

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 3765/MUM/2024

(Assessment Year : 2008-09)

ITA No. 3762/MUM/2024

(Assessment Year : 2010-11)

ITA No. 2343/MUM/2024

(Assessment Year : 2013-14)

Aakash Nidhi Builders & Developers

AAkash Nidhi Italian Marble House,
Santacruz Airport Side, W.E. Highway,
Vile Parle (West), Maharashtra - 400049
PAN: AALFA7373H

..... Appellant

v/s

ITO - 25(2)(1),

Kautilya Bhavan, BKC
Maharashtra

..... Respondent

ITA No.4320/MUM/2024

(Assessment Year : 2010-11)

ITO - 34(1)(1),

Room No.230D, 2nd Floor,
G-Block, Kautilya Bhavan, BKC
Maharashtra - 400051

..... Appellant

vs.

Aakash Nidhi Builders & Developers,

Aakash Nidhi Italian Marble House,
Santacruz Airport Side, W.E. Highway,
Vile Parle (West), Maharashtra - 400049
PAN: AALFA7373H

..... Respondent

ITA No.3053/MUM/2024

(Assessment Year : 2013-14)

ITO - 25(2)(1),

Room No.230D, 2nd Floor,
Kautilya Bhavan, BKC, Bandra East,
Maharashtra - 400051

..... Appellant

vs.

**Aakash Nidhi Builders And
Builders Mumbai,**

AAkash Nidhi Italian Marble House,
Santacruz Airport Side, W.E. Highway,
Vile Parle West, Maharashtra – 400049
PAN: AALFA7373H

..... Respondent

Assessee by : Shri Vimal Punmiya

Revenue by : Shri Ram Krishn Kedia, Sr.DR

Date of Hearing – 19/03/2025

Date of Order - 15/04/2025

ORDER**PER: SHRI SANDEEP SINGH KARHAIL, J.M.**

The present appeals by the assessee and the Revenue arise from the separate impugned orders dated 03/07/2024, 24/06/2024 and 01/04/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2008-09, 2010-11 and 2013-14, respectively.

2. Since these appeals pertain to the same assessee arising out of the similar factual matrix, these appeals were heard together as a matter of convenience and are decided by way of this consolidated order.

**ITA No. 3765/Mum./2024
Assessee's appeal – A.Y. 2008-09**

3. In this appeal, the assessee has raised the following grounds: –

"1. On the facts and circumstances of case and in law, Ld. ITO erred in disallowing deduction u/s.80-IB of Rs.2,51,07,390/-.

2. The Ld. ITO erred in charging interest u/s. 234B, 234C of the Income Tax Act.

3. The Ld. ITO erred in invoking penalty provisions u/s.271(1)(c) of the Income Tax Act."

4. The solitary grievance of the assessee is against the denial of deduction under section 80-IB(10) of the Act.

5. The brief facts of the case pertaining to this issue, as is evident from the record, are: The assessee is a partnership firm engaged in the business of building and development. For the year under consideration, the assessee undertook the construction of a housing project, namely "Aakash Nidhi" at Mira Road (East), District-Thane, and declared a total profit of Rs. 2,51,07,392. The entire profit earned by the assessee was claimed as a deduction under section 80-IB(10) of the Act. Hence, for the year under consideration, the assessee filed its return of income on 30/09/2008, declaring a total income of Rs. Nil. The return filed by the assessee was processed under section 143(1) of the Act.

6. Subsequently, on the basis of the assessment conducted for the assessment year 2007-08, wherein similar deduction claimed under section 80-IB(10) of the Act for the very same project was disallowed, notice under section 148 of the Act was issued on 28/03/2014 and proceedings under section 147 of the Act were initiated. In response, the assessee filed a letter stating that the return filed by the assessee on 30/09/2008 be treated as a return filed in response to the notice issued under section 148 of the Act. During the assessment proceedings, the assessee was asked to show whether it has fulfilled all the conditions laid down for claiming deduction under section

