

(Attach copy of Form 10CCB of developer)

15 Providing telecommunication services :

- (a) Please specify the nature of telecom service
[e.g., basic telecom service, cellular service, etc.
[Section 80-IA(4)(ii)]]

16 Development, operation, maintenance of industrial park/SEZ

- (a) With respect to the industrial park/SEZ, does the undertaking (please tick):

Develop

Develop
and
operate

Maintain and operate an industrial park /SEZ

- (b) Name and address of the industrial park/SEZ

- (c) Has the operation and maintenance of the industrial park/SEZ been received on transfer from its developer

Yes ☐

No ☐

- (d) If yes, first year of claiming deduction under section 80-IA by the developer (Attach copy of Form 10CCB of developer)

17 Generation, transmission, distribution of power :

- (a) Does the undertaking generate power or generate and distribute power

Yes ☐

No ☐

- (i) If yes, indicate the year in which the undertaking has started generating power

- (b) Does the undertaking transmit or distribute power

Yes ☐

No ☐

- (i) If yes, indicate the year in which the new transmission and distribution lines were laid

- (c) Has there been substantial renovation and modernization of the existing network of transmission or distribution lines

Yes ☐

No ☐

If yes, please specify, -

- (i) the year in which the substantial renovation and modernisation of the existing network of transmission or distribution lines took place

- (ii) book value of plant and machinery as on 1-4-2004

- (iii) value of increase in the plant and machinery in the year of substantial renovation and modernisation

ELIGIBLE BUSINESS UNDER SECTION 80-IB

18 Industrial undertakings engaged in manufacture or production of article or thing or operation of cold storage plant

- (a) Does the industrial undertaking manufacture or produce any article or thing specified in the Eleventh Schedule

Yes ☐

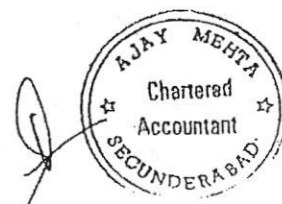
No ☐

(Please specify the article or thing.....)

- (b) If yes, does the manufacturing process use power

Yes ☐

No ☐



- (c) Number of workers employed in the manufacturing process
- (d) Does the industrial undertaking operate any cold storage plant
- (e) Please specify if the company is a small scale industrial undertaking
- (f) If the industry is located in the North Eastern Region, is the industry a notified industry as per second proviso to section 80-IB(4)?
- (g) If the industry is located in Jammu & Kashmir, does it manufacture or produce any article or thing specified in part 'C' of the Thirteenth Schedule?

19 Business of ship

- (a) Is the ship owned by an Indian company and wholly used for the business carried on by it
- (b) If the ship was acquired on transfer, was the ship owned or used in Indian territorial waters by a person resident in India

20 Business of hotel

- (a) Is the hotel located in
- (i) Hilly area
- (ii) Rural area
- (iii) Place of pilgrimage
- (iv) Other notified area
- (v) None of the above
- (b) Is the hotel approved by the prescribed authority under rule 18BBC of the Income-tax Rules, 1962?

21 Business of scientific research and development

- (a) Is the business approved by the prescribed authority under rule 18D?
- (Please attach copy of approval)

Printed from Taxmann's Income-tax Rules on CD

- (b) Does it fulfil the conditions prescribed in rule 18DA of the Income-tax Rules?

22 Commercial production or refining of mineral oil

- (a) Is the undertaking engaged in the commercial production or refining of mineral oil?
- (b) If yes, please specify:

23 Developing and building housing projects

- (a) Date of approval by local authority (Please attach copy of approval/if approval is obtained more than once, attach copy of first approval of the building plan)

- (b) Date of completion of the housing project
- (Please attach copy of the completion certificate issued by the local authority)

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

(Please specify _____)

(Please specify _____)

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Commercial production of mineral oil

Refining of Mineral Oil

Refining of mineral oil

Kapra Municipality Sanction No. BA/G/1162/2005
Dt. 02.07.2005 (First Building Plan Permission)

Under Progress



- (c) Size of plot of land of the project
 (d) Is the project situated in Delhi or Mumbai or within 25 kilometres from their municipal limits
 (e) Built-up area of the residential unit of the Project.

- (f) Built-up area of the shops and other commercial establishments situated in the project
 (g) Whether the project is carried out in accordance with a scheme framed by Central/State Government for re-construction/re-development of existing buildings in areas declared to be slum areas under any law in force and notified by the Board.
 (Please attach a copy of CBDT's notification)
 (h) Please specify the method of accounting adopted

24 Other business activities

- (a) Is the undertaking in the business of setting up and operating a cold chain facility for agricultural produce
 (b) Is the undertaking in the integrated business of handling, storage and transportation of foodgrains
 (c) Is the undertaking in the business of processing, preservation and packaging of fruits or vegetables

ELIGIBLE BUSINESS UNDER SECTION 80-IC

- 25 (i) Whether the undertaking or enterprise is located in an area notified by the Board for the purposes of in an area notified by the Board for the purposes of section 80-IC
 (ii) If yes, please indicate,—
 (a) Name of the Export Processing Zone/Integrated Infrastructure development centre / industrial Growth Centre/Industrial Park/Estate/Software Technology Park/Industrial Area/Theme Park and the District/State in which located
 (b) Khasra No. of the undertaking or enterprise (Also indicate the Board's Notification No.)
 (c) If the eligible business is new, please give the date of commencement of production or manufacture of article or thing
 (d) If the existing business has undertaken substantial expansion, please specify,—
 (i) The date of substantial expansion
 (ii) The total book value of plant and machinery (before taking depreciation in any year) as on first day of the previous year in which substantial

Ac 6.05 Guntas (For Phase-I)

Yes ☐

No ☒

Size of each unit ranging from 1366 S.ft to 1,487 S.ft (Built up area). The Built up area is certified by Chartered Engineer (Certified Copy Enclosed)

Nil

Yes ☐

No ☐

Mercantile (Refer Annexure - A)

Not Applicable

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

Yes ☐

No ☐

[Handwritten Signature]

[Handwritten Signature]



- expansion took place.
- (iii) Value of increase in the plant and machinery in the year of substantial expansion.
- (e) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Thirteenth Schedule
(If yes, please specify the article or thing)
- (f) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Fourteenth Schedule
(If yes, please specify the article or thing or operation)
- 26 For claim of deduction under section 80-IA(4)(ii) and (iv) / 80-Ib(3), (4), (5), and (11)/80-IC please indicate:
- (a) Whether the undertaking or enterprise has been formed by the splitting up or the reconstruction of a business already in existence
- (b) If yes, whether the circumstances and the period specified in section 33B is applicable
(Please give details)
- (c) Has the undertaking or enterprise received any machinery or plant on transfer which was previously used for any purpose
- (d) If yes, please specify value of machinery or plant received on transfer
- (e) Total value of machinery or plant used in business
- 27 Total sales of the undertaking
- 28 Transactions by the undertaking to a related concern of the assessee, or another undertaking of the assessee, or the co-owner of the undertaking, or another undertaking of the co-owner :
[Related concern is a person within the meaning of section 40A(2)(b)]
Name of the Related Concern
- (a)
- (b)
- (c)
- (d)
- 29 Profits and gains derived by the undertaking / enterprise from the Eligible business #
- 30 Deduction under section 80-IB

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Refer Annexure 'I'

NIL

Transaction

(Please specify nature and amount)

Rs.

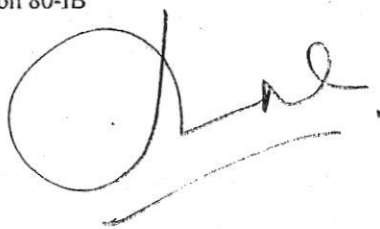
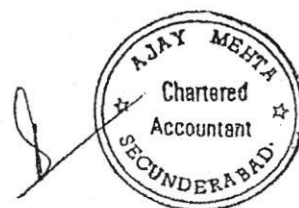
Rs.

Rs.

Rs.

Rs.9633962/- (As per computation enclosed)

Rs.9633962/-

Declaration

I/ We have examined the balance sheet of the above industrial undertaking or enterprises style** M/s. Mehta and Modi Homes and belonging to the assessee M/s. Mehta and Modi Homes (Permanent Account no. AAJFM0647C as at 31-03-2007 and the profit and loss account of the said industrial undertaking or enterprise for the year ended on that date which are in agreement with the books of account maintained at the head office at 5-4-187/3& 4, 2nd Floor, Soham Mansion, M.G Road Ranigunj Secunderabad.- 500003 and Branches at None

*I/We have obtained all the information and explanations which to the best of *my /our knowledge and belief were necessary for the purposes of the audit, in *my/our proper books of account have been kept by the head office and the branches of the industrial undertaking or enterprise aforesaid visited by *me/us so far as appears from *my/our examination of books, and proper returns adequate for the purposes of audit have been received from branches not visited by *me/us, subject to the comments given below:

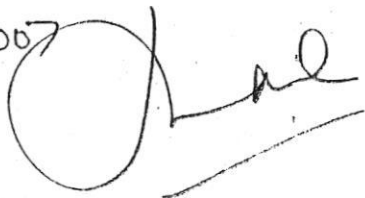
in *me/our opinion the undertaking or enterprise satisfies the conditions stipulated in section 80-IB (strike out which ever is not applicable) and the amount of deduction claimed under this section in item 30 is as per the provisions of the Income-Tax act and meets the required conditions.

