**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member**
**and Shri Sandeep Gosain, Judicial Member**

**ITA Nos. 1030, 2879 to 2882, 3497 & 3498/Mum/2013**
(Assessment Years: 2002-03 & 2004-05 to 2009-10)

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| DCIT, Central Circle 15 & 16<br>Room No. 401, 4th Floor<br>Àayakar Bhavan, M.K. Road<br>Mumbai 400020 | Vs. | M/s. Vijay Grihnirman Pvt. Ltd.<br>1, Tarlika, 261 Sir Balachandra<br>Road, Matunga, Mumbai 400019 |

PAN - AAACV2806N

**Appellant** **Respondent**

Assessee by: Shri G.M. Doss
Revenue by: Shri Bhumika V. Vora

Date of Hearing: 27.04.2016
Date of Pronouncement: 29.04.2016

**O R D E R**

**Per Jason P. Boaz, A.M.**

These appeals by Revenue are directed against the orders of the CIT(A)-39, Mumbai dated 30.11.2012 for A.Y. 2002-03; dated 18.01.2013 for A.Y. 2004-05 and 2005-06; dated 31.01.2013 for A.Y. 2006-07; dated 30.01.2013 for A.Y. 2007-08 and dated 18.02.2013 for assessment years 2008-09 & 2009-10. These appeals having interconnected issues and being heard together are being disposed off by way of this consolidated order in seriatum.

2. **Revenue's Appeal in ITA No. 1030/Mum/2013 (A.Y. 2002-03)**

2.1 In this appeal the revenue has raised the following grounds: -

*"1. That the ld. CIT(A) has erred in law and on facts in allowing deduction u/s. 80-IB(10) ignoring the fact that the order of the ITAT dt. 24.08.2011, which has been followed by the CIT(A), has not been accepted by the Department and appeal has been filed u/s. 260A.*

*2. The Appellant craves to leave to add, to amend and/or to alter any of the grounds of appeal, if need be.*

*3. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

2.2 From a perusal of the grounds raised (supra) it is seen that the single issue raised therein is with regard to the learned CIT(A) allowing the assessee's claim for deduction under section 80IB(10) of the Act by following the decision of the Coordinate Bench of this Tribunal in the assessee's own case for assessment years 2000-01 to 2006-07 in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011. The contention of the Revenue is that the learned CIT(A) ought not to have followed the aforesaid decision of the Coordinate Bench of this Tribunal since the same has not been accepted by the Department and has preferred appeals against the said order before the Hon'ble High Court. The learned D.R. was heard in support of the ground raised.

2.3 Per contra, the learned A.R. for the assessee submitted that the learned CIT(A) has considered the assessee's claim for deduction under section 80IB(10) of the Act and allowed the same considering the facts of the case and by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07. It is prayed that in view of the above, Revenue's appeal was liable to be dismissed.

2.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncement cited. The facts of the matter are that the assessee is a member of 'Vijay Group' in whose case a search and seizure action was carried out under section 132 of the Act on 22.09.2005 at their business and residential premises. Pursuant thereto, the assessment for A.Y. 2002-03 was completed under section 143(3) r.w.s. 153A of the Act vide order dated 30.03.2007. Subsequently, the CIT, Central II, Mumbai invoking the provisions of section 263 of the Act held the order of assessment passed by the Assessing Officer (AO) to be erroneous and prejudicial to the interest of the Revenue and set aside the order of assessment. The AO then passed order under section 143(3) r.w.s. 153! & 263 of the Act disallowing the assessee's claim for deduction under section 80IB(10) of the Act. Subsequently, the Coordinate Bench of this Tribunal vide its order in ITA Nos. 3514 to 3520/Mum/2009

dated 24.08.2011 quashed the order passed by the learned CIT under section 263 of the Act for assessment years 200-01 to 2006-07.

2.4.2 We find that the learned CIT(A), considering the facts of the case for the year under consideration and following aforesaid decision of the Coordinate Bench of this Tribunal dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07, allowed the assessee's claim for deduction under section 80IB(10) of the Act at paras 8.1 to 8.6 of the impugned order holding as under: -

> *"8.1 The fact is that the A.O has originally granted deduction under s. 8-IB(10) of the Act. However, while completing the impugned assessment the A.O declined to grant deduction for the following reasons:*
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> *(a) Building no. 1 to 13 commencement certificate no. 97064/TMC/TDD/ 1687 was issued on 04.10.1997 by the Thane Municipal Corporation for buildings constructed on survey no. 136,137 and 138. Since the date of commencement of Build Nos. 1 to 13 is before 1.10.1998 deduction u/s. 80IB(10) is not allowable to the appellant.*
>
> *(b) As per Rule 18BBB it is mandatory to file separate audit report for each undertaking or enterprise for which deduction is claimed and it should be accompanied by Profit and Loss Account and Balance Sheet of the said undertaking or enterprise as if the undertaking or enterprise were a distinct entity.*
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> *8.2 It has to be mentioned here that the original assessment, as completed was the subject matter of proceedings under s. 263 of the Act. The CIT, Central-11, Mumbai had invoked the provisions of s. 263 for the A.Y. 2000-01 to 2006-07 on the ground that on examination of these orders, it was observed that the same were erroneous and prejudicial to the interest of Revenue mainly because deduction under s. 801B(10) has been allowed, whereas assessee had not fulfilled all the conditions.*
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> *8.3 The appellant had filed appeal against the order passed under s. 263 and the Hon'ble ITAT vide orders in ITA No. 3515 to 3520/Mum/2009 dated 24.8.2011 had quashed the orders under s. 263.*
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> *8.4 As regards the objection that the building no. 3 was commenced before 1.10.1998, the Hon'ble ITAT in paragraph 13 have held as under:-*
>
> *"13. The first objection raised by the Commissioner is that the actual work in two projects viz. Vijay Nagari Annex-1 (Building Nos.1 to 3) and Vijay Nagar Annex-I (Building No. 10 to 12) commenced as per the annexures to 10CCB*

*reports on 17/10/1998, where as per the Commencement Certificate issued by the TMC work commenced on 04/10/1997 and, therefore, commencement should be reckoned on 04/10/1997. As per section 801B (10) the first condition for claiming deduction is that the project must have commenced on or after 1st date of October, 1998. However, as pointed out by the Ld. Counsel of the assessee the work could not start because of hindrances and the same started only after 17/10/1998, which becomes clear from the letter of the architect addressed to the TMC which is available at page 111 of the paper book. It was further pointed out that an enquiry was made by A.O himself though the Inspector and the Inspector has categorically stated that actual construction started on 17/10/1998. The relevant para of the Inspector's report dated 02/03/2007 reads as under:-*

*"In. this project the assessee had constructed seven buildings. The area of land utilized for this project is 2.93 acres and the built-up area of flats constructed on each of the these building are ranging from 456 to 664 per sq.ft. The date of commencement and date of completion of this project was 17/10/1998 and 13/10/2001, 13/12/2001 & 06/02/2002 respectively. The documentary proof of municipal approved plan, architect, certificate, and completion certificate etc, are obtained and placed on record."*