80-IB(10) of the Act. After considering the submissions of the assessee, it was noticed that the assessee commenced its construction activities on 02/04/2000. Therefore, the assessee was required to complete the project on or before 31/03/2008 to claim the deduction under section 80-IB(10) of the Act. However, it was noticed that the original certificate of approval for the commencement of construction was obtained from Mira Bhayander Municipal Corporation on 02/05/2000, wherein the approval for Plot Nos. 378/5 and 379/4 were given. It was further noticed that apart from Wing-A to Wing-F, the assessee constructed Wing-G on Plot No. 379/4. Further, it was noticed that the completion certificate for Wing-A to Wing-F was obtained by the assessee on or before 31/03/2008, however, the completion certificate for Wing-G was not obtained by the assessee as of 31/03/2008, as required under section 80-IB(10) of the Act. Thus, it was noticed that Wing-G was still under construction, and the assessee had not obtained the completion certificate as of 31/03/2008 as per the provisions of section 80-IB(10) of the Act. Therefore, the Assessing Officer ("AO"), vide order dated 27/03/2015 passed under section 143(3) read with section 147 of the Act, held that the assessee has not completed the entire project as stipulated in the provisions of section 80-IB(10) of the Act, and therefore, is not eligible to claim the deduction under section 80-IB(10) as the conditions stipulated as per the provisions of section 80-IB(10)(a)(ii) of the Act are not satisfied in the present case. Accordingly, the entire claim of deduction under section 80-IB(10) of the Act was disallowed, and the total income of the assessee was assessed at Rs. 2,51,07,390.

7. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the disallowance of deduction claimed under section 80-IB(10) of the Act. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the following facts: –

- a) The project of the assessee consisted of 7 buildings viz. Wings A to G.
- b) The first commencement certificate in the project was issued on 02/05/2000.
- c) As per the provisions of section 80IB(10), the assessee was required to get the project completed prior to 31/03/2008.
- d) The assessee obtained completion certificates only in respect of Wings A to F, prior to 31/03/2008.
- e) The "G" wing was not completed as on 31/03/2008.

9. Since the construction of all the seven buildings, namely Wing-A to Wing-G, was not completed by the assessee and the completion certificate for all the seven Wings was not obtained by the assessee prior to 31/03/2008, the AO denied the deduction claimed under section 80-IB(10) of the Act, as in the present case, the first commencement certificate was issued in respect of the project on 02/05/2000, and therefore, as per the provisions of section 80-IB(10) of the Act, the housing project required approval by the local authority on or before 31/03/2008.

10. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that in assessee's own case for the assessment year 2007-08,

the learned CIT(A) granted partial relief to the assessee and allowed the deduction claimed under section 80-IB(10) of the Act in respect of Wing-A to Wing-F of the housing project "Aakash Nidhi" developed by the assessee and denied the deduction claimed under section 80-IB(10) of the Act in respect of Wing-G on the basis that since the said Wing was appended subsequently the same needs to be considered a separate project. The relevant findings of the learned CIT(A), in assessee's own case for the assessment year 2007-08, are reproduced as follows: –

"3.4 I have carefully considered the issue. The fact of the matter is that when the original owner of the plot M/s. Sweet Land Developers applied for the Commencement Certificate on 17.04.2000 and obtained such certificate on 02.05.2000, they received approval only in respect of the six wings A to F. Part of the plot was agricultural land and, therefore, the Municipal Authorities could not have given the Commencement Certificate for the seventh wing. The original Commencement Certificate dated 02.05.2000 was also accompanied by an approval of block plan comprising of six buildings only (A to F Wing) duly confirmed by subsequent Plinth Completion Certificate dated 13.10.2000 by the same Mira-Bhayander Municipal Corporation. The appellant has come into the project by virtue of subsequent MOU dated 05.06.2005 signed between them and M/s. Sweet Land Developers. Till this date also, the original land owners could not get the remaining portion of the plot converted into non-agricultural use. Such approval for non-agricultural use in respect of the remaining part of the plot was received on 23.11:2005. So the basic issue to be considered here is whether a project which started with permission to complete six wings only and the seventh wing got attached after a lapse of more than five years after conversion of the plot into non-agricultural use, can, at all, be considered part of the original project. Though the appellant has claimed so and Ld. A.O. has also approved wings A to G to be forming part of a single project, it is very apparent from the sequence of events described above that the project commenced consisted only of six buildings. The seventh building which came up after conversion of the contiguous plot of land into non-agricultural use, cannot be considered to be forming part of the original plan. In this manner any number of contiguous wings can be added to the original project and claimed to be forming a single project. Therefore, it is held that only wings A to F forms part of the project and the wing G which got subsequently appended has to be considered as a separate project altogether notwithstanding the fact that this separate project may draw upon the common amenities of the earlier six wings. Having held so, the reason given as per points No.1 and 2 of the grounds for allowance of deduction u/s.80IB(10) for all the seven wings of a single project cannot be approved."