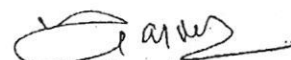
In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us the said accounts give a true and fair view-

- (i) in the case of the balance sheet, of the state of affairs of the above name industrial undertaking or enterprise as at 31-03-2007; and
- (ii) in the case of the profit and loss account, of the profit ~~or loss~~ of the industrial undertaking or enterprise for the accounting year ending on 31-03-2007;

Place: Secunderabad

Date: 30.10.2007

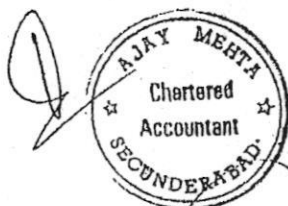



Signed



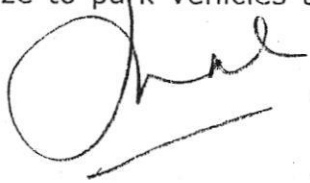
MEHTA & MODI HOMES**Asst Year - 2007-08****Annexure - I to Form NO 10CCB**

1. The firm has taken up developing of Housing Project which is situated at Cherlapally Village which is named as 'Silver Oak Bungalows '. The sanction for the project is obtained from HUDA vide Lr.No.2755/MP2/Plg/HUDA/2004 dated 06/07/2005 and Kapra Municipality vide sanction No. BA/41/3650/2004 dated 15.06.2005 being local Authority.
2. The salient features of the project are as under for Phase-I :
 - a. Land Area Acre 6.05 Gts.
 - b. Total number of individual residential units 76
 - c. Size of each unit is ranging from 1366 S.ft to 1487 S.ft (*Built-up area.*) The Built-up area is certified by a Chartered Engineer) (copies are enclosed herewith)
 - d. Date of commencement 02.07.2005 (Date of First Building plan sanction)
3. The revenue from Housing project is recognized on an estimate basis till the project completed and is transferred / delivered to the customers. Revenue in respect of independent residential units, which are completed is recognized at the point of transfer/delivered and /or ready for delivery to customer.
4. The work for independent residential units is under progress. During the year installments of Rs7,74,90,121/- received / receivable on the basis of agreements / understanding.
5. In accordance with accounting policy adopted with regard to revenue recognition on uncompleted independent residential units an estimated profit of Rs. 1,16,23,518/- calculated at 15% on installments for the year of Rs 7,74,90,121/- is credited to Profit & Loss A/C and the corresponding debit of the same is to the account of construction work in progress account.
6. In accordance with the accounting policy adopted with regard to revenue recognition for uncompleted Residential units the installments aggregating to Rs. 7,74,90,121/- is carried forward as current liabilities and expenditure on construction, land cost and estimated profit declared aggregating to Rs. 17,42,41,587/- is carried forward as Inventories.
7. The copy of Sanction letter, Sanction plan, Brochure for the project is enclosed.
8. The Project is under the stage of construction. Keeping in view the generally accepted and settled principle that the profits accrues year to year in a project having a gestation period and not at the end of the project profits are estimated during the progress of project.

**For MEHTA & MODI HOMES****PARTNER**

NOTE ON PORTICO AND OPEN TERRACE:

1. In the scheme of housing project development, there exist two basic options of development. One option is to develop and construct series of independent houses and the other option is to develop and construct blocks of multi-storied buildings having apartments/flats on each floor of the building. The first option can be said as 'horizontal development' and the second option can be said as 'vertical development'.
2. In the horizontal scheme of development, it is imperative that the one large parcel of land is sub-divided within itself and plotted into desired size of plots. This plotting necessarily involves leaving certain areas as internal road so as to form approach road to each plot. Whereas in a vertical development, blocks of multi storied buildings are planned to be constructed leaving certain areas for roads in and around the block of buildings.
3. Typically, in vertical development involving constructions of buildings having more than one floor, the ground floor (or the cellar) is meant for parking. The residential units i.e., flats/apartments starts from the first floor onwards. These parking areas can be either a reserved parking or common parking area for the flat occupants. Therefore, these parking areas obviously do not form part of a residential unit. The parking area is not habitable and is meant only for parking of vehicles. The parking area for the occupants of the multistoried building is pooled and provided at one place i.e., either on the ground floor/cellars or in the open space around the buildings.
4. In a horizontal development i.e., in an independent house the parking area is termed as 'portico'. The portico is within the plot area but definitely outside the residential unit. The portico here also is meant for parking of vehicles and is not habitable. The portico at the most, has an convenience advantage that you may approach the main door of the residential unit without having to go to upper floors to enter the flat/apartment. The location of the portico within the compound wall of a plot shall not alter the nature of that area as a parking area. The word 'portico' used generally for a bungalow is similar to word 'parking area' used in a multistoried apartment. The purpose and the meaning are also same i.e., the area meant to be utilized as parking of vehicles.
5. The meaning of the word 'Portico' can be explained as follows:
 - A portico/porch/parking area is an area covered or uncovered with sufficient size to park vehicles together with a driveway connecting



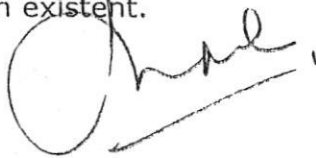
the parking space with a street or alley permitting ingress and egress of the vehicles.

- It is a paved outdoor area adjoining a residence. It adjoins the residence externally and is not part of the residential unit. A residential unit is enclosed in walls, which stretch from the floor level to the roof; it has windows and is topped by a roof.
- A portico/parking/porch, on the other hand, hardly has the features of the residential unit. Windows are non-existent. It is not competent to be used for habitable purposes.
- Portico area is not at the level of the ground floor and is below it. It doesn't even form a part of the house. The entrance of the house is after the portico. It doesn't form part of the plinth of the house.

Built up area does not include parking area and is not usable. Even for apartments parking is considered separately and cannot be part of usable built up area. For this very reason, all municipal laws and other standards and codes exclude the portico from the built-up area.

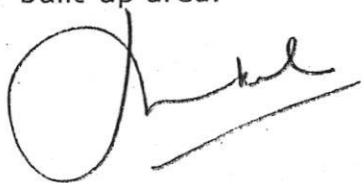
6. Considering the above meaning of the word 'Portico' it may be appreciated that the 'Portico' do not form part of a residential unit and as such, the company has rightly excluded the portico for calculating the built-up area.
7. In the design of the residential units under Silver Oak Bungalows housing project, an open terrace is provided on the first floor. The area of this open terrace is not included in calculation for the reason that the same do not form part of a residential unit. The open terrace provided is open to sky and as such the terrace area is not habitable.
8. A terrace is known as paved outdoor area adjoining a residence. It adjoins the residential externally and is not part of the structure that composes the residential unit. A residential unit is enclosed in walls, which stretch from the floor level to the roof; it has windows and is topped by a roof. A residential unit has provisions for amenities and security of the residents.

A terrace, on the other hand, hardly has the features of the residential unit. It is open to the sky and the height of its wall boundaries are nowhere similar to that of the residential unit. Windows are non-existent.



A terrace independently is not capable to be used for habitable purposes and therefore can not be considered as forming part of the residential unit. For this very reason, all municipal laws and other standards and codes exclude the open terrace from the built-up area.

9. In a multistoried building (under vertical concept of development), the terrace is the top floor which is open to sky and is not habitable. This terrace area cannot form part of the residential unit. Similarly, open terrace provided for the bungalow cannot form part of the residential unit. This can also be understood by way a example of a Pent House. A pent house is on a terrace covering certain portion of the terrace. While computing built-up area of the Pent- House, the open terrace area surrounded to the pent house is not measured.
10. Considering all the above, with respect to open terrace, we have rightly not included the open terrace on first floor in computing the built-up area.



and related floor cladding, latter edge of construction shall be considered.

NOTE: In case a cantilever wall is added to the existing wall, only half the area of such wall shall be included in the plinth area of the building.

5.1.1. The following shall be included in the plinth area:

a) Stair cover.

b) Terrace area of a verandah with parapet.

c) 100 percent area for the portion protected by the projections above, and

d) 50 percent area for the portion unprotected from above.

5.1.2. 100 percent area of the balcony protected by projection above and 50 percent area of the unprotected balcony; and

e) In case an alcove made by cantilevering a wall beyond external wall:

f) 25 percent of the area for the alcove of height up to 1 m,

g) 50 percent of the area for the alcove of height more than 1 m and up to 2 m, and

h) 100 percent of the area for the alcove of height more than 2 m.

5.1.3. The following shall not be included in the plinth area:

i) Area of loggia.

j) Area of arcade, blind band, cornice, etc.

k) Area of verandah, sun breakers or other features projecting out of the architectural features, for example, the projection for door, porch, etc.

l) Open platform.

m) Terrace.

n) Open spiral, side stair cover, and

o) Area of machine, machine room, towers, etc., which project above terrace level.

5.2. MEASUREMENT OF CARPET AREA

5.2.1. From the plinth area as worked out in 5.1, the area of the wall shall be deducted (see also 5.1.1, 5.1.2 and 5.2.2).

5.2.2. Thickness of wall shall be included in the carpet area.

5.2.3. The vertical dimensions shall be measured internally or externally.

5.2.4. The following shall be included in the carpet area:

a) Stair cover.

b) Terrace area of a verandah with parapet.

c) 100 percent area for the portion protected by the projections above, and

d) 50 percent area for the portion unprotected from above.

5.2.5. 100 percent area of the balcony protected by projection above and 50 percent area of the unprotected balcony; and

e) In case an alcove made by cantilevering a wall beyond external wall:

f) 25 percent of the area for the alcove of height up to 1 m,

g) 50 percent of the area for the alcove of height more than 1 m and up to 2 m, and

h) 100 percent of the area for the alcove of height more than 2 m.

5.2.6. The following shall be excluded from the carpet area:

i) Area of loggia.

j) Area of arcade, blind band, cornice, etc.

k) Area of verandah, sun breakers or other features projecting out of the architectural features, for example, the projection for door, porch, etc.

l) Open platform.

m) Terrace.

n) Open spiral, side stair cover, and

o) Area of machine, machine room, towers, etc., which project above terrace level.

