IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

ITA No.2845/Mum/2016
(**Assessment Year:2005-06**)
ITA No.2846/Mum/2016
(**Assessment Year:2006-07**)
ITA No.2847/Mum/2016
(**Assessment Year:2007-08**)
ITA No.2848/Mum/2016
(**Assessment Year:2008-09**)
ITA No.2849/Mum/2016
(**Assessment Year:2009-10**)
ITA No.2850/Mum/2016
(**Assessment Year:2010-11**)
&
ITA No.2851/Mum/2016
(**Assessment Year:2011-12**)

Dy. Commissioner of Income-Tax, CC-3(4), Central Range-3 Mumbai	Vs.	M/s. AHCL PEL, Patel Estate, S.V.Road, Jogeshwari (West) Mumbai - 400102
PAN/GIR No.		**AANFA5615N**
Appellant)	..	**Respondent**)

Revenue by	Shri R.P. Meena & Shri Chaitanya Anjaria
Assessee by	Shri Mayur Kisnadwala
Date of Hearing	**04/09/2018**
Date of Pronouncement	**26/10/2018**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

These are the appeals filed by the Revenue against the order of CIT(A)-51 dated 29/01/2016 for A.Y.2005-06 to 2011-12 in the matter of order passed u/s. 143(3) r.w.s. 153C of the IT Act.

2. Common grievance of Revenue in all the years are same which relates to allowing claim of deduction u/s.80IB of the IT Act.

3. Rival contentions have been heard and record perused.

4. The brief facts of the case are that the assessee is a partnership firm between Ace housing construction ltd and Patel engineering ltd.(AHCL-PEL) assessee entered into a joint development agreement with M/ s Jivesh developers and properties (p) ltd.(JDPPL) for development of a slum rehabilitation project at Bandra in the name of Quantum Park, on which the assessee along with JDPPL claimed deduction u/s 80 IB as per the details given below;

S.No	A.Y	Deduction claimed (in Rs)
1	2005-06	9,96,99,542/-
2	2006-07	1,51,59,087/-
3	2007-08	4,52,76,221/-
4	2008-09	5,57,93,823/-
5	2009-10	3,23,31,695/-
6	2010-11	5,71,07,046/-
7	2011-12	5,09,84,409/-
	Total	35,63,51,733/-

5. The claim of assessee was allowed in principle in the original assessment orders passed u/s 143(3) for all the A.Yrs. under

consideration. Assessee did not sell all the flats built in the project. The unsold flats were leased out and on the lease income also assessee claimed 80IB deduction which was disallowed by AO in the original assessments. On appeal, CIT (A) confirmed the disallowance of 80IB on lease income. On further appeal Hon'ble ITAT held that assessee is eligible for 80 IB deductions even on lease income.

6. Meanwhile, there was a search action on Patel engineering group of companies on 16/12/2010 and interalia Shri. Danish Merchant one of the directors of AHCEL-PEL was also covered. During search at the premises of Danish Merchant, a loose paper containing a lease deed was found and seized as per which combined built up area of two flats A301&302 which was to be leased out, was shown as 3600 sq.ft. Mr. Danish merchant was confronted and his statement was recorded on 16/10/2010 and on 18/12/2011. Based on the statement it was held that there was a wrong claim of 80IB; as the flats are having floor area of more than 1000 sq.ft., in violation of conditions laid down u/s 801B . Consequently notice u/s 153C dt.02/09/2011 was issued and served on the assessee for all the above A.Yrs.. In response to notices, returns of income declaring the same total income, as was returned originally, were filed and assessee claimed deduction u/s 80IB as was claimed in original returns. AO, however held that the assessee is not eligible for deduction u/s 80IB as the adjacent flats were sold to the same party or its close relatives with an intention of merging the flats even from the stage of planning the

project. Therefore it was held by AO that as the merged flats are having area of above 1000 sq.ft. assessee is not eligible for 80IB deduction and hence disallowed the same in all the assessment years.

7. By the impugned order CIT(A) allowed assessee's claim after observing as under:-

> *"7.8 I have carefully considered the arguments of the assessee and have gone through the reasons given by AO in the assessment order. AO mainly relied on the seized paper which shows that the combined area of flats A 301-302 is more 3600 sft. AO further relied on the statements of Danish Merchant, Bhojwani and Chatrawala and plans seized during search which reflected merger of flats. Assessee countered the AO's contentions by relying on registered sale documents, BMC approved plan, OC issued by BMC, BMC official's inspection for fixing ratable value of the flats, shares allotted by coop housing society etc. The assessee's arguments are summarised as below*
> ***(1)*** *The construction was as per plans approved by local authority as per which the built-up area of each residential unit is less than 1000 sq. feet.*
> *(2) Occupancy certificate is issued after verification by BMC thereby confirming that the construction was in accordance with the approved plans.`*
>
> *(3) Separate sale agreements have been entered into and possession of each residential unit was given to the buyer of the respective unit.*
> *(4) Buyer of each residential unit is a separate member of the society. Even as on date, the society raises maintenance bills based on the residential units constructed as per approved plans.*
> *(5) It is not the finding that each residential unit, as per approved plan, cannot be used on a standalone basis unless it is apart of the adjoining residential unit*
> *(6) The municipal authorities levy property tax separately for each residential unit*
> *(7) There were no brochures or other promotional material which showed that the two residential units can be combined into one.*
> *(8) The provisions of the section until amended by the Finance Act, 2009 did not prohibit sale of more than one unit to the same individual or his relative. The amendment is prospective.*

(9) CBDT has in its Circular No. 05/2010 dated 3.6.2010 has recognized the fact that prior to the amendment multiple adjoining residential units were being sold by developers to the same individual who then combined them and thereby the restriction on the size of the residential unit imposed by the section was being circumvented. CBDT states that in order to curb this practice, the section was amended and the amendment is prospective.
(10) Municipal authorities while assessing the property for levy of property tax, visited the property, got it surveyed from an independent surveyor and found the construction is in accordance with the approved plans. Separate property taxes are levied in respect of each residential unit
(11) Municipal authorities give water connection to the building depending upon the number of residential units in the building. The water connection to the project developed and built by the Assessee has been calculated on the basis of
number of residential units as per approved plans.

(12) The fact that the impugned plan which was seized has not been acted upon is evident from the fact that the impugned plan mentions that there is Refuge Area on 8th and 10th floors whereas in the building constructed in accordance with the approved plans there is Refuge Area only on the 8th floor and there are fire fighting passages on 9th to 12th floors. This distinction itself is sufficient to conclude that the construction was not in accordance with the impugned plan.

