

**(2015) 04 SC CK 0056**

**In the Supreme Court Of India**

**Case No :** Special Leave to Appeal (C) No. 22450/2011, SLP (C) Nos. 24329, 24330, 24331, 24332, 24333, 25000, 25001, 26010, 26011, 26807, 27249, 27273, 22450, 27671, 27673, 28130, 28131, 28147, 28148, 28167, 28168, 28169, 28170, 28756-28757, 29127, 29128, 30641, 306

C.I.T.

APPELLANT

Vs

Veena Developers

RESPONDENT

**Date of Decision :** 28-04-2015

**Acts Referred:**

Income Tax Act, 1961 — Section 80IB(10)

**Citation :** (2015) 277 CTR 297

**Hon'ble Judges :** A.K. Sikri, J; Rohinton Fali Nariman, J

**Bench :** Division Bench

**Advocate :** Gurukrishna Kumar, Senior Advocate, Pritish Kapoor, Anil Katiyar, Sadhna Sandhu, Rekha Pandey, Niranjana Singh, Gargi Khanna, Sneha, T.M. Singh, N. Annapoorani, Subash C. Acharya, Arijit Prasad, Rupesh Kumar, Kavin Gulati, D.L. Chidanand, Wasim Qadri, Man

**Final Decision :** Disposed Of

**Judgement**

SLP (C) No. 22450/2011, SLP (C) No. 20534/2013, SLP (C) CC No. 12785/2013, SLP (C) CC No. 11544/2013, SLP (C) No. 21661/2013, SLP (C) No. 21662/2013, SLP (C) No. 21663/2013, SLP (C) No. 24961/2013, SLP (C) No. 31709/2013, SLP (C) No. 34888/2013, SLP (C) No. 10678/2015, SLP (C) No. 28130/2011, SLP (C) No. 20409/2013, SLP (C) No. 21842/2012, SLP (C) No. 19087/2012, SLP (C) No. 29127/2011, SLP (C) No. 30643/2011, SLP (C) No. 9943/2015, SLP(C) No. 6085/2012, SLP(C) No. 25000/2011, SLP(C) No. 24329/2011, SLP(C) No. 24331/2011, SLP(C) No. 24332/2011, SLP(C) No. 24333/2011, SLP(C) No. 25001/2011, SLP(C) No. 30642/2011, SLP(C) No. 28131/2011, SLP(C) No. 30641/2011, SLP(C) No. 29128/2011, SLP(C) No. 28167/2011, SLP(C) No. 28130/2011, SLP(C) No. 28147/2011, SLP(C) No. 28148/2011, SLP(C) No. 28169/2011, SLP(C) No. 33053/2011, SLP(C) No. 23109/2012, SLP(C) No.

31167/2012, SLP(C) No. 28756-28757/2011, SLP(C) No. 21298/2012, SLP(C) No. 27671/2011, SLP(C) No. 27673/2011, SLP(C) No. 27249/2011, SLP(C) No. 31278/2011, SLP(C) No. 26807/2011, SLP(C) No. 28168/2011, SLP(C) No. 34137/2011, SLP(C) No. 26010/2011, SLP(C) No. 26011/2011, SLP(C) No. 27675/2012, SLP(C) No. 5766/2015, SLP(C) No. 5767/2015, SLP(C) No. 5770/2015, SLP(C) No. 10827/2015, SLP(C) No. 12107/2015, SLP(C) No. 35907/2013, SLP(C) No. 38202/2013, SLP(C) No. 6770/2014, SLP (C) No. 26196/2013, SLP (C) No. 26197/2013, SLP (C) No. 788/2012, SLP (C) No. 31862/2012, SLP (C) No. 36558/2012, SLP (C) No. 789/2013, SLP (C) No. 790/2013, SLP (C) No. 11270/2013, SLP (C) No. 31863/2012, SLP (C) No. 31864/2012, SLP (C) No. 30696/2013, SLP (C) No. 32776/2013, SLP (C) No. 9873/2014, SLP (C) No. 27273/2011, SLP (C) No. 28170/2011, SLP (C) Nos. 28976-28977/2013, SLP (C) No. 9153/2014, SLP(C) No. 1568/2013, SLP(C) No. 31861/2012, SLP(C) No. 3127/2012, SLP(C) No. 3793/2012, S.L.P.(C)...CC No. 7562-7563/2012, SLP(C) No. 16627/2012, SLP(C) No. 20034/2012, SLP(C) No. 20035/2012, SLP(C) No. 21299/2012, SLP(C) No. 16490/2013, SLP(C) No. 16491/2013, SLP(C) No. 16492-16493/2013, SLP(C) No. 18023/2013, SLP(C) No. 18024/2013, SLP(C) No. 18025/2013, SLP(C) No. 18026/2013, SLP(C) No. 21665/2013, SLP(C) No. 28449/2013, SLP(C) No. 32691/2013, SLP(C) No. 32693/2013, SLP(C) No. 2766/2014, SLP(C) No. 5699/2014, SLP(C) No. 33433/2014, SLP(C) No. 5768/2015, SLP(C) No. 4680/2015, SLP(C) No. 5764/2015, SLP(C) No. 5776/2015, SLP(C) No. 7576/2015, SLP(C) No. 6452/2015, SLP(C) No. 8826/2015, SLP(C) No. 8389/2015, SLP(C) No. 8218/2015, SLP(C) No. 8822/2015, SLP(C) No. 12108/2015, SLP(C) No. 9942/2015, SLP(C) No. 12109/2015, SLP(C) No. 10805/2015, SLP(C) No. 10679/2015, SLP(C) No. 11349/2015, SLP(C) No. 12061/2015, SLP(C) No. 12106/2015, SLP (C) No. 9153/2014

1. SLP (C) No. 9153/2014 is taken on board with the consent of the parties.

2. Delay condoned.

3. All these special leave petitions are filed by the Revenue/Department of Income tax against the judgments rendered by various High Courts deciding identical issue which pertains to the deduction Under Section 80IB(10) of the Income Tax Act, as applicable prior to 01.04.2005. We may mention at the outset that all the High Courts have taken identical view in all these cases holding that the deduction under the aforesaid provision would be admissible to a "housing project".

4. All the Assesseees had undertaken construction projects which were approved by the municipal authorities/local authorities as housing projects. On that basis, they claimed deduction Under Section 80IB(10) of the Act. This provision as it stood at that time, i.e., prior to 01.04.2005 reads as under:

5. Section 80IB(10) [as it stood prior to 01.04.2005]

(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.

6. However, the income tax authorities rejected the claim of deduction on the ground that the projects were not "housing project" inasmuch as some commercial activity was also undertaken in those projects. This contention of the Revenue is not accepted by the income tax Appellate Tribunal as well as the High Court in the impugned judgment. The High Court interpreted the expression "housing project" by giving grammatical meaning thereto as housing project is not defined under the Income Tax Act insofar as the aforesaid provision is concerned. Since Sub-section (10) of Section 80IB very categorically mentioned that such a project which is undertaken as housing project is approved by a local authority, once the project is approved by the local authority it is to be treated as the housing project. We may also point out that the High Court had made observations in the context of Development Control Regulations (hereinafter referred to as "DCRs" in short) under which the local authority sanctions the housing projects and noted that in these DCRs itself, an element of commercial activity is provided but the total project is still treated as housing project. On the basis of this discussion, after modifying some of the directions given by the ITAT, the conclusions which are arrived at by the High Court are as follows:

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

a) Upto 31/3/2005 (subject to fulfilling other conditions), deduction Under Section 80IB(10) is allowable to housing projects approved by the local authority having residential units with commercial user to the extent permitted under DC Rules/Regulations framed by the respective local authority.

b) In such a case, where the commercial user permitted by the local authority is within the limits prescribed under the DC Rules/Regulation, the deduction Under Section 80IB(10) upto 31/3/2005 would be allowable irrespective of the fact that the project is approved as "housing project" or "residential plus commercial".

c) In the absence of any provisions under the Income Tax Act, the Tribunal was not justified in holding that upto 31/3/2005 deduction Under Section 80IB(10) would be allowable to the projects approved by the local authority having residential building with commercial user upto 10% of the total built-up area of

the plot.

d) Since deductions Under Section 80IB(10) is on the profits derived from the housing projects approved by the local authority as a whole, the Tribunal was not justified in restricting Section 80IB(10) deduction only to a part of the project. However, in the present case, since the Assessee has accepted the decision of the Tribunal in allowing Section 80IB(10) deduction to a part of the project, we do not disturb the findings of the Tribunal in that behalf.

e) Clause (d) inserted to Section 80IB(10) with effect from 1/4/2005 is prospective and not retrospective and hence cannot be applied for the period prior to 1/4/2005.

7. We are in agreement with the aforesaid answers given by the High Court to the various issues. We may only clarify that insofar as answer at para (a) is concerned, it would mean those projects which are approved by the local authorities as housing projects with commercial element therein.

8. There was much debate on the answer given in para (b) above. It was argued by Mr. Gurukrishna Kumar, learned senior Counsel, that a project which is cleared as "residential plus commercial" project cannot be treated as housing project and therefore, this direction is contrary to the provisions of Section 80(I)(B)(10) of the Act. However, reading the direction in its entirety and particularly the first sentence thereof, we find that commercial user which is permitted is in the residential units and that too, as per DCR. Examples given before us by the learned Counsel for the Assessee was that such commercial user to some extent is permitted to the professionals like Doctors, Chartered Accountants, Advocates, etc., in the DCRs itself.

9. Therefore, we clarify that direction (b) is to be read in that context where the project is predominantly housing/residential project but the commercial activity in the residential units is permitted. With the aforesaid clarification, we dispose of all these special leave petitions.

10. SLP (C) No. 8827/2015, SLP (C) No. 9132/2014, SLP (C) No. 9871/2014, SLP (C) No. 8823/2015, SLP (C) No. 7570/2015, SLP (C) No. 8829/2015, SLP (C) No. 10290/2014, SLP (C) No. 24330/2011, SLP (C) No. 8390/2015, SLP (C) No. 4651/2015, SLP (C) No. 4652/2015, SLP (C) No. 7579/2015, SLP(C) No. 12063/2015, SLP(C) No. 7578/2015, SLP(C) No. 8828/2015, SLP(C) No. 7575/2015, SLP(C) No. 8825/2015, SLP(C) No. 5769/2015.

11. List on Thursday 30th April, 2015.