5.3. MEASUREMENT OF REMAINABLE AREA

5.3.1. The remainable area shall be carpet area as worked out in 5.2.4. It shall further include the following:

a) The carpet area of kitchen, pantry, store, lavatory, bath room, and

b) The carpet area of kitchen, pantry, store, lavatory, bath room, and

c) The carpet area of kitchen, pantry, store, lavatory, bath room, and

d) The carpet area of kitchen, pantry, store, lavatory, bath room, and

e) The carpet area of kitchen, pantry, store, lavatory, bath room, and

f) The carpet area of kitchen, pantry, store, lavatory, bath room, and

g) The carpet area of kitchen, pantry, store, lavatory, bath room, and

h) The carpet area of kitchen, pantry, store, lavatory, bath room, and

i) The carpet area of kitchen, pantry, store, lavatory, bath room, and

j) The carpet area of kitchen, pantry, store, lavatory, bath room, and

k) The carpet area of kitchen, pantry, store, lavatory, bath room, and

l) The carpet area of kitchen, pantry, store, lavatory, bath room, and

m) The carpet area of kitchen, pantry, store, lavatory, bath room, and

n) The carpet area of kitchen, pantry, store, lavatory, bath room, and

o) The carpet area of kitchen, pantry, store, lavatory, bath room, and

p) The carpet area of kitchen, pantry, store, lavatory, bath room, and

q) The carpet area of kitchen, pantry, store, lavatory, bath room, and

r) The carpet area of kitchen, pantry, store, lavatory, bath room, and

s) The carpet area of kitchen, pantry, store, lavatory, bath room, and

t) The carpet area of kitchen, pantry, store, lavatory, bath room, and

u) The carpet area of kitchen, pantry, store, lavatory, bath room, and

v) The carpet area of kitchen, pantry, store, lavatory, bath room, and

w) The carpet area of kitchen, pantry, store, lavatory, bath room, and

x) The carpet area of kitchen, pantry, store, lavatory, bath room, and

y) The carpet area of kitchen, pantry, store, lavatory, bath room, and

z) The carpet area of kitchen, pantry, store, lavatory, bath room, and

616
H7

NATIONAL BUILDING CODE OF INDIA

PART 3- DEVELOPMENT CONTROL RULES AND GENERAL BUILDING REQUIREMENTS

SCOPE

This Part deals with the development control rules and general building requirements to ensure health and safety of the public.

2. TERMINOLOGY

2.0 For the purpose of this part, the following definitions shall apply:

2.1 Access — A clear approach to a plot or a building.

2.2 Accessory Use — Any use of the premises subordinate to the principal use and customarily incidental to the principal use.

2.3 Alteration — A change from one occupancy to another, or a structural change, such as an addition to the area or height, or the removal of part of a building, or any change to the structure, such as the construction of putting into or removal of any wall, partition, column, beam, joist, floor or other support, or a change to enclosing of any required means of ingress or egress, or a change to the fixtures or equipment.

2.4 Approved — Approved by the Authority having jurisdiction.

2.5 Authority Having Jurisdiction — The Authority which has been created by a statute and which for the purpose of administering the Code/Part may authorize a committee or an official to act in its behalf, hereinafter called the Authority.

2.6 Back-to-Back Cluster — Clusters when joined back to back and/or on sides (see Fig. 1).

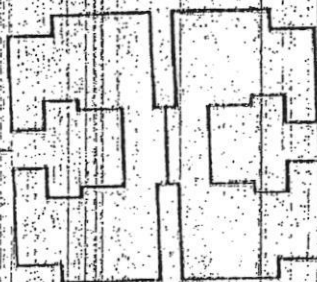


FIG. 1 BACK-TO-BACK CLUSTER

2.7 Balcony — A horizontal projection, with a handrail or balustrade or a parapet, to serve as passage or sitting out place.

2.8 Basement or Cellar — The lower storey of a building below or partly below ground level.

2.9 Building — Any structure for whatsoever purpose and of whatsoever materials constructed and every part thereof whether used as human habitation or not and includes foundation, plinth, walls, floors, roofs, chimneys, plumbing and building services, fixed platforms, VERANDAH, balcony, cornice or projection, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures. Tents, SHADHANAHS, tarpaulin shelters, etc., erected for temporary and occasional occasions with the permission of the Authority shall not be considered as building.

2.10 Building Height of — The vertical distance measured in the case of flat roofs, from the average level of the ground around and contiguous to the building or as decided by the Authority to the terrace of last livable floor of the building adjacent to the external walls; and in the case of pitched roofs, up to the point where the external surface of the outer wall intersects the finished surface of the sloping roof; and in the case of gables facing the road, the mid-point between the eaves level and the ridge. Architectural features serving no other function except that of decoration shall be excluded for the purpose of measuring height.

2.11 Building Envelope — The horizontal spatial limits up to which a building may be permitted to be constructed on a plot.

2.12 Building Line — The line up to which the plinth of a building adjoining a street or an extension of a street or on a future street may lawfully extend. It includes the lines prescribed, if any, in any scheme. The building line may change from time-to-time as decided by the Authority.

2.13 Cabin — A non-residential enclosure constructed of non-load bearing partition.

2.14 Canopy — A projection over any entrance.

2.15 Covered Area — The covered area of the usable room at any floor level (excluding the area of the wall).

2.16 CHHATRA — A sloping or horizontal structural overhang usually provided over openings on external walls to provide protection from sun and rain.

2.17 Chimney — An upright shaft containing one or more flues provided for the conveyance to the outer air of any product of combustion resulting from the operation of heat producing appliance or equipment employing solid, liquid or gaseous fuel.

2.18 Chunk or Courtyard — A space permanently

for

open to the sky, enclosed fully or partially by building and may be at ground level or any other level within or adjacent to a building.

2.19. **Chowk, Inner** — A chowk enclosed on all sides.

2.20. **Chowk, Outer** — A chowk one of whose sides is not enclosed.

2.21. **Closed Clusters** — Clusters with only one common entry into cluster open space (see Fig. 2).

2.22. **Cluster** — Plots or dwelling units or housing grouped around an open space (see Fig. 3).

Ideally housing cluster should not be very large. In ground and one storeyed structures not more than 20 houses should be grouped in a cluster. Clusters with more dwelling units will create problems in identity, overpopulation and maintenance.

2.23. **Cluster Court/Town House** — A dwelling in a cluster plot having 100 percent or nearly 100 percent ground coverage with vertical expansion generally limited to one floor only and meant for self use.

2.24. **Cluster Plot** — Plot in a cluster.

2.25. **Cooking Alcove** — A cooking space having

direct access from the main room without any intervening door.

2.26. **Covered Area** — Ground area covered by the building immediately above the plinth level. The area covered by the following in the open spaces is excluded from covered area (see Table 3):

- Garden, cistern, well and well structures, plant nursery, water pool, swimming pool (if uncovered), platform round a tree, tank, fountain, bench, *CHABUTRA* with open top and unenclosed on sides by walls and the like;
- Drainage culvert, conduit, catch-pit, gully pit, chamber, gutter and the like;
- Compound wall, gate, unstoreyed porch and porches, canopy, slide, swing, uncovered staircase, ramps areas covered by *CHAJJA* and the like; and
- Washroom, booth, pump-house, garbage shed, electric cabin or sub-stations, and such other utility structures meant for the services of the building under consideration.

NOTE: For the purpose of this Part, covered area equals the plot area minus the area due for open spaces.

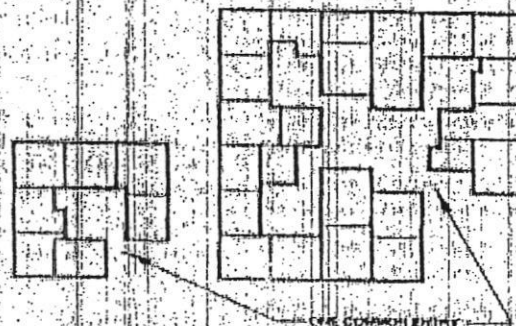


FIG. 2 CLOSED CLUSTER

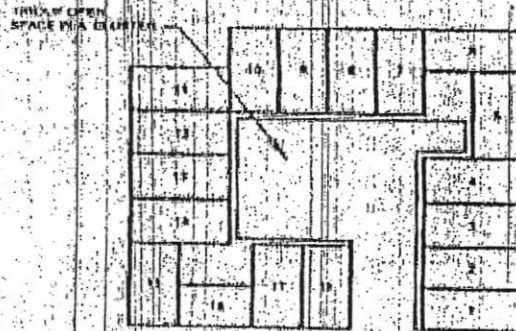


FIG. 3 CLUSTER

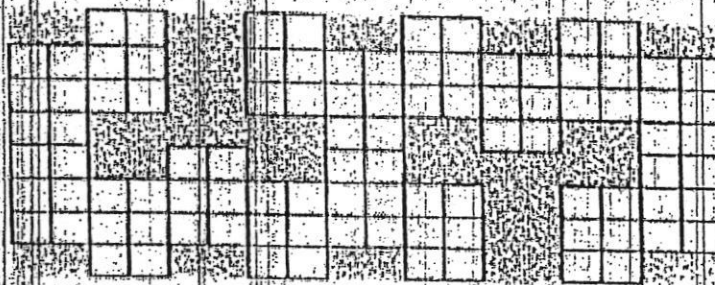


FIG. 7 - OPEN CLUSTER

2.60. Owner — Person or body having a legal interest in land and/or building thereon. This includes freeholders, leaseholders or those holding a sub-lease which both bestows a legal right to occupation and gives rise to liabilities in respect of safety or building condition.

In case of lease or sub-lease holders, as far as ownership with respect to the structure is concerned, the structure of a flat or structure on a plot belongs to the ultimate lessee till the allotment/lease subsists.

2.61. Parapet — A low wall or railing built along the edge of a roof or floor.

2.62. Parking Space — An area enclosed or unenclosed, covered or open, sufficient in size to park vehicles, together with a drive-way connecting the parking space with a street or alley and permitting ingress and egress of the vehicles.

2.63. Partition — An interior non-load bearing barrier, one storey or part-storey in height.

2.64. Plinth — The portion of a structure between the surface of the surrounding ground and surface of the floor immediately above the ground.