11. We find that while deciding the cross-appeal by the assessee and the Revenue against the aforesaid decision of the learned CIT(A) for the assessment year 2007-08, the coordinate bench of the Tribunal vide order dated 22/02/2013, passed in ITAs no. 5968 and 5816/Mum./2010, upheld the afore-noted findings of the learned CIT(A), by observing as follows: –

"10. We have carefully considered the rival contentions and have perused the relevant findings of the Assessing Officer and the learned Commissioner (Appeals) as well as the material available on record. In this case, the approval for commencement certificate for the construction of housing project was given on 2nd May 2000, which comprised of six buildings namely "A" Wing to "F" Wing. This commencement certificate was given to M/s. Sweet Land Developers. Later on, a Memorandum of Understanding dated 5th June 2005, was signed between the Assessee and M/s. Sweet Land Developers, whereby the Assessee came into the project. After getting necessary approvals for remaining part of the plot, for non-agricultural use, a revised commencement certificate was received on 27th January 2006. Under this approval, the Assessee was allowed to construct additional wing I.e., "G" Wing. It is, however, very relevant to mention here that the initial approval for six wings from "A" to "F" was for an area of more than one acre. The construction of these six buildings had already started and two of the wings actually got completed on 21st June 2007. All the six wings from "A" to "F" admittedly have been completed prior to 31st March 2008. The claim of the Assessee is that "G" Wing should also be taken part of the same project by virtue of commencement certificate dated 27th January 2006. Such a claim of the Assessee cannot be held to be tenable for the reason that already commencement certificate was obtained for construction of the entire housing project which originally contained "A" to "F" wing. Even though, the Assessee had entered into the project by virtue of MoU dated 5th June 2005, then also, it will not alter the date of commencement of the project. The second commencement certificate gives only the approval for further extension of one more wing and revalidating the earlier six wings, therefore, it cannot be held that the entire commencement of the project should be reckoned from the date 27th January 2006. The findings and the reasons given by the learned Commissioner (Appeals) which is also supported by the decision of the Tribunal in Saroj Sales Organisation v/s ITO, 115 TT) 485 and the judgment of Hon'ble Jurisdictional High Court in Vandana Properties (supra) is absolutely correct and we do not find any reason to deviate from such a finding. Consequently, the conclusion drawn by the learned Commissioner (Appeals) right from Para-3.4 to Para-3.5.1 are thus, upheld. Thus, grounds raised by the Revenue and the Assessee are treated as dismissed."

12. It is further evident from the record that the Revenue's appeal against the aforesaid decision of the coordinate bench of the Tribunal for the

assessment year 2007-08 was dismissed by the Hon'ble Jurisdictional High Court vide order dated 04/02/2016 passed in CIT v/s Aakash Nidhi Builders and Developers, reported in [2016] 76 taxmann.com 73 (Bom.). In further appeal, the Hon'ble Supreme Court dismissed the Special Leave Petition filed by the Revenue in CIT v/s Aakash Nidhi Builders and Developers, reported in [2016] 76 taxmann.com 86 (SC), against the aforesaid order of the Hon'ble High Court.

13. Thus, from the careful perusal of the orders passed in assessee's own case for the assessment year 2007-08, it is evident that the claim of deduction under section 80-IB(10) of the Act was allowed to the assessee only in respect of Wing-A to Wing-F of the housing project "*Aakash Nidhi*", while in respect of Wing-G of the aforementioned housing project the claim of the assessee under section 80-IB(10) of the Act was denied. Therefore, in the absence of any distinguishing facts pertaining to the claim of deduction under section 80-IB(10) of the Act in respect of housing project "*Aakash Nidhi*" in the present case, respectfully following the settled position in the assessee's own case as noted in the foregoing paragraphs, the AO is directed to grant the deduction under section 80-IB(10) of the Act to the assessee proportionate to the profits earned from Wing-A to Wing-F of the housing project "*Aakash Nidhi*". Accordingly, Ground No. 1 raised in assessee's appeal is partly allowed.