(13) In all the assessments, for assessment years from 2004-05 to 2009-10, the Assessing Officers have granted deduction after examining that all the conditions required to be fulfilled for claiming this deduction have been satisfied by the Assessee. In A. Y. 2004-05, AO made enquiry from the buyer that he had purchased two independent residential units and that the assessee had given possession of two independent residential units. The buyer had confirmed that the assessee had sold and given possession of two independent residential units the buyer had combined them on his own. He confirmed that even as on that date the two residential units still had two main doors and that there were two separate electricity meters.

(14) AO made inquiries from the local authority if there were any contraventions in the construction of the housing project under consideration. However, there is not even a whisper about this in the assessment order, thereby confirming that the local authority had nothing to state against the assessee.

(15) As regards the observation of the AO that there was one invoice of two flats given on leave and license basis to Boehnnger, it is submitted that there can always be a common invoice for multiple transactions.

7.9 After considering the above contentions of the assessee it can be seen that third party evidence in the nature of BMC clearances are in favour of the assessee. The enquiries made by AO during original

assessments did not reveal anything against the assessee. With regard to plans of merging the flats there can be no denial that assessee might have shown these plans to prospective buyers that the flats can be merged after buying them. However this in itself, in my considered opinion, cannot prove that assessee constructed merged flats to begin with. The evidence in the form of BMC verifications and OC issued cannot be brushed aside lightly. Assessee can always take refuge under the plea that the merger is done by the purchasers and there is nothing preventing the buyers from merging the flats once purchase is made and registration is done. Enquiries made by AO while completing the original assessment reveal that the purchasers themselves got the flats merged. AO did not controvert this finding by making any fresh enquiries. There is no evidence to show that it is the assessee who constructed merged flats and sold them as single unit. On the contrary the sale deeds registered clearly show that units of less than 1000 sft were sold and registered. This piece of evidence in the form of registration by state govt. authorities cannot also be ignored. The fact that various assessees are indulging in the practice of selling adjoining flats to same individual/ family members has come to the notice of CBDT which forced it bring in the amendment. Be that as it may, the amendment, as pointed out, is only prospective and hence cannot be applied to earlier transactions. CBDT in the circular recognized this fact but did not make a retrospective amendment. The parliament in its wisdom chose to apply the law only prospectively.

7.10 It is further seen that the assessee developed the property jointly with M/s Jivesh Developers and Properties Pvt Ltd, in which case also the issue had come up for appeal before my predecessor C1T(A). He got further enquiries conducted with the coop hsg. Society and vide order No IT/116/13-14 dated 10.09.2015 decided the issue in favour of the assessee by observing as under:-

"I have considered the submissions of the Appellant, the reply of the society, the copies of the approved plans which are same as the plans seized in the course of search and the record of the A.O. On going through the assessment order, I find that the AO has not at even one place alleged that the construction was not in accordance with the approved plans. There is no finding that the flats are merged. The only basis of coming to the conclusion that the flats are merged is the drawing dated 31.12.2001 which does not have any details except the date and the fact that the refuge areas are on 8th and 10th floors. Undoubtedly, this is not the plan which has been approved by the local authority. The approved plans show that there is a refuge area on 8th floor and fire fighting passages on 9th to 22th floors. The occupancy certificate issued has plans which are same as the plans which were approved by the local authority. As per approved plans the built-up area of each of the residential units is less than 1,000 sq. feet. It is not even the case of the Assessing Officer that the residential

unit as per approved plan cannot be used on a stand alone basis without merging it with an adjoining unit and justifiably so since as per the approved plans each residential unit is an independent one which can be used on a stand alone basis and has an independent access to the lift and common staircase. Each of the four residential units on each floor has been sold to different purchasers. Possession is given to the purchaser of the respective residential unit. Prior to the amendment of the provision of section 80IB(10) of the Act by Finance (No. 2) Act, 2009, adjoining units have been sold to husband and wife but that was something which was then permissible. The amendment to clause (f) of Explanation to section 80IB(10) is prospective and not retrospective. In fact, even the CBDT Circular No. 05/2010 dated 3rd June, 2010 has stated that the amendment does not apply to residential units allotted before 19.8.2009. Each of the purchasers are members of the society and have been allotted shares. Even as of date, which is about more than 10 years from the date of issuance of occupancy certificate, the society charges separate maintenance charges in respect of each of the residential units. The maintenance bills raised by the Society are in respect of residential units as per the municipal approved plans. As far as reliance of the Assessing Officer on the statement of Mr. Shashi Chhatrawala is concerned, it needs to be noted that the AO has considered Mr. Chhatrawala as the planner / designer / architect of the building whereas in the reply to the second question raised to him he has stated that he is SSC by qualification. Further, Mr. Chhatrawala has said that he has first made the plans with two flats per floor and then modified it for four flats per floor. He has even said that the plan with four flats per floor has been approved by municipal authorities. He has not stated that the construction was in accordance with the original plan (i.e. two flats per floor} or that it was not in accordance with the approved plans. Further, he has also said that he did work as per directions of Mr. Samir N. Bhojwani. Mr. Samir N. Bhojwani has in his statement said that the construction was as per approved plans. Thus, the two statements read together lead to a conclusion that the construction was as per approved plan. The statement of Mr. Chhatrawala does not support the case of the AO. The contention of the Appellant that requisite FSI was not available for construction as per the impugned plan i.e. two flats per floor with no AHU is corroborated by the fact that subsequently, when additional FSI did become available the Appellant has constructed flats on 13th floor (on which deduction under section 80IB(10) has not been claimed). The AO has denied deduction on the basis of surmise. The surmise is based on the , unapproved computer print out which bears the date 31.12,2001 and that "Refuge areas are on 8th and 10th floors". Addition cannot be made on the basis of surmise nor can a benefit be denied on the basis of surmise. The plan with two flats per floor could at best be said to be a draft plan to which was prepared but not acted upon. Assuming that the AO has come to the conclusion that the adjoining flats are combined, he has very clearly stated in the assessment order the conclusions he is arriving at on the basis of evidence and inquiries. He has on page 9 of the assessment order at several places clearly stated / indicated that the buyers have combined the flats. If the buyers have combined the residential

