IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.201 OF 2012

The Commissioner of Income Tax-16,
Mumbai 400 007 ...Appellant
v/s
M/s Happy Home Enterprises,
Mumbai 400 004 ...Respondent

Mr Vimal Gupta, Sr. Counsel with Mr Vipul Baypayee for Appellant.
None for Respondent.

WITH

INCOME TAX APPEAL NO.308 OF 2012

The Commissioner of Income Tax,
Central II, Mumbai ...Appellant
v/s
M/s Kanakia Spaces Pvt.Ltd. ...Respondent

Mr A.R. Malhotra with Mr N.A. Kazi for Appellant.
Mr J.D. Mistry, Sr. Counsel with Mr A.K. Jasani for Respondent.

CORAM : S.C. DHARMADHIKARI AND
B.P. COLABAWALLA JJ.

Reserved on : 25th July, 2014.
Pronounced on : 19th September, 2014

JUDGMENT ***[Per B.P. Colabawalla J.]*** *:-*

1. Income Tax Appeal No.201 of 2012 is filed by the Revenue under section 260A of the Income Tax Act 1961 (hereinafter referred to as the

Act) wherein the following questions of law are projected as substantial and read as under :-

> *"(A) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in allowing to the Assessee Company a deduction u/s 80IB(10) of the Income Tax Act for A.Y. 2006-2007 amounting to Rs.2,11,74,864/- wherein the commercial area built by the assessee exceeded the limit specified in clause (d) to section 80IB(10) of the I.T. Act 1961?*
>
> *(B) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in holding that the limits on commercial area provided in clause (d) to section 80IB(10) of the Act would not be applicable even after 01.04.2005 as the projects were approved before that date even though no such exception is provided under the Income Tax Act?"*

2. This appeal was admitted on the aforesaid questions by a Division Bench of this Court on 22nd February, 2013. Since we found that several Appeals on similar questions were either admitted or pending admission in this Court, we by our order dated 4th July, 2014 passed in Income Tax Appeal No.308 of 2012, directed the learned counsel for the parties to submit a list to the Registrar so that these Appeals could be listed before this Court for disposal. By the said order, we also requested the respective counsels to address us on the point as to whether the judgment of this Court in the case of ***CIT v/s Brahma Associates, reported in (2011) 333 ITR 289 (Bom)*** would cover the cases where the housing project within the meaning of section 80-IB(10) had been approved prior to 31st March, 2005 and whether the view taken in ***Brahma Associates (supra)*** would cover all such matters. This is how these Appeals are listed before us.

3. Basically, we have been called upon to interpret the provisions of section 80-IB(10)(d) from two different perspectives. Firstly, we have to examine whether the said provision applies to a housing project approved before 31st March, 2005 and completed before 1st April, 2005. Secondly, we have to examine whether the said provision applies to a housing project approved before 31st March, 2005 but completed on or after 1st April, 2005. The date 1st April, 2005 is of some significance because by Finance (No.2) Act, 2004, w.e.f. 1st April 2005, section 80-IB(10) was substantially amended and clause (d) was inserted therein, that stipulates that the built up area of the shops and other commercial establishments included in the housing project should not exceed five percent of the aggregate built up area of the housing project or two thousand square feet, whichever is less. What we are called upon to decide is whether this condition/restriction set out in clause (d) of section 80-IB(10) will apply to the two scenarios set out above.

4. The facts in Income Tax Appeal No.308 of 2012 deal with first scenario where the housing project was approved before 31st March, 2005 and completed before 1st April, 2005 but the sale of some of the units in the said project took place after 1st April, 2005 i.e. in the A.Y. 2005-2006. The facts in Income Tax Appeal No.201 of 2012 deal with the second scenario viz. where the housing project was approved before 31st March, 2005 but completed on or after 1st April 2005, but within the time-frame as laid down in section 80-IB(10). Since the facts in these two cases cover both the

scenarios above, we shall refer to the facts of these two cases and all the other Appeals will accordingly be disposed off following the ratio of this judgment.

FACTS IN INCOME TAX APPEAL NO.308 OF 2012

5. On 19th July 2007, a search under section 132 of the Act was conducted in the Assessee's case (M/s Kanakia Spaces Pvt.Ltd.) and consequent thereto, assessment proceedings were initiated by issuance of a notice under section 153A of the Act. The Assessee filed a return under the said section on 19th March, 2008 declaring a total income of Rs. Nil after claiming a deduction of Rs.56,27,583/- under section 80-IB(10) of the Act. The assessment proceedings under section 143(3) r/w section 153A were completed on 31st December, 2009 when the Assessing Officer inter alia held that the profits derived from the sale of commercial area was not entitled to a deduction under section 80-IB(10) of the Income Tax Act, 1961. The Assessing Officer in coming to the aforesaid conclusion inter alia recorded that during the year under consideration viz. A.Y. 2005-2006, the Assessee Company was engaged in the business as builders and developers and was following the project completion method of accounting. During the said year the Assessee had completed the "Discovery Project" which was a mixed housing project, having commercial shops. During the course of the assessment proceedings, the Assessing Officer found that the

Assessee had claimed a deduction under section 80-IB(10) on the profit after sale of shops and this was disallowed on the ground that the Assessee had not complied with the basic requirement that the profit derived on the sale of commercial area of the project was not entitled for a deduction.

6. Being aggrieved by the Assessment Order, the Assessee preferred an Appeal before the Commissioner of Income Tax (Appeals), who by his order dated 15th April, 2010 upheld the findings of the Assessing Officer. The CIT (Appeals) observed that the provisions of section 80-IB(10) were substantially amended by Finance (No.2) Act, 2004 with effect from 1st April, 2005 wherein it was provided that the built up area of the shops and other commercial establishments included in the housing project should not exceed 5% of the aggregate built up area or 2000 sq.ft., whichever is less. The CIT (Appeals) held that the amended provisions of section 80-IB(10) which came into effect from 1st April, 2005 were applicable for the current A.Y. viz. 2005-2006. Accordingly, he dismissed the Appeal filed by the Assessee.

7. Being dissatisfied, the Assessee approached the Income Tax Appellate Tribunal (hereinafter referred to as the **"ITAT"**). The ITAT, after noting the undisputed facts and relying upon its own judgment in the case of Saroj Sales Organisation v/s ITO, reported in 115 TTJ 485, by its order dated 30th June, 2011 reversed the order of the CIT (Appeals). The

undisputed facts noted by the ITAT were that the construction of the housing project known as the "Discovery Project" having an aggregate built up area of 1,27,736 sq.ft. got completed in the A.Y. 2004-2005. The Assessing Officer and CIT (Appeals) had denied the benefit of the deduction under section 80-IB(10) on the ground that the commercial area of 7,607 sq.ft. was more than 2,000 sq.ft. as set out in clause (d) of section 80-IB(10) and therefore violated the provisions thereof, which dis-entitled the Assessee to the deduction. After noting these facts, and after relying upon several decisions of its Coordinate Benches, the ITAT held that if housing projects were approved before 31st March 2005, the condition / restriction set out in clause (d) of section 80-IB(10) would not be applicable. Being aggrieved by this order of the ITAT, the Revenue is in Appeal before us.

