

## Housing projects can't be held as single project if each project is independent with separate facilities

**Summary – The High Court of Delhi in a recent case of Omaxe Buildhome (P.) Ltd., (the Assessee) held that Where each real estate project developed by assessee constituted an integrated development which could be considered on a standalone basis and each was independent of other housing schemes developed by assessee on adjoining lands, assessee would be entitled to deduction under section 80-IB on each project, these being separate housing projects**

### Facts

- The assessee was engaged in the business of real estate development and construction of residential/housing projects. It claimed deduction under section 80-IB in relation to two of its projects, namely, 'O' (GH-03) Noida and 'O' Greens-I, Greater Noida.
- The Assessing Officer held that the project 'O' Noida was a singular housing project spanning over 29.41 acres consisting of units developed to plots of land shown as GH-01, GH-02 and GH-03. Admittedly the towers constructed on plots marked as GH-02 and GH-03 did not confirm to the conditions as stipulated under section 80-IB(10). Since the development of land marked as GH-01, GH-02 and GH-03 formed a part of a singular housing project, deduction under section 80-IB was not available to the assessee in respect of the construction/development of plot GH-03. He took a similar view in the case of 'O' Greens-I, Greater Noida. He held that construction/development on a parcel of land spanning over 50 acres constituted a single housing project and 'O' Greater Noida which comprised of 24 towers constituted only a part of a larger development. He did not accept the assessee's contention that 11 towers built over 8.4 acres in the case of 'O' (GH-03) Noida and 24 towers built over 25.83 acres constituted separate housing projects for the purposes of section 80-IB(10). He disallowed the claim of deduction under section 80-IB on the ground that the whole project was required to be compliant with section 80-IB(10) and an eligible part of the project could not be severed from the ineligible part for admitting the benefit under section 80-IB. The assessee was claiming deduction with respect to certain buildings which were a part of housing projects and did not qualify to be termed as separate housing projects.
- On appeal, the Commissioner (Appeals) noted that 'O' (GH-03) Noida consisted of towers T-1 to T-12 built on the plot marked as GH-03 which consisted of two bed room residential units having a built up area of less than 1000 sq. ft. each. He further examined the allotment letter dated 3-10-2010 issued by NOIDA for allotment of group housing plots GH-01, GH-02 and GH-03 and concluded that the approval granted by NOIDA recognised separate group housing scheme. The master plan also indicated separate identifiable plots for group housing on GH-01, GH-02 and GH-03. The plot of land, GH-03, was separated by road. Each group housing scheme envisaged its separate common facilities and amenities. The land allotted for housing scheme GH-01, GH-02 and GH-03 measured 119022.12 sq. mtrs. (29.41 acres) out of which the plot relatable to GH-03 measured 8.4 acres. On the aforesaid basis, he accepted the assessee's contention that the GH-03 qualified as a separate housing project and complied with all the conditions as specified under section 80-IB(10). He held that the common

approval for the three schemes as demarcated on the plan with independent facilities would not in any manner dilute the position that the three housing schemes on separate plots earmarked as GH-01, GH-02 and GH-03 were separate and independent housing projects.

- Insofar as Project 'O' Greens-I, Greater Noida was concerned, he noted that the said project spanned over an area of approximately 50 acres. The housing project in respect of which deduction was claimed by the assessee consisted of 24 towers comprising of residential units having a constructed area of less than 1500 sq. ft. built on an area measuring 25.83 acres of land. This housing project was separable from the project that consisted of 11 towers built over 24.174 acres, which admittedly was not eligible for benefit under section 80-IB.
- He held that since both the housing projects were separated by roads and had separate common facilities, they constituted separate housing projects. He accordingly allowed the deduction under section 80-IB to the assessee.
- On second appeal, the Tribunal concurred with the findings of the Commissioner (Appeals).
- On appeal to High Court :

#### Held

- The question whether a housing scheme constitutes a separate housing project is essentially a question of fact. In the instant case, the Commissioner (Appeals) had found that the real estate development in respect of which deduction under section 80-IB was claimed by the assessee constituted separate housing projects, as (i) they were built on plots of land which were clearly demarcated and separated from other projects, (ii) the housing schemes were clearly demarcated on the sanctioned plans and were reflected separately, and (iii) the housing schemes in question, namely, 'O' (GH-03) and 'O' Greater Noida were complete and independent real estate developments as the same not only consisted of built up residential buildings but also separate common facilities and amenities provided for the residential units of the housing project.
- It is not disputed that the housing projects referred to as 'O' (GH-03), Noida and 'O' Greens-I, Greater Noida are real estate developments that are complete on a stand alone basis. The said projects comprise of towers of residential units along with common areas, facilities and amenities for the residents of those towers. Thus, considered on a stand alone basis, the said real estate developments would constitute an integrated development independent of the other housing schemes developed by the assessee on the adjoining lands. The expression 'housing project' has not been defined under section 80-IB and, thus, must be construed in its ordinary sense and in the context of section 80-IB(10) which specifies the attributes of an eligible housing project.
- A real estate development which on a stand alone basis is complete in all respects, that is, it includes the dwelling units, the necessary infrastructure, common areas and common facilities for the residents of the dwelling units, would constitute a housing project for the purpose of section 80-IB.
- In view of the aforesaid, the orders passed by the Commissioner (Appeals) and Tribunal deserved to be upheld.