units purchased by them the Appellant cannot be denied the deduction. Appellant cannot be penalized for the act of the third party. For granting the deduction what is relevant is the plans approved by the local authority. If the local authority has issued occupancy certificate then the conclusion is that the construction is in accordance with the plans for which occupancy certificate has been issued. If it is otherwise, the AO ought to have proved that. In the case of the Appellant, leave aside establishing / proving, there is not even a mention that the residential units have been combined or that the construction is not in accordance with the approved plans. Even assuming that the two adjoining flats can be merged into a bigger flat, as long as the Appellant satisfies all the conditions prescribed for claiming deduction under section 80IB(10) and the Appellant has constructed residential units which have built-up area less than 1000 sq. feet, deduction cannot be denied to the Appellant. In fact, even CBDT Circular recognizes that before the amendment of the section by the Finance (No. 2) Act, 2009, developers were selling multiple residential units to a single buyer who later on combined the adjoining units and converted them into one bigger house. It was with a view to curb this loop hole that the Finance (No. 2) Act, 2009 amended the provisions of section 8013(10) but the legislature chose to amend the provisions prospectively. Deduction cannot be denied when the Appellant has actually constructed residential units which satisfy all the conditions prescribed. The Appellant got the plans approved with each residential unit having a built-up area of less than 1000 sq. feet and constructed residential units with a built-up area of less than 1,000 sq. feet and sold residential units with a built-up area of less than 1,000 sq. feet. In view of the above mentioned observations and respectfully following the decisions of the Mumbai Bench of the Tribunal in the case of Emgeen Holdings (P.) Ltd. v. DOT [2011] 12 taxmann.com 468 (Mum), Baba Promoters and Developers (ITA No. 159/PN/2009; AY 2005-06; order dated 2.2.2012) and Poddar & Ashish Developers (ITA No. 2443/Mum/2013; AY 2009-10; Order dated 30.9.2014), relied upon by the Appellant, I hold that the Appellant is entitled to deduction under section 80I,B(10) of the Act. The The AO is directed to grant deduction under section 80IB(10) of the Act as claimed by the Appellant.

7,11 Since the facts are identical in the case of present appeals and as it is the same property, in view of the observations made by me in the above para and also considering the elaborate findings given by my learned predecessor as find any reason to deviate from the decision of my predecessor. Following the same stand, I direct AO to allow the deduction u/s.80IB (10). This ground of appeal is thus allowed."

8. We had also considered judicial pronouncements cited by lower authorities in their respective orders as well as referred by AR and DR during the course of hearing before us. We had also gone through the

Tribunal order in the group case of the assessee as well as in assessee's own case with respect to eligibility of claim of deduction u/s.80IB(10).

9. From the record we found that assessee is a partnership firm between Ace Housing and Construction Ltd. (AHCL) and Patel Engineering Ltd, (PEL) formed for developing a housing project "Quantum Park" under the slum rehabilitation scheme of the Slum Rehabilitation Authority (SRA). This scheme envisages development of slum area and rehabilitation of the slum dwellers, which was carried out by the assessee. For this purpose the assessee entered into a Joint Development Agreement (JDA) with Jivesh Developers & Properties Pvt. Ltd. (Jivesh), wherein, as per the terms of the agreement, Jivesh would construct the sale area component and hand over to the assessee earmarked-identified residential units in the sale component of the building for sale.

10. From the record we found that the construction of the said housing project was completed as per the plans approved by the SRA and full occupation certificate (OC) was issued to assessee on 10.4.2003. The approved plans submitted to the lower authorities show that the built up area (BUA) of each residential unit is less than 1,000 sq. feet, which fact is not in dispute. Subsequently, additional FSI became available to the assessee which was used to construct residential units on the 13th floor as per the amended plan approved by the authorities on 16th December 2005. Originally assessee has filed return for the A.Y.2005-06 to 2007-08

u/s.139(1) of the Act and for A.Y.2008-09 to 2010-11 u/s.153C and u/s.143(2) for A.Y.2011-12 wherein the assessee claimed deduction u/s 80IB(10) of the Act on the "profits and gains" derived by it from the development of the "Quantum Park" housing project, inter alia, on the profits from the sale of residential units and profits from leave and licence fees on residential units, held as stock-in-trade, let out pending its sale. In the scrutiny assessment orders u/s 143(3) of the Act for AYs 2005-06 to 2007-08, the AO, after a detailed verification of the fulfillment of the conditions of eligibility of deduction u/s 80IB(10), allowed deduction on the profits from the sale of residential units; as regards the profits from the leave and licence fees, the AO held that such income is not "derived from" the development of a housing project but from letting thereof (though it is business income) and hence, the assessee was not eligible for deduction u/s 80IB(10) on this component; the assessments for AY 2008-09 to 2010-11 abated.

11. We had carefully gone through the scrutiny assessment order passed by the AO u/s.143(3) for A.Y.2005-06, 2006-07 and 2007-08 wherein AO has given a categorical finding with all the conditions for eligibility of the housing project for deduction u/s.80IB(10) have been fulfilled and assessee is therefore, eligible for the same. However, with respect to income from leave and license fee, the AO has declined assessee’s claim of deduction u/s.80IB(10). We found that assessee approached to the Tribunal and the Tribunal held that profits and gains

from leave and licence fee is also eligible for deduction u/s.80IB (10) of the Act. Thus, this issue is also decided in favour of the assessee in assessee's own case in earlier years.

12. In the assessment order so framed, AO observed that in the course of a search carried out at Patel Engineering Ltd. group of cases, at the residence of Mr. Danish Merchant, a loose folder marked Al was found and seized containing page no. 54 in which the combined size of flat A-301/302 of the said building is shown as BUA of 3,600 sq. feet. It was therefore alleged by the Revenue authorities that a wrong claim of deduction u/s 80IB(10) had been made by the assessee as the conditions laid down therein are not fulfilled. However, vide notice dated 06/07/2012, the AO queried that as per the letter dated 5.4.2011 of Mr. Rupen Patel, Managing Director of PEL (pages 53-55), addressed to DDIT (lnv.)(2) (who was the officer in charge of the search), giving disclosure made during the course of search on 16.12.2010, the section 80IB deduction claim of Rs. 30.54 crores has been offered as additional income forming part of the disclosure. However, on perusal of the return of income and books of accounts filed in response to section 153C, it is seen that section 80IB claim has been made by you disregarding the disclosure.