*8.5 Thus it is observed that on the basis of enquiry by the A.O it had been ascertained that actual construction had commenced only after 17.10.1998. Thus, although the appellant had received commencement certificate prior to 1.10.1998, actual construction commenced w.e.f 17.10.1998; which had been confirmed by the Inspection on site verification. With reference to filing of the Audit Report, it is submitted that for A.Y. 2000-01 to 2002-03, it was not mandatory to file Audit Report separately for each undertaking or enterprise. The Hon'ble ITAT has also observed as under:-*

*"In any case, we further find that Rule 18BBB was brought on statute for the first time w.e.f. 6-9-2062 which means its requirement was not applicable in A. Y. 2000-01."*

*8.6 Thus the said objection is also not tenable. The amendment introduced by the Finance Act, 2002 is applicable w.e.f. 1.4.2003 i.e. A.Y. 2003-04 and onwards. Hence it is held that the claim for deduction under s. 80IB(10) is allowable and hence to be allowed, it is directed accordingly."*

2.4.3 On an appreciation of the facts of the case for the year under consideration, i.e. A.Y. 2002-03 in respect of the assessee's claim for deduction under section 80IB(10) of the Act we find that no material has been brought on record to controvert the factual findings of the learned CIT(A) (supra) and therefore we find no requirement to interfere with or deviate therefrom. In the factual matrix of the case and decision of the Coordinate Bench of this Tribunal in its order in ITA Nos. 5315 to 5320/Mum/2009 dated 24.08.2011 (supra), we uphold the order of the learned CIT(A) in allowing the assessee's

claim for deduction under section 80IB(10) of the Act. Consequently, the grounds at S.Nos. 1 to 3 raised by the Revenue are dismissed.

3. In the result, Revenue's appeal for A.Y. 2002-03 is dismissed.

4. **Revenue's appeal in ITA Nos. 2879 & 2880/Mum/2013 for assessment years 2004-05 & 2005-06**

4.1 In the appeals for both assessment years 2004-05 and 2005-06, the revenue has preferred the following identical grounds: -

> *"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the assessee has fulfilled the conditions laid down u/s 80IB(10) without appreciating the fact that the assessee failed to obtain Completion Certificate issued by the Local Authority in respect of all the projects on which it has claimed deduction u/s. 801B(10) of the IT Act, 1961.*
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> *2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) without appreciating that one of the projects viz. "Vijay Garden" contained row houses exceeding 2000 sq.ft. in area which violated the condition precedent for allowing deduction u/s. 801B(10).*
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> *3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) despite noting that the assessee had filed only consolidated audit report and not separate audit report in respect of each project as mandatory under Rule 18BBB.*
>
> *4. The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*
>
> *5. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

4.2 From a perusal of the grounds raised (supra), it is seen that the issue raised therein is with regard to the learned CIT(A) allowing the assessee's claim for deduction under section 80IB(10) of the Act in the impugned orders for assessment years 2004-05 and 2005-06, by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 5315 to 5320/Mum/2009 dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07. The learned D.R. for Revenue was heard in support of the grounds raised and submitted that the learned CIT(A) ought not to have followed the aforesaid order of the Coordinate Bench of this Tribunal (supra) since the Department

had not accepted this order and had preferred appeals against the same before the Hon'ble High Court.

4.3 Per contra, the learned A.R. for the assessee submitted that the learned CIT(A) has considered the assessee's claim for deduction under section 80IB(10) of the Act and allowed the same considering the facts of the case for the relevant years under consideration and by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 for assessment years 2000-01 to 2006-07. It is prayed that in view of the above, Revenue's appeals for assessment years 2004-05 and 2005-06 are liable to be dismissed.

4.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncement cited. The facts of the matter are that the AO completed the orders of assessment for assessment years 2004-05 and 2005-06 under section 143(3) r.w.s. 153A of the Act vide orders dated 30.03.2007 allowing the assessee's claim for deduction under section 80IB(10) of the Act. Subsequently, the CIT, Central-II, Mumbai invoking the provisions of section 263 of the Act held that the aforesaid orders of assessment passed by the AO to be erroneous and prejudicial to the interests of Revenue and set aside the orders of assessment for assessment years 2004-05 & 2005-06. The AO then passed orders of assessment for these two assessment years under section 143(3) r.w.s. 153C of the Act dated 24.12.2010 disallowing the assessee's claim for deduction under section 80IB(10) of the Act. Subsequently, the Coordinate Bench of this Tribunal vide its orders in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 quashed the orders passed by the learned CIT under section 263 of the Act for assessment year 2000-01 to 2006-07.

4.4.2 We find that the learned CIT(A), considering the facts of the case for the years under consideration and following the aforesaid decision of the Coordinate Bench of this Tribunal dated 24.08.2011 in the assessee's own case for assessment year 2000-01 to 2006-07, at paras 5.1 to 5.5 of the impugned orders for assessment year 2004-05 and 2005-06 have allowed the

assessee's claim for deduction under section 80IB(1) of the Act, subject to verification, by holding as under: -

*"5.1 It is stated by the Assessing Officer that after considering the details submitted during the course of assessment proceedings and during the course of revision proceeding under s. 263, the claim of deduction under s. 80IB is being disallowed.*

*5.2 It is pointed out by the appellant that -*

*The Assessing Officer after physical verification has allowed deduction u/s 80IB(10) in. the assessment order date 30.03.2007 passed under s.143(3) r.w. 153A. Subsequently the Commissioner invoked the provisions of section 263 and set aside the assessment order dated 30.3.2007 mainly for the purpose of withdrawing the deduction allowed by the Assessing Officer in the order dated 303.2007. The Hon'ble ITAT quashed the order passed by the CIT under s. 263. The Assessing Officer has in the impugned order disallowed the deduction under s. 80IB(10) mainly on the ground that his predecessor has disallowed the deduction in the order passed u/s 143(3) r.w.s. 263/153A. Since the order passed by the Commissioner u/s 263 has been quashed by the Hon'ble Tribunal, the consequential order passed by the Assessing Officer u/s 143(3) r.w.s. 263/153A no longer survives and therefore the deduction allowed by the Assessing Officer in the order dated 30.3.2007 passed u/s 143(3) r.w.s. 153A cannot be disallowed in the impugned order, which is otherwise illegal, bad in law or otherwise void for want of jurisdiction.*

*5.3 On a reading of the assessment order, it is perceived that the Assessing officer had denied the claim citing the following reasons:*

*(a) Phase-II Project "Vijay Nagari Annex- II" (Building No. 14 to 18, Survey No. 138) commenced on 30.03.2001 as per Commencement Certificate No. 99/018/ TMC/TDD/2295 dt. 30.03.2007 of the Thane Municipal Corporation. For Building No. 14, 15, 77 & 18 Occupancy Certificate No. 99/018/TMG/TDD/5102 dt. 9.02.2005 was issued by TME, the local authority. No Occupancy Certificate for Building No. 16 is received till date.*

*(b) As per Rule 18BBB it is mandatory to file separate audit report for each undertaking or enterprise for which deduction is claimed and it should he accompanied by Profit and Loss Account and Balance Sheet of the said undertaking or enterprise as if the undertaking or enterprise were a distinct entity.*

*(c) Project 'Vijay Garden' (Building No. 1-13 and Row House No. 1-12) commenced on 11.07.2002 vide commencement certificate No.2002/07TMC/TDD/837. Total super built up are for .fiats ranges from 380Sq.Ft. to 1015 Sq. Ft. and area for Row Houses is 2000 Sq.Ft. each. Since this project Contains row houses of 2000 Sq.Ft. area each., the deduction under s. 80IB of the assessee Act cannot be allowed.*

*5.4 The appellant has made further submission, as under, in this regard, which are extracted below:*

*As regards point no(a) wherein the ld. A.O. has alleged that the completion certificate occupancy certificate of building n.No.16 has not yet been received it is submitted that the allegation is entirely frivolous on the ground that this allegation has not found place in the assessment order passed u/s 143(3) r.w.s. 153A, show cause notice issued by CIT u/s 263, order passed by CIT u/s 263, consequential order passed by the A.O. u/s 143(3) R.W.S. 263/153a. It is submitted that the building has been completed which is evident from audit report u/s 80IB(10) as well as from the completion certificate issued by the architect.*

*It may be noted that the ld. A.O. during the course of assessment proceedings deputed two Inspectors at the sites of the housing projects constructed and developed by the appellant in order to verify the claim of the appellant u/s 80IB(10). The Inspectors accordingly submitted their report vide letter dated 2.3.2007. The relevant para of the Inspectors report is reproduced as under :*

*"In this project the assessee had constructed seven buildings. The area of land utilized for this project is 2.93 acres and the built-up area of flats constructed on each of these building are ranging from 456 to 664 per sq. feet. The date of commencement and date of completion of this project was 17.10.1998 and 13.10.2001; 13.12.2001 & 6.02.2002 respectively. The documentary proof of municipal approved plan, architect certificate, commencement certificate and completion certificate, etc. are obtained and placed on record."*

*Therefore, it is submitted that the ld. A.O. in the order u s 143(3) r.w.s.153A has correctly & legitimately allowed the claim of deduction u/s 80IB(10).*

*It is further submitted that during the course of search at the premises of the third parties no incriminating document relating to the claim of deduction u s 801B(10) was found. In the absence of any incriminating material the ld. A.O. is not empowered to disallow the claim of deduction u/s.80IB(10) in the impugned order passed u/s 143(3) r.w.s. 153C. It is therefore, submitted that the ld. A.O. acted without jurisdiction and in that view of the matter the disallowance made by the ld. A.O. is liable to be deleted and the appellant's claim, of deduction u/s 80IB may kindly be allowed.*

*It is worth to be noted that subsequently the Commissioner of Income Tax, Central-II, Mumbai invoked the provisions of section 263 on the ground that the assessment order passed by the ld. A.O. u/s 143(3) r.w.s. 153A is erroneous and prejudicial to the interest of revenue and set-aside the assessment order. After considering the submission made by the authorized representative the ld. A.O. passed order u/s 143(3) r.w.s. 153A & 263 and disallowed the deduction u/s 80IB(1) claimed by the appellant, which are allowed by the ld. A.O. in the order passed u/s 143(3) r.w.s. 153A.*

*The appellant filed appeals before the Hon'ble ITAT against the ld. CIT's order passed u/s 263. The Hon'ble ITAT vide order dated 24.08.2011 quashed the orders passed by the id. CIT u/s 263.*

*5.5. On a consideration of the matter, it has to be held that the matter of claim of deduction under s. 80IB(10) had been examined by the Hon'ble ITAT, the highest fact finding body, in the course of adjudicating upon the validity of the revision order of the CIT-II, Central, under s. 263. The Hon'ble ITAT vide order dated 24.08.2011, after taking cognizance of the Inspectors Report dated 2.3.2007, has given a finding of fact that the objection as raised by the Assessing Officer are not factually correct, as stated in paragraph 13 of its order. In these circumstances, and especially in the light of the fact that the consequential order passed by the Assessing Officer under s. 143(3) r.w.s. 263/-153A no longer survive, the Assessing Officer is not correct in disallowing the claim under s. 80IB(10). However, it has to be considered that no separate audit report was furnished as mandated by Rule 18BB, the appellant had furnished a consolidated audit report in form No.10CCB. Though the appellant would argue that in this case a consolidated audit report is already filed and hence the claim cannot be denied, it cannot be ignored that for the impugned year separate audit report in Form 10CCB is essential. Therefore the claim is subject to filing of separate reports for each undertaking or undertaking for which deduction under s. 80IB is claimed by the appellant. The appellant is directed to file the same before the Assessing Officer and subject to filing and due verification, the claim stands allowed."*

4.4.3 On an appreciation of the facts of the case for the two assessment years 2004-05 and 2005-06 on the issue of the assessee' claim for deduction under section 80IB(10) of the Act for assessment years 2004-05 and 2005-06 we find that no material has been brought on record by Revenue to controvert the factual findings of the learned CIT(A) (supra) and therefore find no requirement to interfere with or deviate therefrom. In the factual matrix of the case as discussed above and following the decision of the Coordinate Bench of this Tribunal in its order in ITA Nos. 5315 to 5320/Mum/2009 dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07 (supra), we uphold the order of the learned CIT(A) in allowing the assessee's claim for deduction under section 80IB(10) of the Act for A.Y. 2004-05 and 2005-06 subject to verification as directed therein. Consequently, the grounds at S.Nos. 1 to 5 raised by Revenue in the appeals for both the assessment years 2004-05 and 2005-06 are dismissed.

5. In the Result, Revenue's appeals for assessment years 2004-05 and 2005-06 are dismissed.

6. **Revenue's Appeal in ITA No. 2881/Mum/2013 for A.Y. 2006-07**

6.1 In this appeal, Revenue has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the assessee has fulfilled the conditions laid down u/s 80IB(10) without appreciating the fact that the assessee failed to obtain Completion Certificate issued by the Local Authority in respect of all the projects on which it has claimed deduction u/s. 801B(10) of the IT Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) without appreciating that one of the projects viz. "Vijay Garden" contained row houses exceeding 2000 sq.ft. in area which violated the condition precedent for allowing deduction u/s. 801B(10).*

*3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) despite noting that the assessee had filed only consolidated audit report and not separate audit report in respect of each project as mandatory under Rule 18BBB.*

*4. The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*

*5. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

6.2 From a perusal of the grounds raised (supra), it is seen that the issues raised therein is with regard to the learned CIT(A) allowing the assessee's claim for deduction under section 80IB(10) of the Act in the impugned orders for A.Y. 2006-07, by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 5315 to 5320/Mum/2009 dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07. The learned D.R. for Revenue was heard in support of the grounds raised and submitted that the learned CIT(A) ought not to have followed the aforesaid order of the Coordinate Bench of this Tribunal (supra) since the Department had not accepted the order and had preferred appeal against the same before the Hon'ble High Court.

6.3 Per contra, the learned A.R. for the assessee submitted that the learned CIT(A) has considered the assessee's claim for deduction under section

80IB(10) of the Act and allowed the same considering the facts of the case for the relevant year under consideration and by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 for assessment years 2000-01 to 2006-07. It is prayed that in view of the above, Revenue's appeal for A.Y. 2006-07 is liable to be dismissed.

6.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement cited. The facts of the matter are that the AO completed the order of assessment for A.Y. 2006-07 under section 143(3) r.w.s. 153A of the Act vide orders dated 30.03.2007 allowing the assessee's claim for deduction under section 80IB(10) of the Act. Subsequently, the CIT, Central-II, Mumbai invoking the provisions of section 263 of the Act held that the aforesaid orders of assessment for A.Y. 2006-07 to be erroneous and prejudicial to the interests of Revenue and set aside the order of assessment. The AO then passed order of assessment under section 143(3) r.w.s. 263/153A of the Act dated 24.12.2010 disallowing the assessee's claim for deduction under section 80IB(10) of the Act. Subsequently, the Coordinate Bench of this Tribunal vide its orders in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 quashed the order passed by the learned CIT under section 263 of the Act for assessment year 2000-01 to 2006-07.