14. The issue arising in Ground No. 2, raised in assessee's appeal, pertains to the levy of interest under section 234B and section 234C, which is consequential in nature. Therefore, this ground needs no separate adjudication.

15. Ground No. 3, raised in assessee's appeal, pertains to levy of penalty under section 271(1)(c) of the Act, which is premature in nature and, therefore, is dismissed.

16. In the result, the appeal by the assessee for the assessment year 2008-09 is partly allowed.

ITA No. 3762/Mum./2024
Assessee's appeal – A.Y. 2010-11

17. In this appeal, the assessee has raised the following grounds: –

"1. On the facts and circumstances of case and in law, Ld. ITO erred in disallowing deduction u/s.80-IB(10) of Rs.13,68,005/-.

2. The Ld. ITO erred in charging interest u/s. 234B, 234C of the Income Tax Act.

3. The Ld. ITO erred in invoking penalty provisions u/s.271(1)(c) of the Income Tax Act."

18. The solitary issue arising in assessee's appeal pertains to the disallowance of Rs. 13,68,005 under section 80-IB(10) of the Act.

19. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee declared a total profit of Rs. 1,84,68,072 and claimed the entire profit as a deduction under section 80-IB(10) of the Act. Accordingly, the assessee filed its return of income, declaring an income of Rs. Nil. Subsequently, on the basis of the assessment conducted for the assessment year 2007-08, wherein similar deduction claimed under section 80-IB(10) of the Act for the very same project was disallowed, notice under section 148 of the Act was issued on

31/03/2017 and proceedings under section 147 of the Act were initiated. During the pre-assessment proceedings, it was, inter-alia, noticed that the units of the housing project "Aakash Nidhi" were allotted to persons having relationships as described in clause (f) of the Explanation to section 80-IB(10) of the Act. Accordingly, the assessee was asked to show cause as to why the deduction claimed under section 80-IB(10) of the Act should not be disallowed and added back to the total income of the assessee. After considering the submissions of the assessee, the Assessing Officer ("AO"), vide order dated 07/12/2017 passed under section 143(3) read with section 147 of the Act, held that as per the details submitted during the assessment proceedings, it is seen that so many flats were sold to the spouse of the existing flat owners and, therefore, the conditions as laid down in clause (f) of the Explanation to section 80-IB(10) of the Act are not fulfilled. Accordingly, the AO, inter-alia, disallowed the deduction claimed under section 80-IB(10) of the Act.

20. The learned CIT(A), vide impugned order, directed the AO to verify and withheld the deduction on a pro-rata basis in respect of all residential units sold in the year under consideration, wherein the assessee has violated the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act. Being aggrieved, the assessee is in appeal before us.

21. We have considered the submissions of both sides and perused the material available on record. In the instant case, on the basis that so many flats were sold to the spouses of the existing flat owners, the deduction claimed under section 80-IB(10) of the Act was denied to the assessee. Before

proceeding further, it is relevant to note the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act, which reads as follows: –

"(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

(i) the individual or the spouse or the minor children of such individual,

(ii) the Hindu undivided family in which such individual is the karta,

(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta."

22. Therefore, the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act mandates that where a residential unit in the housing project is allotted to an individual, no other residential unit in such housing project can be allotted to the spouse or minor children, etc., of the individual. On the basis of the details as noted by the AO, on pages 5 and 6 of the assessment order, it is the plea of the Revenue that in the instant case, the flats were allotted to the spouse of the existing flat owners and therefore, the same violates the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act. On the contrary, it is the plea of the assessee that none of the flats were allotted to the spouse of the existing flat owners, rather the same has been allotted to the major children of the flat owners and, therefore, the same cannot be considered to be violative of the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act. In this regard, the assessee has also placed on record the agreement for sale in respect of some of these flats. Having considered the submissions of both sides, we are of the considered view that whether the flats were allotted to the spouse of the existing flat

