

## Ownership of land isn't a pre-requisite for a developer to claim sec. 80-IB relief for housing project

**Summary – The High Court of Gujarat in a recent case of Shreeji Developers., (the Assessee) held that in order to claim deduction under section 80-IB(10), it is not necessary that developer of housing project should be owner of land.**

The Revenue had filed an Appeal challenging the judgment of the Income-tax Appellate Tribunal and following questions were presented for consideration:—

- "(A) Whether on the facts and circumstances of the case, the Income-tax Tribunal, is right in law in deleting addition of Rs. 69,58,801/= made on account of disallowance of deduction claimed under Section 80IB [10] of the Income-tax Act, by the Assessing Officer ?
- (B) Whether the assessee firm is entitled for claiming deduction under section 80IB (1) r/w. Section 80IB (1) and rule 18BBB as the assessee firm has not fulfilled the condition mentioned in the above mentioned section ?"

The issue is with respect to the assessee's claim of deduction under Section 80IB [10] of the Income-tax Act, 1961 {"Act" for short}. The Revenue's objection to such deduction was that the assessee did not own the land on which the Housing Project was developed and that therefore, such deduction was not allowable.

The HC while deliberating this issue referred to the case of *CIT v. Radhe Developers* [\[2012\] 341 ITR 403/204 Taxman 543/17 taxmann.com 156 \(Guj.\)](#), where such an issue was dealt in the following manner and disposed off the issue similarly :—

*"The essence of sub-Section (10) of Section 80IB, therefore, requires involvement of an undertaking in developing and building housing projects approved by the local authority. Apparently, such provision would be aimed at giving encouragement to providing housing units in the urban and semi-urban areas, where there is perennial and acute shortage of housing, particularly, for the middle income group citizens. To ensure that the benefit reaches the people, certain conditions were provided in sub-Section(10) such as specifying date by which the undertaking must commence the developing and construction work as also providing for the minimum area of plot of land on which such project would be put up as well as maximum built up area of each of the residential units to be located thereon. The provisions nowhere required that only those developers who themselves own the land would receive the deduction under Section 80IB(10) of the Act."*

*"We have noted at some length, the relevant terms and conditions of the development agreements between the assessee and the land owners in case of Radhe Developers. We also noted the terms of the agreement of sale entered into between the parties. Such conditions would immediately reveal that the owner of the land had received part of sale consideration.*

*In lieu thereof he had granted development permission to the assessee. He had also parted with the possession of the land. The development of the land was to be done entirely by the assessee by constructing residential units thereon as per the plans approved by the local authority. It was specified that the assessee would bring in technical knowledge and skill required for execution of such project.*

*The assessee had to pay the fees to the Architects and Engineers. Additionally, assessee was also authorized to appoint any other Architect or Engineer, legal adviser and other professionals. He would appoint Sub-contractor or labour contractor for execution of the work. The assessee was authorized to admit the persons willing to join the scheme. The assessee was authorised to receive the contributions and other deposits and also raise demands from the members for dues and execute such demands through legal procedure. In case, for some reason, the member already admitted is deleted, the assessee would have the full right to include new member in place of outgoing member.*

*He had to make necessary financial arrangements for which purpose he could raise funds from the financial institutions, banks etc. The land owners agreed to give necessary signatures, agreements, and even power of attorney to facilitate the work of the developer."*

In short, the assessee had undertaken the entire task of development, construction and sale of the housing units to be located on the land belonging to the original land owners. Such terms and conditions under which the assessee undertook the development project and took over the possession of the land from the original owner, leaves little doubt in our mind that the assessee had total and complete control over the land in question. The assessee could put the land to use as agreed between the parties. The assessee had full authority and also responsibility to develop the housing project by not only putting up the construction but by carrying out various other activities including enrolling members, accepting members carrying out modifications engaging professional agencies and so on. Most significantly, the risk element was entirely that of the assessee. The land owner agreed to accept only a fixed price for the land in question. The assessee agreed to pay off the land owner first before appropriating any part of the sale consideration of the housing units for his benefit. In short, assessee took the full risk of executing the housing project and thereby making profit or loss as the case may be. The assessee invested its own funds in the cost of construction and engagement of several agencies. Land owner would receive a fix predetermined amount towards the price of land and was thus insulated against any risk.

In the result, the HC decided the appeal against the Revenue.