

Production of backdated completion certificate won't allow sec. 80-IB deduction

Summary – The High Court of Madhya Pradesh in a recent case of Global Reality., (the Assessee) held that where completion certificate of housing project of assessee was issued after cut off date by Local Authority but mentioned date of completion of project before cut off date, same could not fulfil condition specified in section 80-IB (10)(a) read with explanation (ii) thereunder and assessee was not entitled to deduction under section 80-IB (10)(a)

Facts

- The assessee, a partnership firm was engaged in construction and sale of houses.
- The assessee, after the approval was granted by the Municipal Corporation, started the housing project before 31-03-2004. The assessee submitted application to the Municipal Corporation on 16-01-2008, claiming that the housing project was completed. The site was inspected by the Inspector of the Municipal Corporation on 27-02-2008. The completion certificate was not issued before the cut off date (*i.e.* 31-03-2008). It was so issued by the Local Authority on 04-05-2010 which, however, did not mention the date of completion of the project. The Local Authority later on, clarified *vide* letter dated 23-03-2011, that the date of completion of the project was 27-02-2008. Relying on the said clarification, the assessee contended that the project was in fact completed on 27-02-2008, before the cut off date; and for which reason the assessee was entitled for deduction within the meaning of section 80-IB (10) (a).
- The Assessing Officer, however, disallowed the claim of the assessee on the finding that inspite of repeated opportunity given to the assessee during the course of assessment proceedings, the completion certificate was not produced before 31-03-2008.
- The assessee carried the matter in appeal before the Commissioner (Appeals) and thereafter before the Tribunal. The Tribunal decided all appeals in favour of assessee.
- On appeal:

Held

- The *explanation* below clause (a), in particular (ii) postulates that 'the date of completion of construction of housing project' shall be taken to be 'the date on which completion certificate' in respect of such housing project 'is issued by the Local Authority'. If *Explanation* (ii) is superimposed on the expression 'completes such construction' in Clause (a) of section 80-IB(10), it would mean that the housing projects commenced on or after 01-10-1998 must possess completion certificate issued by the Local Authority on or before the cut off date, as may be applicable - to become eligible for tax deduction. As per *Explanation* (ii), therefore, the synonym of 'completes such construction' would be the date on which completion certificate is issued by the Local Authority. No more and no less.

- Issuance of completion certificate, after the cut off date by the Local Authority but, mentioning the date of completion of project before the cut off date, does not fulfil the condition specified in clause (a) of section 80-IB (10) read with *Explanation (ii)* thereunder. The argument of the assessee that the effect of amended clause (a) of sub-section 10 of section 80-IB, which has come into force with effect from 1st April, 2005, has retrospective effect or that it is unjust in any manner or incapable of compliance at all is rejected. Similarly, the requirement of securing completion certificate issued by the Local Authority before the cut off date is not directory, in view of the express provision in section 80-IB (a) and the *Explanation (ii)* thereunder. The completion certificate granted by the Local Authority must bear the date of having been issued before the cut off date.
- The impugned judgment of the Tribunal is set aside; and in the facts of the present case, the decision of the Assessing Officer to disallow deduction under section 80-IB(10)(a) is upheld.