owners or the same were allotted to the major children of the flat owners requires verification. Therefore, we deem it appropriate to restore this aspect of the issue to the file of the jurisdictional AO for necessary examination of the details placed reliance upon by the assessee. We direct that if, upon verification, it is found that the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act are violated, then to that extent only the deduction under section 80-IB(10) of the Act be disallowed on a pro-rata basis. We order accordingly. Needless to mention, no order shall be passed without affording reasonable and adequate opportunity of hearing to the assessee. Accordingly, Ground No. 1 raised in assessee's appeal is allowed for statistical purposes.

23. The issue arising in Ground No. 2, raised in assessee's appeal, pertains to the levy of interest under section 234B and section 234C, which is consequential in nature. Therefore, this ground needs no separate adjudication.

24. Ground No. 3, raised in assessee's appeal, pertains to levy of penalty under section 271(1)(c) of the Act, which is premature in nature and, therefore, is dismissed.

25. In the result, the appeal by the assessee for the assessment year 2010-11 is allowed for statistical purposes.

ITA No. 4320/Mum./2024
Revenue's appeal – A.Y. 2010-11

26. In this appeal, the Revenue has raised the following ground: –

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the exemption under section 80IB(10) of the Income Tax Act on proportionate basis without appreciating the fact that the assessee has not satisfied the conditions stipulated as per the provisions of section 80IB(10)."

27. The solitary grievance of the Revenue, in its appeal, is against the direction for allowing the deduction under section 80-IB(10) of the Act on a proportional basis.

28. Having considered the submissions of both sides on perusal of the material available on record, we find that this issue pertains to the deduction claimed under section 80-IB(10) of the Act in respect of the housing project "Aakash Nidhi" comprising of seven buildings, namely Wing-A to Wing-G. During the hearing, the learned AR, by placing reliance upon the decisions rendered in assessee's own case for the assessment year 2007-08, submitted that in respect of Wing-A to Wing-F deduction under section 80-IB(10) of the Act has been allowed in the case of the assessee. Further, with respect of Wing-G, the learned AR, by placing reliance upon the decision of the Hon'ble Jurisdictional High Court in ITO v/s Vandana Properties, reported in [2012] 353 ITA 36 (Bom.), submitted that the assessee's claim under section 80-IB(10) of the Act is maintainable. Therefore, in view of the facts and circumstances of the present case as noted above, insofar as the claim of the assessee in respect of Wing-A to Wing-F deduction under section 80-IB(10) of the Act is allowed respectfully following the settled position in assessee's own case for the assessment year 2007-08. Further, insofar as the claim of the assessee in respect of Wing-G of the housing project "Aakash Nidhi", we deem it appropriate to restore the issue to the file of the jurisdictional AO for

de novo adjudication in light of the decision of the Hon'ble Jurisdictional High Court in Vandana Properties (supra). We order accordingly. Needless to mention, no order shall be passed without affording reasonable and adequate opportunity of hearing to the assessee. Accordingly, with the above directions, the solitary ground raised by the Revenue is partly allowed for statistical purposes.

29. In the result, the appeal by the Revenue for the assessment year 2010-11 is partly allowed for statistical purposes.

ITA No. 2343/Mum./2024 - Assessee's appeal – A.Y. 2013-14
ITA No. 3053/Mum./2024 - Revenue's appeal – A.Y. 2013-14

30. In this appeal, the assessee has raised the following grounds: –

"1. On the facts and circumstances of case and in law, Ld. CIT(A) erred in disallowing deduction u/s 80-1B(10) of Rs. 78,80,716/-.

2. The Ld. CIT(A) erred in charging interest u/s 234B, 234C of the Income Tax Act.

3. Ld. CIT(A) erred in invoking penalty provisions u/s 271(1)(c) of the income tax Act."

31. While in its appeal, the Revenue has raised the following ground: –

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the exemption under section 80IB(10) of the Income Tax Act on proportionate basis without appreciating the fact that the assessee has not satisfied the conditions stipulated as per the provisions of section 80IB(10)."

32. The solitary issue arising in assessee's appeal pertains to the disallowance of Rs. 78,80,716 under section 80-IB(10) of the Act. On the other hand, the Revenue has challenged the allowance of deduction under section 80-IB(10) of the Act on a proportionate basis.

33. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee declared a total profit of Rs. 5,25,28,114, and the entire profit was claimed as a deduction under section 80-IB(10) of the Act. Accordingly, the assessee filed its return of income, declaring an income of Rs. Nil. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act, along with a questionnaire, were issued and served on the assessee. During the assessment proceedings, it was noticed that the assessee had not fulfilled the conditions of the provisions of section 80-IB(10)(a)(ii) and section 80-IB(10)(f) of the Act. Further, it was noticed that the assessee has claimed deduction under section 80-IB(10) of the Act twice on the sale of the same flat. After considering the submissions of the assessee, the AO, vide order dated 29/03/2016 passed under section 143(3) of the Act, held that since the assessee has not fulfilled the conditions of the provisions of section 80-IB(10)(a)(ii) and section 80-IB(10)(f) of the Act, therefore, the assessee is not entitled to deduction claimed under section 80-IB(10) of the Act. Further, the AO also denied the deduction on the basis that the assessee has re-sold some flats in the year under consideration on which deduction under section 80-IB(10) of the Act was claimed in earlier years and, therefore, the profit earned by the assessee is a trading income. Thus, it was held that in respect of such profit deduction under section 80-IB(10) of the Act is not maintainable.

34. The learned CIT(A), vide impugned order, directed the AO to withhold the deduction on a pro-rata basis. Being aggrieved, both the assessee and the Revenue are in appeal before us.

35. Having considered the submissions of both sides and perused the material available on record, we find that insofar as the issue of the violation of the provisions of section 80-IB(10)(a)(ii) is concerned, similar issue has been decided in assessee's own case for the assessment year 2010-11. Accordingly, in the absence of any change in facts and law, our findings/conclusions as rendered in the appeal for the assessment year 2010-11 shall apply *mutatis mutandis* to the present case. Accordingly, insofar as the claim of the assessee in respect of Wing-A to Wing-F deduction under section 80-IB(10) of the Act is allowed respectfully following the settled position in assessee's own case for the assessment year 2007-08. Further, insofar as the claim of the assessee in respect of Wing-G of the housing project "Aakash Nidhi", we deem it appropriate to restore the issue to the file of the jurisdictional AO for *de novo* adjudication in light of the decision of the Hon'ble Jurisdictional High Court in Vandana Properties (supra).

36. Similarly, as regards the issue of violation of the provisions of section 80-IB(10)(f) of the Act, our findings/conclusions as rendered in the appeal for the assessment year 2010-11 shall apply *mutatis mutandis* to the present case. Accordingly, this aspect of the issue is also restored to the file of the jurisdictional AO for necessary examination of the details placed reliance upon by the assessee. We direct that if, upon verification, it is found that the provisions of clause (f) of the Explanation to section 80-IB(10) of the Act are violated, then to that extent only the deduction under section 80-IB(10) of the Act be disallowed on a pro-rata basis. We order accordingly.

37. As regards the claim of the Revenue that same flat has been sold twice by the AO, it is the plea of the assessee that the flat was initially only allotted and when the party did not make the complete payment, the flat was re-allotted to another party, and the balance profit earned by the assessee in the year under consideration was claimed under section 80-IB(10) of the Act. Having considered the submissions of both sides, we deem it appropriate to restore this aspect of the issue also to the file of the jurisdictional AO for necessary verification to examine whether the same flat was re-sold or re-allotted by the assessee. It is further directed that if, upon examination, it is found that the assessee merely re-allotted the same flat due to non-fulfilment of allotment conditions by the earlier allottee, then the AO is directed to grant deduction under section 80-IB(10) of the Act to the assessee in respect of the balance deduction claimed by the assessee in the year under consideration. We order accordingly. Needless to mention, no order shall be passed without affording adequate and reasonable opportunity of hearing to the assessee.

38. With the above directions, the appeal by the assessee for the assessment year 2013-14 is allowed for statistical purposes, while the appeal by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 15/04/2025

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/04/2025

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai