standing counsel.

versus

OMAXE BUILDHOME P. LTD. ..... Respondent

WITH

2.

\+ **ITA 328/2016**

PR. COMMISSIONER OF INCOME TAX
CENTRAL-3 ..... Appellant

Through: Mr Rahul Chaudhary, Senior Standing counsel with Mr Raghvendra Singh, Junior Standing counsel.

versus

OMAXE BUILDHOME P. LTD. ..... Respondent

AND

3.

\+ **ITA 329/2016**

PR. COMMISSIONER OF INCOME TAX
CENTRAL-3 ..... Appellant

Through: Mr Rahul Chaudhary, Senior Standing counsel with Mr Raghvendra Singh, Junior Standing counsel.

versus

OMAXE BUILDHOME P. LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **20.05.2016**

CM No.18872/2016 in ITA 327/2016
CM No.18873/2016 in ITA 328/2016
CM No.18874/2016 in ITA 329/2016

1. Allowed, subject to all just exceptions.

ITA Nos.327/2016, 328/2016 & 329/2016

2. The Revenue has filed these appeals under Section 260A of the Income Tax Act,1961 (hereafter the 'Act') impugning a common order dated 12th November, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.5373, 4031 & 4032 pertaining to Assessment Years ('AY') 2007-08, 2008-09 and 2009-10 respectively.

3. The said appeals (ITA Nos. 5373, 4031 & 4032) were filed by the Revenue against the orders dated 28th June, 2013 , 13th March, 2013 and18th March, 2013 passed by the Commissioner of Income Tax (Appeals) [CIT(A)] allowing the Assessee's respective appeals for AYs 2007-08, 2008-09 and 2009-10 against the disallowance of deduction under Section 80IB(10) of the Act in respect of two of its projects, namely, "Omaxe Grandwoods (GH-03) Noida" and "Omaxe Palm Greens-I, Greater Noida".

4. In these appeals, the Revenue has projected the following common questions of law:

> "2.1 Whether the Tribunal erred on the facts and in law in allowing deduction under Section 80IB(10) of the Income Tax Act, 1961?
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> 2.2 Whether the Tribunal erred on the facts and in law in holding that deduction under Section 80IB(10) of the Income Tax Act, 1961 can be allowed in respect of profits of a residential unit even if the housing project does not satisfy the conditions specified in Section 80IB(10)(b)/(c)/(d) of the Income Tax Act, 1961?
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> 2.3 Whether the Tribunal erred on the facts and in law in allowing deduction under section 80IB(10) of the Income Tax Act, 1961 on proportionate basis?"

5. OMAXE BUILDHOME P. Ltd. (hereafter the 'Assessee') is a public limited company and, is, *inter alia,* engaged in the business of real estate development and construction of residential/housing projects.

6. The Assessee filed its return of income for AYs 2007-08, 2008-09, 2009-10 claiming the deduction under Section 80IB of the Act, *inter alia,* claiming deduction under Section 80IB of the Act in relation to two of its projects, namely, "Omaxe Grandwoods (GH-03) Noida" and "Omaxe Palm Greens-I, Greater Noida".

7. The Assessing Officer (AO) disallowed the said deduction on the ground that the whole project was required to be compliant with Section 80IB(10) and an eligible part of the project could not be severed from the ineligible part for admitting the benefits under Section 80IB of the Act; according to the AO, the Assessee was claiming deduction with respect to certain buildings which were a part of housing projects and did not qualify to be termed as separate housing projects.

8. The AO held that the project 'Omaxe Grandwoods Noida' was a singular housing project spanning over 29.41 acres consisting of units developed to plots of land shown as GH-01, GH-02 and GH-03. Admittedly, the towers constructed on plots marked as GH-02 and GH-03 did not confirm to the conditions as stipulated under Section 80IB(10) of the Act. Since, according to the AO, the development on land marked as GH-01, GH-02 and GH-03 formed a part of a singular housing project, he concluded that deduction under Section 80IB was not available to the Assessee in respect of the construction/development of plot GH-03. The AO took a similar view in the case of Omaxe Palm Greens-I, Greater Noida. He held that construction/development on a parcel of land spanning over 50 acres constituted a single housing project and "Omaxe Palm Greens –I" which comprised of 24 towers constituted only a part of a larger development. The AO did not accept the Assessee's contention that 11 towers built over 8.4 acres in the case of Omaxe Grandwoods (GH-03) and 24 towers built over 25.83 acres constituted separate housing projects for the purposes of Section 80IB(10) of the Act.