6.4.2 We find that the learned CIT(A), considering the facts of the case for the year under consideration and following the aforesaid decision of the Coordinate Bench dated 24.08.2011 in the assessee's own case for assessment year 2000-01 to 2006-07, partly allowed the assessee's claim for deduction under section 80IB(10) of the Act, subject to verification of Audit Report/Certificates, by holding as under at paras 6.1 to 6.4: -

> "6.1 The Assessing Officer disallowed the claim on account of various reasons, which are summarized as hereunder:
>
> *(a) Phase-II Project "Vijay Nagari Annex- II" (Building No. 14 to 18, Survey No. 138) commenced on 30.03.2001 as per Commencement Certificate No. 99/018/ TMC/TDD/2295 dt. 30.03.2007 of the Thane Municipal Corporation. For Building No. 14, 15, 77 & 18 Occupancy Certificate No. 99/018/TMG/TDD/5102 dt. 9.02.2005 was issued by*

*TME, the local authority. No Occupancy Certificate for Building No. 16 is received till date.*

*(b) Project 'Vijay Garden' (Building No. 1-13 and Row House No. 1-12) commenced on 11.07.2002 vide commencement certificate No.2002/07TMC/TDD/837. Total super built up are for .fiats ranges from 380Sq.Ft. to 1015 Sq. Ft. and area for Row Houses is 2000 Sq.Ft. each. Since this project Contains row houses of 2000 Sq.Ft. area each., the deduction under s. 80IB of the assessee Act cannot be allowed.*

*(c) As per Rule 18BBB it is mandatory to file separate audit report for each undertaking or enterprise for which deduction is claimed and it should he accompanied by Profit and Loss Account and Balance Sheet of the said undertaking or enterprise as if the undertaking or enterprise were a distinct entity.*

*6.2 In respect of the above stated objections, the appellant submissions are as summarized below:*

*i) With regard to non-receipt of completion occupancy certificate for Bldg. No, 16 (Vjaya Nagari Annex II), the objection is entirely frivolous as is evident from copy of the Audit Report placed on record. Further during the course of assessment proceedings, the Assessing Officer had deputed two inspectors at the site of the housing project in order to verify the claim of the appellant under s. 80IB(10). The relevant paragraph of the Inspectors report is reproduced as under:*

*"II(ii) Vijay Nagri Annexure Phase-Il - In this project the assessee had constructed five buildings. The area of land utilized for this project is 3.16 acres and the built-up area of flats constructed on each of these building are ranging from 539 to 792 per sq. feet. The date of commencement and date of completion of this project was 31.03.2001 and March 2004 respectively. The documentary proof of municipal approved plan, architect certificate, commencement certificate and completion certificate, etc. are obtained and placed on record.*

*ii) With regard to the project Vijay Garden, it is submitted that no deduction has been claimed in respect of Row houses being Bldg. Nos. 1 to 9 of Vijay Garden. The deduction under s. 80IB(10) has been claimed only in respect of Bldg. Nos. 10 to 13, and the same is evident from para 2 of the Inspectors report which is reproduced below:*

*"2. <u>Vijay Garden</u>- In this project the assessee had constructed 13 buildings in Survey no.234, ,Hissa No.2, Kavesar, Godbunder Road, Thane(W) under the name Vijay Garden. Out of the 13 buildings assessee had claimed deduction u/s 80-III in respect of 4 buildings. The area of the land utilized for this project is 2.05 acres and the built-up area of flats constructed on each of these building are ranging from 315 to 784 per sq. feet. The date of commencement and date of completion of this project was 07.11.2002 and January 2006 respectively. The documentary proof of municipal approved plan, architect certificate, commencement certificate and completion certificate, etc. are obtained and placed on record."*

*It has been stated by the AO that appellant is not entitled to deduction under s. 80IB(10) on the ground that appellant ,failed to file separate report in Form 10CCB for each undertaking or enterprise for which the deduction had been claimed. In this regard it is submitted that the consolidated Audit Report was already furnished alongwith the return of income and therefore the claim of the appellant cannot he denied. The non-furnishing of separate Audit Report alongwith the return will render the return defective and therefore the defect is clearable.*

*iii) It is further submitted that during the course of search no incriminating documents relating to the claim of deduction, under S. 80IB(10) was found. In the absence of any- incriminating material the Assessing Officer is not empowered to disallow the claim of' deduction under s. 80IB(10) in the impugned order passed under s. 143(3) r.w.s. 153C. It is further pointed out that the assessment under s.143(3) r.w.s. 153A was completed on 3.5.2007, wherein the AO had allowed the claim of deduction under s 80IB(10). Subsequently, the CIT(C)-II Mumbai invoked provisions of sec. 263 considering the assessment order as erroneous and prejudicial to the interest of revenue and set aside the assessment order. The Assessing Officer thereafter passed order under s. 143(3) r.w.s. 153A and 263 after disallowing the deduction under s. 80IB(10) claimed by the appellant. However, the Hon'ble ITAT vide order dt.24.8.2011 quashed the order passed by the CIT(C)-II, Mumbai, under s. 263. The Hon.ble ITAT in para 13 of its order has held as under:*

*"13. The first objection raised by the Commissioner is that the actual work in two projects viz. Vijay Nagari Annex-I (Building Nos. 1 to 3) and Vijay Nagari Annex-I (building No.10 to 12) commenced as per the annexures to 10CCB reports on 17.10.1998, whereas as per the Commencement Certificate issued by the TMC work commenced on 04.10.1997 and therefore, commencement should be reckoned as 04.10.1997.*

*As per sec. 80IB(10) the first condition for claiming deduction is that the project must have commenced on or before 1st date of October, 1998. However, as pointed out by the Ld. Counsel of the assessee the work could not start because of hindrances and the same started only after 17.10.1997, which becomes clear from the letter of the architect addressed to the TMC which is available at page 111 of the paper book. It was further pointed out that an enquiry was made by A.O. himself through the Inspector and the Inspector has categorically stated that actual construction started on 17.10.1998. The relevant para of the Inspector report dated 02.03.2007 reads as under :*

*"In this project the assessee had constructed seven buildings. The area of land utilized for this project is 2.93 acres and the built-up area of flats constructed on each of the these building are ranging from 456 to 664 per sq.ft. The date of commencement and date of completion of this project was 17/10/1998 and 13/10/2001, 13/12/2001 & 06/02/2002 respectively. The documentary proof of municipal*

*approved plan, architect, certificate, and completion certificate etc, are obtained and placed on record."*

*We further find that a detailed reply in this regard was filed before the CIT and, therefore, Ld. Commissioner should have determined the exact objection found by him and if nothing was found wrong, then he should have dropped the proceedings. We further find this proposition has been confirmed by Delhi Bench of the Tribunal in the case of Institute of Chartered Accountants of India vs. DIT(Exemption) [supra] wherein at page 561 it was observed as under :*

*"With respect to the reliance placed by learned CIT-Departmental Representative on the proposition of Delhi High Court in this case of Gee Vee Enterprises (supra) wherein non-making of inquiry by the A.O. was stated to justify the action of CIT u/s 263, it is very pertinent to mention the latest decision of Hon'ble' jurisdiction High Court in the ease of CIT vs. Vikas Polymers in IT Ref. No.3 of 1991, dt. 16th August, 2010, wherein it was observed that merely by stating that assessee has not filed certain documents on record at the time of assessment, it does not justify the conclusion arrived at by the CIT that A.O. has shirked his responsibility of investigating the case. It was further observed that in view of the fact that assessee has explained the capital investment made by the partners, which had been called into question by the CIT, during the course of proceedings before him, the CIT was held to be not justified in passing order u/s 263. In view of the above judgment, as per our considered view when the assessee has filed all the information as called by the CIT before him, he should have examined the same and if nothing is found wrong, he should have dropped the proceedings rather than restoring the matter back to the file of the A.O. for examining again. The primary condition with regard to the order of the A.O. being prejudicial to the interest of the Revenue is not satisfied in this case, therefore, Hon'ble court has held that the order of CIT u/s 263 was bad in law. Accordingly, it was held that where the CIT has stated in his order that A.O. has not examined certain items, assuming this to be so, the order will only be erroneous, but it cannot be said to be prejudicial to the interest of the revenue till the CIT deals with the explanation given by the assessee with regard to the items alleged by him in the course of proceedings u/s 263. Meaning thereby the CIT should have appreciated the reply filed by the assessee and merely by stating that A.O. has not examined certain points, he cannot exercise his revisionary jurisdiction u/s 263, in so far as such order can be branded as erroneous but cannot be said to be prejudicial to the interest of the Revenue."*

*In any case, once A.O. had made the enquiry and he was satisfied that actual construction had commercial only after 17.10.1998 and allowed the deduction that would mean that A.O. has adopted one of the possible views in law. If this course of action is adopted, then no fault*

*can be found with the action of the A.O. because the Hon'ble Supreme Court in the case of Malbar Industrial Commissioner Ltd. vs. CIT [243 ITR 83] has held as under :*

*"A bare reading of this provision makes it clear that the perquisite to the exercise of jurisdiction by the Commissioner suo motto under it, is that the order of the Income Tax Officer is erroneous in so far as it is prejudicial to the interest of the Revenue. The Commissioner has to be satisfied of twin condition, namely (I) the order of Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue - recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the assessing officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category full orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interest of the Revenue" is not an expression of the art and is not defined in the Act. Understood in its ordinary meaning it is of vide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provision of the Act and this task is entrusted to the Revenue. The phrase "prejudicial to an erroneous order of the Income Tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interest of the Revenue" has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of Revenue, for example, when an Income tax officer adopted one of the course permissible in law and it has resulted in loss of Revenue; or where two views are possible and the income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the Income Tax Officer is sustainable in law."*

*In view of the above, we are of the view that this objection cannot be sustained."*

*On the basis of the above submissions it is prayed that deduction under s. 80IB(10) be allowed.*

*6.3 I have considered the matter. As per the facts on record, in the return of income filed, the appellant had claimed deduction under s. 80IB(l0) of the Act. The Assessing Officer had allowed the claim while completing the assessment under s 143(3) r.w.s. 153A after scrutiny of the claim made. Subsequently, the Commissioner invoked the provisions of section 263 and set aside the assessment order dt. 30.3.2007 mainly for the purpose of withdrawing the deduction allowed by the Assessing Officer. The Hon'ble ITAT quashed the order passed by the CIT under s 263. The Assessing Officer, in the impugned*

*order has disallowed the deduction under s. 80IB(10) reckoning that the deduction has been disallowed in the order passed under s. 143(3) r.w.s. 263/153A. It has to be held that since the order passed by the CIT under s.263 has been quashed by the Hon'ble Tribunal, the consequential order passed by the Assessing Officer under S. 143(3) r.w.s. 263/153A no longer survives. Therefore, it follows that the deduction earlier allowed by the Assessing Officer in the order dated 30.5.2007, passed under s. 143(3) r.w.s. 153A is not open for disallowance in the impugned year. Further, from a perusal of the Inspector's Report it appears that the objections as raised by the Assessing Officer are not factually correct. Without prejudice to the said findings, it has indeed to be held that the appellant was statutorily bound to furnish separate Audit Report in Form 10CCB, which condition has not been met for the reason that only a consolidated Audit Report was furnished. The appellant is indeed bound to furnish separate Audit Report for each undertaking or enterprise for which the deduction is claimed. At this juncture, if the view held by the judiciary is taken into account, then it follows that the provisions of section 80IB(13) are directory and that the defect of not furnishing the requisite Audit Report is curable. Accordingly, the appellant has to necessarily furnish separate Audit Reports for each undertaking or enterprise for which deduction under s. 80IB has been claimed. Since the said separate reports were not placed before the Assessing Officer, the appellant is directed to produce the requisite Certificates/Report before the Assessing Officer who after perusing the said Certificate will decide the eligibility of the appellant for relief under s. 80IB(10), as deemed fit.*

*6.4 The Assessing Officer will allow reasonable opportunity to the appellant with regard to examination of the project wise Audit Reports,*

*6.5 This ground is treated as allowed in part."*

6.4.3 On an appreciation of the facts of the case, on the assessee's claim for deduction under section 80IB(10) of the Act for A.Y. 2006-07, we find that Revenue has failed to bring on record any material to controvert the findings of the learned CIT(A) (supra) and therefore find no requirement to interfere with or deviate therefrom. In this factual matrix of the case as discussed above and following the decision of the Coordinate Bench of this Tribunal in its order in ITA No. 3514 to 3520/Mum/2009 dated 24.08.2011 in the assessee's own case for assessment years 2000-01 to 2006-07, we uphold the order of the learned CIT(A) in allowing the assessee's claim for deduction under section 80IB (10) of the Act subject to verification as directed therein. Consequently, the grounds at S.Nos. 1 to 5 raised by Revenue in this appeal are dismissed.

7. In the result, Revenue's appeal for A.Y. 2006-07 is dismissed.

8. **Revenue's appeal in ITA No. 2882/Mum/2013 for A.Y. 2007-08**

8.1 In this appeal, Revenue has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the assessee has fulfilled the conditions laid down u/s 80IB(10) without appreciating the fact that the assessee failed to obtain Completion Certificate issued by the Local Authority in respect of all the projects on which it has claimed deduction u/s. 801B(10) of the IT Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) without appreciating that one of the projects viz. "Vijay Garden" contained row houses exceeding 2000 sq.ft. in area which violated the condition precedent for allowing deduction u/s. 801B(10).*

*3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) despite noting that the assessee had filed only consolidated audit report and not separate audit report in respect of each project as mandatory under Rule 18BBB.*

*4. The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*

*5. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

8.2 From a perusal of the grounds raised (supra), it is seen that the issues raised therein pertain to the learned CIT(A) allowing the assessee's claim for deduction under section 80IB(10) of the Act for A.Y. 2007-08 after considering the facts of the case for the year under consideration. The learned D.R. for Revenue was heard in support of the grounds raised (supra).

8.3 Per contra, the learned A.R. for the assessee submitted that the learned CIT(A) has considered the assessee's claim for deduction under section 80IB(10) of the Act and allowed the same considering the facts of the case for the relevant year under consideration and by following the decision of the Coordinate Bench of this Tribunal in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 for assessment years 2000-01 to 2006-07. It is prayed that in view of the above, Revenue's appeals for A.Y. 2006-07 is liable to be dismissed.

8.4.1 We have heard the rival contentions and perused and carefully considered the material on record. The facts of the matter are that the AO

disallowed the assessee's claim for deduction under section 80IB(10) of the Act in the order of assessment for A.Y. 2007-08 vide order dated 24.12.2010 passed under section 143(3) r.w.s. 153C and 143B(1) of the Act. We find from a perusal that the learned CIT(A) allowed the assessee's claim for deduction under section 80IB(10) of the Act after considering the facts of the case pertaining to the year under consideration, i.e. A.Y. 2007-08 and following the ratio of the Coordinate Bench of this Tribunal vide its orders in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 wherein the Coordinate Bench had quashed the order under section 263 of the Act for assessment year 2000-01 to 2006-07 denying the assessee deduction under section 80IB(10) of the Act. At paras 7.1 to 7.5 of the impugned order the learned CIT(A) has considered and allowed the assessee's claim for deduction under section 80IB(10) of the Act holding as under: -

*"7.1 The appellant had claimed deduction under s. 80IB(10) of Rs.5,47,28,624/-.*

*7.2 For the captioned year, the appellant had claimed deduction under s. 80IB(10) as under:*

| *Project* | *Date of commencement* | *Date of Completion* | *Size of plot (Approx.)* | *Deduction u/s 80IB* |
|---|---|---|---|---|
| *V Nagari Annex-II (14-18)* | *30.3.2001* | *March 2003* | *3.16 Acres* | *17,09,493* |
| *V Nagari Annex-II (26-27)* | *04.08.2003* | *25.08.2006* | *1.18 Acres* | *64,11,469* |
| *V Nagari Annex-II (31-32)* | *04.08.2003* | *07.11.2007* | *1.64 Acres* | *38,54,278* |
| *V Nagari Annex-II (10-13)* | *11.07.2002* | *04.04.2006* | *1.72 Acres* | *2,25,30,384* |
| *Vijay Vatika* | *11.08.2003* | *27.10.2007* | *1.78 Acres* | *1,14,46,927* |
| *Vijay Vilas (1-6)* | *14.12.2004* | *14.04.2007* | *2.78 acres* | *67,96,871* |
| *Vijay Park-II (1-3)* | *11.07.2000* | *March 2002* | *1.39 Acres* | *2,12,350* |
| *Vijay Park-II (8-13, 17,21)* | *11.07.2000* | *March 2002* | *4.67 Acres* | *13,34,230* |
| *Vijay Park-II (14-16, 22-23)* | *11.07.2000* | *March 2003* | *3.36 Acres* | *4,21,620* |
| ***Total*** | | | | ***5,47,17,622*** |

*7.3 The A.O. has disallowed the claim on account of various reasons, summarized as hereunder:*

*(a) Phase-II Project "Vijay Nagari Annex- II" (Building No. 14 to 18, Survey No. 138) commenced on 30.03.2001 as per Commencement Certificate No. 99/018/ TMC/TDD/2295 dt. 30.03.2007 of the Thane*

*Municipal Corporation. For Building No. 14, 15, 77 & 18 Occupancy Certificate No. 99/018/TMG/TDD/5102 dt. 9.02.2005 was issued by TME, the local authority. No Occupancy Certificate for Building No. 16 is received till date.*

*(b) Project 'Vijay Garden' (Building No. 1-13 and Row House No. 1-12) commenced on 11.07.2002 vide commencement certificate No.2002/07TMC/TDD/837. Total super built up are for .fiats ranges from 380Sq.Ft. to 1015 Sq. Ft. and area for Row Houses is 2000 Sq.Ft. each. Since this project Contains row houses of 2000 Sq.Ft. area each., the deduction under s. 80IB of the assessee Act cannot be allowed.*

*(c) Project "Vijay Nagari Ananex-II" (Building No. 26,27), Vijay Park II (1-3), Vijay Park -II (8-13), 17 to 21) Vijay Park II (14-16, 22-23), the appellant has received occupancy certificate and completion certificate not received till date.*

*(d) As per Rule 18BBB it is mandatory to file separate audit report for each undertaking or enterprise for which deduction is claimed as if the undertaking or enterprise were a distinct entity.*

*7.4 With respect to the above objections, submissions of the appellant are as summarised below:*

*(a) As regards point no(a) wherein the ld. A.O. has alleged that the completion/ occupancy certificate of building n.No.16 has not yet been received it is submitted that the allegation is entirely frivolous on the ground that this allegation has not found place in the assessment order passed u/s 143(3) r.w.s. 153A, show cause notice issued by CIT u/s 263, order passed by CIT u/s 263, consequential order passed by the A.O. u/s 143(3) R.W.S. 263/153a. It is submitted that the building has been completed which is evident from audit report u/s 80IB(10) as well as from the completion certificate issued by the architect which is placed at pages nos. 11-13 of the paperbook. It may be noted that the A.O. during the course of assessment proceedings had deputed two Inspectors at the sites of the housing projects constructed and developed by the appellant in order to verify the claim of the appellant u/s 80IB(10). The inspectors accordingly submitted their report vide letter dated 2.3.2007. The relevant para of the Inspectors report is reproduced as under :*

*"(ii) Vijay Nagri Annexure Phase-II :In this project the assessee had constructed five buildings. The area of land utilized for this project is 3.16 acres and the built-up area of flats constructed on each of these building are ranging from 539 to 792 sq. feet. The date of commencement and date of completion of this project was 31.03.2001 and March 2004 respectively. The documentary proof of municipal approved plan, architect certificate, commencement certificate and completion certificate, etc. are obtained a rid placed on record."*

*(b) As regards the project Vijay garden (1-13), the A.O's objection is that the area of the row house is more than 2000 square jet each. In this respect it is submitted that no deduction has been claimed in respect of row houses being building nos. 1-9 of Vijay Garden. The deduction*

*under s. 80IB(10) has been claimed only in respect of building nos. 10 to 13 which is evident from para 2 of the Inspector's report dated 2.3.2007 which is reproduced below:*

*"2. Vijay Garden- In this project the assessee had constructed 13 buildings in Survey no.234, ,Hissa No.2, Kavesar, Godbunder Road, Thane(W) under the name Vijay Garden. Out of the 13 buildings assessee had claimed deduction u/s 80-III in respect of 4 buildings. The area of the land utilized for this project is 2.05 acres and the built-up area of flats constructed on each of these building are ranging from 315 to 784 per sq. feet. The date of commencement and date of completion of this project was 07.11.2002 and January 2006 respectively. The documentary proof of municipal approved plan, architect certificate, commencement certificate and completion certificate, etc. are obtained and placed on record."*

*(c) As regards the objection of the A.O. regarding project "Vijay Nagari Annex-II (Bui1ding No.26,27), Vijay Part II(1-3), Vijay Park-II(8-13, 17 to 21) Vijay Park II (14-16, 22-23) that the appellant has received occupancy certificate and completion certificates not received till date it is submitted that the allegation is entirely frivolous on the ground that the occupancy certificate is issued by the competent authority on receipt of completion certificate from the architect.*

*d) Further, the A.O. has erroneously held that the appellant is not entitled to deduction u/s 80IB(10) on the ground that the appellant failed to file separate report along with the return of income in Form No. 10CCA for each undertaking or enterprise for which deduction has been claimed. In this respect it is submitted as under:*

*The objective of the A.O. is frivolous as the appellant has filed the return electronically and therefore no audit report could have been filed along with the return of income. Further, it is submitted that the CBDT vide circular No. 6/2008 dated 18.07.2008 has categorically stated that no documents (including TDS / TCS Certificate, reports of Audit) should be attached alongwith returns filed in the electronic mode.*

*7.5 The objection as raised by the A.O and the submissions of the appellant have been considered. It is observed that during the course of assessment proceedings, the A.O. had deputed two Inspectors for on-site verification, who had clearly stated that project Vijay Nagari Phase II commenced on 31.3.2011 and was completed in March 2003; that with regard to Vijay Garden, the deduction had been claimed in respect of Building Nos. 10 to 13, and not in respect of Row houses being Building nos. 1-9, The copy of the Inspector's Report is available at page nos. 85-86 of the paper book filed. As regards Project "Vijay Nagari Annex-II, that only occupancy certificate has been received and not completion certificate, the appellant has brought to my notice that occupancy certificate is issued by the Municipal Authority only after receipt of completion certificate from the Architect. In other words, without the completion certificate from the Architect, the Occupancy Certificate would not be issued. It is a fact that the Occupancy*

*Certificates have been received. Further, there is merit in the contention that as per CBDT circular No. 6/2008 dated 18.7.2008, it was clarified that no documents were to be attached with the returns filed on electronic mode. The original documents and certificates were to be produced when called for by the A.O. The appellant has filed copy of the Audit Report under s. 80IB(10), project wise, which were furnished to the A.O., at pages 5 to 84 of the Paper Book furnished. Moreover, it is noted that the CIT, Central-II, Mumbai had invoked the provision of S. 263 on the ground that the assessment order passed by the A.O. under S. 143(3) r.w.s. 153A for A.Yrs, 2000-01 to 2006-07 are erroneous and prejudicial to the interest of Revenue and had set aside the assessment order. The appellant filed appeal before the Hon'ble ITAT. The Hon'ble ITAT, after elaborately considering the findings of the CIT for disallowance of claim under s. 80IB(10), in its order dated 24.08.2011, had quashed the order of the CIT passed under S. 263. For the said stated reasons, it is held that appellant is entitled to the claim under s. 80IB(10).”*

8.4.2 On an appreciation of the facts of the case on assessee's claim for deduction under section 80IB(10) of the Act for A.Y. 2007-08, we find that, except for raising grounds in this regard, Revenue has failed to bring on record any material to controvert the findings of the learned CIT(A) supra and therefore find no requirement to interfere with or deviate therefrom. In this factual matrix of the case as discussed above and following the ratio of the decision of the Coordinate Bench of this Tribunal in the assessee's own case dated 24.08.2011 (supra) on the issue of allowability of the assessee's claim for deduction under section 80IB(10) of the Act, we uphold the order of the learned CIT(A) in holding that the assessee is entitled to the claim for deduction under section 80IB(10) of the Act. Consequently, Revenue's grounds raised at S.Nos. 1 to 5 of this appeal are dismissed.

9. In the result, Revenue's appeal for A.Y. 2007-08 is dismissed.

10. **Revenue's appeal in ITA No. 3497/Mum/2013 for A.Y. 2008-09**

10.1 In this appeal, Revenue has raised the following grounds: -

*“1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the assessee has fulfilled the conditions laid down u/s 80IB(10) without appreciating the fact that the assessee failed to obtain Completion Certificate issued by the Local Authority in respect of all the projects on which it has claimed deduction u/s. 801B(10) of the IT Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the*

*CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) without appreciating that one of the projects viz. "Vijay Garden" contained row houses exceeding 2000 sq.ft. in area which violated the condition precedent for allowing deduction u/s. 801B(10).*

3. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee u/s. 80IB(10) despite noting that the assessee had filed only consolidated audit report and not separate audit report in respect of each project as mandatory under Rule 18BBB.*
4. *The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*
5. *The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

10.2 From a perusal of the grounds raised (supra), it is seen that the issues raised therein pertain to the learned CIT(A) allowing the assessee's claim for deduction under section 80IB(10) of the Act for A.Y. 2008-00 after considering the facts of the case for the year under consideration. The learned D.R. for Revenue was heard in support of the grounds raised (supra).

10.3 Per contra, the learned A.R. for the assessee submitted that in the impugned order the learned CIT(A) has allowed the assessee's claim for deduction under section 80IB(10) of the Act only after considering the various facts of the case for the year under consideration in this regard and satisfying himself that all stipulated conditions are fulfilled in claiming deduction under section 80IB(10) of the Act. It is submitted that even in the earlier years, i.e. 2000-01 to 2006-07, the Coordinate Bench of this Tribunal has held that the assessee is entitled for deduction under section 80IB(10) of the Act (supra).

10.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The facts of the matter are that the AO disallowed the assessee's claim for deduction under section 80IB(10) of the Act in the order of assessment passed under section 143(3) of the Act vide order dated 24.12.2010 for A.Y. 2008-09. We find from a perusal of the impugned order that the learned CIT(A), after considering all the contentions/objections of the AO and the facts of the case on this issue in the year under consideration, i.e. A.Y. 2008-09, allowed the assessee's claim for

deduction under section 80IB (10) of the Act holding as under at para 7 thereof that the assessee had fulfilled all the stipulated conditions for being allowed the said deduction: -

> *"7. I have considered the matter and examined the material as placed in the Paper Book submitted. The appellant has placed on record a copy of the Inspector's report dated 02.03.2007(Pages 82 to 83 of Paper Book). From the said report, it is seen it has been reported therein that with respect to the claim of deduction in respect of the four buildings in Vijay Garden, all the requisite documents including the commencement and completed certificates have been obtained and placed on record. Further, it has been submitted that the occupancy certificate is issued by the competent authority only after the completion certificate is issued by the Architect. In this regard, I have examined the copies of the occupancy certificate placed on record by the appellant. From pages 47 to 40 contain the copies of the completion certificates given by the Architect to enable the Municipal authorities to issue the Occupancy Certificate. Thus it is found that there is merit in the contention that without completion certificate from the Architect, the Occupancy Certificate cannot he obtained. Also, it is clear from the order of the AO himself that no claim was made for deduction in respect of row houses being building numbers 1-9 of Vijay Garden. It is clear from the chart as prepared by the A.O., in paragraph 3.2 of the assessment order that in respect of Vijay Garden, the claim is with respect to Building Nos. 10-13; there is no claim in respect of Row House, being Building Nos. 1-9 of Vijay Garden. As regards the non-furnishing of Audit Report along with the return, when the return of income has been e-filed, the original documents/annexures relating to the computation of income are to be produced during the course of assessment proceedings. In the instant case, the separate Audit Reports in Form 10CCB, project wise, were produced during the course of assessment proceedings, and is part of the record of the A.O. Hence the conditions precedent for being eligible to the claim for deduction under s. 80IB(10) stand fulfilled. In these circumstances, it is held that appellant is entitled to deduction claimed under s. 80IB(10). It is accordingly held so."*

10.4.2 On an appreciation of the facts of the case on the issue of the assessee's claim for deduction under section 80IB (10) of the Act, it is seen that the assessee's eligibility to be allowed the deduction under section 80IB(10) of the Act has been upheld for the earlier assessment years 2000-01 to 2006-07 by the decision of the Coordinate Bench of this Tribunal in assessee's own case in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 wherein the Coordinate Bench had quashed the orders under section 263 of the Act for assessment year 2000-01 to 2006-07, whereby

the learned CIT had withdrawn the deduction originally allowed to the assessee by the AO. In the year under consideration, i.e. A.Y. 2008-09, we find that the learned CIT(A) had examined and found from the report of the Inspector of Income Tax dated 02.03.2007 that with respect to the claim for deduction in respect of the four buildings in Vijay Garden, all requisite documents including the commencement and completion certificates are obtained and placed on record. The learned CIT(A) has also observed that the Occupancy Certificate is issued by the competent authority only after the completion certificate is issued by the Architect and that all the required documentation for issue of the Occupancy Certificate has been placed before the competent authority, and therefore the claim for deduction under section 80IB (10) cannot be denied for the reasons that the completion certificate has not been obtained from the local authorities. It has also been observed by the learned CIT(A) that when the assessee's return for the year under consideration has been e-filed, the original documents/ annexures, Audit Report, etc. are to be produced before the AO in the coruse of assessment proceedings; which has been done in this case. Before us, except for raising the grounds (supra), the learned D.R. for Revenue has not been able to bring on record any material evidence to contradict the findings of facts rendered by the learned CIT(A) that the assessee has fulfilled the conditions laid down for being allowed deduction under section 80IB(10) of the Act. In this factual matrix of the case, as discussed above, we uphold the order of the learned CIT(A) in holding that the assessee is entitled to be allowed deduction under section 80IB(10) of the Act in this year. Consequently, Revenue's grounds at S.Nos. 1 to 5 of this appeal being bereft of merit are dismissed.

11. In the result, Revenue's appeal for A.Y. 2008-09 is dismissed.

12. **Revenue's appeal in ITA No. 3498/Mum/2013 for A.Y. 20090-10**

12.1 In this appeal Revenue has raised the following grounds: -

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee has fulfilled the conditions laid down u/s. 80IB(10) without appreciating the fact that the assessee failed to obtain a Completion Certificate issued by the*

*Local Authority in order to claim deduction u/s. 80IB(10) of the I.T. Act, 1961.*

2. *The Appellant craves to leave to add, to amend and/or alter any of the grounds of appeal, if need be.*

3. *The appellant, therefore prays that on grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

12.2 From a perusal of the grounds raised (supra), it is seen that the Revenue contends that the learned CIT(A) erred in holding that the assessee has fulfilled the conditions required for being allowed the deduction claimed under section 80IB(10) of the Act without considering the fact that the assessee has failed to obtain the completion certificate from the local authority. The learned D.R. was heard in support of the ground raised.

12.3 Per contra, the learned A.R. for the assessee submitted that in the impugned order, the learned CIT(A) has considered all the various facts of the case and allowed the assessee's claim for deduction under section 80IB (10) only after satisfying himself that the assessee fulfilled all the conditions stipulated therein. It is submitted that the fact that the assessee is legally entitled to deduction under section 80IB(10) of the Act has been upheld by the decision of the Coordinate Bench of this Tribunal dated 24.08.2011 for assessment years 2000-01 to 2006-07.

12.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The facts of the matter are that the AO disallowed the assessee's claim for deduction under section 80IB(10) of the Act in the order of assessment passed under section 143(3) of the Act on 29.09.2011 for A.Y. 2009-10. We find from a perusal of the impugned order that the CIT(A) after considering all the contentions/objections of the AO and the facts of the case on this issue in the year under consideration, allowed the assessee's claim for deduction under section 80IB (10) of the Act holding as under at para 7 thereof that the assessee had fulfilled all the stipulated conditions for being allowed the said deduction.

*"7. I have considered the findings of the A.O. and the contentions as raised by the appellant. It is observed that the claim has been denied mainly on the ground that the completion certificates were not received.*

*This is countered by the appellant stating that the occupancy certificate is issued by the local authority only after receipt of the completion certificate from the Architect. In order to evidence its contention the appellant has produced the copies of the certificate from the Architect, placed at page nos. 37 to 55 of the paper book furnished in the course of the appellate proceedings. From a perusal of the said documents it is observed that the occupancy certificate for the various projects have been issued by the Municipal Corporation and the same are addressed to M/s Archetype Consultants (I) Pvt. Ltd., who in turn have submitted the completion certificates, which is referred to in the said certificate of occupancy. Hence the claim cannot be denied for the reason that completion certificates haves not been obtained for the reason that it is after receipt of the completion certificate of the Architect that the occupancy certificate is issued by the Municipal Authorities. Hence held that for the said reason the claim cannot be denied and that the appellant is entitled to the claim. In these circumstances it is held that appellant is entitled to the deduction claimed under s. 80IB(10). It is accordingly held so."*

12.4.2 On an appreciation of the facts of the case on the issue of the assessee's claim for deduction under section 80IB(10) of the Act, it is seen that the assessee's eligibility for being allowed the deduction under section 80IB(10) of the Act has been upheld by the decision of the Coordinate Bench of this Tribunal in the assessee's own case in ITA Nos. 3514 to 3520/Mum/2009 dated 24.08.2011 wherein the Coordinate Bench had quashed the orders under section 263 of the Act for assessment years 2000-01 to 2006-07 whereby by the learned CIT had withdrawn the said deduction originally allowed by theAO. In the year under consideration, the assessee's claim for deduction under section 80IA(10) was rejected on the ground that completion certificates were not received from the local authority. The learned CIT(A) had observed, inter alia, that the Occupancy Certificate is issued by local/ competent authority only after the Completion Certificate is issued by the Architect. It was observed by the learned CIT(A) that all the required documentation for issue of Occupancy Certificate had been placed before the local authority and hence held that the assessee's claim for deduction under section 80IB(10) of the Act cannot be denied merely for the reason that the Completion Certificate had not been issued/obtained from the local authorities. Before us, except for raising these grounds, the learned D.R. for Revenue has not been able to bring on record any material evidence to controvert the findings of fact rendered by the learned CIT(A) that the assessee

had fulfilled the conditions laid down for being allowed deduction under section 80IB(10) of the Act. In this factual matrix of the case, as discussed above, we uphold the order of the learned CIT(A) in holding that the assessee is entitled to be allowed deduction under section 80IB(10) of the Act in this year. Consequently, finding no merit in the grounds 1 to 3 raised by Revenue, the same are dismissed.

13. In the result, Revenue's appeal for A.Y. 2009-10 is dismissed.

14. To sum up, Revenue's appeals for assessment years 2002-03 and 2004-05 to 2009-10 are dismissed.

Order pronounced in the open court on 29th April, 2016.

| Sd/- | Sd/- |
|---|---|
| **(Sandeep Gosain)** | **(Jason P. Boaz)** |
| **Judicial Member** | **Accountant Member** |

Mumbai, Dated: 29th April, 2016

*Copy to:*

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -39, Mumbai*
4. *The CIT, Central-II, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*
*ITAT, Mumbai Benches, Mumbai*

n.p.