2.65. Plinth Area — The built up covered area measured at the floor level of the basement or of any storey.

2.66. Porch — A covered structure supported on pillars or otherwise for the purpose of pedestrian or vehicular approach to a building.

2.67. Raft — See 2.82.

2.68. Road Lane — See 2.34.

2.69. Room Height — The vertical distance measured from the finished floor surface to the finished ceiling surface. Where a finished ceiling is not provided, the underside of the joists or beams or the beam shall determine the upper point of measurement.

2.70. Row Housing/Row Type Building — A row of buildings, with only front, rear and interior open spaces where applicable.

2.71. Semi-Detached Building — A building detached on three sides.

2.72. Service Road/Lane — A road/lane provided adjacent to a plot(s) for access or service purposes as the case may be.

2.73. Set-Back Line — A line usually parallel to the plot boundaries and laid down in each case by the Authority, beyond which nothing can be constructed towards the plot boundaries.

2.74. Site (Plot) — A parcel (piece) of land enclosed by definite boundaries.

2.75. Site, Corner — A site at the junctions of and fronting on two or more intersecting streets.

2.76. Site, Depth of — The mean horizontal distance between the front and rear site boundaries.

2.77. Site, Double Frontage — A site, having a frontage on two streets, other than a corner plot.

2.78. Site, Interior or Tandem — A site access to which is by a passage from a street whether such passage forms part of the site or not.

2.79. Staircover (or MUMPI) — A structure with a roof over a staircase and its landing built to enclose only the stairs for the purpose of providing protection from weather and not used for human habitation.

2.80. Storey — The portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

2.81. Storey, Topmost — The uppermost storey in a building whether constructed wholly or partly on the roof.

for

FROM: CEEBROS PROPERTY

FX NO. 1044243452

10 Jan. 2013 07:43 P 1

KA: Mr. Lalashmi Reddy

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2012

Coram

The Honourable Mr. Justice CHITRA VENKATARAMAN

and

The Honourable Mr. Justice R. PAVICHANDRA PAABU

TAX CASE (Appeal) Nos: 581 of 2008, 1186 of 2008
and 136 of 2009

Tax Case (Appeal) No. 581 of 2008:-

M/s. Ceebros Hotels Private Limited
No. 19, III Cross Street
Raja Annamalaiapuram
Chennai-600 028.

Appellant.

-vs-

The Deputy Commissioner of Income Tax
Central Circle IV (3)
Chennai-600 034.

Respondent.

Tax Case (Appeal) No. 1186 of 2008 :-

Commissioner of Income Tax
Chennai.

Appellant.

-vs-

M/s. Ceebros Hotels Private Limited
No. 19, III Cross Street
Raja Annamalaiapuram
Chennai-600 028.

Respondent.

Tax Case (Appeal) No. 136 of 2009:-

Commissioner of Income Tax
Chennai.

Appellant.

-vs-

M/s. Ceebros Hotels Private Limited
"Bukriti", 19/1, 3rd Cross Street
R.A. Puram, Chennai-600 028.
(PAN: AACG3051E)

Respondent.

FROM : CEEBROS PROPERTY

EXX NO. : 14424348452

10 Jan. 2013 07:43 P 2

Tax Case (Appeal) Nos. 501 and 1186 of 2008 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.Nos.1033/MDS/2006 and 1051/MDS/2006 for the assessment year 2003-04, dated 15.02.2008.

TC A 501 of 2008: Against the order of the Commissioner of Income Tax (Appeals) I Chennai - 34 dated 15.02.2006 and made in ITA.No.92/05-06. Against the Assessment order of the Deputy Commissioner of Income Tax, Central Circle IV(3), Chennai dated 31.10.2005 and made in PA.No./G.I.No. AAA CC 3051 B

TC A.No.1186 of 2008: Against the order of the Commissioner of Income Tax (Appeals) I Chennai - 34 dated 15.02.2006 and made in ITA.No.92/05-06. Against the Assessment order of the Deputy Commissioner of Income Tax, Central Circle IV(3), Chennai dated 31.10.2005 and made in PA.No./G.I.No. AAA CC 3051 E dated 31.10.2005.

Tax Case (Appeal) No. 136 of 2009 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1227/MDS/2007 for the assessment year 2004-05, dated 20.03.2008.

TC A.No.136 of 2009: Against the order of the Commissioner of Income Tax (Appeals) I Chennai - 34 dated 21.02.2007 and made in ITA.No.117/06-07. Against the Assessment order of the Deputy Commissioner of Income Tax, Central Circle IV(3), (I/c) Chennai dated 08.12.2006 and made in VAN.No./G.IR.No. AAA CC 0351 W/ZC

For Appellant : Mr. Jahangir D.J. Mistry
in Tax Case No. Senior Advocate
501 of 2008 for Mr. A.S. Srinaman

For Respondent : Mr. T. Ravikumar
in Tax Case No. 501 Standing Counsel for Income Tax
of 2008

For Appellant : Mr. T. Ravikumar
in Tax Case Nos. Standing Counsel for Income Tax
1186 of 2008
& 136 of 2009

For Respondent : Mr. Jahangir D.J. Mistry
in Tax Case Nos. Senior Advocate
1106/08 & 136/09 for Mr. A.S. Srinaman

* * *

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COMMON JUDGMENT

(The Judgment of the Court was delivered by

CHITRA VENKATARAMAN, J)

1. Tax Case (Appeal) No. 581 of 2008 is at the instance of the assessee relating to the Assessment Year 2003-2004, arising out of the order of the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1033/MDS/2006, dated 15.02.2008.

2. Tax Case (Appeal) No. 1186 of 2008 is at the instance of the Revenue relating to the very same Assessment Year, viz., 2003-2004, arising out of the order of the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1051/MDS/2006, dated 15.02.2008.

3. Tax Case (Appeal) No. 136 of 2009 is at the instance of the Revenue relating to the Assessment Year 2004-2005, arising out of the order of the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1227/MDS/2007, dated 28.03.2009.

4. The assessee in all these cases is one and the same and since the issue arises herein is out of the same facts, common order is passed, after hearing both sides.

5. Following is the question of law raised for consideration in Tax Case (Appeal) No. 581 of 2008:-

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in including the open space of the terrace of the 7th floor within the meaning of the 'built up area', which has been defined to include 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 area shared with other residential units 7".

6. Following are the questions of law raised for consideration in Tax Case (Appeal) No. 1186 of 2008:-

"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that as the provision is violated only on the 7th floor of the building, proportionate deduction under Section 80-IB (10) is to be allowed?

2. Whether on the facts and circumstances of the case, the Tribunal was right in granting partial exemption where one of the conditions of granting exemption is that the

(83)

residential units should be less than 1000 sq.ft. 7".

7. Following are the questions of law raised for consideration in Tax Case (Appeal) No. 136 of 2009:-

"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that as the provision is violated only on the 7th floor of the building, proportionate deduction under Section 80-IB (10) is to be allowed ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in granting partial exemption where one of the conditions of granting exemption is that the residential units should be less than 1500 sq.ft. 7"

8. For easy reference, the facts in Tax Case (Appeal) No. 581 of 2000 is stated herein and as pointed out earlier, the same facts apply to other two cases also.

9. The assessee herein is a Builder, who had constructed 384 Apartments located in six individual blocks on a land measuring 3.46 acres. Each block has 64 Apartments. The narration of facts as found in the Tribunal's order and as stated by the learned Senior Counsel appearing for the assessee show that there are four types of Apartments with plinth area of 798 sq.ft.; 851 sq.ft.; 1004 sq.ft. and 1364 sq.ft. and there are 10 Apartments in the first six floors in each of the blocks. The Apartments comprising plinth area of 798 to 1004 sq.ft., are located in 1st to 6th floor. The Apartments of plinth area of 1364 sq.ft. are located in the 7th floor. There is a common area shared by all the flat owners, running from 152 sq.ft. to 261 sq.ft. Apart from that, each Apartment owner is entitled to exclusive use of covered or uncovered car park, for which, extra fee was charged. Apart from all these, the 7th floor flat owners having plinth area of 1364 sq.ft./1368 sq.ft. has the advantage of an exclusive terrace of an extent of 454 sq.ft. Thus, the 24 residential units located in the 7th floor of the blocks, enjoyed an open terrace area of 454 sq.ft. each. While considering the relief under Section 80-IB of Income Tax Act, the Assessing Officer took into consideration, the private open terrace for exclusive use of the 7th floor owners as part of the built-up area. Thus the total built-up area of the 24 residential units located in the 7th floor came to 1818 sq.ft. approximately. Thus, considering the above aspect that built-up area of these 7th floor flats exceeded 1500 sq.ft. and hence not satisfying the condition under Section 80-IB (10)(c), the Assessing Officer sought to reject the claim for deduction. The Assessing Officer pointed out that as per 80B-Clause

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(c) of Section 80-18 (10), the 'built-up area' of residential unit should not exceed 1500 sq.ft. Since the private terrace area is also a part of the built-up area, some of flats having exceeded 1500 sq.ft., the assessee could not claim the benefit of deduction under Section 80-18 for the entire units in the block. Referring to the definition of "Built-up area" in Section 80-18(14) (a), which has been inserted by the Finance (No.2) Act, 2004, from 01.04.2005, the Assessing Officer viewed that there is no definition for "Built-up area" for the assessment year 2003-2004, yet, going by the definition under Section 80-18 (14) (a) under the Finance Act, 2004, including the projections and balconies in the built-up area, the open terrace which is attached to the bedrooms has an entrance only from the bedroom and hence, has to be included in the built-up area. Thus, the Assessing Officer rejected the claim of the assessee in toto, even in respect of the other flats which answered the description in Section 80-18 (10) (c).

10. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who agreed with the Assessing Officer as regards the inclusion of the private terrace area into the built-up area. However, as regards the rejection of entirety of the claim under Section 80-18 of the Income Tax Act, the Commissioner of Income Tax pointed out that since the project of the assessee included flats of measurement less than 1500 sq.ft. and that only 28 flats have 184 sq.ft. of private terrace each, when included into the 'built-up area' exceeded 1500 sq.ft., the assessee could not be denied the deduction under Section 80-18 in respect of flats which satisfied the condition. He viewed that by and large, the assessee had satisfied the main objects of the provisions of deduction. In the circumstances, he granted the proportionate relief to the assessee. Aggrieved by the order of the Commissioner of Income Tax (Appeals) as regards the inclusion of open terrace area into the built-up area, the assessee came on appeal before the Income Tax Appellate Tribunal. As far as the Revenue is concerned, it objected to the granting of relief even on proportionate basis, hence, the Department came on appeal before the Tribunal.

11. On hearing both sides, the Tribunal came to the conclusion that the Commissioner of Income Tax (Appeals) had correctly held that the assessee was not entitled to deduction in respect of the flats in the 7th floor, since the built-up area exceeded 1500 sq.ft., i.e., taking into account, the open terrace area into a built-up area, the extent of flat exceeded 1500 sq.ft., thus, violated the requirements under Section 80-18 (10), dis-entitling the assessee to the benefit of deduction.

12. As far as the Revenue's appeal is concerned, the Tribunal followed the decision reported in 105 TTD 71, Atan Excella Foundations (P) Limited vs. ACIT and confirmed the order of the Commissioner of Income Tax (Appeals), holding that the relief be

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granted on proportionate basis.

13. Aggrieved by the inclusion of open terrace area into built-up area, the assessee is before us on appeal in T.C. (A) No. 581 of 2008. As far as the proportionate relief granted to the assessee is concerned, the Revenue is on appeal in T.C. (A) No. 1186 of 2009. Insofar as T.C. (A) No. 1186 of 2009 is concerned, the consideration therein depends on the decision that we take on assessee's Tax Court regarding the inclusion of the open terrace into the built up area. Hence, it is not necessary for us to consider this as a separate issue but one linked to the issues in T.C. No. 581 of 2008. In such circumstances, we reject the Revenue's appeal.

14. As far as the T.C. No. 136 of 2009 is concerned, it relates to the Revenue's Appeal for the assessment year 2004-2005, where the question relates to granting the relief on proportionate basis on account of the inclusion of the open terrace area into the built-up area. In view of our earlier judgment in T.C. (A) Nos. 1348 and 1349 of 2007, dated 18.10.2012 and the order in T.C. (A) No. 1186 of 2009, we reject the Revenue's Appeal.

15. Thus, we are left to decide the only issue raised in T.C. (A) No. 581 of 2008, which relates to the assessment year 2003-2004. Learned Senior Counsel appearing for the assessee pointed out that considering the absence of any provision containing the definition of 'built-up area', during the relevant material time, the Tribunal committed a serious error in including the open terrace area as part of the constructed area. He further submitted that in the absence of definition of 'built-up area', the only course available to the Revenue will be to go by the Development Control Rules for Chennai Metropolitan Area. He would further point out that Sub-Section 14 (a) of Section 80-IB, defines "Built-up area", but, it is an artificial definition. The open terrace area could never form part of the built-up area as per the Development Control Rules. Referring to the Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings, he submitted that the said provision will answer the question as to what the 'Built-up area' would mean even for Section 80-IB purpose. Building Rules, being Special Rules concerning the construction, there being no other definition in the Income Tax Act, the above provision would be the only guiding factor during the material time for consideration and the subsequent insertion of the definition on "built-up area" would not be of any relevance.

16. In this connection, learned Senior Counsel placed before us the details of the built-up area in respect of seven floors, the common area and the terrace area, apart from the Approval Plan before the Court and submitted that what had been sold by the assessee is as per the Approved Plan, where the terrace had not been shown as a built-up area. The mere fact that a portion of the

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Terrace had been sold as a private terrace to a party purchasing flats in the 7th floor would not make the terrace, otherwise, a built-up area.

17. In this connection, the learned Senior Counsel appearing for the assessee placed reliance on the unreported decision of the Bombay High Court in Income Tax Appeal No.3315 of 2010 (The Commissioner of Income Tax vs. M/s. Tinnwala Industries), dated 13.04.2012 and also the decision of the Karnataka High Court reported in [2012] 21 Taxmann.com 140 (Karnataka), Commissioner of Income Tax, Central Circle vs. Anriya Project Management (Societal) Private Limited. In the light of the above said decisions on the very same provision, he submitted, it is not open to the Revenue to contend that the built-up area includes the open terrace also. He further pointed out that as the name would suggest, there are no projection given to the terrace as in the case of balcony to include it within the built-up area spot.

18. Per contra, learned Standing Counsel appearing for the Revenue supported the order of the Tribunal and submitted that the Amendment w.e.f. 01.04.2005, by inserting the definition clause on 'built-up area', is clarificatory in nature and hence, the definition has to be taken as retrospective in its operation.

19. Section 80-IB of Income Tax Act, contemplates Deduction in respect of profits and gains derived from the business of construction of a Housing Project. It prescribes the conditions, subject to which, the deduction will be available to an assessee.

20. Section 80-IB(10) as it stood at the relevant point of time viz., 2003-2004 and 2004-2005 :-

"2003-2004

Section 80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. ---

(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 site 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;"

"2004-2005

Section 80-IP. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. --

(10) The amount of profit 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.

[w.e.f. 1-4-2005]

(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

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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 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; 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. "

21. With effect from 01.04.2005 by the Finance (No.2) Act, 2004, the definition of the "Built-up area" was inserted under Section 80-IB(10), (14). For our purpose, Section 80-IB (14) (e) reads as under:-

"(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 area shared with other residential units;"

22. It is evident from the reading of Sub-Section 10 of Section 80-IB of Income Tax Act as relevant to Assessment Year 2003-2004 and 2004-2005 that an assessee undertaking development and building of an Housing Project will be entitled to deduction of hundred per cent, subject to the following conditions, viz., the assessee must undertake development of a Housing Project approved by the Local Authority. As far as the year under consideration is concerned, the approval for the project must have been granted before 31.03.2005. As per Sub-clause (a), the undertaking must have commenced development and construction of the project on or after 01.10.1998 and complete construction as per the sub-clauses then depending on the date of approval; as per Sub-clause (b), the project must be on a size of a plot having minimum of one acre; and as per Sub-clause (c), the residential unit must have a maximum built-up area of one thousand square feet, if 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. On and from 01.04.2004 relevant to 2004-2005, as per clause (d), the

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Built-up area of the shops and commercial establishments included in the housing project must not exceed five per cent of the aggregate built-up area of the project or two thousand square feet, whichever is less.

23. Going by the clauses, thus, enumerated above, it is clear that even if the project satisfies all condition such as the size, the built-up area, the commencement and the completion works, if the project is not approved by the Local Authority, an assessee would not be entitled to claim the deduction. Therefore, the emphasis is on a project approved by the Local Authority. Revenue does not dispute the fact that the assessee had undertaken the Development and Building Housing Project as approved by the Local Authority. The relevant Regulations which guide the approval to be given to the project in the City of Chennai is the Development Regulations for Chennai Metropolitan Area.

24. The Development Regulations for Chennai Metropolitan Area contain the definitions of various clauses used in the Regulations. For our purpose, the definition of Balcony in Section 2(7); Covered Area in Section 2(17); and Plinth Area in Section 2 (32) are relevant, which reads as under:-

"2. Definition

(7) Balcony - A cantilever projection, with a handrail or balustrade or a parapet, to serve as sitting out place.

(17) Covered Area - Ground area covered by the building above the plinth level and includes parts of the building projecting out in other storey (including basement floor levels).

(32) Plinth Area - The built up covered area measured at the floor level of the basement or of any storey."

25. A reading of Development Control Rules in Annexure-IX gives the maximum permissible floor space index and plot coverage as regards the different classes of usage. As far the present assessee's case is concerned, given the extent of land, the maximum permissible plot coverage for the residential building would be upto 2.25 and the maximum permissible floor space index would be about 30% to 40% of a residential building.

26. In the Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings as issued by Bureau of Indian Standard, the definition of "Plinth Area" in Section 2.1 and Balcony in Section 2.4 are given as under:-

"2.1 Plinth Area

Plinth Area shall mean the built-up covered measured at the floor level of the basement or of any storey.

2.4 Balcony

A horizontal projection with a hand-rail, balustrade or a parapet, to serve a passage or sitting out place."

27. Clause 4 also provides for the measurement of plinth area as follows:-

4. MEASUREMENT OF PLINTH AREA

4.1 Plinth area shall be the built up covered areas measured for the categories mentioned in 3.2 and shall include such areas as given in 4.1.1 and exclude the areas given in 4.1.2.

4.1.1 For the purpose of plinth area, following shall be included :

a) Area of the wall at the floor level excluding plinth offsets, if any; when the building consists of columns projecting beyond cladding, the plinth area shall be taken up to the external face of cladding (in case of corrugated sheet cladding outer edge of corrugation shall be considered);

NOTE - In case, a common wall is owned jointly by two owners, only half the area of such walls shall be included in the plinth area of one owner.

b) Shafts for sanitary, water supply installations, garbage chute, telecommunication, electrical, fire fighting, air-conditioning and lift;

c) Stair case;

d) In case of open verandah with parapets:

- 1) 100 percent area for the portion protected by the projections above, and
- 2) 50 percent area for the portion unprotected from above.

e) 100 percent area of the balcony protected by projection above and 50 percent area of the unprotected balcony; and

f) In case of alcove made by cantilevering a slab beyond external wall :

- 1) 25 percent of the area for the alcove of height up to 1 m,
- 2) 50 percent of the area for the alcove of height more than 1 m and upto 2 m, and
- 3) 100 percent of the area for the alcove of height more than 2 m.

4.1.2 The following shall not be included in the plinth area (see 2.1) :

a) Area of loft ;

b) Area of architectural band, cornice, etc;

c) Area of vertical sun breaker or box louver projecting out and other architectural features; for

- example slab projection for flower pot, etc:
d) Open platform;
e) Terrace;
f) Open Spiral/servicing stair cases; and
g) Area of masonry, machine room, towers, turrets, domes projecting above terrace level."