13. From the record we found that in the course of search, on 16.12.2010, and on 18.1.2011 statements of Mr. Danish Merchant were recorded, relevant extracts of which is reproduced by the AO in the

assessment orders of all the captioned years (AY 2005-06 on pages 3-4 and 7-8 of the assessment order, being show cause notice dated 1.11.2012

14. It was contention of AO that the assessee, from the very beginning, had planned to reap the benefit of section 80IB for the Quantum Park project. He relied on the evidences found and seized, belonging to Jivesh, during the course of search on Samir Builders, wherein Jivesh was found to be incorrectly claiming deduction u/s 80IB(10) based on seizure of two sets of plans one of which has two flats per floor having BUA of around 2,000 sq. feet per flat (referred to as the original plan), whereas the second plan, which is approved by authorities, has four flats on each floor having a BUA of less than 1,000 sq. feet per flat. The AO relied on the statements of Mr. Shashikant P. Chhatrawala and Mr. Sarnir Bhojwani, recorded on 30.11.2010 and 1.12.2010 respectively, during the course of search on Samir Builders, extracts of which are reproduced in the assessee's assessment order on pages 6 -7. The AO has not given full copy of statement of Shri Chatrawala and Shri Samir Bhojwani even though assessee has requested for the same. Based on the above statements recorded, the AO alleges that Mr. Chhatrawala being in possession of two plans, one for municipal approval and the other (referred to as the original plan) for handing over to sales persons is explicit evidence and proof of manipulation.

15. By referring to the flat given on leave and licence, the AO observed that a perusal of the agreement between the assessee and Bayer Material Science Pvt. Ltd. (licencee of flats A -301/302) (Bayer) shows that the licencee has to take permission of the licensor to carry out any work of structural or permanent nature and hence it is the assessee who can be said to have combined the two flats. Thereafter, the AO concluded that based on the statements of Mr. Danish Merchant, Mr. Shashikant P. Chhatrawala and Mr. Samir Bhojwani, it is beyond doubt that:

- The assessee got the plan approved from BMC for construction of 124 flats;
- That 124 flats were converted into 52 flats by joining 2 or 3 flats;
- That as per the original plan, there was no AHU in the floor plan, though the plan for the municipal and income tax purposes has two AHUs in the floor plans and the same is missing in the flats merged later by the occupants;
- The municipal plan cannot be modified by anybody and that even if the flat owners merge the flats, the plans cannot be altered;
- The draft floor plan having no AHU for showing to potential buyers prove that the assessee had plans to construct only 2 flats per floor admeasuring about 2,000 sq. feet;
- That the assessee has given merged flats on leave and licence basis; and is wrongly claiming deduction u/s 80IB.

16. During the course of hearing before us learned DR had filed a note dated 16.5.2018 wherein his main contention is that based on the loose paper found during the course of search, the combined area of the two flats A 301 and A 302, which was leased out was shown at 3,600 sq. feet and that Mr. Merchant in his statement recorded on oath has admitted that two or three flats were merged to form a single unit, which is having a floor area of more than 1,000 sq. feet which renders the assessee to be ineligible for deduction u/s 8016(10).".

17. Learned DR further contended that during the course of search action u/s. 132 conducted on 30.11.2010 at the premises of Samir Builders (director of Jivesh) two sets of plans in respect of the Quantum project were found of which one set of plan dated 31.12.2011 (it should be year 2001) showed two flats per floor having built up area (BUA) of 2,000 sq. feet each and the other plan showed four flats per floor having BUA of less than 1,000 sq. feet each and that the later plan was approved by the BMC for SRA project. He contended that Mr. Chhatrawala, who was working under the direction of Mr. Samir Bhojwani has stated on oath on 30.11.2010 that the unapproved plan was given to sales personnel to market the flats. He therefore alleged that the clearances and approvals from BMC is simply to hoodwink the law and that from the beginning the project was conceptualised to claim deduction u/s 80IB(10) without adhering to the conditions mentioned therein.

18. As per learned DR the CIT (A) has wrongly allowed the claim of deduction u/s 80IB(10) of the assessee on the flats sold as well as those given on lease by heavily relying on BMC clearances and the OC issued and the order of the CIT (A) in the case of Jivesh vide order no. IT/116/13-14, dated 10.9.2015. From the record we found that the above decision of the CIT (A) has been upheld by the Hon'ble Tribunal in ITA No. 2168/M/2009, 432/M/2009 and 2693/M/2011 dated 29.10.2014 for AYs. 2005-06, 2006-07 and 2008-09.

19. Reliance was also placed by learned DR on the decision of the Apex Court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company &0rs. CA No. 3327 of 2007, wherein it was held by the Constitution Bench that when there is an ambiguity in an exemption notification, it should be interpreted strictly. After considering the entire material placed on record, we observe that the statement of Mr. Rupen Patel was recorded u/s 132(4) on 16.12.2010 and 8.2.2011 a perusal of these statements would show no questions were put to him regarding the claim of deduction u/s 80IB(10) by the assessee and that therefore Mr. Rupen Patel has never surrendered the claim of deduction u/s 80IB(10) made by the assessee in his statements on oath. In fact that is the reason that the AO has chosen not to reproduce the statement on oath of Mr. Rupen Patel in the assessment order though he produces such statements of Mr. Danish Merchant and that of Mr. Chhatrawala and Mr. Bhojwani of Samir Builders (Jivesh group). As regards the letter dated 5th April, 2011

signed by Mr. Rupen Patel and addressed to the DDIT (Inv.), the officer in charge of the search, the said letter would show that nowhere therein is an admission by Mr. Rupen Patel or the assessee that a wrong claim has been made; in fact on a close perusal of the said letter, it **would** be seen that the assessee has reiterated that its claim of deduction u/s 801B(10) of Rs. 30.54 crores is correct and that only in the event the claim is rejected that such amount is considered in the total group disclosure of Rs. 195 crores of PEL and its associate concerns; in others words, it was informed to the DDIT that the assessee is not withdrawing its claim of deduction u/s 80IB(10). This is very apparent on observing the difference in the language used for making a disclosure in PEL and other group companies on one hand and the assessee (AHCL PEL) on the other. Along with the return of income filed in response to the notice u/s 153C as reproduced in the letter dated 6th August, 2012 filed with the AO during the course of assessment proceedings , this fact was reiterated as under:

> *AHCL-PEL, a Partnership Firm, wherein Patel Engineering Ltd. is a Partner, has developed a Housing Project "Quantum Park" in accordance with the approvals granted by the local authority. The development of the said project commenced in the year 2000 and was completed in the year 2005, i.e. A.Y. 2005-06. The assessee has income/receipts from sale of residential units in the housing project, as also from leave and license fees from the residential units given on such basis. It has claimed deduction on the above income u/s. 80IB(10), which has been allowed by the Revenue Authorities in successive scrutiny assessments to the extent of "profits and gains" derived from the sale of the residential units. Hence, the fulfillment of all conditions laid down u/s. 8016(10) and the eligibility for deduction u/s. 80IB(10) has been tested and verified by the Assessing Officers in successive*

scrutiny assessments. However, such deduction claimed by the assessee in respect of "leave and license fees" has been rejected on the ground that such income is not derived from the business of developing and building housing projects, against which appeals filed by the assessee are pending at various Appellate Fora. During the course of search on Patel Engineering Group, issues have arisen regarding the correctness of the claim of deduction u/s. 8018(10). We believe our claim is correct and we are eligible for the deduction u/s. 80IB(10).