FACTS IN INCOME TAX APPEAL NO.201 OF 2012

8. In this case, the Assessee (Happy Home Enterprises), for the A.Y. 2006-2007 filed a return of income on 31st October 2006 declaring its total income at Rs.45,781/-. The said case was thereafter selected for scrutiny and the Assessing Officer found that the Assessee had claimed a deduction of Rs.2,11,74,864/- under section 80-IB(10). On verification of the details filed by the Assessee it was noticed by the Assessing Officer that the housing project put up by the Assessee consisted of 12 shops admeasuring

approximately 1,910 sq.ft., which was approximately 6.63 % of the total built up area of the said housing project. Since the area occupied by the said shops exceeded the 5% limit specified in clause (d) of section 80-IB(10), the deduction claimed by the Assessee was disallowed. It is not in dispute that in the facts of this case, the housing project was approved by the local authority on 19th June, 2003 (i.e. before 31st March, 2005). It is also an undisputed position that the said Project was completed after 1st April, 2005.

9. Being aggrieved thereby, the Assessee preferred an Appeal to the CIT (Appeals), who by his order dated 5th November 2009, set aside the order of the Assessing Officer and held that the deduction under section 80-IB(10) was available to the Assessee. The CIT (Appeals) in allowing the appeal mainly followed the judgment of the Special Bench (Pune) of the ITAT in the case of Brahma Associates v/s Joint CIT (OSD), Circle 4, Pune, dated 6th April 2009, reported in (2009) 119 ITD 255 (Pune)(SB), wherein it was held that where housing projects were approved before 31st March 2005, the condition laid down in clause (d) of section 80-IB(10) was not applicable. Not accepting the verdict of the CIT (Appeals), the Revenue preferred an Appeal before the ITAT who also followed the view of its Special Bench, Pune and further noted that this Court in the case of ***Brahma Associates (supra)*** had upheld the said view of the special Bench.

10. Being aggrieved by this order of the ITAT, the Revenue is in Appeal before us. Despite service of this Appeal, none appeared on behalf of the Assessee. However, since an important question of law was to be decided, we had requested Mr Mistry, the learned senior counsel appearing on behalf of the Assessee in ITXA No.308 of 2012, to address us even on the issue raised in this appeal. He was kind enough to accept our request and we are grateful for his able assistance in the matter.

11. Before dealing with the rival contentions of the parties, it would be in the fitness of things to trace the history of the provisions that we are called upon to construe in these Appeals.

12. Initially, section 80-IA was inserted in the Income Tax Act, 1961 by Finance (No.2) Act, 1991 w.e.f. 1st April, 1991 and dealt with deductions in respect of profits and gains from industrial undertakings etc. in certain cases. As the Government identified housing as a priority area and to purposefully tackle the country's housing shortage problem, it was decided to give tax incentives for the promotion of housing. With this object in mind and with a view to promote investment in housing, sub-section (4F) was inserted in section 80-IA w.e.f. 1st April, 1999. Section 80-IA(4F) as it stood then, read as under :-

> *"(4F) This section applies to an undertaking engaged in developing and building housing projects approved by a local authority subject to the*

condition that the size of the plot of land has a minimum area of one acre and the residential unit has a built up area not exceeding one thousand square feet;

Provided that the undertaking commences development and construction of the housing project on or after the 1st day of October 1998 and completes the same before the 31st day of March 2001."

13. As can be seen from the said provision, at that time, if an undertaking was engaged in developing and building housing projects approved by the local authority, it was entitled to a deduction as set out in section 80-IA provided that:- (i) the size of the plot of land had a minimum area of one acre; (ii) each individual residential unit had a built up area not exceeding 1000 sq.ft. and (iii) the development / construction of the said housing project commenced on or after 1st October, 1998 and completed before 31st March, 2001. Therefore, when this provision was first introduced, there were only three conditions that were required to be fulfilled by the undertaking engaged in the development / construction of housing projects approved by the local authority. There was no restriction on the quantum of commercial area that could included in the said housing project. That was to be determined by the local authority in accordance with its own rules and regulations. As long as the local authority sanctioned the project as a housing project and it complied with the three conditions as stipulated in section 80-IA(4F), the said undertaking was entitled to the deduction as set out therein.

14. Thereafter, by the Finance Act, 1999 entire section 80-IA was substituted by the newly introduced sections 80-IA and 80-IB which were on the lines of the existing section 80-IA but with certain modifications. The newly inserted section 80-IB(10) w.e.f. 1st April, 2000 read as under :-

> *"(10) The amount of profits in case of an undertaking developing and building housing projects approved by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if -*
>
> *(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October 1998 and completes the same before the 31st day of March 2001;*
>
> *(b) the project is on the size of a plot of land which has a minimum area of one acre, and*
>
> *(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place."*

15. Therefore, w.e.f. 1st April, 2000 section 80-IA(4F) was substituted with section 80-IB(10) and in substance was basically the same, with one addition. The newly inserted section 80-IB(10) stipulated that if the housing project approved by the local authority was at a distance of 25 Kms or beyond the municipal limits of the cities of Delhi or Mumbai, then the residential unit in the said housing project could have a maximum built area of 1,500 sq.ft. instead of 1,000 sq.ft. All other conditions as set out in section 80-IA(4F) were retained in section 80-IB(10). This was brought about as there were many representations that in towns other than Mumbai and Delhi the land cost was relatively less and for the same capital expenditure, investors could afford to procure dwelling units of slightly

larger areas. In light of this, it was represented that the ceiling on the built up areas for dwelling units in approved housing projects be increased from 1,000 sq.ft. to 1,500 sq.ft. at all locations except Mumbai and Delhi. Accepting the said representations, the Legislature inserted clause (c) to sub-section (10) of section 80-IB which stipulated that in a housing project approved by the local authority and situated in the cities of Delhi or Mumbai or within 25 Kms from the municipal limits of these cities, each individual residential unit could not exceed a built up area of 1,000 sq.ft., and at any other place, could not exceed the built up area of 1,500 sq.ft.