9. Aggrieved by the decision of the AO, the Assessee preferred appeals before the CIT(A) for the respective AYs. The CIT(A) examined the facts and noted that Omaxe Grandwoods (GH-03) Noida consisted of towers T-1 to T-12 built on the plot marked as GH-03 which consisted of two bed room residential units having a built up area of less than 1000 sq. ft. each. He further examined the allotment letter dated 3rd October, 2010 issued by NOIDA for allotment of group housing plots GH-01, GH-02 and GH-03 and concluded that the approval granted by NOIDA recognised separate group housing scheme. The master plan also indicated separate identifiable plots for group housing on GH-01, GH-02 and GH-03. The plot of land, GH-03, was separated by road. The CIT(A) observed that each group housing scheme envisaged its separate common facilities and amenities. The land allotted for housing scheme GH-01, GH-02 and GH-03 measured 119020.12 sq. mtrs. (29.41 acres) out of which the plot relatable to GH-03 measured 8.4 acres. On the aforesaid basis, the CIT(A) accepted the Assessee's contention that the GH-03 qualified as a separate housing project and complied with all the conditions as specified under Section 80IB(10) of the Act. The CIT(A) held that the common approval for the three schemes as demarcated on the plan with independent facilities would not in any manner dilute the position that the three housing schemes on separate plots earmarked as GH-01, GH-02 and GH-03 were separate and independent housing projects.

10. Insofar as Project Omaxe Palm Greens-I, Greater Noida is concerned, the CIT(A) noted that the said projects spanned over an area of approximately 50 acres. The housing project in respect of which deduction was claimed by the Assessee consisted of 24 towers comprising of

residential units having a constructed area of less than 1500 sq. ft. built on an area measuring 25.83 acres of land. The CIT(A) held that this housing project was separable from the project that consisted of 11 towers built over 24.174 acres, which admittedly was not eligible for benefit under Section 80IB of the Act. The CIT(A) held that since both the housing schemes were separated by roads and had separate common facilities, they constituted separate housing projects.

11. The Revenue preferred an appeal against the decisions of the CIT(A) before the ITAT. After examining the relevant facts, the ITAT concurred with the findings of the CIT(A) and disposed of the appeals by an order dated 12th November, 2015, which is impugned herein.

12. Mr Raghvendra Singh, learned Junior Standing counsel appearing for the Revenue contended that the deduction under Section 80IB is available only if the project as a whole qualifies the conditions as specified under Section 80IB(10) of the Act. He contended that the CIT(A) and the Tribunal had erred in separating the eligible portion of the project from the ineligible portion for allowing the deduction under Section 80IB of the Act. He referred to the decision of the Bombay High Court in ***Commissioner of Income Tax v. Brahma Associates***: **[2011] 333 ITR 289** in support of this contention.

13. The question whether a housing scheme constitutes a separate housing project is essentially a question of fact. In the present case, the CIT(A) had found that the real estate developments in respect of which deductions under Section 80IB were claimed by the Assessee constituted separate housing

projects as: (i) they were built on plots of land which were clearly demarcated and separated from other projects; (ii) the housing schemes were clearly demarcated on the sanctioned plans and were reflected separately; (iii) the housing schemes in question, namely, Omaxe Grandwoods (GH-03) and Omaxe Palm Greens-I were complete and independent real estate developments as the same not only consisted of built-up residential buildings but also separate common facilities and amenities provided for the residential units of the housing project.

14. None of the aforesaid facts are in dispute. It is not disputed that the housing projects referred to as Omaxe Grandwoods (GH-03), Noida and Omaxe Palm Greens-I, Greater Noida are real estate developments that are complete on a stand-alone basis. The said projects comprise of towers of residential units alongwith common areas, facilities and amenities for the residents of those towers. Thus, considered on a standalone basis, the said real estate developments would constitute an integrated development independent of the other housing schemes developed by the Assessee on the adjoining lands. The expression 'housing project' has not been defined under Section 80IB of the Act and thus, must be construed in its ordinary sense and in the context that Section 80 IB (10) which specifies the attributes of an eligible housing project.

15. In our view, a real estate development which on a standalone basis is complete in all respects, that is, it includes the dwelling units, the necessary infrastructure, common areas and common facilities for the residents of the dwelling units would constitute a housing project for the purpose of Section

80IB of the Act and we find no infirmity with the decision of the CIT(A) and the ITAT. The decision in the case of ***Brahma Associates*** (*supra*) is wholly inapplicable in the facts of the present case.

16. In that case, the Bombay High Court had held that the commercial establishments, which were a part of the housing project could not be excluded for the purposes of deduction available under Section 80IB of the Act. The Court held that the benefit was available to an Assessee in respect of income derived from the entire project and was not limited to the income derived from the sale of residential units alone. The said decision is of no assistance to the Revenue as this is not a case where income from a part of the housing project is sought to be considered for computing the deduction under Section 80IB; in the present case, the finding is that the income from the housing schemes in respect of which deductions are claimed are by themselves standalone complete housing projects.

17. In our view, no substantial questions of law arise. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 20, 2016
MK/RK