In view of the above, we submit that return of income filed in response to notice u/s. 153C is in terms of the disclosure made during the course of the search".

20. From the order of AO we observe that when the AO's attention was drawn to the above facts pursuant to his show cause notice dated 6.7.2012, he let the matter on this issue rest and has nowhere contended thereafter that the assessee has retracted the disclosure made by persisting with its claim of deduction u/s 80IB(10) i.e. he accepted the fact that there is no retraction.

21. With regard to the reliance placed by AO on the statement of Mr. Dinesh Merchant we observe that Mr. Dinesh Merchant has categorically stated that 124 flats were constructed by the assessee as per the municipal plans, which is also corroborated by the reply of Mr. Samir Bhojwani in his response to question no. 23 in his statement dated 1st December 2010 (reproduced by the AO in the assessment order). A perusal of the final municipal plans, based on which the OC was granted, would show that each residential unit is equipped with a kitchen. There are no discrepancies between his statements vis-a-vis the approved plans. He has also stated that the construction was done as per the approved

plans and that later on some flats were amalgamated by the buyers. Such flats subsequently amalgamated by the buyers were sold to them prior to the amendment in section 8016(10) by the Finance (No. 2) Act, 2009, which, as discussed earlier, became applicable w.e.f. 19.8.2009.

22. We had also carefully gone through the submission filed by the assessee before the AO vide letter dated 20/12/2012 which was reproduced by him in the assessment order on page 8; however, paras 1 and 2 of the said letter not reproduced by the AO are also relevant as they bring out the context in which the submissions were made. From the record we also found that the area of each residential unit constructed as per the approved plans is less than 1000 sq. feet and this fact has not been disputed by the AO; Mr. Danish Merchant has categorically stated in his statement recorded during the course of search on 16th December 2010 that the construction was indeed done as per the approved plans only, but later on the flats were amalgamated by the buyers (page 4 of the assessment order); the AO has also not contradicted this statement. It is to be noted that the full OC was received on 10.4.2003 and the final OC on 18th July 2006. In fact, the AO himself states in the assessment order that in the original plan (unapproved), there was no AHU in the floor plan; however, the plan approved by the municipal authorities has two AMDs in the floor plan, which are missing when the flats were merged later by the occupants (page 11 of the assessment order). The AO further states that nobody has the authorization to modify the

municipal approved plan even though they may have bought two separate flats and merged as one; assuming that all the flats owners have two flats each and have decided to merge the flats simultaneously, still the municipal plan has to remain the same.

23. In respect of the flat sold out, the AO has come to a conclusion that the assessee did construct two residential units; the assessee did sell two residential units and it is the occupants who merged the two flats. He has also stated that even the purchasers of residential units do not have the authority to modify the municipal approved plan. On this basis, the AO proceeded to disallow the claim for deduction u/s 80IB(10) of the Act, which effectively amounts to penalizing the assessee (by way of denial of deduction lawfully due to the assessee) for an illegal act of someone else carried after possession has been given and the society has been formed. From the record we also found that the co-operative housing society of the purchasers of the flats in the Quantum Park building constructed by the assessee has since been formed and separate share certificates have been allotted for each of the flats to the purchasers. Each residential unit has a separate electric meter and that property taxes are levied in respect of each residential unit separately. Even as on date, the society raises maintenance bills based on the residential units constructed as per approved plans. Municipal authorities give water connection to the building depending upon the number of residential units in the building, which in the assessee's case has been calculated on the basis of number

of residential units as per approved plans. Each residential unit is an independent one. It is not that the residential unit, as per approved plan, cannot be used on a standalone basis unless it is a part of the adjoining residential unit. In respect of each of the residential units constructed by the assessee, separate sale agreements have been entered into and possession of each residential unit was given to the buyer of the respective unit. Moreover, there were no brochures or other promotional material found which showed that the two residential units can be combined into one.

24. From the record we also found that while the assessment is substantially framed on the basis of the unapproved plan found with Jivesh during the course of search on them, there is not even an allegation in the assessment order that the actual construction has been made by the assessee based on these plans. The fact that the impugned plan has not been acted upon is evident from the fact that the impugned plan mentions that there is Refuge Area on 8th and 10th floors whereas in the building constructed in accordance with the approved plans there is Refuge Area only on the 8th floor and there are firefighting passages on 9th to 12th floors. Besides and more importantly, the said unapproved plan could not have been acted upon because the FSI which would be required to construct the building as per the said unapproved plan would be about 10,750 sq. mts. whereas the FSI as per plans approved on the basis of which occupancy certificate dated 10th April, 2003 has been

granted was 8,110 sq. mts.; this 2001 unapproved plan could have been workable only if the assessee got additional FSI which has not happened.

25. We also found that in respect of constructed project, the OC is granted by the local authority only after the concerned authority's senior officers verify the construction on site and find it completely in accordance with the approved plans. The local authority has issued full OC dated 10.4.2003 and the plans as per OC are the same as were approved, wherein the BUA of each residential unit is less than 1,000 sq. feet. Therefore, the apprehension of there being two residential units per floor instead of four as per approved plans is unfounded and without any basis.

26. From the record we also found that in the case of Jivesh, the AO had, in around August 2012, made inquiries from the local authority / SRA, about the housing project developed and built by the assessee. He had, with a view to verify whether the housing project developed and built by the assessee satisfies all the conditions laid down in section80!B(10) of the Act, invoking the powers vested in him under section 133(6) of the Act, asked the local authority to submit to him the LOI, completion certificate of the housing project developed and built by the assessee and also give him details of penalty, if levied for any infraction in construction of the building along with photographic evidence. There is not even a whisper in their assessment order about the inquiry so made and the reply received by him. This only confirms that

the local authority did not have anything to say against the assessee and consequently the AO has not mentioned anything in the assessment order about the inquiry so made. In fairness, the AO having considered the reply of the local authority to be in favour of the assessee ought to have allowed the claim of deduction u/s80IB(10) of the Act. There could not have been more reliable evidence than the local authority approving the project confirming that there are no deviations in the construction from the approved plans. Infact, the local authority is responsible for approving the project and also for ensuring that the project is as per the approved plans.

27. In Mumbai upon completion of construction of the building, the Municipal Authorities levy property taxes based on ratable value of the residential unit. Ratable value in turn depends, inter alia, on the area of each residential unit and the floor on which it is located. For ascertaining the area of the residential units, the municipal officers get the flat measured from a licensed surveyor. The measurement of areas is given by the licensed surveyor to the municipal officers. Upon receipt of the areas from the licensed surveyor, the municipal officers visit the site and carry out an inspection. Upon inspection, the area of each residential unit is mentioned and its ratable value as well. Based on this ratable value, property tax is computed. The findings of such verification are completely in accordance with the approved plans. Taxes are levied in respect of each of the flats constructed as per occupancy plans. In all the

assessments, for AYs from 2005-06 to 2007-08, all completed u/s 143(3), the AOs have granted deduction u/s 801B(10) after examining that all the conditions required to be fulfilled for claiming this deduction have been satisfied by the assessee. In the assessments completed under section 153C of the Act, the only new material with the AO is page no. 54 of Annexure 1 seized from the residence of Mr. Danish Merchant, the statement of Mr. Danish Merchant and the reliance on the statement of Mr. Shashikant P. Chhatrawala obtained during the course of search on Samir Builders group. As observed earlier, in the case of Jivesh, the order of the CIT (A) holding it to be eligible for deduction u/s 80IB(10) has been upheld by the Hon'ble Tribunal.

28. With regard to observation of the AO to the effect that assessee from the very beginning had planned to reap the benefit of Section 80IB(10). We found that a perusal of the assessment order shows that the AO has heavily relied on the statements of Mr. Shashikant P. Chhatrawala and Mr. Samir Bhojwani taken on oath in the independent search proceedings on Samir Builders group. It is stated in the assessment order, that Mr. Chhatrawala is working with M/s Samir Builders as a building designer, whereas he is a merely SSC pass out; in fact, it transpires at the end of his statement that Mr. Dinesh NavnitDalal, working as a draughtsman had to assist Mr. Chhatrawala in identifying the original plan for Quantum Park project. Hence we rely on the statement of Mr. Chhatrawalais has to be judged in the light of the above

mentioned facts. Moreover, the original plan having two flats per floor having BUA of 2,000 sq. feet per flat referred to by the AO in the assessment order is really the unapproved plan found on the computer of Mr. Chhatrawala which were never submitted for the municipal approval, the AO has himself accepted the fact that the construction is not as per such original plan, which would mean that the original unapproved plan was never acted upon. Further Mr. Samir Bhojwani, in his statement, has stated that there are several such unapproved plans in the premises but the construction was completed as per plans approved by SRA and full OC was issued on 10.4.2003 and that the municipal taxes levied on the residential units are as per the said OC. In the entire assessment order, the AO has not contradicted the above statement of Mr. Bhojwani.

29. With regard to the computer print out found during the course of search at Samir builder group wherein the search party found computer print outs of several other approved plans of the Quantum Park project, on perusal of which, it is evident such computer printouts are of the plans on the basis of which the construction has been completed and OC dated 18th July, 2006 received. These computer printouts contain the minutest details as regards the building actually constructed by the assessee including the following:

- *Signature, name and address of the licensed surveyor & engineer;*
- *Signature and name of the owner;*
- *Description of the Proposal and property;*
- *Certificate of engineer certifying that he has surveyed the plot under reference, the date of survey and the area found on survey;*

- *Information required in Form 1 and Form II (Proforma B);*
- *It has supporting sheets containing block plan, location plan, set back area calculations, reservation area calculations, recreation ,, calculations;*
- *Block Plan showing sub-plots A to F;*
- *Diagram of Plot A and Plot B;*
- *Area calculations of Plot "A" and Plot "B"*
- *Set back area diagram and its calculations;*
- *Location Plan;*
- *Set back area diagram from existing road to slum fisheries / reservation, etc.;*
- *Set back area calculations from existing road to slum fisheries / reservation, etc.;*
- *Area calculations of reservation of fishing complex, net drying, etc.;*
- *Area calculations of various portions of the building and each flat;*
- *Information required to be given in Proforma C;*
- *Area calculations of sub-divided Plot *E' and Plot T';*
- *Area diagram of R G area for rehab plot and also area calculation of RG area for rehab plot;*
- *Area diagram of R G area for sale plot and also area calculation of RG area for sale plot;*
- *Summary;*
- *The Form 1 in the plan has information about area of the plot; area accepted by PRC / PA / ULC; Road set back area; area of Proposed road; area of reservation; total area; balance area of plot; permissible floor area; total built-up area proposed; FSI consumed; number of parkings required by regulations; total number of parkings provided, etc*.

30. These details exactly tie up with every agreement that has been entered into by the assessee with various purchasers of the flats constructed in respect of which income is recorded in the books of accounts and accepted by the Assessing Officer.

31. We had also carefully gone through the decision of the Tribunal in the case of Jivesh Developers & Properties Pvt. Ltd., vide consolidated order dated 28.3.2018, in ITA Nos. 5643-5649/Mum/2015, CO Nos. 105-110/Mum/2017 and ITA Nos. 6940,6941,6891-6894/Mum/2014,

wherein it was held that the assessee therein, is eligible for deduction u/s 80IB(10) on the Quantum Park project; a perusal of the said order would show that the arguments and contentions of the Revenue are the same as in the assessee's case as the same project was under consideration as in the present appeals before us. In the light of this fact also, since the said project had already been held to be eligible for deduction u/s 801B(10), accordingly in the instant case the CIT (A) has correctly held that the assessee is eligible for the said deduction.

32. With regard to the contention of the AO that loose paper folder marked as Al was found and seized containing page no. 54 in which the combined size of flat A-301 and A-302 of the said building is shown as BUA of 3,600 sq. feet. We observe that assessee vide letter dated 23/10/2012 had submitted before the AO that it was merely a letter of intent regarding the Leave and Licence agreements (LLA) for the above flats prepared and sent by Bayer. However, the assessee had not accepted and signed the said letter as the area mentioned therein of 3,600 sq. feet was wrong; it was actually 1,742 sq. feet (Flat A-301 816 sq. feet + Flat A-302 926 sq. feet) which could be verified from the BMC approved plans submitted earlier. In none of the statements taken on oath is there an admission by Mr. Merchant / assessee that the BUA of any flat is more than 1,000 sq. feet or that the area of all the flats combined on a floor is 3,600 sq. feet. We also found that the AO has not disputed the respective sq. feet areas of the flat as per the BMC plans. On

the contrary, the AO's contention is that as two flats are merged and their combined area is more than 1,000 sq. feet, the assessee is not eligible for deduction u/s 80IB(10). He contends that even assuming the theory of merger of flats by the licencee, a copy of LLA between the assessee (licensor) and Bayer (licencee) would show that, para 9(iii) and (iv) of the said agreement states that licencee shall be required to take the permission of the licensor to carry out any work being work of structural or permanent nature and that the licencee can carry out all minor repairs to the licenced premises and therefore the licencee cannot be held responsible for any kind of addition or modification in the floor plans. In this regard we observe that nowhere in the agreement is it mentioned that the two flats are merged; merely because a single agreement is entered into or a single invoice is raised towards letting out of two flats, no adverse inference can be drawn. In fact such an argument of there being a single invoice of leave and licence, of the learned DR before the Hon'ble Tribunal in Jivesh case was not accepted by the Hon'ble Tribunal. In the decision of Jivesh who was a co-developer of the assessee for the same project viz. Quantum Park, the Hon'ble Tribunal has held as under:

> *"19. We have considered rival submissions and perused materials on record We have also applied our mind to the decisions relied upon by both the parties. At the very outset, we have to address the contention of the learned Departmental Representative regarding alleged violation of rule 46A by the learned Commissioner (Appeals). In this regard, it is the submission of the learned Departmental Representative that during the appellate proceedings, the learned Commissioner (Appeals) has conducted independent enquiry and called for information from the housing society as well as the assessee and on the basis of such enquiry / information has granted relief to the assessee*

without giving any opportunity to the Assessing Officer to examine and have his say on the evidences brought on record. For deciding this issue, it is necessary to look into the observations of the learned Commissioner (Appeals) in Para-14.5 of his order. It has been noted by the learned Commissioner (Appeals) that the Assessing Officer was specifically asked to make certain enquiries and furnish certain details in respect of assessee's claim of deduction under section 801B(10) of the Act. Asnoted by the learned Commissioner (Appeals), since the Assessing Officer did not respond to or comply with the directions of the learned Commissioner (Appeals), he had to call for the assessment record for verifying the factual details. Further, sine, the dispute between the Department and the assessee pertained to the issue whether the housing project has been constructed as per the approved plan and complying the conditions of section 80IB(10) of the Act, it required factual verification. Therefore, to ascertain the fact whether the housing project was built as per the approved plan, learned Commissioner (Appeals) decided to conduct an independent enquiry with the housing society and as per the information obtained from the housing society, he found that the housing project has been constructed with four flats in each floor which is evident from the maintenance receipts issued by the society as well as the shares allotted by the society to flat owners. Further, to verify whether the housing project was constructed as per the approved plan, learned Commissioner (Appeals) called for the original approved plan from the assessee bearing the seal of the BMC. After obtaining the said plan and cross verifying with the seized drawings, he found that 11 out of 12 seized drawings tallied with the original approved plan bearing the seal of BMC. Thus, as could be seen from the aforesaid facts, since necessary information / factual details were not forthcoming from the Assessing Officer, learned Commissioner (Appeals) decided to conduct an independent enquiry on his own to ascertain the correct factual position relating to construction of the housing project. Section 250 of the Act lays down the procedure to be followed by the Commissioner (Appeals) .....

20. ..... So far as the other aspects of the Departments challenge to allowance of assessee "s claim of deduction
under section 80IB(10) of the Act are concerned, a bare perusal of the assessment order would reveal that relying heavily upon the seized unapproved plan dated 31st December 2001, the Assessing Officer has concluded that four flats in each floor of the housing project have been merged into two as a result of which the floor area of each flat has exceeded 1,000 sq.ft., thereby, violating the condition of section 80IB(l0)(c) of the Act. Of course, the Assessing Officer selectively relied upon the statement recorded from Shahikant Chatrawala, whom the Assessing Officer presumed to be the architect of the housing project. However, the enquiry conducted by the learned Commissioner (Appeals) with the housing society clearly revealed that the housing project has four flats in each floor having built-up area of less than 1000 sq.ft. The supporting evidences submitted by the housing society before the learned Commisioner (Appeals) also demonstrated such fact. Further, evidence has been brought on record to indicate that each floor is having four flats with independent electricity metering units. Moreover, the very fact that BMC has issued occupancy certificates in respect of the flats in the housing project is suggestive of the fact that the

housing project has been constructed as per the approved plan. Admittedly, there is no allegation by the BMC that the housing project has been constructed deviating from the approved plan. At least department has not brought any such fact on record Thus, as per the facts and evidences brought on record either as a result of ***enquiry*** *conducted by* ***the*** *learned Commissioner (Appeals) or being produced by* ***the assessee before the departmental authorities, it is established that the housing project was constructed as per the plan approved by BMC and not otherwise. Though, in the statement recorded Sashikant Chhatrawala. the soiled architect did say that he has prepared two sets of plans, however, he never stated that the*** *housing project was constructed as per the approved plan. Even, during the assessment* ***proceeding*** *also* ***assessee*** *denying all allegations had submitted that housing project was constructed as per the plan* ***approved by BMC and*** *brought some evidence on record to substantiate its claim. Thus, when in course of assessment* ***proceedings the*** *assessee had asserted that the housing project was constructed as per the approved plan, the minimum that the Assessing Officer was required to do was to conduct.an independent enquiry with the BM.C and the housing society to ascertain, the correctness of assessee's claim. In that process Assessing Officer could have factually verified not only the exact number of flats available in each floor with their built-up area but also existence of AHU and fire refuge space. Instead of doing that the Assessing Officer has found an easy way out for denying assessee's claim of deduction under section 80IB(10) by simply relying upon the seized unapproved plan and statement of Sashikant Chhatrawala. Absolutely no evidence worth its name has been placed before us by the department to persuade us to reverse the decision of the Commissioner (Appeals). On the contrary, the evidences brought on record clearly support the factual findings of learned Commissioner (Appeals) and which, in our view, the department has failed to controvert In (Appeals) on the issue. As regards the case laws cited by learned Departmental Representative, though, the principle laid down therein are well accepted, however, they do not come to the rescue of the department as the decision of the learned commissioner (Appeals) is purely on factual basis and on appreciation of facts and evidences brought on record. Ground nos. (i) to (v) are dismissed."*