16. Thereafter, section 80-IB(10) was further amended and w.e.f. 1st April, 2001 and read as under :-

> *"(10) The amount of profits in case of an undertaking developing and building housing projects approved before the 31st day of March 2001 by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if:-*
>
> *(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October 1998 and completes the same before the 31st day of March 2003;*
>
> *(b) the project is on the size of a plot of land which has a minimum area of one acre; and*
>
> *(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place."*

17. Therefore, now w.e.f. from 1st April, 2001 section 80-IB(10) stipulated that any housing project approved by the local authority before

31st March 2001, was entitled to a deduction of 100 per cent of the profits derived in any previous year relevant to any assessment year from such housing project provided:- (i) the construction / development of the said housing project commenced on or after 1st October, 1998 and was completed before 31st March 2003; (ii) the housing project was on a size of a plot of land which had a minimum area of one acre; and (iii) each individual residential unit had a maximum built-up area of 1,000 sq.ft., where such housing project was situated within the cities of Delhi or Mumbai or within 25 Kms from the municipal limits of these cities, and a maximum built-up area of 1,500 sq.ft. at any other place. Therefore, for the first time, a stipulation was added with reference to the date of approval, namely that approval had to accorded to the housing project by the local authority before 31st March, 2001. Before this amendment there was no date prescribed for the approval being granted by the local authority to the housing project. Prior to this amendment, as long as the development/ construction commenced on or after 1st October, 1998 and was completed before 31st March 2001, the assessee was entitled to the deduction. Also by this amendment, the date of completion was changed from 31st March, 2001 to 31st March, 2003. Everything else remained untouched.

18. Thereafter, by Finance Act, 2003 further amendments were made to section 80-IB(10) and read as under :-

> *"(10) The amount of profits in case of an undertaking developing and building housing projects approved before the 31st day of March 2005 by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if -*
>
> *(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October 1998;*
>
> *(b) the project is on the size of a plot of land which has a minimum area of one acre; and*
>
> *(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place."*

19. As can be seen from the aforesaid provision, now the only changes that were brought about were that w.e.f. 1st April, 2002, (i) the housing project had to be approved before 31st March, 2005 and (ii) there was no time limit prescribed for completion of the said project. Though these changes were brought about by Finance Act, 2003, the Legislature thought it fit that these changes be deemed to have been brought into effect from 1st April, 2002. All the remaining provisions of section 80-IB(10) remained unchanged.

20. Thereafter, by Finance (No.2) Act, 2004, w.e.f. 1st April, 2005 section 80-IB(10) was substituted and substantial changes were effected in the newly substituted sub-section (10) of section 80-IB. It reads thus:-

> *"(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent of the profits derived*

in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less."

(emphasis supplied).

21. Therefore, by Finance (No.2) Act, 2004, with effect from 1st April 2005, the Legislature made substantial changes to sub-section (10) of section 80-IB. There were several new conditions that were incorporated by

the newly substituted sub-section. One such condition was clause (d), which for the first time, w.e.f. 1st April, 2005, put a restriction on the quantum of commercial area that could be included in a housing project approved by the local authority, in order to entitle an assessee to claim the deduction as set out in section 80-IB(10). Clause (d) stipulated that the built up area of the shops and other commercial establishments included in the housing project could not exceed 5 % of the aggregate built up area of the housing project or 2,000 sq.ft., whichever was less. It is the effect of this clause (d) which we are called upon to decide in these appeals and whether it would apply to housing projects approved the local authority before 31st March, 2005. In other words, what we are called upon to decide is whether the said condition would apply to such housing projects approved by the local authority before 31st March 2005, when the aforesaid condition/restriction was not on the statute-book and was brought into effect only from 1st April, 2005. We should mention here that there have been further amendments to section 80-IB(10) in subsequent years. However, we are not dealing with the those further amendments as they do not arise for our consideration in the present Appeals.

22. It would be important to note another amendment that was brought about by Finance (No.2) Act, 2004 to sub-section (14) of section 80-IB, w.e.f. 1st April, 2005. Section 80-IB(14) was also amended by the same

Finance (No.2) Act, 2004 and for the first time under clause (a) thereof, the words *"built-up area"* were defined. Section 80-IB(14)(a) reads thus:-

> *"(14) For the purposes of this section,—*
>
> *(a) "built-up area" means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;"*

23. Prior to insertion of section 80-IB(14)(a), in many of the rules and regulations of the local authority approving the housing project, *"built-up area"* did not include projections and balconies. Probably, taking advantage of this fact, builders provided large balconies and projections making the residential units far bigger than as stipulated in section 80-IB(10), and yet claimed the deduction under the said provision. To plug this lacuna, clause (a) was inserted in section 80-IB(14) defining the words *"built-up area"* to mean the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls, but did not include the common areas shared with other residential units. The reason we are referring to this provision is because it too was brought about for the first time w.e.f. 1st April, 2005 and the Karnataka High Court had the occasion to consider whether it would apply to housing projects approved by the local authority before 31st March, 2005. We have relied upon the reasoning of the judgement of the Karnataka High Court for coming to the findings that we have, in this judgement.

24. Having traced the history of section 80-IB(10), we now proceed to deal with the rival contentions of the parties. On behalf of the Revenue, submissions were made by learned senior counsel Mr Vimal Gupta, and learned counsels, Mr Abhay Ahuja and Mr A. R. Malhotra. Though we have not independently dealt with the facts in Income Tax Appeal No.592 of 2012, in which Mr Abhay Ahuja appears for the Revenue, since he has addressed on the issues raised herein, we are also making a reference to the submissions advanced by him.

25. Mr Gupta, learned senior counsel appearing on behalf of the Appellant – Revenue, submitted that clause (d) of section 80-IB(10) inserted w.e.f. 1st April, 2005 and which applies from A.Y. 2005-06 onwards was actually in the nature of a relaxation and / or benefit granted to the Assessee and not a restriction as sought to be contended on behalf of the Assessees. He submitted that prior to 1st April 2005, a housing project could not include any commercial area for an assessee to claim a deduction under section 80-IB(10). With effect from 1st April 2005, clause (d) was inserted which allowed shops and other commercial establishments to be included in a housing project provided it did not exceed 5% of the aggregate built up area of the housing project or 2,000 sq.ft., whichever was less. Therefore, according to Mr. Gupta, w.e.f. 1st April 2005, the Legislature allowed a stipulated amount of commercial area that could be included in a housing

project, whereas prior thereto, there was a complete absence of such a provision. He therefore submitted that prior to 1st April 2005, no commercial area could be included in a housing project so as to entitle the assessee to a deduction under section 80-IB(10). In view thereof, clause (d) of section 80-IB(10) was in the nature of a relaxation and / or benefit and not a restriction, was the submission of Mr. Gupta.

26. In the alternative, Mr Gupta as well as Mr Ahuja submitted that if it is held that clause (d) of section 80-IB(10), and which was inserted w.e.f. 1st April 2005, was not in the nature of a relaxation, but instead was a restriction imposed on the quantum of commercial area that could be included in a housing project, then from A.Y. 2005-06, effect will have to be given to the same notwithstanding the fact that the project was approved prior to 31st March, 2005. In other words, it was submitted that if the profits are brought to tax in the A.Y. 2005-06 or thereafter, then notwithstanding the fact that the housing project was approved prior to 31st March 2005, if the said project did not comply with the provisions of clause (d) of section 80-IB(10), then the profits brought to tax in A.Y. 2005-06 or thereafter will not be entitled to the deduction as contemplated under the said section.

27. As a consequence thereto, it was submitted that the conditions / restrictions laid down in section 80-IB(10) would have to be revisited and /

or looked at and complied with in the assessment year in which the profits are being booked by the assessee. If the assessee's housing project did not meet all the conditions / restrictions as stipulated in the said section during that assessment year, then the assessee would not be entitled to the deduction for that assessment year, was the submission. The Revenue submitted that this is notwithstanding the fact that the project was approved at a time when that particular condition was not on the statute book at all. The assessment for one assessment year, cannot in the absence of a contrary provision, be affected by the law in force in another assessment year. A right claimed by the assessee under the law in force in a particular assessment year is available only in relation to a proceeding pertaining to that assessment year, was the submission. In support of this argument, the learned counsels relied upon two judgments of the Supreme Court in the case of ***Reliance Jute Industries Ltd. v/s CIT, reported in (1979) 120 ITR 921*** and ***Securities and Exchange Board of India v/s Ajay Agarwal, reported in AIR 2010 SC 3466***.

28. Lastly, it was submitted that the decision of this Court in the case of ***Brahma Associates (supra),*** supports the case of the Revenue that w.e.f. 1st April 2005, the assessee would not be entitled to the deduction under section 80-IB(10) if it did not comply with clause (d) thereof. This, according to the learned counsels, was notwithstanding the fact that the housing project was

approved by the local authority before 31st March, 2005. For all the aforesaid reasons it was submitted that the substantial questions of law framed by this Court and reproduced above, be answered in favour of the Revenue and against the Assessees. Mr. Malhotra adopted the arguments of Mr. Gupta and Mr. Ahuja and which we have noted above.

29. On the other hand, Mr Mistry, the learned senior counsel appearing on behalf of the Assessee in ITXA No.308 of 2012, submitted that only those conditions could be applied to the housing projects that were on the statute-book on the date when the housing project was approved. In other words, if the housing project was approved by the local authority before 31st March 2005, then, the amended provisions of section 80-IB(10) that were brought into force w.e.f. 1st April 2005, and especially clause (d) thereof, would have no application to such a housing project. He submitted that the conditions imposed by the newly substituted section 80-IB(10) were all related and/or linked to the approval and/or construction and/or completion of the said housing project and therefore, the Legislature in its wisdom, deemed it fit to bring the same into force only w.e.f. 1st April, 2005 and did not give it any retrospectivity.

30. Mr Mistry further submitted that prior to 1st April 2005, a housing project approved by the local authority before 31st March, 2005 only

required compliance of three conditions viz. (i) the development/construction of the said housing project was commenced on or after 1st October 1998; (ii) the said housing project was on a plot of land which had a minimum area of one acre and (iii) the residential unit had a maximum built-up area of 1,000 sq.ft., where such residential unit was situated within the cities of Delhi or Mumbai or within 25 kilometers of the municipal limits of these cities, and 1,500 sq.ft. at any other place. Only these three conditions were required to be complied with by an assessee whose housing project was approved before 31st March, 2005 because these were the only conditions that were on the statute-book at that time, was the submission of Mr. Mistry. It was his further submission that it is only w.e.f. 1st April, 2005 that section 80-IB(10) was substituted and substantial amendments were made therein and those amendments could not be made applicable to housing projects approved before 31st March, 2005 because the deduction available to the assessee under section 80-IB(10) was inseparably linked to the date of approval of the housing project and not to the assessment year in which the deduction was claimed.

31. The further submission of Mr Mistry was that accepting the argument of the Revenue would lead to absurd results. For example, an assessee following the project completion method of accounting would not be entitled to the deduction under section 80-IB(10) even though the said

housing project was approved and completed before 31st March, 2005 but the profits therefrom were offered to tax in A.Y. 2005-06. On the other hand, if the same assessee was following the work-in-progress method of accounting he would be entitled to the deduction under section 80-IB(10) upto A.Y. 2004-05 and would be disallowed the deduction from A.Y. 2005-06 onwards, merely because he followed a different method of accounting. This, according to Mr Mistry is not only absurd but could never have been the intention of the Legislature whilst either introducing section 80-IB(10) or making substantial amendments thereto w.e.f. 1st April, 2005.

32. According to Mr Mistry, the conditions laid down in section 80-IB(10) as amended w.e.f. 1st April, 2005 and particularly those linked with the approval / construction / completion of the housing project would necessarily apply only to those housing projects that were approved by the local authority after 1st April, 2005. One cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved and more so when the said condition was inextricably linked to the approval granted to the housing project by the local authority under its own rules and regulations, was the submission of Mr. Mistry. Clause (d) of sub-section (10) of section 80-IB, which is the bone of contention in the present appeals, according to Mr Mistry, is inextricably linked with the approval and construction of the housing project and

therefore an assessee cannot be called upon to comply with the said condition when the same was never in contemplation either of the assessee or the Legislature, when the approval to the housing project was accorded by the local authority. For all the aforesaid reasons it was submitted that the substantial questions of law framed by this Court and reproduced above, be answered in favour of the Assessees and against the Revenue.

33. We have considered the elaborate submissions of both the sides and carefully examined the relevant provisions. The essential question that is required to be decided is whether section 80-IB(10)(d) which was brought into force w.e.f. 1st April, 2005 would apply to projects that were approved by the local authority prior to it being brought on the statute book. Or to put it differently, the essential question is whether the said clause has to be complied with by an assessee who offers his profits to tax in A.Y. 2005-2006 or thereafter, even though his housing project was accorded approval by the local authority before 31st March, 2005.

34. As can be seen from the history of section 80-IA(4F) and then section 80-IB(10), prior to 1st April 2005, an assessee, developing and building a housing project approved by the local authority before 31st March, 2005 was entitled to a deduction of 100 % of the profits derived from such housing project in any previous year relevant to any assessment year, provided (i)

the development and construction of the said project had commenced on or after 1st October 1998; (ii) the project was on the size of a plot of land which had a minimum area of one acre and (iii) the residential unit had a maximum area of 1,000 sq.ft. where such residential unit was situated within the cities of Delhi or Mumbai or within 25 Kms from the municipal limits of these cities, and 1,500 sq.ft. at any other place. Before 1st April 2005, there was no condition and / or restriction on the quantum of the commercial area that could be included in a housing project. That had to be determined on the basis of the rules and regulations of the local authority approving the said housing project.

35. However, the provisions of section 80-IB(10) were substantially amended by way of Finance (No.2) Act, 2004 w.e.f. 1st April, 2005. As can be noted from the amended provisions, there were several conditions that were imposed in the newly substituted section 80-IB(10) that were absent in the said section prior to its amendment. One such condition inserted w.e.f. 1st April, 2005 was clause (d) that put a restriction on the quantum of commercial area that could be included in a housing project in order to entitle the assessee to claim the deduction as set out in the said section. It is pertinent to note that in the appeals before us, it is an admitted fact that the housing projects were approved prior to 31st March, 2005. In ITXA No.308 of 2012, in fact, the project was even completed prior to 31st March, 2005

and only the profits were offered to tax in A.Y. 2005-06. We do not think that the Legislature intended to give any retrospectivity to clause (d) of section 80-IB(10). This more so because it is clearly a condition that relates to and/or is linked with the approval and construction of the housing project. At the time when the housing project is approved by the local authority, it decides, subject to its own rules and regulations, what quantum of commercial area is to be included in the said project. It is on this basis that building plans are approved by the local authority and construction is commenced and completed. It is very difficult, if not impossible to change the building plans and / or alter construction midway, in order to comply with clause (d) of section 80-IB(10). It would be highly unfair to require an Assessee to comply with section 80-IB(10)(d) who has got his housing project approved by the local authority, before 31st March, 2005 and has either completed the same before the said date or even shortly thereafter, merely because the Assessee has offered its profits to tax in A.Y. 2005-2006 or thereafter. Requiring the Assessee to comply with the condition set out in clause (d) of sub-section (10) of section 80-IB merely because he has offered his profits to tax in A.Y. 2005-06 or thereafter, even though his housing project was approved before 31st March 2005, would be requiring the Assessee to virtually do a humanly impossible task. This, in our opinion, could never have been the intention of the Legislature. In fact, to our mind, it would run counter to the very object for which these provisions were introduced, namely to tackle the shortage of housing in the country and

encourage investment therein by private players. It is therefore clear that clause (d) of sub-section (10) of section 80-IB cannot have any application to housing projects that are approved before 31st March, 2005. The said clause (d) being inextricably linked to the date of approval of the housing project, it will have to be held that the said clause operates only prospectively i.e. for housing projects approved after 1st April, 2005. This is notwithstanding the fact that the profits were offered to tax by the Assessee for the A.Y. 2005-06 or thereafter.

36. There is yet another reason for coming to the aforesaid conclusion. Take a scenario where an Assessee following the project completion method of accounting, has completed the housing project approved by the local authority complying with all the conditions as set out in section 80-IB(10) as it stood prior to 1st April, 2005. If we were to accept the argument of the Revenue, then in that event, despite having completed the entire construction prior to 1st April, 2005 and complying with all the conditions of section 80-IB(10) as it stood then, the Assessee would be disentitled to the entire deduction claimed in respect of such housing project merely because he offered his profits to tax in the A.Y. 2005-06. In contrast, if the same Assessee had followed the work-in-progress method of accounting, he would have been entitled to the deduction under section 80-IB(10) upto the A.Y. 2004-05, and denied the same from A.Y. 2005-06 and thereafter. It

could never have been the intention of the Legislature that the deduction under section 80-IB(10) available to a particular Assessee would be determined on the basis of the accounting method followed. This, to our mind and as rightly submitted by Mr Mistry would lead to startling results. We therefore have no hesitation in holding that section 80-IB(10)(d) is prospective in nature and can have no application to a housing project that is approved before 31st March, 2005. As the deduction sought to be claimed under section 80-IB(10) is inseparably linked with the date of approval of the housing project, it would make no difference if the construction of the said project was completed on or after 1st April, 2005 or that the profits were offered to tax after 1st April, 2005 i.e. in A.Y. 2005-06 or thereafter. We therefore find no substance in the argument of the Revenue that notwithstanding the fact that the housing project was approved prior to 31st March 2005, if the construction was completed on or after 1st April, 2005 or if the profits are brought to tax in the A.Y. 2005-06 or thereafter, the said housing project would have to comply with the provisions of clause (d) of section 80-IB(10). To our mind, we do not think that the condition/restriction laid down in clause (d) of section 80-IB(10) has to be revisited and / or looked at and complied with in the assessment year in which the profits are offered to tax by the Assessee. When the Assessee claims a deduction under section 80-IB(10), the Assessee is required to comply with such a condition only if it is on the statute-book on the date of the approval of the housing project and it has nothing to do with the year in

which the profits are brought to tax by the Assessee. We have come to this conclusion only because we find that clause (d) of section 80-IB(10) is inextricably linked to the date of the approval of the housing project and the subsequent development/construction of the same, and has nothing to do with the profits derived therefrom. We may hasten to add that if a particular condition is not inseperably linked to the date of approval of the housing project, different considerations would arise. However, we are not called upon to decide any such condition and hence we are not laying down any general proposition of law, save and except that clause (d) of section 80-IB(10) being a condition linked to the date of the approval of the housing project, would not apply to any housing project that was approved prior to 31st March, 2005 irrespective of the fact that the profits of the said housing project are brought to tax after the said provision was brought into force.

37. On the issue of retrospectivity of clause (d) of section 80-IB(10) we are supported in our view by a judgment of this Court in the case of ***Brahma Associates (supra)***. Though the facts in ***Brahma Associates's case*** were slightly different, inasmuch as the assessment year in question was A.Y. 2003-04, this Court held as under :-

> *"32. Lastly, the argument of the Revenue that section 80-IB(10) as amended by inserting clause (d) with effect from April 1, 2005 should be applied retrospectively is also without any merit, because, firstly, clause (d) is specifically inserted with effect from April 1, 2005 and, therefore, that clause cannot be applied for the period prior to April 1, 2005. Secondly, clause (d) seeks to deny section 80-IB(10) deduction to projects having commercial user beyond the limit prescribed under clause (d),*

even though such commercial user is approved by the local authority. Therefore, the restriction imposed under the act for the first time with effect from April 1, 2005 cannot be applied retrospectively. Thirdly, it is not open to the Revenue to contend on the one hand that section 80-IB(10) as it stood prior to April 1, 2005 did not permit commercial user in housing projects and on the other hand contend that the restriction on commercial user introduced with effect from April 1, 2005 should be applied retrospectively. The argument of the Revenue is mutually contradictory and hence liable to be rejected. Thus, in our opinion, the Tribunal was justified in holding that clause (d) inserted to section 80-IB(10) with effect from April 1, 2005 is prospective and not retrospective and hence cannot be applied to the period prior to April 1, 2005.

33. In the result, the questions raised in the appeal are answered thus :

(a) .....

(b) .....

(c) .....

(d) .....

(e) Clause (d) inserted to section 80-IB(10) with effect from April 1, 2005 is prospective and not retrospective and hence cannot be applied for the period prior to April 1, 2005."

(emphasis supplied)

38. In fact, this judgment also concludes the argument of the Revenue that clause (d) of section 80-IB(10) inserted with effect from 1st April, 2005 is actually in the nature of a relaxation and / or benefit granted to the Assessee and not a restriction as sought to be contended on behalf of the Assessees. On this very point, this Court negated the aforesaid contention and held as under :-

"24. Thus, on the date on which the Legislature introduced 100 per cent deduction under the Income Tax Act 1961 on the profits derived from housing projects approved by a local authority, it was known that local authorities could approve projects as housing projects with commercial user to the extent permitted under the DC Rules framed by the respective local authority. In other words, it was known that local authorities could approve a housing project without or with commercial user to the extent permitted under the Development Control Rules. If the Legislature intended to restrict the benefit of deduction only to projects approved exclusively for residential purposes, then it would have stated so. However, the Legislature has provided that section 80-IB(10) deduction is

available to all housing projects approved by a local authority. Since local authorities could approve a project to be a housing project with or without the commercial user, it is evident that the Legislature intended to allow section 80-IB(10) deduction to all housing projects approved by a local authority without or with commercial user to the extent permitted under the Development Control Rules.

25. It is not in dispute that where a project is approved as a housing project without or with commercial user to the extent permitted under the rules / Regulations, then, deduction under section 80-IB(10) would be allowable. In other words, if a project could be approved as a housing project having residential units with permissible commercial user, then it is not open to the income tax authorities to contend that the expression "housing project" in section 80-IB(10) is applicable to projects having only residential units.

28. The above conclusion is further fortified by clause (d) of section 80-IB(10) inserted with effect from April 1, 2005. Clause (d) of section 80-IB(10) inserted with effect from April 1, 2005 provides that even though shops and commercial establishments are included in the housing project, deduction under section 80-IB(10) with effect from April 1, 2005 would be allowable where such commercial user does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet whichever is lower. By the Finance Act, 2010, clause (d) is amended to the effect that the commercial user should not exceed three per cent of the aggregate built up area of the housing project or five thousand square feet whichever is higher. The expression "included" in clause (d) makes it amply clear that commercial user is an integral part of a housing project. Thus, by inserting clause (d) to section 80-IB(10) the Legislature has made it clear that though housing projects approved by the local authorities with commercial user to the extent permissible under the Development Control Rules / regulation were entitled to section 80-IB(10) deduction, with effect from April 1, 2005 such deduction would be subject to the restriction set out in clause (d) of section 80-IB(10). Therefore, the argument of the Revenue that with effect from April 1, 2005 the Legislature for the first time allowed section 80-IB(10) deduction to housing projects having commercial user cannot be accepted."

(emphasis supplied)

39. As noted above, by the very same Finance (No.2) Act 2004, w.e.f. 1st April 2005 sub-section (14) of section 80-IB was amended and clause (a) was inserted therein which sought to define the words *"built-up area"*. In the case of ***CIT and Anr. v/s G.R. Developers, reported in (2013) 353 ITR 1 (Karn)***, the question that arose before the Karnataka High Court was

whether the definition of *"built-up area"* inserted in section 80-IB(14)(a) by Finance (No.2) Act, 2004, w.e.f. 1st April 2005, was prospective or retrospective in nature. Prior to insertion of section 80-IB(14)(a), in many of the rules and regulations of the local authority approving the housing project, *"built-up area"* did not include projections and balconies. Probably, taking advantage of this fact, builders provided large balconies and projections making the residential units far bigger than as stipulated in section 80-IB(10), and yet claimed the deduction under the said provision. To plug this lacuna, clause (a) was inserted in section 80-IB(14) defining the words *"built-up area"* to mean the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but did not include the common areas shared with other residential units. Therefore, w.e.f. 1st April, 2005 notwithstanding the local law governing the construction of a building, for the purpose of getting benefit under section 80-IB(10), the Assessee was required to ensure that the housing project approved by the local authority had residential units not bigger than the amount stipulated therein and which included the built-up area as set out in section 80-IB(14)(a). In construing the said provision, the Karnataka High Court held as under :-

> *"9. In respect of approvals obtained prior to April 1, 2005, if sub-section (14)(a) of section 80-IB is held to be applicable, then, the Assessee has to necessarily seek for a modified plan. Otherwise, if he proceeds with the construction without obtaining the sanction of the modified plan, he would not be eligible for benefit of tax exemption under section 80-IB(10). Similarly, if a valid approval is obtained and the building is constructed in all respects prior to April 1, 2005, and if the said substituted provision is held to be applicable retrospectively, the assessee would not be entitled*

> *to the benefit of tax exemption, if he effects sales subsequent to April 1, 2005. Such an interpretation not only would be absurd but have disastrous consequences so far as the assessee is concerned. Therefore, it cannot be said that, that was the intention of the Legislature while bringing in the substitution. So we should keep in mind the object behind enacting this provision, namely, to bring in investments and to encourage the infrastructure development of middle income housing projects. If the aforesaid provision is held to be retrospective in nature, it would negate the object of the said provision. It is is settled law that the courts have to harmonize these provisions and interpret the same in a manner to achieve the object of the Legislature than to distress the said object. In that view of the matter, the definition of built up area, as inserted in sub-section (14)(a) of section 80-IB by the Finance (No.2) Act of 2004, which came into effect from April 1, 2005, cannot be held to be retrospective. It applies only to such housing projects, which are approved subsequent to April 1, 2005. In that view of the matter, the assessee, in the instant case, is entitled to the benefit of the aforesaid provision and, hence, the said substantial question of law is answered in favour of the assessee and against the Revenue."*
>
> (emphasis supplied)

40. As can be discerned from the said judgement, the Karnataka High Court categorically held that the said provision viz. sub-section (14)(a) of section 80-IB inserted w.e.f. 1st April, 2005 applied only to housing projects which were approved subsequent to 1st April, 2005. Although, the Karnataka High Court was construing sub-section (14)(a) of section 80-IB that defined the words *"built-up area"*, we find that the same reasoning can even be applied to clause (d) of sub-section (10) of section 80-IB. We should keep in mind that the object of section 80-IB(10) was to bring in investments and to encourage infrastructural development of middle level housing projects. If we were to hold that clause (d) of sub-section (10) of section 80-IB was to be complied with even by an Assessee whose housing project was approved before 31st March 2005, it would negate the very object and purpose for which section 80-IA(4F) and thereafter section 80-IB(10) were introduced

in the first place. In that view of the matter, the condition/restriction imposed by clause (d) of section 80-IB(10) and which came into effect from 1st April 2005, can apply only to such housing projects which are approved on or after 1st April, 2005. It would not be out of place to mention that the said judgment of the Karnataka High Court was challenged before the Supreme Court and the Special Leave Petition against the same was dismissed on 7th January, 2013.

41. We also find that a similar issue as the one raised in these Appeals came up for consideration before the Division Bench of Gujarat High Court in the case of ***Manan Corporation v/s Assistant Commissioner of Income Tax, reported in (2013) 356 ITR 44 (Guj)***. In the facts before the Gujarat High Court, one of the grounds on which the Assessee was denied the deduction under section 80-IB(10) was the non-fulfillment of clause (d) thereof. The assessment year in question before the Gujarat High Court was A.Y. 2006-07. It was the case of the Assessee before the Gujarat High Court that a condition of limiting commercial establishments / shops to 5% of the aggregate built-up area of the housing project or 2,000 sq.ft. whichever is less, came into force w.e.f. 1st April, 2005 and therefore the same could be made applicable to projects approved only on or after 1st April, 2005. Whilst dealing with the aforesaid contention and after analysing the provisions of section 80-IB(10), the Gujarat High Court held as under :-

"34. Neither the assessee nor the local authority responsible to approve the construction projects are expected to contemplate future amendment in the statute and approve and / or carry out constructions maintaining the ratio of residential housing and commercial construction as provided by the amended Act being 3 per cent of the total built-up area or 5,000 sq.feet, whichever is higher (now in the post-2010 period) or 5 per cent of the aggregate built-up area or 2,000 sq.feet, whichever is less. The Revenue is also in error to suggest that even if such conditions are onerous, they are required to be fulfilled. The entire object of such deduction is to facilitate the construction of residential housing project and while approving such project when initially there was no such restriction in taxing statute and the permissible ratio for commercial user made 5 per cent to the total built-up area by way of amendment and reduction of which by further amendment to 3 per cent of the total built-up area, has to be necessarily construed on prospective basis.

35. As is very apparent from the record, there was no criteria for making commercial construction prior to the amended section and the plans are approved as housing projects by the local authority for both the projects of the appellant. Permission for construction of shops has been allowed by the local authority in accordance with rules and regulations, keeping in mind presumably the requirement of large townships. However, the projects essentially remained residential housing projects and that is also quite apparent from the certificates issued by the local authority and, therefore, neither on the ground of absence of such provision of commercial shops nor on account of such commercial construction having exceeded the area contemplated in the prospective amendment can be made applicable to the appellant-assessee whose plans are sanctioned as per the prevalent rules and regulations by the local authority for denying the benefit of deduction of profit derived in the previous year relevant to the assessment year as made available otherwise under the statute."

(emphasis supplied)

42. Therefore, even the Gujarat High Court has taken a view that clause (d) of section 80-IB(10) is prospective in nature and would not apply to housing projects approved prior to 31st March, 2005. We are in respectful agreement with the ratio laid down in the aforesaid judgement of the Gujarat High Court.

43. We also do not find any substance in the submission of the Revenue that the decision of this Court in the case of ***Brahma Associates (supra)***

supports the case of the Revenue that w.e.f. 1st April 2005, the Assessee would not be entitled to the deduction under section 80-IB(10) if it did not comply with clause (d) thereof. In this regard, heavy reliance was placed by the Revenue on the following paragraph :-

> *28. The above conclusion is further fortified by clause (d) of section 80-IB(10) inserted with effect from April 1, 2005. Clause (d) of section 80-IB(10) inserted with effect from April 1, 2005 provides that even though shops and commercial establishments are included in the housing project, deduction under section 80-IB(10) with effect from April 1, 2005 would be allowable where such commercial user does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet whichever is lower. By the Finance Act, 2010, clause (d) is amended to the effect that the commercial user should not exceed three per cent of the aggregate built up area of the housing project or five thousand square feet whichever is higher. The expression "included" in clause (d) makes it amply clear that commercial user is an integral part of a housing project. Thus, by inserting clause (d) to section 80-IB(10) the Legislature has made it clear that though housing projects approved by the local authorities with commercial user to the extent permissible under the Development Control Rules / regulation were entitled to section 80-IB(10) deduction, with effect from April 1, 2005 such deduction would be subject to the restriction set out in clause (d) of section 80-IB(10). Therefore, the argument of the Revenue that with effect from April 1, 2005 the Legislature for the first time allowed section 80-IB(10) deduction to housing projects having commercial user cannot be accepted."*

44. We fail to see how this paragraph is of any assistance to the case of the Revenue. In the case of ***Brahma Associates (supra),*** it was the case of the Revenue that the residential project having any commercial construction is not entitled to the deduction under section 80-IB(10), and for supporting this argument, reliance was placed on the inclusion of clause (d) thereof w.e.f. 1st April, 2005 which restricts the area of commercial construction in a residential project. In the facts of ***Brahma Associates (supra)***, the A.Y. in

question was 2003-04 and it was a project of residential housing with commercial user. It is in this backdrop that this Court rejected / refuted the argument of the Revenue and for fortifying the same it held that with effect from 1st April, 2005 deduction under section 80-IB(10) would be subject to the restriction set out in clause (d) thereof. The case of ***Brahma Associates (supra)***, was not in relation to a housing project that was approved before 31st March, 2005 and the profits of which were brought to tax after 1st April, 2005. This is clear from the fact that the assessment year in question was A.Y. 2003-04. The issue raised in these Appeals never arose for consideration in ***Brahma Associates case (supra)*** and therefore, the reliance placed by Mr Gupta on the said paragraph is wholly out of context.

45. Having held that clause (d) of section 80-IB(10) is inapplicable to housing projects approved before 31st March, 2005 irrespective of the fact that the construction of the same is completed after 1st April, 2005 or that the profits from such housing project are brought to tax in A.Y. 2005-06 or thereafter, we now deal with the judgments relied upon by the Revenue. The first judgment relied upon by the Revenue is of the Supreme Court in the case of ***Reliance Jute Industries Ltd. (supra)***. The provisions of section 24(2)(iii) of the Income Tax Act, 1922 came up for interpretation before the Supreme Court which inter alia dealt with unabsorbed loss being carried forward for more than eight years. The facts before the Supreme Court were that during the A.Y. 1960-61, the Assessee claimed that the

unabsorbed loss for A.Y. 1950-51 could be carried forward and set off against the business income for the A.Y. 1960-61. The Assessee contended before the Supreme Court that by virtue of section 24(2)(iii) as it stood before its amendment w.e.f. 1st April 1957, the Assessee had acquired a vested right to have the unabsorbed loss carried forward from year to year until it was completely set off. According to the Assessee, the subsequent amendment to section 24(2)(iii) limiting the period for carrying forward the loss to eight years, could not divest the Assessee of the vested right which had accrued to him. Negating this contention of vested right, the Supreme Court held as under :-

> *"Section 24(2) has suffered amendment a number of times. Prior to its amendment by the Finance Act, 1955, it permitted a business loss to be carried forward for not more than six years, except in the case of losses pertaining to certain assesment years ending with the assessment year 1943-44 where the period for carrying forward was shorter. Section 16 of the finance Act, 1955, amended s.24(2), and as a result of the amendment s. 24(2)(iii) provided that a business loss which was not wholly set off could be carried forward from year to year. Thereafter, Finance (No.2) Act of 1957 amended s. 24(2)(iii) with effect from April 1, 1957, and in consequence an unabsorbed loss could not now be carried forward for more than eight years.*
>
> *The assessee claims a vested right under s. 24(2)(iii), as it stood before its amendment in 1957, to have the unabsorbed loss of 1950-51 carried forward from year to year until the loss is completely absorbed. The claim is based on a misconception of the fundamental basis underlying every income-tax assessment. It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication: CIT v. Isthmian Steamship Lines (1951) 20 ITR 572 (SC) and Karimtharuvi Tea Estate Ltd. v. State of Kerala (1966) 60 ITR 262 (SC). On that principle, it is abundantly clear that when an assessment for the assessment year 1960-61 is to be made and s. 24(2) is invoked, it is s. 24(2) as in force in that assessment year which has to be applied. That is the provision as amended by the finance (No.2) Act, 1957. There is no question of the assessee possessing any vested right under the law as it stood before the amendment. The assessment for one assessment year cannot, in the absence of a contrary provision, be affected by the law in force in another assessment year. A right claimed by an assessee under the law in*

> *force in a particular assessment year is ordinarily available only in relation to a proceeding pertaining to that year. Therefore, inasmuch as the provisions of s. 24(2), as amended in 1957, govern the assessment for the assessment year 1960-61, the High Court is right in affirming that the unabsorbed loss of Rs.15,50,189 of the assessment year 1950-51 cannot be carried forward for more than eight years, and consequently, cannot be set off against the business income of the assessment year 1960-61."*
>
> (emphasis supplied)

46. We fail to see how this judgment can be of any assistance to the Revenue. Firstly, in the case at hand, no Assessee is claiming any vested right of deduction as was done by the Assessee before the Supreme Court in ***Reliance Jute Industries Ltd. (supra)***. The Assessees are aware that for the subject deduction, certain conditions are to be complied with. However, it is their case that the deduction cannot be denied for want of compliance with a condition which has been introduced after their project was approved. Hence, that is not required to be complied with. This judgment is therefore of no assistance to the Revenue. Secondly, the provision being interpreted by the Supreme Court was section 24(2)(iii) which dealt with right of the Assessee to be able to set off the unabsorbed loss against the business profits of the Assessee. Interpreting this provision, the Supreme Court held that there was no question of any vested right because it is the law at the time when the Assessee claimed the set off, that would have to be applied. Thirdly, the Supreme Court itself held that "*It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication"* and "*a right claimed by an Assessee under the law in force in a particular*

assessment year is ordinarily available only in relation to a proceeding pertaining to that year." In the present case, we have held that the condition / restriction set out in clause (d) of section 80-IB(10) is inseparably linked to the date of the approval of the housing project. As a consequence thereto, we have held that the said clause cannot apply to a housing project approved before 31st March, 2005. The facts in the present case as well as the provision of law that we are called upon to interpret, are totally different from the ones in the case of ***Reliance Jute Industries Ltd. (supra)*** and therefore, the reliance placed on the said judgment is wholly misconceived.

47. The second judgment relied upon by the Revenue is also of the Supreme Court in the case of ***Ajay Agarwal (supra)***. We find that this judgment too is wholly inapplicable to the facts of the present case. This can be discerned simply from reading paragraphs 3 to 9 of the said judgment which set out the facts of the case before the Supreme Court. In fact, in the said judgment, the Supreme Court was called upon to decide the interpretation of section 11-B of the *Securities and Exchange Board of India Act, 1992* and its retrospectivity. The facts before the Supreme Court were in relation to alleged violations of the provisions of the SEBI Act, 1992. The complaint against the company and its directors was to the effect that there were mis-statements in the prospectus filed by the company, and more particularly with regard to the alleged non-disclosure by the directors

of the pledge of 7,50,000 shares owned by them. After show cause notices were issued, the chairman of the board of SEBI, exercising his powers under section 4 (3) read with section 11 and section 11-B of the SEBI Act, directed that the Respondent (Ajay Agarwal – director) be restrained from associating with any corporate body in accessing the securities market and also be prohibited from buying, selling or dealing in securities for a period of 5 years. The argument before the Supreme Court was that section 11-B was brought on the statute book by way of an amendment w.e.f. 25th January 1995, whereas the public issue in respect of which the impugned order was passed, was of November 1993 and the prospectus in which the alleged mis-statements were made was of October 1993. Hence, the question arose whether any direction could be issued under section 11-B for the alleged misconduct committed prior to its introduction. It is in the light of these facts that the Supreme Court referred to the judgement in the case of ***Reliance Jute Industries Ltd (supra)*** and stated that it was too well settled that the law to be applied for an assessment is the one which is extant in the assessment year, unless there is an amendment which is made retrospective either expressly or by necessary implication. In the facts of this case, the Supreme Court held that by the time the board passed the order on 31st March 2004, the SEBI Act had been amended and therefore at the time of passing of the order, the amendments in question empowered the board to do so. The Supreme Court came to the aforesaid conclusion even though holding that the provisions of section 11 (4) (b) and section 11-B were not

retrospective in their operation. As stated earlier, we fail to see how this judgement can be of any assistance to the Revenue. The facts as well as the provisions of law being interpreted by the Supreme Court in the aforesaid judgement were totally different from the facts of the present case, as well as the provisions of law that we are called upon to interpret. We therefore find, that this judgement too is wholly inapplicable to decide the controversy in the present appeal and the reliance placed thereon by the revenue is wholly misplaced.

48. It is now too well settled a proposition that the ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it. If one must refer to any authority on this subject, the Supreme Court in the case of ***Sarva Shramik Sanghatana (KV) v/s State of Maharashtra, reported in (2008) 1 SCC 494*** has very succinctly and eloquently reiterated the said proposition. Paragraphs 14 to 18 of the said judgment read thus :-

> *"**14.** On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem[1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] : (All ER p. 7 G-I)*
>
> > *"Before discussing Allen v. Flood [1898 AC 1 : (1895-1899) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I*

entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

We entirely agree with the above observations.

15. *In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:*

"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

16. *In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:*

"59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

(emphasis supplied)

17. *As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp. 584-85, paras 9-12)*

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...'

10. In Home Office v. Dorset Yacht Co. Ltd. [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said,

'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' (All ER p. 297g)

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] , observed: (All ER p. 1274d)

'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

And, in British Railways Board v. Herrington [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

***

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.' "

(emphasis supplied)

18. *We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula."*

49. Even applying the aforesaid proposition as laid down in the case of ***Sarva Shramik Sanghatana (KV) (supra),*** we find that the reliance placed by the Revenue on the judgment of ***Reliance Jute Indutries Ltd (supra)*** and ***Ajay Agarwal (supra)*** is wholly misplaced and is of no assistance to the arguments advanced on behalf of the Revenue.

50. In view of our discussion and findings in this judgment, we answer both substantial questions of law raised in these Appeals in the affirmative, that is in favour of the Assessees and against the Revenue. The Appeals are disposed off in the aforesaid terms. There shall be no order as to costs.

(B.P. COLABAWALLA J.) **(S.C. DHARMADHIKARI J.)**