28. A reading of the definition of 'Plinth Area' under the Development Regulations with the definition in Indian Standard Method of Measurement of Plinth show that they are identically worded. Read in the context of Clause 4 on the measurement of plinth area, it is clear that while it includes open verandah with parapets, with projections above for 100% area and 50% area for the portion unprotected above and includes an well balcony which is a projection with a hand-rail, balustrade or a parapet, to serve as passage or sitting out place, under Clause 4.1.2 (e), it specifically excludes terrace from the built-up area. Thus the measurement of the plinth area that includes open verandah, balcony, which are projections to serve as a sit out, as provided under Sub-Clause (d) of Clause 4.1.1 and excludes open terrace which is not a projection as in the case of a verandah or sit out and hence, any measurement of a built-up area must necessarily ignore the terrace area.

29. Thus in the face of terrace being an open area, not being a projection and hence, not included in the plinth area, the question herein is as to whether the Tribunal is justified in confirming the order of assessment to include the terrace area into the built-up area, solely by reason of the fact that the assessee had sold it to purchasers of the 7th Floor as a private terrace.

30. We do not think, the Tribunal is justified in taking the view that open terrace would form part of the built-up area for the purpose of Sub-Clause (c) of Section 80-IB(10). As already seen in the preceding paragraphs, an assessee having an Approved Plan project alone has the right to claim deduction under Section 80-IB. Any project undertaken not approved by the Local Authority is outside the purview of the Act. Thus, when a Local Authority, endowed with the jurisdiction to grant the approval is guided in its approval by Regulation as to what constitutes the plinth area, which is the built-up area, it is difficult for us to agree with the contention of the Revenue as well as the reasoning of the Tribunal that for the purpose of considering the claim under Section 80-IB, the built-up area would be different from what has been given approval by the Local Authority, on a building project. Given the fact that during 2003-2004 there was no definition at all on what a built-up area is, the understanding of the Revenue, which is evidently contrary to the approval of the Local Authority based on the Rules and Regulations could not be sustained. Consequently, we have no hesitation in agreeing with the assessee's contention that

open terrace area, even if be private terrace, cannot form part of the built-up area.

31. As far as the introduction of definition portion in Section 80-IB(14) w.e.f. 01.04.2005 is concerned, even assuming that the definition section has retrospective effect, we do not think that the definition given under Section 80-IB (14) would in any manner prejudice the claim of the assessee herein, for the definition given under Section 80-IB (14) does not appear to go against what has been defined to include the measurement of the plinth area of building under the Building Regulations and Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings as issued by Bureau of Indian Standard. Since, Clause 4.1.2 clearly excludes open terrace for plinth area and what is included in Clause 4.1.1 is as stated in Clause (d), which reads as under :

- "(d) In case of open verandah with parapets:
- 1) 100 percent area for the portion protected by the projections above, and
 - 2) 50 percent area for the portion unprotected from above."

Revenue does not dispute the fact that the open terrace is not a projection like a balcony to fit in with the definition under Section 2.4 of Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings as issued by Bureau of Indian Standard.

32. Thus, going by the definition under Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings, even by making a reference to the definition of "built-up area" under Sub-Section 14 (e) as applicable to the year under consideration, we do not find any justifiable ground for the Revenue to include the open terrace as part of the built-up area. This we say for the reason that as already pointed out, Sub-Section 10 of Section 80-IB of Income Tax Act contemplates grant of deduction only in respect of projects, which are approved by the Local Authority, in which event, an understanding that one has to give to the definition of "built-up area" including the projections and balcony must necessarily go along with the understanding placed on such expressions as per the relevant Regulation of the statutory authority under the Development Control Rules. In any event, even taking the definition as giving a different meaning, the same cannot control the substantive provision which contemplates deduction to projects approved by the Local Authority, the approval being as per the Regulations and Rules of the Local Authority. In such circumstances, we reject the contention of the Revenue and thereby, we agree with the view expressed by the assessee.

33. Learned Senior Counsel for the assessee placed reliance on the unreported decision of the Bombay High Court in Income Tax Appeal No. 3315 of 2010 (The Commissioner of Income Tax vs. M/s. Tinnwala Industries), dated 13.04.2012. A reading of the decision of the Bombay High Court shows that the issue raised therein related to the Assessment Year 2004-2005. Similar contention raised before the Court was taken before the Bombay High Court too. Holding the view that the expression "Built-up area" in a Housing Project approved by the Local Authority does not include the balcony area for the period prior to 1st April 2005, the Bombay High Court held that when the Legislature has introduced the definition of "Built-up area" by including the balcony area from a particular date, then, the same could not be applied retrospectively.

34. In the decision reported in [2012] 21 Taxmann.com 140 (Karnataka), Commissioner of Income Tax, Central Circle vs. Anriya Project Management (Services) private Limited, rendered by Karnataka High Court, a similar such question was considered. The Karnataka High Court pointed out that prior to 01.04.2005, open balcony area have to be excluded in calculating the built-up area. The Karnataka High Court further pointed out as the Project was approved by 14.06.2002 and the balcony were shown, but, were excluded in the built-up area, the Income Tax Authority cannot add Balcony as built-up area and deny the benefit to the assessee.

35. The Karnataka High Court further pointed out that as per Section 80-IB (10), the Housing project must be one approved by a local authority. In respect of the approval obtained prior to 01.04.2005, if Sub-section 14(a) of Section 80-IB has to be held applicable, then, the assessee has to necessarily seek for a modified plan. Once, a valid approval is obtained and the building is constructed in all respects prior to 01.04.2005, then, the assessee would be entitled to the benefit of Section 80-IB. This is irrespective of the date of sale, that is, even if it is subsequent to 01.04.2005, the assessee has to have the benefit of Section 80-IB. As far as the introduction of definition of "Built-up area" in Sub-Section 14(a) of Section 80-IB, under Finance (No.2) Act, 2004 is concerned, the Karnataka High Court held that having regard to the fact that they came into force from 01.04.2005, the same will have relevance to those Housing Projects, which were approved subsequent to 01.04.2005.

36. We agree with the views expressed in the unreported decision of Bombay High Court in Income Tax Appeal No. 3315 of 2010 (The Commissioner of Income Tax vs. M/s. Tinnwala Industries), dated 13.04.2012 and the decision of Karnataka High Court reported in [2012] 21 Taxmann.com 140 (Karnataka), Commissioner of Income Tax, Central Circle vs. Anriya Project Management (Services) private Limited, that Section 80-IB (14) defining 'Built-up area' will have

relevance on and from 01.04.2005. Apart from this, we have also held in the preceding paragraphs that going by the substantive part of Section 80-IB (10), what is required for grant of deduction is a Housing Project approved by the Local Authority. That being the case, the definition of "built-up area", has to have the same meaning, as has been given in the Development Control Rules, otherwise, the substantive part in Section 80-IB referring to the approval by the Local Authority becomes meaningless for the purpose of deduction under Section 80-IB (10) and the approval for the purpose of Section 80-IB has to emanate from the Income Tax Act. We do not think the Act contemplates such exercise also by the Revenue. Given the fact that contemplation of deduction is to Housing Projects approved by the Local Authority, we hold that once the Local Authority have excluded open terrace from the working of built-up area, it is not open to the Revenue to review the approval given by the competent authority to hold that terrace would also be included in the built-up area. As already held the definition also does not speak in different language from what is given in the measurement provision of Bureau of Indian Standard in the context of the definition of Balcony in the Indian Standard.

37. In the circumstances, we have no hesitation in allowing the assessee's appeal, by setting aside the order of the Tribunal. Thus, we hold that the assessee is entitled to deduction in respect of flats in the 7th floor, which do not exceed the required extent as per Section 80-IB (10) (c) that open terrace area, cannot form part of the built-up area.

38. The Tax Case (A) No. 581 of 2000 is allowed and consequently, Tax Case (A) Nos. 1186 of 2008 and 135 of 2003 by the Revenue are dismissed.

Sd/
Asst. Registrar

(true copy)

Awaramli 8.12.12.
Sub Asst. Registrar

paa

To

1. The Income Tax Appellate Tribunal,
Madras "A" Bench.

2. The Commissioner of Income Tax (Appeals I)
Chennai.

DP (CO)
13/12/2012

TAX CASE (Appeal) Nos. 501 of 2000, 1186 of 2000
and 136 of 2009

3. CCR To Mr. A. B. Shrivastava, Advocate, BA. 60153
CC To Mr. M. Ravikumar, Advocate, BA. 60154

4. The Commissioner of Income Tax, Chennai - 34

5. The Deputy Commissioner of Income Tax,
Central Circle IV (3),
Chennai-600 034.

SPCL. CEEBROS PROPERTY

PRG INC : 04424346452

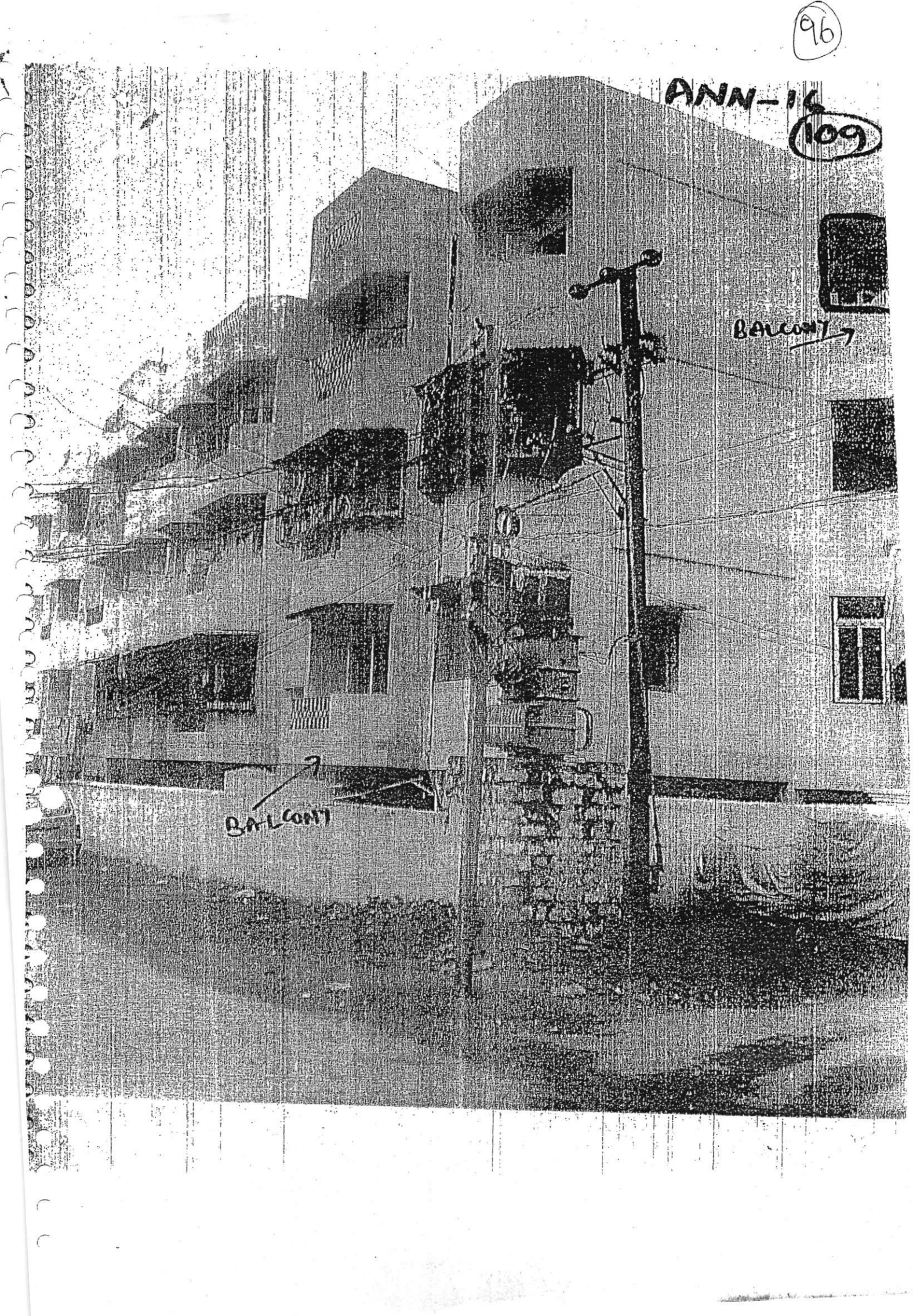
10 Jan 2013 07:54 P. 15

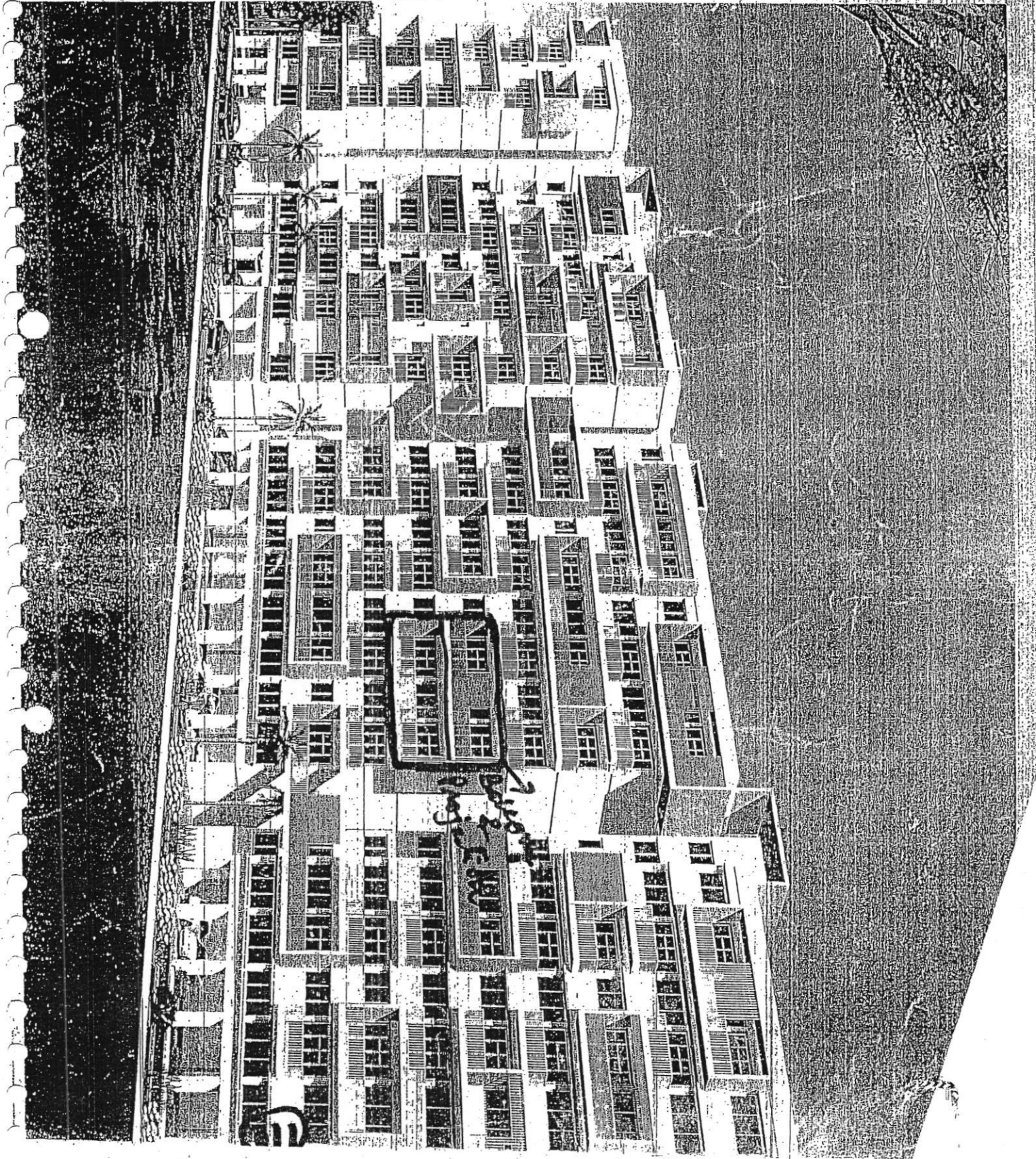
ANN-16

(109)

BALCONY →

→ BALCONY



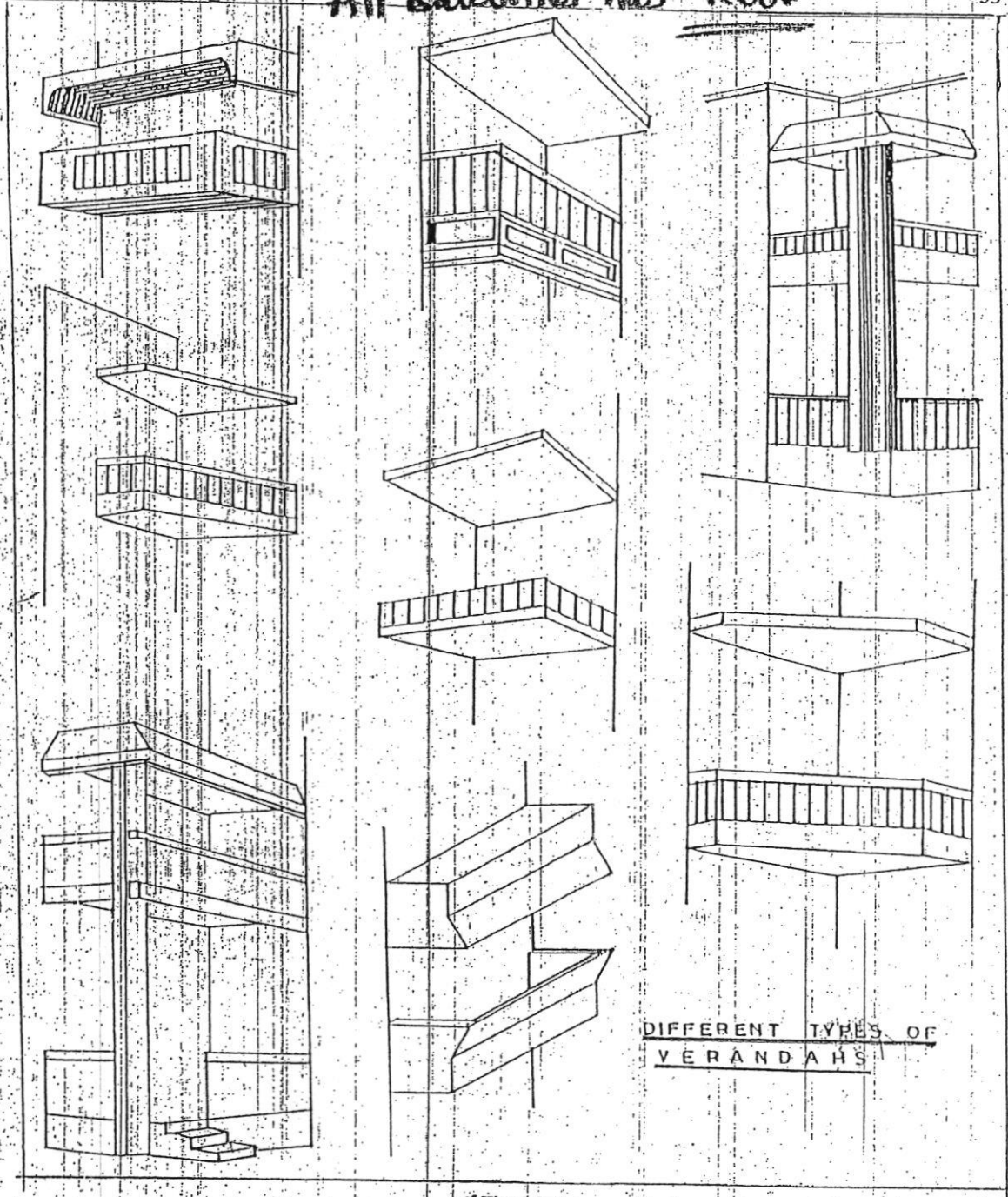


2nd Floor
Office

BALCONIES

All balconies has 'Roof'

(III)



DIFFERENT TYPES OF VERANDAS

Fig. 5.30 m

(u) (99)
Received on
18/3/14
HAB

Office of the
Income tax Officer, Ward-10(4), Hyderabad
Room 513 'A', I T Towers, A C Guards, Hyderabad – 500 004
Ph: 23425603 FAX:23425399

F No. AAJFM0647C/2007-08

Date: 13/03/2014

To

M/s. Mehta & Modi Homes,
5-4-187/3 &4,
Soham Mansion,
M.G.Road,
Ranigunj,
Secunderabad -500003.

Sir,

Sub: Income tax assessment – your own – A.Y.2007-08 – furnishing
of reply to objections raised for issue of notice u/s.148 – Reg.
Ref: Your letter dated 27-08-2013.

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Please refer to the above.

2. In this case the assessee raised objections to the issue of notice u/s.148. The relevant portion of the objections raised by the assessee are reproduced as under:

In response to the reasons supplied to the assessee, it has been contented by assessee that in the reasons supplied, it is noticed that the basis for the proposed action is the view that in the assessment order dated 31-12-2008 made u/s.143(3), deduction u/s.80IB(10) had been allowed erroneously as the maximum permissible built-up area of 1500 sq.ft per unit has been exceeded after inclusion of the area of the portico in the ground floor and open terrace in the first floor, in violation of the specified conditions contained in section 80IB(10) of the Act.

The assessee submits that the return filed by the assessee was accompanied by prescribed audit report in Form No.10CCB which is required to be submitted in support of claim of deduction u/s.80IB(10). The Form states that the built up area of each unit ranged from 1,366 sq.ft. to 1,487 sq.ft. The built-up area is certified by a Chartered Engineer and is enclosed to form 10CCB.

In the assessment order made u/s.143(3), the AO enquired into the correctness of the claim u/s.80-IB(10). In the course of assessment proceedings, the building sanction plans as sanctioned by the local authority were furnished. After examination of the documents, sanctioned plans and the report in Form No,10CCB, he sent his Inspector to the project site to verify the details. The report of the inspector is reproduced by the AO

Contd..2

:3:

floor from the total built-up area has not been disclosed in the information submitted during the course of original assessment proceedings. Further, the assessee also argued that the Assessing Officer had deputed the Inspector to cause field enquiries and the Inspector's report was incorporated in the assessment order on this very issue and hence, the Assessing Officer erred in reopening the assessment u/s 147 on a mere change of opinion.

On perusal of the above argument of the assessee with the Inspector's report, it is observed that only the carpet area within each residential unit alone was considered for measuring the built up area basing on the plan copies furnished as per which the built-up area was certified by a Chartered Engineer as ranging from 1,366 sq.ft to 1,487 sq.ft and the description of measurements as mentioned in the Inspector's report straight away matches with plan copies certified by a Chartered Engineer. However, it is seen that it was never mentioned in the Inspector's report that the portico and terrace areas were also included for the purpose calculating the built up area of the residential unit and after including the built up area of portico and terrace, the total built-up area was 1,366 sq.ft to 1,487 sq.ft which was less than 1500 sq.ft.

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What
stopped
inspector
from
including
portico
and
terrace
area
in
built up
area

At this stage, it is pertinent to mention here that Hon'ble ITAT, 'A' Bench, Hyderabad vide order ITAT No:1541/Hyd/2010 date: 31.03.2011 in the case of *M/s. Modi Builders and Realtors Pvt. Ltd.* for A.Y.2007-08 denied the deduction u/s 80IB by holding that built up area included portico and balcony and that there is no ambiguity in clause (a) of sub-section (14) of section 80IB, which defines the built up area, so the need for interpretation does not arise.

When this decision of ITAT is applied to the assessee's case, it is noticed that the assessee has excluded the area of portico in the ground floor and the open terrace in the 1st floor in the total built-up area of the residential unit. However, if these two are included, the total built up area of each residential unit exceeds 1500 sft. The entire slab area of the portico in the ground floor and the open terrace in the 1st floor is under exclusive ownership of each bungalow owner and is not commonly shared with any other owner. Therefore, when the provisions of section 80IB(14) are independently applied in the case of the assessee on the basis of clear findings of ITAT, Hyderabad in order dated 31.03.2011, it is noticed that the assessee has not satisfied the conditions prescribed under section 80IB.

Accordingly, the original assessment completed u/s 143(3) is reopened by invoking the provisions of section 147 of the Act. The section 147 authorizes and permits assessing officer to assess and reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. What is required is that the assessing officer should have justification to believe that income has indeed escaped

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to Section 147, equally an assessee who seeks the benefit of the proviso to Section 147 must make a full and true disclosure of all primary facts.

However, in the present case, the assessee, in the return of income that was originally filed, though submitted details of the built up area, these built up area statements, however, was silent on the inclusion of the built up area of portico and terrace in the total built up area and this fact was not disclosed either in the return of income filed or in the assessment proceedings. It is noticed that in the original return of income filed by the assessee, there was a careful avoidance on the part of the assessee to disclose the fact that total built up area does not include the built up areas of Portico and Terrace. Though, it is true that the books of account including audit report, P&L a/c, balance sheet and other documents were submitted along with return before the assessing officer and the assessment was completed under section 143(3) of the Act, the assessee has not disclosed this fact to the Assessing Officer in the original assessment proceedings.

Subsequently, it cannot be said that mere production of the account books before the assessing officer would amount to disclosure within the meaning of Explanation 1 to section 147. In other, words, the mere production of evidence before the assessing officer is not enough and there may be an omission or failure to make a full and true disclosure if some material for the assessment lies embedded in that evidence which the assessee can uncover but has not done so. The assessee cannot argue that there was no failure on the part of the assessee to fully and truly disclose all the material facts and the reopening of the assessment beyond a period of four years is not possible. The words 'omission or failure to disclose fully and truly all material facts necessary for the assessment for the year postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. This was not done by the assessee.'

Further, it is to state that the term 'failure' on the part of the assessee is not restricted only to the income-tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The said expression 'failure to fully and truly disclose material facts' also relate to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details it is required and under an obligation to disclose. Burden is on the assessee to make full and true disclosure. There is a well known difference between a wrong claim made by assessee after disclosing all the true and material facts and a wrong claim made by assessee by withholding the material facts fully and truly. It is only in the latter case that Assessing Officer would be entitled to proceed under section 147 and notice can be issued after expiry of four years.

This is what has been doubted in the *Indian & Eastern Newspaper Society's* case (supra) and we shall discuss its application to this case a little later. But, even leaving this out of consideration, there can be no doubt that the present case is squarely covered by proposition (4) set out in *Kalyanji Mavji & Co.* (supra). This proposition clearly envisages a formation of opinion by the Income Tax Officer on the basis of material already on record provided the formation of such opinion is consequent on information in the shape of some light thrown on aspects of facts or law which the Income Tax Officer had not earlier been conscious of. To give a couple of illustrations suppose an Income Tax Officer, in the original assessment, which is a voluminous one involving several contentions, accepts a plea of the assessee in regard to one of the items that the profits realized on the sale of a house is a capital realization not chargeable to tax. Subsequently he finds, in the forest of papers filed in connection with the assessment, several instances of earlier sales of house property by the assessee. That would be a case where the Income Tax Officer derives information from the record on an investigation or enquiry into facts not originally undertaken. Again, suppose if Income Tax Officer accepts the plea of an assessee that a particular receipt is not income liable to tax. But, on further research into law he finds that there was a direct decision holding that category of receipt to be an income receipt. He would be entitled to reopen the assessment under section 147(b) by virtue of proposition (4) of *Kalyanji Mavji* (supra). The fact that the details of sales of house properties were already in the file or that the decision subsequently come across by him was already there, would not affect the position, because the information that such facts or decision existed comes to him only much later."

On a combined reading of the judgments of the apex court in *Kalyanji Mavji* (supra), *Indian & Eastern Newspaper Society* (supra) and *A.L.A. Firm* (supra), would make it clear that the proposition that where the information may be obtained even from the record of the original assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law still holds good. Therefore, in the light of the judgment of the Apex Court in *A.L.A. Firm* (supra) the initiation of proceedings under section 147 of the Act is in accordance with law.

It is to state that in the case of *Kelvinator of India Ltd*, the decision of a three Judges Bench of the apex court in *A.L.A. Firm v. CIT* (1991) 189 ITR 285 was not considered wherein the implication and effect of the decision in *Indian & Eastern Newspaper Society* (supra) and *Kalyanji Mavji & Co.* (supra) were considered and explained and it was categorically held that the decision in *Indian & Eastern Newspaper Society* (supra) has not cast any doubt on the other three proposition Nos. 1, 3 and 4 laid down in *Kalyanji Mavji's* case (supra).

Therefore, where the assessment order has been passed and certain items were not at all discussed and it escaped the notice of the assessing officer as a result of which, the assessment order was reopened in respect to those items, in such circumstances, it cannot be said that it would amount to review. Since, the assessing officer in the original assessment order did not form any view or any opinion with regard to these items which escaped its notice, it will not amount to review of the order or change of opinion. When no opinion was formed by the assessing authority how can there be any change of opinion. In the instant case, neither there is a change of opinion nor was it reopened at the behest of any superior authority. In

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