33. We observe that third party evidence in the nature of:

- BMC approved plans as per which the BUA of each residential unit is less tha 1,000 sq. feet and no allegation that the construction is not as per such approved plans,
- Independent access to lift and common staircase,
- occupation certificate which is given by the BMC only after senior

• officers verify that the construction is in accordance with the approved plans,

• levy of property tax by BMC on each residential unit separately,

• inquiry made by the AO from local authority/SRA by issuing summons u/s 133(6) to submit LOl, completion certificate and details penalties levied, if any in the case of Jivesh,

• inspection by the authorities for fixing rateable value of the each residential unit for which the area of each flat is got measured by a licenced surveyor in the presence of the authority's officials,

• issue of separate share certificates by the co-operative society to each flat owner,

• a separate electric meter for each flat,

• the water connection to the building has been given based on the numbers of residential units approved by the BMC,

• maintenance bills being raised by the society for four flats even in the year 2015.

• each residential unit is independent having a separate entrance and it is not that the residential unit, as per the approved plan, cannot be used on standalone basis unless it is part of the adjoining residential unit,

cannot be brushed aside.

34. As per our considered view in terms of section 80IB(10), what is relevant is the plans approved by the local authority and if the construction is as per such plans, deduction under section 80IB(10)

cannot be denied; even if two adjacent residential units have been merged into a bigger flat, so long as the assessee satisfies all the conditions prescribed for claiming deduction u/s 80IB(10) and the assessee has constructed residential units which have BUA of less than 1,000 sq. feet. deduction cannot be denied. In the instant case of the assessee, the assessee had got the plans approved with each residential unit having a BUA of less than 1,000 sq. feet and allotted residential units to the purchasers with a BUA of less than 1,000 sq. feet. Accordingly, there is no infirmity in the order of CIT(A) allowing assessee's claim of deduction u/s.80IB(10) of the IT Act.

35. With regard to the AO's contention of treating income derived from leave and licence fee not in the nature of income leviable for deduction u/s.80IB(10), we observe that the ITAT, in assessee's own appeals against the orders u/s 143(3) of the Act for assessment years 2005-06 to 2007-08 has held such income to be eligible for deduction u/s 801B(10) of the Act. The relevant part of the decision is extracted hereunder:

> *"3. At the outset, Shri Mayur Kisnadwala, Ld Counsel for the assessee mentioned that the assessee is a builder and engaged in the business of development of housing project which is allowable for deduction u/s 80IB of the Act. There is no dispute about the project and the allowability of deduction of profits relatable to the sale proceeds of the flats of the said housing project. The only dispute relates to the allow/ability of deduction u/s80IBof the Act in respect of the rental income earned by the assessee in respect of certain unsold flats held as stock-in-trade. It is the case of the assessee that some of the flats which are left unsold were let out under ,,leave and license system" and the said income being directed connected to the flats, which is integral part of the housing project is also allowable*

for deduction u/s 80IB of the Act. He relied on various decisions in support of the same.

4. On the other hand. Revenue Officers are of the opinion that such receipts are not allowable profits and denied the claim of deduction.

5. Before us. Id Counsel for the assessee submitted that there is no dispute on the facts and the dispute is only with regard to the definition of eligible profits whether it includes rental income earned by the assessee from the unsold part of the housing project. Bringing our attention to various decision placed before us, Ld Counsel for the assessee mentioned that the scrap sales are held to be eligible profits. He also mentioned that the interest payments received by the assessee from the debtors, relating to the sale proceeds, were also found eligible for claim of' deduction u/s 80IB of the Act. In support of his argument, Ld Counsel for the assessee relied on the decision of ITAT, Hyderabad in the case of ACIT vs. Biotech Medicals (P) Ltd [2009] 119 ITD 143 (Hyd). Further, Ld Counsel also relied on the decision of the ITAT Mumbai Bench in the case of Tata Infomedia Ltd vs. ACIT (20091 116 ITD 426 (Mum), which is delivered in the context of deduction u/s 80Q of the Act, wherein it was held that advertisement income constitutes eligible profits. In this case, the income is earned on sale of yellow pages. Drawing parallel to the above instances, Ld Counsel for the assessee submitted that the rental receipts earned out the unsold flats of the housing project should be held eligible for deduction. Further, Ld Counsel for the assessee brought our attention to the judgment of the Hon'ble Supreme Court in the case of Liberty India vs. CIT [2009] 317 ITR 218 (SC) for the proposition that the income with first degree nexus should be considered as eligible income for the purpose of claim of deduction u/s 80IB of the Act"

6. On the other hand Ld DR relied on the orders of the Revenue Authorities.

7. We have heard both the parties and perused the orders of the Revenue authorities as well as cited decisions of the Tribunal and the higher judiciarv- On hearing both the parties, we find, the said propositions mentioned above are helpful for deciding the issue on hand. Considering the fact that the unsold flats, being stock-in-trade of the housing project, being the immediate source of the impugned rental income, we find direct nexus of the said income to the housing project on hand. Therefore, the said income is derived from the housing project, making the income eligible for deduction u/s 8016(10} of the Act. Therefore, the conclusions drawn by the CIT (A) are not sustainable in law. Accordingly, we reverse the order of the CIT (A) on this issue and allow the ground No.l in all the three appeals."

36. With regard to the AO's reliance on the decision of Hon'ble Supreme Court in the case of Dilip Kumar and Company CA No. 3327 of 2007, wherein it was held by the Constitution Bench that when there is an ambiguity in an exemption notification, it should be interpreted strictly, we found that the applicability of this decision is only when there is an ambiguity. In a case there is no ambiguity in the language of the section, the ratio of this decision is not applicable. Since the DR has not pointed out any ambiguity in the language of section 80IB(10), the ratio of this decision is not applicable in the instant case.

37. In view of the above discussion, we do not find any infirmity in the well reasoned order of CIT(A) wherein CIT(A) has dealt with the issue of assessee's eligibility u/s.80IB threadbare after recording detailed findings. The findings recorded by him are as per material on record which do not require any interference on our part.

38. In the result, appeals of Revenue are dismissed.

Order pronounced in the open court on this 26/10/2018

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(R.C.SHARMA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 26/10/2018
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai