आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.300/RPR/2023
निर्धारण वर्ष / Assessment Year : 2009-10

C.G Buildcon Private Limited
B-1, 3rd Floor, C.G. Elite,
Opp. Mandi Gate, Vidhan Sabha Road,
Pandri (C.G.)-492 004
PAN: AACCC5355P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3(1), Raipur

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N Agrawal, CA (Joined virtually)
Shri Mahendra Kumar Agrawal, CA

Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 27.06.2025
घोषणा की तारीख / Date of Pronouncement : 14.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This is a recalled matter. In the first round of appeal before the Tribunal, the assessee has assailed 11 grounds as per grounds of appeal which as per the order of the Tribunal dated 11.12.2023 are extracted as follows:

> "1. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in upholding the reopening of the case u/s 147 for the reasons "that the appellant was not in the possession of completion certificate of the project at the time of original assessment u/s 143(3), even though such information and documents were on record before the AO, whose office had allowed the deduction u/s 80IB(10) in scrutiny assessment order u/s.143(3) consecutively for the AY 2008-09 dated 04/11/2010, AY 2009-10 dated 09/12/2011 and AY 2010-11 dated 19/03/2013, after due verification, consideration and application of mind.
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> 2. That on the facts and in the circumstances and in law the AO Ward 3(1) Raipur has erred in recording the reasons instead of the AO, ACIT Circle 1(2) Raipur and in issuing the notice u/s 147 since the original assessment order u/s 143(3) was passed by the AO, ACIT Circle 1(2) Raipur.
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> 3. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in holding the re-opening as justified, since the reasons recorded was on the basis of disallowance made in sec.143(3) order for AY 2012-13, such disallowance was deleted by the CIT(A) and the very reason of re-opening for AY 2009-10 by the AO became non-existent.
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> 4. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in holding in its order "that the AO had undoubtedly a fresh and tangible material by way of information about non-availability of completion certificate for re-opening the case u/s 147 for AY 2009-10".
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> 5. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in concluding that. AO's action cannot be treated as a change of opinion.

6. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in confirming the disallowance u/s 80IB(10) of the Act by the AO as the conditions to allowability of such deduction was examined by the AO in the first year of claim during AY 2008-09 in the proceedings u/s 143(3) .

7. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in observing that the AO [ITO-3(1)] has initiated the re-assessment proceedings after recording reasons and getting approval from the competent authority and that it had disposed off the objection of the Appellant as per procedure laid down by Hon'ble Supreme Court in the case of GKN Driveshafts (India) ltd. vs. ITO & Others (2003) 259 ITR 19 (SC), even though the AO had neither addressed the objections raised nor the reasons provided had any information about the satisfaction/approval of competent authority.

8. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in and in its finding that the Appellant had misplaced in its submission that CIT(A) had granted full relief, Appellant had claimed that the Project was to be completed by 31/03/2011, no independent evidence which proves that completion certificate was issued by the Chartered Engineer before 31/03/2009.

9. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in facts of the case that the AO had deputed Inspectors and called for information u/s 133(6) from Nagar Palik Nigam, Raipur but the reports and response did not reveal any objection that to the effect that the construction was not completed,

10. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in facts as well as in law in dismissing the Appeal by not following the intent and spirit of provision of Sec. 8018 (10) since the Appellant had completed the project within the time limit specified under the Act, filed application before the local authority for issuing the CC but they delayed the issuance of such CC.

11. That the appellant craves to leave, add, amend, alter or modify any of the grounds of appeal either before or at the time of hearing of the case."

Thereafter, the Tribunal in its aforesaid order held and observed as follows:

2. Succinctly stated, the assessee company, which is engaged in the business of a builder and developer had e-filed its return of income for A.Y.2009-10 on 27.09.2019, declaring an income of Rs. Nil [after claiming deduction u/s. 80IB(10) of

the Act]. The return of income filed by the assessee company was processed as such u/s. 143(1) of the Act. The original assessment was, thereafter, framed by the A.O. vide his order passed u/s. 143(3) of the Act, dated 09.12.2011, wherein income of the assessee company was determined at Rs.33,57,420/-.

3. Based on information gathered by the A.O. while framing the assessment of the assessee company for A.Y.2012-13 that the assessee company had despite the absence of a completion certificate issued by the competent authority claimed deduction u/s. 80IB(10) of the Act, which, thus, was disallowed while framing the assessment for the aforementioned year, i.e., A.Y.2012-13, therein, reopened its case for A.Y.2009-10. For the sake of clarity, the "reasons to believe" based on which the case of the assessee company was reopened are culled out as follows:

ANNEXURE

Reasons for issue of notice u/s 148

Name of the assessee	-	C.G. Buildcon Pvt. Ltd, 1st Floor, Pagaria Complex, Pandri Bus stand, Raipur.
Status	-	Company
PAN	-	AACCC5355P
A.Y.	-	2009-10

The assessee has filed return of income for the A.Y. 2009-10 declaring total income of Rs. NIL. The assessee has claimed exemption u/s 80IB at Rs. 82, 94,384/-. The assessment for the A.Y. 2012-13 was completed u/s 143(3). During the course of assessment proceedings for the A.Y. 2012-13 it came to notice that the assessee donot have completion certificate issued by competent authority for completion of housing project and thus the claim of the assessee u/s 80IB(10) was disallowed.

The assessee has claimed deduction u/s 80IB(10) for the A.Y. 2009-10. On the basis of facts and documents on record, I have reason to believe that the income of the assessee has escaped assessment for the A.Y. 2009-10 and this is a fit case for initiation of assessment proceedings u/s 147 of the Income tax Act, 1961.

Raipur
Date: 19.02.2016

(S. Dewangan)
ITO-3(1), Raipur

4. During the reassessment proceedings, the assessee company on being called upon to produce a copy of the "completion certificate" issued by the Municipal Corporation, Raipur, dated 24.08.2016, submitted that though it had made a request for issuance of the "completion certificate" on

25.08.2007 but the same was issued by the Municipal Corporation only in August 2016. The A.O., in order to verify the aforesaid claim of the assessee company called for the requisite details from the Municipal Corporation, Raipur. As per the reply filed by the Municipal Corporation, Raipur, it was stated that the assessee company had applied for a "completion certificate only on 12.08.2016, which, thereafter, was issued by their office on 24.08.2016.

5. Based on the aforesaid facts, the A.O held a conviction that the assessee company had not applied for the "completion certificate" until August 2016, which, thus, was granted to it by the competent authority, i.e., Municipal Corporation, Raipur on 24.08.2016. The A.O observing that the assessee company had failed to comply with the requisite condition of obtaining a "completion certificate" from the local authority within the prescribed period, thus, disallowed its entire claim of deduction u/s.80IB(10) of the Act of Rs.68,50,234/-. Accordingly, the A.O. vide his order passed u/s.148 r.w.s. 143(3) dated 27.12.2016 determined the income of the assessee company at Rs.72,81,094/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observation of the CIT(Appeals) wherein, he had approved the declining of the assessee's claim for deduction u/s. 80IB(10) is culled out as under:

"4. Decision: I have carefully considered the facts on record, re-assessment order, relevant details/documents, the written submissions made by the appellant during appellate proceedings. The sole ground of appeal relates to disallowance of deduction at Rs. 68,50,234/- u/s 80(IB)(10) of the Act. Briefly, the appellant was engaged in a residential project namely C.G. Heights and claimed to be approved and developed with the consent of Nagarpalika Nigam, Raipur and the appellant claimed deduction u/s 80IB(10) of the Act, which was denied by the AO stating that the project was not completed within the specified period for claiming deduction u/s 80IB(10). During the appellate proceedings, the appellant submitted that it had started the project on 21.08.2005 and completed the project on 29.10.2007 which is well within the prescribed time limit. It has further been submitted that it had applied on 25.08.2007 for completion certificate and thereafter several request letters were also submitted to the Nagarpalika Nigam, Raipur but the Nagarpalika Nigam, Raipur issued the completion certificate on 24.08.2016. Since, there was delay in issuing completion certificate by the Nagarnigam Palika,

Raipur and it had furnished the request for the said certificate well within the time limit, it cannot be said that the project was not completed within time limit. The appellant also submitted certificate from chartered Engineer and Architect certifying the completion of project on 28.03.2008. The appellant also submitted a copy of CIT(A) order for A.Y. 2012-13 wherein the CIT(A) has accepted the contention of the appellant and allowed the claim of deduction u/s 80IB(10) of the Act.

4.1.1 Briefly, a housing project namely C.G. Heights was approved by Nagapalika Nigam, Raipur on 18.03.2005 and the project was required to be completed by 31.03.2009 to avail the benefit of deduction u/s 80IB(10) of the Act. During the assessment proceedings for AY 2012-13, the AO found that there was no completion certificate with the appellant and it had wrongly claimed the deduction u/s 80IB(10) of the Act and accordingly, the AO denied the deduction in the assessment order for AY 2012-13. Further, the AO initiated the re-assessment proceedings for AY 2009-10 after recording reason and getting prior approval from the competent authority. The appellant objected the re-opening proceedings, which was disposed off by the AO before completing the re-assessment as per the procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 259 ITR 19 (SC). Further, it is seen that the AO had undoubtedly a fresh and tangible material by way of information about non-availability of completion certificate for re-opening the case u/s 147 of the Act for AY 2009-10 and it can't be said a change of opinion because the appellant failed to demonstrate that this information was available with the AO at the time of original assessment in the present case for AY 2009-10 and AO after considering the non-availability of CC allowed the deduction u/s 80IB(10) of the Act. Thus, the appellant's contention on both counts are hereby dismissed.

4.1.2 The appellant contended that the CIT(A), Raipur has allowed its appeal for AY 2012-13 on similar & identical issue vide appeal order no. 268/15-16 dated 01.11.2018. Perusal of this appellate order reveals that the CIT(A) had allowed the issue on the sole basis of completion certificate dated 24.08.2016 subject to satisfaction of the AO on furnishing of the completion certificate dated 24.08.2016 before AO. So there was pre-condition for getting the benefit of deduction u/s 80IB(10) on the basis of CIT(A) order. Thus, the appellant has misplaced in its submission that the Ld CIT(A)-1, Raipur vide order dated 01.11.2018 for AY 2012-13 has granted full relief on this issue. Since, the date of completion certificate is prima facie beyond the time limit for completion of project for getting

benefit of deduction u/s 80IB(10) of the Act, the present appeal warrants examination of facts as well as legal provision. Therefore, I proceed to examine the issue in the light of the CC dated 24.08.2016 afresh.

4.1.3 The first and most important issue relates to date of approval of project by Nagarnigam Palika, Raipur because it shall decide the time limit of completion of project for eligibility of deduction u/s 80IB(10) of the Act. The extract of the section 80IB(10) is reproduced herewith.

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

80-IB. (10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.]

Explanation.—For the purposes of this clause,—

(/) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

Plain reading of the above provision reveals that the legislature has specified the time limit for completion of housing project for getting the deduction u/s 80IB(10) of the Act. The explanation also specify that the date of completion certificate issued by local authority shall be considered as the date of completion of construction of the housing project for section 80IB(10) of the Act and not the date of application filed by the appellant before local authority for CC.

In this regard, the appellant contended that it got approval vide order no. 116 dated 16.08.2005 and therefore, the project was to be completed by 31.03.2011 as per provision of section 80IB(10)((a)(iii) of the Act, which is factually incorrect because this order relates to permission for starting construction work of the building and not the approval of the residential project namely "C.G. Heights". Also, section 801B(10)(a)(iii) of the Act was inserted vide Finance Act, 2010 w,e.f 01,04.2010 i.e. much later than the date of approval of the project and the project of the appellant is not covered under this sub-clause. Further, it is a matter of fact that the Nagarnigam Palika, Raipur had issued completion certificate dated 24.08.2016 wherein it has categorically been mentioned that the project was permitted vide letter no. 21/83/2005 dated 18.03.2005 and a letter no. 664 dated 29.10.2007 was issued releasing the mortgaged flats due to completion of various internal development works. These facts clearly show that the project was approved on 18.03.2005 and the same was required to be completed by 31.03.2009 i.e. four years from the end of the financial year in which the housing project is approved by the local authority as per the provision of section 80IB(10)((a)(ii) of the Act for getting the benefit of deduction u/s 801B(10) of the Act. Hence, the appellant's argument on this count is rejected.

4.1.4 During the appellate proceedings, the appellant furnished a certificate of chartered engineers certifying the completion of project on 28.03.2008 and letter addressed to local authority dated 25.08.2007, 30.07.2010, 22,12,2010, 01.04.2011, 12.02.2015 and 12.08.2016 in support of its contention that the housing project was completed on or before 31.03.2008. Perusal of these evidences reveals that the letter dated 25.08.2007 doesn't relate to completion of housing project but it relates to completion of certain flats, which were mortgaged vide letter dated 28.02.2005. Further, the letter

dated 30.07.2010 doesn't bear any receipt stamp of the local authority. In fact, the appellant furnished the proper application letter dated 22.12.2010 with the requisite annexures for the first time for issuing completion certificate of the housing project before the local authority having duly receipt with stamp. Also, there is no independent evidence, which prove that the completion certificate was issued by the chartered engineers before 31.03.2009 and furnished before the local authority. In fact, this certificate of chartered engineers was furnished before the Nagarpalika on 22.12.2010 for the first time. So it can be safely concluded that the appellant had made application for CC of the C.G. Heights project before the local authority for the first time on 22.12.2010, which is beyond the prescribed time limit u/s 80IB(10(a)(ii) of the Act. Thus, the appellant's claim that it had made application for completion certificate for the project vide letter dated 25.08.2007 is not found to be correct. These facts support the findings of the AO that the project was not completed within the stipulated time period of section 80IB(10) of the Act.

In view of the above factual and legal position, the denial of deduction u/s. 80IB(10) of the Act in the present case made by the A.O in the re-assessment order is hereby confirmed.

5. In the result, the appeal of the appellant is dismissed."

7. The assessee company, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

8. We have heard the ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

9. As is discernible from the record the assessee company has assailed the reassessment framed by the AO vide his order u/s. 148 r.w.s. 143(3) dated 27.12.2016 for muti-facet reasons, viz. (i). as the assessment in the case of the assessee company was earlier framed u/s. 143(3) of the Act; thus, in the absence of any failure on its part to disclose fully and truly all material facts necessary for framing of assessment for the year under consideration, its case could not have been reopened after the expiry of four years from the end of the relevant assessment year; (ii). that the reopening of the concluded assessment of the assessee company, which the A.O had originally framed vide his order passed u/s.143(3) dated

09.12.2011, was reopened based on a "change of opinion" on the same set of facts as were available before his predecessor, which was not permissible as per the mandate of law; and (iii)**.** that the ITO-Ward 3(1) has erred in initiating reassessment proceedings as the original assessment u/s 143(3), dated 09.12.2011 was framed by the ACIT-Circle1(2), Raipur; and (iv). that the lower authorities had, based on misconceived facts, declined the assessee's claim for deduction u/s 80IB(10) of the Act.

10. As the assessee company has assailed the validity of the jurisdiction assumed by the A.O for framing the impugned assessment vide his order passed u/s. 148 r.w.s 143(3) dated 27.12.2016; therefore, we shall first deal with the same.

11. At the threshold of hearing of the appeal, Shri Mahendra Agrawal, the Ld. Authorized Representative (for short 'AR') for the assessee company submitted that as the A.O. had originally framed the assessment in the case of the assessee company vide his order passed u/s. 143(3) dated 09.12.2011; therefore, in the absence of any failure on the part of the assessee company to fully and truly disclose all material facts necessary for framing of the assessment in its case for the year under consideration, i.e., A.Y.2009-10, the concluded assessment framed in its case could not have been dislodged after a lapse of a period of four years from the end of the relevant assessment year. The Ld. A.R in support of his aforesaid contention had relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **Titanor Components Ltd. Vs. Assistant Commissioner of Income Tax, (2012) 343 ITR 183 (Bom)**.

12. Apart from that, it was the claim of the Ld. AR that as the A.O. had, based on a mere "change of opinion," reopened the concluded assessment of the assessee company; therefore, as per the settled position of law, he had grossly erred in assuming jurisdiction and framing the impugned assessment. The Ld. AR, in order to buttress his aforesaid claim, had drawn our attention to the copy of the "reasons to believe" which had formed the very basis for reopening the case of the assessee company. Backed by the fact that the case of the assessee company was reopened for the reason that it was not eligible for claiming deduction u/s. 80IB(10) of the Act, the Ld. AR had taken us through the original assessment order that was framed in the case of the assessee company u/s. 143(3) dated 09.12.2011, Page 65 of APB. Referring to the aforesaid assessment order, it was averred by the Ld. AR that as the assessee's claim for deduction u/s.80IB(10) of the Act was duly

looked into and deliberated upon by the A.O while framing the original assessment and was scaled down by him to an amount of Rs.68,50,234/- (as against that inadvertently claimed at Rs.82,94,384/-), therefore, in absence of any fresh material the reopening of its concluded assessment based on a mere "change of opinion" could not be sustained and was liable to be struck down. The Ld. AR, in order to fortify his aforesaid contention took us through the notice u/s. 142(1)(ii)/(iii) of the Act dated 17.10.2011, wherein the A.O in the course of original assessment proceedings at Sr. No.11 & 12 has specifically queried about the justification of the assessee's claim for deduction u/s. 80IB(10) of the Act. Further, taking us through the reply that was filed by the assessee before the A.O., in the course of the assessment proceedings on 30.11.2011, it was submitted that the assessee company had duly justified its entitlement for claiming deduction u/s. 80IB(10), which was originally raised at Rs.82,94,384/- but thereafter, was revised to a correct figure of Rs.68,50,234/-. It was, thus, the claim of the Ld. AR that as the assessee's entitlement for claiming deduction u/s. 80IB(10) was duly looked into by the A.O while framing the original assessment vide his order u/s. 143(3) dated 09.12.2011; therefore, the said concluded assessment could not have been dislodged based on a mere "change of opinion" by the successor A.O.

13. As is discernible from the records, the view taken by the A.O. as regards the ineligibility of the assessee company for claiming deduction u/s. 80IB(10) for the reason that It had not obtained the "completion certificate" from the competent authority, i.e., Municipal Corporation, Raipur, was, in turn, based on his observations recorded while framing the assessment in the case of the assessee company for A.Y.2012-13, Page 71- 76 of APB. For the sake of clarity, the observations of the A.O. based on which the assessee company was held ineligible for claiming deduction u/s. 80IB(10) of the Act while framing assessment in its case for A.Y.2012-13 are culled out as under:

"6. The assessee company was engaged in Construction of real estate properties and derives income from sale of residential and commercial properties. For the year under consideration it claimed deduction u/s. 80IB(10) in respect of C.G. Height project. Section 80IB(10) as amended by Finance Act (No.2) 2004, w.e.f 01-04-2005, makes it clear that an assessee will be entitled to claim deduction under the said provision if he fulfills all the conditions mentioned therein. As per section 80IB(10) :

The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a Local Authority shall be 100% of the profits derived in the previous year relevant to any assessment year from such housing projects

(a) Such undertaking has commenced or commences development and construction of the housing projects on or after the 1" day of October, 1998 and completes such construction .

(ii) in a case where a housing project has been approved by the local authority on or after the 1" day of April, 2005, within 5 years from the end of the financial year in which the housing project is approved by the Local Authority.

Explanation to the section 80IB (10):

(iii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the Local Authority. —

(b) The project is on the size of a plot of land which has a minimum area of one acre.

(c) The residential unit has a maximum built up area of 1500 sq. ft.

(e) Not more than one residential unit in the housing project is allotted to any person being an individual and

(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.

In the case of the assessee, the completion certificate has not yet been issued by the Local Authority. The assessee has been asked repeatedly to furnish completion certificate from the competent Local Authority but it has not yet been submitted. In the written reply dt. 16-02- |2015 it has been stated by the assessee that :

(a) He has applied to the Local Authority — Nagar Palik Nigam, Raipur on 20-10-2010, 11-04-2011 & 12-02-2015 for issue of completion certificate for the residential project, but the authorities have not yet issued the completion certificate.

(b) The project was started on 21-08-2005 and completed on 29-10-2007. The facts of completion are well established through the Chartered Engineer and Architect Certificate and also from the fact that residential complex so constructed is already in use by the buyers of the flats since 2008.

The assessee was again asked to produce the completion certificate but he failed to produce completion certificate.

The Inspector was deputed for spot enquiry. The Inspector's report is received and placed on record. In the report the inspector has informed that he had requested to the assessee to provide the copy of completion certificate issued by the Local Authority, which is mandatory compliance under the Act for claiming the deduction under section 80IB. He has been replied that the application for completion certificate has been filed at the concerned authority. But the assessee did not provide the completion certificate to the inspector. Thus it is very clear that the assessee has no completion certificate as issued by the Local Authority in support of his claim made u/s. 80IB. The production of the completion certificate is a legal requirement prescribed by the Statute and without fulfilling this condition the assessee's claim of deduction u/s. 80IB cannot be allowed. Therefore, the assessee's claim of deductions u/s. 80IB (10) is disallowed."

As can be gathered from the aforesaid observations recorded by the A.O. while framing the assessment for A.Y.2012-13, the very basis for disentitling the assessee company for claiming deduction u/s. 80IB(10) was that the assessee company had failed to produce a "completion certificate", which, inter alia,

was a pre-condition for claiming deduction under the aforesaid statutory provision. Also, the A.O. supported his aforesaid observation on the basis of the report of the Inspector of Income Tax, who, as deputed, had carried out a spot inquiry.

14. We have given thoughtful consideration to the issue in hand, i.e., the entitlement of the assessee company for claiming deduction u/s. 80IB(10) of the Act, which, we find, was allowed by the A.O. while framing the original assessment vide order passed u/s. 143(3) dated 09.12.2011. On the basis of information that was gathered in the course of the assessment proceedings in the assessee's case for A.Y.2012-13, which revealed that the assessee company had failed to obtain from the competent authority a "completion certificate" within the prescribed period, a fact that was further supported by the report of the Inspector of Income-Tax who had carried out spot inquiry, the A.O, based on the said fresh/tangible material had arrived at a bonafide belief that the assessee's claim for deduction u/s. 80IB(10) of the Act was wrongly allowed by his predecessor while framing assessment vide his order passed u/s. 143(3) of the Act, dated 09.12.2011. As there was fresh/tangible material before the A.O, i.e., information gathered in the course of the assessment proceedings for A.Y.2012-13, which in turn was supported by the report of the Inspector of Income-Tax and revealed that the assessee company had not obtained a "completion certificate" within the prescribed time period as per the mandate of Sec. 80IB(10) of the Act; therefore, we are unable to concur with the contention of the Ld. AR that reopening of its concluded assessment in the absence of any fresh/tangible material coming to the notice of the A.O. after the culmination of the original assessment was based on a mere "change of opinion" by the successor A.O.

15. We shall now deal with the contention of the Ld. AR that as the A.O. had framed the original assessment in the case of the assessee company vide his order passed u/s. 143(3) dated 09.12.2011; therefore, in the absence of any failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment for the said year, i.e., A.Y.2009-10, the same could not have been reopened after four years from the end of the relevant assessment year.

16. Observing that the assessee company had not specifically assailed the impugned order by raising a specific ground of appeal as regards the validity of jurisdiction assumed by the A.O in the backdrop of the mandate of the "1st proviso" to Section 147 of the Act, we had called upon the Ld. AR to explain on what basis the said claim was being raised before us. In reply, the Ld. AR had stated that the assessee company duly raised the said contention by way of an objection dated 06.06.2016 that was filed with the A.O, on the basis of which the very assumption of jurisdiction for the reopening of its concluded assessment was assailed before him. The Ld. AR had drawn our attention to the letter/objection dated 06.06.2016 that was filed before the A.O, Page 32-34 of APB. The Ld. AR referring to the aforesaid letter/objection dated 06.06.2016 (supra) submitted that the assessee company had, in the course of the assessment proceedings, while challenging the validity of the jurisdiction assumed by the A.O for reopening of its case had, inter alia, assailed the same in the backdrop of the mandate of the "1st proviso" to Sec. 147 by relying on the judgment of the **Hon'ble High Court of Bombay** in the case of **Titanor Components Ltd. Vs. Assistant Commissioner of Income Tax (supra).**

17. We have thoughtfully considered the aforesaid issue and find substance in the claim of the Ld. AR that the validity of jurisdiction assumed by the A.O. for reopening of the concluded assessment of the assessee company was, inter alia, challenged in the backdrop of the mandate of the "1st proviso" to Section 147 of the Act. It transpires from the record that the assessee company had not only assailed the assumption of jurisdiction by the A.O before us in the backdrop of the "1st proviso" to Sec. 147 vide "Ground of appeal No.1" but had also raised the same at the stage of filing of objection dated 06.06.2016 (supra) before the A.O.

18. Apropos the claim of the Ld. AR that the reopening of the concluded assessment of the assessee company is hit by the "1st proviso" to Sec. 147 of the Act, we are unable to persuade ourselves to subscribe to the same. As is discernible from the copy of the "reasons to believe" it transpires that as the A.O had categorically observed that in the course of the assessment proceedings in the case of the assessee company

for A.Y.2012-13 it stood revealed that the latter had failed to obtain the "completion certificate" from the competent authority, thus, its claim for deduction u/s. 80IB(10) of the Act was disallowed while framing the assessment in its case for the said year u/s. 143(3) of the Act. Thereafter, the A.O., in the backdrop of the aforesaid fact, observed that as per the facts and documents on record the assessee company was not entitled to claim deduction u/s. 80IB(10) for the year under consideration, i.e., A.Y.2009-10; therefore, its income to the said extent had escaped assessment within the meaning of Section 147 of the Act. As the for reopening the concluded assessment of the assessee company for the year under consideration, i.e., A.Y.2009-10, was based on the fact that the competent authority had not issued the certificate for completion of the housing project of the assessee company within the prescribed period, a fact that was not disclosed by the assessee company in its return of income/audit report for A.Y.2009-10; therefore, we are of a strong conviction that the same would suffice for satisfying of the requisite condition contemplated in the "1st proviso" to Section 147 of the Act, i.e., there was failure on the part of the assessee company to disclose fully and truly all material facts necessary for framing of its assessment for the year under consideration, i.e., A.Y.2009-10.

19. In sum and substance, as can be gathered from the "reasons to believe", which had formed the very basis for reopening the concluded assessment of the assessee company for the year under consideration, the fact that the assessee company in its return of income for A.Y.2009-10 had failed to come forth with full and true disclosure as regards the material fact that the "completion certificate" of its housing project was not obtained within the prescribed period contemplated u/s. 80IB(10) of the Act; thus, the same duly brings its case within the sweep of the "1st proviso" to Section 147 of the Act. Our aforesaid conviction is supported by the fact that a perusal of the audit report filed by the assessee company in Form 10CCB dated 03.09.2009 reveals that at Sr. No.23, it had, inter alia, wrongly claimed that the housing project was completed on 29.10.2007. For the sake of clarity, the relevant extract of the aforesaid audit report in Form 10CCB is culled out as under:

23.	Developing and building housing projects	YES---- MULTI STORIED RESIDENTIAL HOUSING PROJECT
	(*a*) Date of approval by local authority (Please attach copy of approval/if approval is obtained more than once, attach copy of first approval of the building plan)	16.08.2005
	(*b*) Date of completion of the housing project (Please attach copy of the completion certificate issued by the local authority)	29.10.2007
	(*c*) Size of plot of land of the project	44866 SQFT.

On a perusal of letter No.664 dated 29.10.2007, Page 42 of APB issued by the Municipal Corporation, Raipur, we find that as observed by the CIT(Appeals), and rightly so, the aforesaid letter was issued for releasing the mortgage flats after completion of various development and internal works and was not a "completion certificate" as had been claimed by the assessee company in its audit report in "Form 10CCB" (supra) as well as in the course of the proceedings before us. Based on the aforesaid material fact that the letter dated 29.10.2007 (supra) issued by the Municipal Corporation, Raipur is not a "completion certificate"; thus, the same falsifies the claim raised by the assessee company in its audit report in "Form 10CCB" (supra), which, in turn, suffices the satisfaction of the precondition contemplated in the "1st proviso" to Section 147 of the Act for reopening the concluded assessment of the assessee company. Thus, in terms of our aforesaid observations, we are unable to concur with the Ld. AR that reopening of the concluded assessment of the assessee's case is hit by the non-satisfaction of the pre-conditions contemplated in the "1st proviso" to Section 147 of the Act.

20. We shall now deal with the claim of the Ld. AR that the A.O. had wrongly assumed jurisdiction and reopened the concluded assessment of the assessee company without obtaining approval from the appropriate authority, i.e., the Pr. CIT, Raipur, as required per the mandate of Section 151 of the Act. The Ld. AR had drawn our attention to his written submissions dated 21.11.2023 wherein it has assailed the validity of the jurisdiction assumed by the A.O dehors obtaining the satisfaction/approval of the competent authority u/s. 151 of the Act. Elaborating on his aforesaid contention, the Ld. AR submitted that though the assessee company had in its objections filed before the A.O. qua the validity of the jurisdiction assumed by him for reopening the concluded

assessment u/s. 147 of the Act, had assailed the same on the ground of want of approval of the competent authority u/s. 151 of the Act, but the latter had, without addressing the said specific objection, proceeded with and framed the assessment. The Ld. AR submitted that the aforesaid conduct of the A.O. in not dealing with the specific objection of the assessee company as regards the validity of the jurisdiction assumed by him in the absence of a valid approval u/s. 151 of the Act from the competent authority was clearly in conflict with the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO & Ors, (2003) 259 ITR 19 (SC).

21. We have given thoughtful consideration to the claim of the Ld. AR and are unable to persuade ourselves to subscribe to the same. As is discernible from the letter dated 06.06.2016, the assessee company had though raised its objection with respect to "reasons to believe" recorded by the A.O u/s. 147 of the Act, but there is nothing discernible therefrom which reveals that it had, inter alia, objected to the assumption of jurisdiction by the A.O for want of approval from the competent authority u/s. 151 of the Act, Pages 32-34 of APB. Considering the fact that the assessee company had in the course of the assessment proceedings not assailed the validity of the jurisdiction assumed by the A.O. for reopening its concluded assessment u/s. 147 of the Act for want of approval from the competent authority u/s. 151 of the Act; therefore, there was no occasion for the A.O. to have dealt with the said aspect while disposing of the objections of the assessee company vide his order dated 10.06.2016, Page 36 of APB. As the aforesaid factual contention of the assessee, i.e., it had, in the course of the assessment proceedings, objected to the assumption of jurisdiction by the A.O. in the absence of any approval from the competent authority u/s. 151 of the Act is not discernible from the record; therefore, the same does not merit acceptance and is accordingly rejected.

22. We shall now deal with the claim of the assessee company that the A.O i.e. ITO, Ward-3(1), Raipur had erred in assuming jurisdiction for initiating reassessment proceedings and framing assessment vide his order passed u/s. 148 r.w.s. 143(3), dated 27.12.2017. The Ld. AR submitted that as original assessment in the case of the assessee company was framed by the ACIT, Circle-1(2), Raipur vide order u/s. 143(3) of the Act dated 09.12.2011, therefore, the reopening and consequential framing of reassessment by the ITO, Ward-3(1), Raipur vide order u/s. 148 r.w.s. 143(3), dated 27.12.2017 was liable to be quashed for want of valid assumption of jurisdiction. Based on his aforesaid contention, it is the claim

of the assessee company that as the ITO, Ward-3(1), Raipur had wrongly assumed jurisdiction and framed the reassessment; therefore, the same could not be sustained and is liable to be vacated.

23. We have thoughtfully considered the aforesaid claim of the assessee company and are unable to persuade ourselves to concur with the same. As the jurisdiction over the case of the assessee company in pursuance to the Notification No.1/2014-15 dated 15.11.2014 issued by the Jt. CIT, Range-3, Raipur was vested with the ITO, Ward-3(1), Raipur, therefore, there is no substance in the claim of the Ld. AR that the said A.O had wrongly assumed jurisdiction and framed the reassessment vide order u/s. 148 r.w.s. 143(3), dated 27.12.2017. At this stage, we may herein observe that pursuant to the CBDT Instruction No.1/2011 dated 31.01.2011, inter alia, in the case of corporate assessees with returned income upto Rs.20 lacs, the jurisdiction to frame assessment would remain with the ITO. Accordingly, on conjoint reading of the aforesaid Notification No.1/2014-15 dated 15.11.2014 and the CBDT Instruction No.1/2011 dated 31.01.2011, we find no infirmity in the assumption of jurisdiction by the ITO, Ward-3(1), Raipur for framing of the assessment in the case of the assessee company, which had filed its return of income for the year under consideration, i.e., A.Y. 2009-10 on 27.09.2009 declaring an income of Rs.Nil. We, thus, finding no merit in the claim of the Ld. AR qua the validity of the jurisdiction assumed by the A.O for initiating reassessment proceedings and framing the consequential reassessment in the case of the assessee company, reject the same.

24. We shall now deal with the contention of the Ld. AR that both the lower authorities had erred in declining its claim for deduction u/s.80IB(10) of the Act. As observed by us hereinabove, the assessee's claim for deduction u/s.80IB(10) had been withdrawn by the A.O for the reason that it had obtained a "completion certificate" from the competent authority, i.e., Municipal Corporation, Raipur, only in August 2016; therefore, it had, inter alia, failed to have satisfied the pre-condition, i.e., obtaining of the "completion certificate" on completion of the housing project from the competent authority within the prescribed period, i.e., 31.03.2009. Although we principally concur with the Ld. AR that in a case where the builder had completed the housing project within the stipulated time and had well within the prescribed period applied for the "completion certificate" but issuance of the same involved a delay on the part of the local authority, then, in such type of cases, there would be no justification in

declining the assessee's claim for deduction u/s.80IB(10) of the Act., but the facts involved in the case of the assessee company before us do not fall within the realm of the aforesaid proposition.

25. Before proceeding any further, we deem it fit to deal with the assessee's claim that as it had got the approval from the local authority vide order No.116 dated 16.08.2005; therefore, the project was to be completed by 31.03.2011 as per the provisions of Section 80IB(10)(a)(iii) of the Act. On the contrary, the CIT(Appeals) had observed that vide order No.116 dated 16.08.2005 (supra), the assessee company had received permission to start the construction work of the building and not an approval of the residential project, viz. "C.G Heights". Also, the CIT(Appeals) refuting the claim of the assessee company that its case was covered by Section 80IB(10)(a)(iii) of the Act, had observed that as the same was inserted only vide the Finance Act, 2010 w.e.f. 01.04.2010, i.e., much later than the date of approval of the project; thus, the same was not covered by the said sub-clause. Also, the CIT(Appeals), to fortify his aforesaid observation, had taken note of the fact that the Municipal Corporation, Raipur, had in its "completion certificate" dated 24.08.2016 categorically stated that the housing project of the assessee company was approved vide letter No.21/83/2005, dated 18.03.2005.

26. We have given a thoughtful consideration and find no infirmity in the view taken by the CIT(Appeals) that the Municipal Corporation, Raipur had approved the housing project of the assessee company vide its letter No.21/83/2005 dated 18.03.2005. As observed by the CIT(Appeals), and rightly so, the "completion certificate" dated 24.08.2016 issued by the Municipal Corporation, Raipur, therein specifically makes a mention that the housing project of the assessee company was approved vide letter No.21/83/2005 dated 18.03.2005. Apart from that, we concur with the CIT(Appeals) that the Municipal Corporation, Raipur, vide its letter No.116, dated 16.08.2005, Page 39 of APB, had given permission to the assessee company to start construction work of the building and the same was not an approval of the residential project, viz., "C.G. Heights." On the basis of the aforesaid facts, we are of the view that the CIT(Appeals) had rightly concluded that as the housing project of the assessee company, viz., "C.G Heights" was approved by the Municipal Corporation, Raipur vide letter No.21/83/2005 dated 18.03.2005, i.e., prior to 31.03.2005; therefore, as per the provisions of Section 80IB(10)(a)(ii) of the Act, the assessee company was obligated to have completed the construction of the said housing project within four years from the end of the

financial year, in which, the same was approved by the local authority, i.e., latest by 31.03.2009.

27. Apropos the certificate of chartered engineers certifying the completion of the housing project on 28.02.2008, and the letters which the assessee company filed with the local authority, i.e., dated 25.08.2007, 30.07.2010, 22.12.2010, 01.04.2011, 12.02.2015 and 12.08.2016 in support of its contention that the housing project was completed on or before 31.03.2008, we find the CIT(Appeals) had dealt with the aforesaid claim of the assessee by observing, as under:

"4.1.4 During the appellate proceedings, the appellant furnished a certificate of chartered engineers certifying the completion of project on 28.03.2008 and letter addressed to local authority dated 25.08.2007, 30.07.2010, 22,12,2010, 01.04.2011, 12.02.2015 and 12.08.2016 in support of its contention that the housing project was completed on or before 31.03.2008. Perusal of these evidences reveals that the letter dated 25.08.2007 doesn't relate to completion of housing project but it relates to completion of certain flats, which were mortgaged vide letter dated 28.02.2005. Further, the letter dated 30.07.2010 doesn't bear any receipt stamp of the local authority. In fact, the appellant furnished the proper application letter dated 22.12.2010 with the requisite annexures for the first time for issuing completion certificate of the housing project before the local authority having duly receipt with stamp. Also, there is no independent evidence, which prove that the completion certificate was issued by the chartered engineers before 31.03.2009 and furnished before the local authority. In fact, this certificate of chartered engineers was furnished before the Nagarpalika on 22.12.2010 for the first time. So it can be safely concluded that the appellant had made application for CC of the C.G. Heights project before the local authority for the first time on 22.12.2010, which is beyond the prescribed time limit u/s 801Bc10(a)(ii) of the Act. Thus, the appellant's claim that it had made app 'cation for completion certificate for the project vide letter dated 25.08.2007 is not found to be correct. These facts support the findings of the AO that the project was not completed within the stipulated time period of section 80IB(10) of the Act.

In view of the above factual and legal position, the denial of deduction u/s.80IB(10) of the Act in the present case made by the A.O in the re-assessment order is hereby confirmed."

As observed by the CIT(Appeals), and rightly so, the letter dated 25.08.2007 (supra), Page 35 of APB, does not relate to the completion of the housing project, but it relates to the completion of certain flats which were mortgaged vide letter dated 28.02.2005. Also, a perusal of the letter dated 30.07.2010, Page 48 of APB, supports the observation of the CIT(Appeals) that as the same does not bear any acknowledgment stamp of the local authority, the same, thus, could not be acted upon. As observed hereinabove, the CIT(Appeals) had rightly concluded that the assessee company had furnished a letter dated 22.12.2010 a/w. requisite annexures with the local authority, for the first time, for obtaining the "completion certificate" of the housing project, which was duly acknowledged by the latter. Also, we concur with the CIT(Appeals) that there was no evidence that proved that the "completion certificate" was issued by the chartered engineer before 31.03.2009 and was furnished with the local authority within the prescribed period. Considering the fact that the Chartered engineers had, on 22.12.2010, for the first time, furnished a "completion certificate" of the housing project with the Nagar Palika, Raipur, the CIT(Appeals) had rightly observed that the assessee company had made an application for obtaining the "completion certificate" of its housing project from the local authority for the first time on 22.12.2010, which, however, was beyond the prescribed period as contemplated u/s. 80IB(10)(a)(ii) of the Act. We, thus, in terms of our aforesaid observations, finding no infirmity in the well-reasoned view taken by the CIT(Appeals), concur with him that the assessee company had wrongly claimed that it had filed with Municipal Corporation, Raipur, an application for obtaining a "completion certificate" of its housing project vide letter dated 25.08.2007.

28. We shall now deal with the contention of the Ld. AR that as declining of the assessee's claim for deduction u/s. 80IB(10) of the Act in A.Y.2012-13, which, in turn, formed the very basis for reopening the concluded assessment for the year under consideration, had thereafter been vacated by the CIT(Appeals); therefore, on the same footing, the disallowance of its said claim for deduction for the year under consideration, i.e., AY 2009-10 could no longer be sustained.

29. We have given thoughtful consideration to the aforesaid contention of the Ld. AR and are unable to find favor with the same. As is discernible from the order of the CIT(Appeals), we find that the aforesaid issue had duly been considered by him while disposing of the appeal of the assessee company for the year under consideration, observing as under:

> "4.1.2 The appellant contended that the CIT(A), Raipur has allowed its appeal for AY 2012-13 on similar & identical issue vide appeal order no. 268/15-16 dated 01.11.2018. Perusal of this appellate order reveals that the CIT(A) had allowed the issue on the sole basis of completion certificate dated 24.08.2016 subject to satisfaction of the AO on furnishing of the completion certificate dated 24.08.2016 before AO. So there was pre-condition for getting the benefit of deduction u/s 80IB(10) on the basis of CIT(A) order. Thus, the appellant has misplaced in its submission that the Ld. CIT(A)-1, Raipur vide order dated 01.11.2018 for AY 2012-13 has granted full relief on this issue. Since, the date of completion certificate is prima facie beyond the time limit for completion of project for getting benefit of deduction u/s 80IB(10) of the Act, the present appeal warrants examination of facts as well as legal provision. Therefore, I proceed to examine the issue in the light of the CC dated 24.08.2016 afresh."
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> As observed by the CIT(Appeals), his predecessor, while disposing of the appeal for A.Y.2012-13, had allowed the issue on the sole basis of the completion certificate dated 24.08.2016 subject to the satisfaction of the A.O on furnishing of the "completion certificate" dated 24.08.2016 before him. Accordingly, the CIT(Appeals) had rightly observed that there was a pre-condition for getting the benefit of deduction u/s.80IB(10) on the basis of the order of his predecessor for A.Y.2012-13. As the "completion certificate" issued for the housing project of the assessee company, viz., "C.G. Heights" was beyond the prescribed period for completion of the project for getting benefit u/s.80IB(10) of the Act; thus, the CIT(Appeals), had rightly held that the assessee company was ineligible for claim of deduction under the said statutory provision. We, thus, finding no infirmity in the well reasoned view taken by the CIT(Appeals), who, after examining the facts r.w the settled position of law had rightly approved the declining of the assessee's claim of deduction u/s. 80IB(10) of the Act by the AO, uphold the same.
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> 30. In the result, the appeal of the assessee being devoid and bereft of any merit is dismissed in terms of our aforesaid observations."

2. Thereafter, the assessee had preferred miscellaneous application before the Tribunal stating viz. (i) Ground of appeal No.6 raised before the

Tribunal was not adjudicated; and (ii) Ground of appeal No.1 taken before the Tribunal remained to be properly adjudicated.

3. As per the order passed in miscellaneous application i.e. MA No.17/RPR/2024 by the Tribunal dated 10.12.2024, the Tribunal had dismissed the Ground of appeal No.(ii) i.e. "Ground of appeal No.1" taken before the Tribunal remained to be properly adjudicated" by observing that the assessee in the garb of rectification application u/s. 254(2) of the Income Tax Act, 1961 (for short 'the Act') was attempting for seeking review of the decision of the Tribunal which is not permissible within the parameter of the said provision of the Act. However, since the Ground of appeal No.6 remained to be adjudicated to that extent and for that limited purpose, the Ground of appeal No.6 was recalled and the registry was directed to fix the appeal for hearing for the said limited purpose after putting both the parties to notice. The relevant part of the order of miscellaneous application is extracted as follows:

> "4. Resultantly, the miscellaneous application i.e MA 17/RPR/2024 filed by the assessee company/applicant under sub-section (2) of Sec. 254 is partly allowed in terms of our aforesaid observations. Accordingly, as the omission to dispose off the **"Ground of appeal no. 6"** (supra) had rendered the order passed by the Tribunal while disposing off the assessee's appeal in ITA No. 300/RPR/2023, as suffering from a mistake which is glaring, patent, obvious and apparent from record, making it amenable for rectification under sub-section (2) of Sec. 254 of the Act; therefore, the order to the said limited extent, i.e, for adjudicating the aforesaid **"Ground of appeal no. 6"** is recalled. The registry is directed to fix the appeal for

> the aforesaid limited purpose on 24/01/2025 after putting both the parties to notice."

4. That therefore, in this recalled matter, the limited purpose of adjudication for which, it has been placed before us is with regard to "Ground of appeal No.6" which remained un-adjudicated in the first round of appeal which reads as follows:

> "6. That on the facts and in the circumstances and in law the Ld. CIT(A) erred in confirming the disallowance u/s 80IB(10) of the Act by the AO as the conditions to allowability of such deduction was examined by the AO in the first year of claim during AY 2008-09 in the proceedings u/s.143(3)."

That as is discernible from the aforesaid ground, it spells out that the Ld. CIT(A) erred in confirming the disallowance u/s 80IB(10) of the Act by the AO as the conditions to allowability of such deduction was examined by the AO in the first year of claim during AY 2008-09 in the proceedings u/s 143(3) of the Act. In other words, the assessee submitted that such disallowance u/s. 80IB(10) of the Act is allowable since the A.O had already examined the allowability of such deduction in the A.Y.2008-09.

5. The fact of the matter is that the assessee is imposing principles of res-judicata in the income tax proceedings by submitting that since for A.Y.2008-09, the allowability of deduction was examined by the A.O, therefore, for the assessment year 2009-10 also, the same deduction should be allowable. It is the matter of common knowledge as has been declared

and held by the Hon'ble Supreme Court as well as by various decisions of the Hon'ble High Courts that the principles of res-judicata are not applicable to the income tax proceedings because the Income Tax Department is not a Court and further the facts and circumstances for each assessment year are separate and could not be applicable to each and every year since every assessment year is single unit altogether. In the case of the assessee for A.Y.2009-10, the Tribunal had dismissed the appeal of the assessee being devoid of any merit vide order dated 11.12.2023 and held that the assessee is not entitled to claim deduction u/s.80IB(10) of the Act and found no infirmity in the view taken by the Ld.CIT(Appeals). For the sake of completeness, the said findings are extracted as follows:

> "25. Before proceeding any further, we deem it fit to deal with the assessee's claim that as it had got the approval from the local authority vide order No.116 dated 16.08.2005; therefore, the project was to be completed by 31.03.2011 as per the provisions of Section 80IB(10)(a)(iii) of the Act. On the contrary, the CIT(Appeals) had observed that vide order No.116 dated 16.08.2005 (supra), the assessee company had received permission to start the construction work of the building and not an approval of the residential project, viz. "C.G Heights". Also, the CIT(Appeals) refuting the claim of the assessee company that its case was covered by Section 80IB(10)(a)(iii) of the Act, had observed that as the same was inserted only vide the Finance Act, 2010 w.e.f. 01.04.2010, i.e., much later than the date of approval of the project; thus, the same was not covered by the said sub-clause. Also, the CIT(Appeals), to fortify his aforesaid observation, had taken note of the fact that the Municipal Corporation, Raipur, had in its "completion certificate" dated 24.08.2016 categorically stated that the housing project of the assessee company was approved vide letter No.21/83/2005, dated 18.03.2005.
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> 26. We have given a thoughtful consideration and find no infirmity in the view taken by the CIT(Appeals) that the

Municipal Corporation, Raipur had approved the housing project of the assessee company vide its letter No.21/83/2005 dated 18.03.2005. As observed by the CIT(Appeals), and rightly so, the "completion certificate" dated 24.08.2016 issued by the Municipal Corporation, Raipur, therein specifically makes a mention that the housing project of the assessee company was approved vide letter No.21/83/2005 dated 18.03.2005. Apart from that, we concur with the CIT(Appeals) that the Municipal Corporation, Raipur, vide its letter No.116, dated 16.08.2005, Page 39 of APB, had given permission to the assessee company to start construction work of the building and the same was not an approval of the residential project, viz., "C.G. Heights." On the basis of the aforesaid facts, we are of the view that the CIT(Appeals) had rightly concluded that as the housing project of the assessee company, viz., "C.G Heights" was approved by the Municipal Corporation, Raipur vide letter No.21/83/2005 dated 18.03.2005, i.e., prior to 31.03.2005; therefore, as per the provisions of Section 80IB(10)(a)(ii) of the Act, the assessee company was obligated to have completed the construction of the said housing project within four years from the end of the financial year, in which, the same was approved by the local authority, i.e., latest by 31.03.2009.

27. Apropos the certificate of chartered engineers certifying the completion of the housing project on 28.02.2008, and the letters which the assessee company filed with the local authority, i.e., dated 25.08.2007, 30.07.2010, 22.12.2010, 01.04.2011, 12.02.2015 and 12.08.2016 in support of its contention that the housing project was completed on or before 31.03.2008, we find the CIT(Appeals) had dealt with the aforesaid claim of the assessee by observing, as under:

"4.1.4 During the appellate proceedings, the appellant furnished a certificate of chartered engineers certifying the completion of project on 28.03.2008 and letter addressed to local authority dated 25.08.2007, 30.07.2010, 22,12,2010, 01.04.2011, 12.02.2015 and 12.08.2016 in support of its contention that the housing project was completed on or before 31.03.2008. Perusal of these evidences reveals that the letter dated 25.08.2007 doesn't relate to completion of housing project but it relates to completion of certain flats, which were mortgaged vide letter dated 28.02.2005. Further, the letter dated 30.07.2010 doesn't bear any receipt stamp of the local authority. In fact, the appellant furnished the proper application letter dated 22.12.2010 with the requisite annexures for the first time for issuing completion certificate of the housing project before the local authority having duly receipt with stamp. Also, there is no independent evidence,

which prove that the completion certificate was issued by the chartered engineers before 31.03.2009 and furnished before the local authority. In fact, this certificate of chartered engineers was furnished before the Nagarpalika on 22.12.2010 for the first time. So it can be safely concluded that the appellant had made application for CC of the C.G. Heights project before the local authority for the first time on 22.12.2010, which is beyond the prescribed time limit u/s 801Bc10(a)(ii) of the Act. Thus, the appellant's claim that it had made app 'cation for completion certificate for the project vide letter dated 25.08.2007 is not found to be correct. These facts support the findings of the AO that the project was not completed within the stipulated time period of section 80IB(10) of the Act.

In view of the above factual and legal position, the denial of deduction u/s.80IB(10) of the Act in the present case made by the A.O in the re-assessment order is hereby confirmed."

As observed by the CIT(Appeals), and rightly so, the letter dated 25.08.2007 (supra), Page 35 of APB, does not relate to the completion of the housing project, but it relates to the completion of certain flats which were mortgaged vide letter dated 28.02.2005. Also, a perusal of the letter dated 30.07.2010, Page 48 of APB, supports the observation of the CIT(Appeals) that as the same does not bear any acknowledgment stamp of the local authority, the same, thus, could not be acted upon. As observed hereinabove, the CIT(Appeals) had rightly concluded that the assessee company had furnished a letter dated 22.12.2010 a/w. requisite annexures with the local authority, for the first time, for obtaining the "completion certificate" of the housing project, which was duly acknowledged by the latter. Also, we concur with the CIT(Appeals) that there was no evidence that proved that the "completion certificate" was issued by the chartered engineer before 31.03.2009 and was furnished with the local authority within the prescribed period. Considering the fact that the Chartered engineers had, on 22.12.2010, for the first time, furnished a "completion certificate" of the housing project with the Nagar Palika, Raipur, the CIT(Appeals) had rightly observed that the assessee company had made an application for obtaining the "completion certificate" of its housing project from the local authority for the first time on 22.12.2010, which, however, was beyond the prescribed period as contemplated u/s. 80IB(10)(a)(ii) of the Act. We, thus, in terms of our aforesaid observations, finding no infirmity in the well-reasoned view taken by the CIT(Appeals), concur with him that the assessee company had wrongly claimed that it had filed

with Municipal Corporation, Raipur, an application for obtaining a "completion certificate" of its housing project vide letter dated 25.08.2007.

28. We shall now deal with the contention of the Ld. AR that as declining of the assessee's claim for deduction u/s. 80IB(10) of the Act in A.Y.2012-13, which, in turn, formed the very basis for reopening the concluded assessment for the year under consideration, had thereafter been vacated by the CIT(Appeals); therefore, on the same footing, the disallowance of its said claim for deduction for the year under consideration, i.e., AY 2009-10 could no longer be sustained.

29. We have given thoughtful consideration to the aforesaid contention of the Ld. AR and are unable to find favor with the same. As is discernible from the order of the CIT(Appeals), we find that the aforesaid issue had duly been considered by him while disposing of the appeal of the assessee company for the year under consideration, observing as under:

"4.1.2 The appellant contended that the CIT(A), Raipur has allowed its appeal for AY 2012-13 on similar & identical issue vide appeal order no. 268/15-16 dated 01.11.2018. Perusal of this appellate order reveals that the CIT(A) had allowed the issue on the sole basis of completion certificate dated 24.08.2016 subject to satisfaction of the AO on furnishing of the completion certificate dated 24.08.2016 before AO. So there was pre-condition for getting the benefit of deduction u/s 80IB(10) on the basis of CIT(A) order. Thus, the appellant has misplaced in its submission that the Ld. CIT(A)-1, Raipur vide order dated 01.11.2018 for AY 2012-13 has granted full relief on this issue. Since, the date of completion certificate is prima facie beyond the time limit for completion of project for getting benefit of deduction u/s 80IB(10) of the Act, the present appeal warrants examination of facts as well as legal provision. Therefore, I proceed to examine the issue in the light of the CC dated 24.08.2016 afresh."

As observed by the CIT(Appeals), his predecessor, while disposing of the appeal for A.Y.2012-13, had allowed the issue on the sole basis of the completion certificate dated 24.08.2016 subject to the satisfaction of the A.O on furnishing of the "completion certificate" dated 24.08.2016 before him. Accordingly, the CIT(Appeals) had rightly observed that there was a pre-condition for getting the benefit of deduction u/s.80IB(10) on the basis of the order of his predecessor for A.Y.2012-13. As the "completion certificate" issued for the housing project of the assessee company, viz., "C.G. Heights"

> was beyond the prescribed period for completion of the project for getting benefit u/s. 80IB(10) of the Act; thus, the CIT(Appeals), had rightly held that the assessee company was ineligible for claim of deduction under the said statutory provision. We, thus, finding no infirmity in the well reasoned view taken by the CIT(Appeals), who, after examining the facts r.w the settled position of law had rightly approved the declining of the assessee's claim of deduction u/s. 80IB(10) of the Act by the AO, uphold the same.
>
> 30. In the result, the appeal of the assessee being devoid and bereft of any merit is dismissed in terms of our aforesaid observations."

6. That once a substantive view has been taken by the Tribunal denying the benefit of Section 80IB (10) of the Act to the assessee and confirming the order of the Ld.CIT(Appeals), the assessee cannot impose the principles of res-judicata by submitting that just because for A.Y.2008-09 such allowability of deduction was examined by the A.O, therefore, also for A.Y.2009-10, it has to be also allowed to the assessee. Such contention raised by the assessee is absolutely misplaced, devoid of merit, perverse and does not contain any legal validity.

7. The **Hon'ble Supreme Court** in the case of **BSNL Vs. Union of India, (2006) 3 SCC 1**, a three Judges Bench analyzed and held that res-judicata shall not apply to the matter pertaining to tax for different assessment year. There are catena of cases wherein it has been held that rationale for non-applicability of principles of res-judicata to Income Tax proceedings as the fact is that there cannot be any estoppel against a statute and tax laws are subject to change annually. Therefore, the legal scenario is that the facts

and circumstances in each of the assessment year has to be examined and dealt with separately. In a very initial case of **Delhi Golf Club Limited Vs. New Delhi Municipal Corporation, AIR 1997 Delhi 347**, it was held that public interest would be better served by by-passing the rule of res-judicata and taxing the property in a year of assessment if the incidence of tax be rightly attracted under the law and ignoring the factum of its having escaped in an earlier year though by a conscious and deliberate decision. It was the decision wherein the Hon'ble Court had observed that so far as the tax laws are concerned, public interest is involved and, in such scenario, even if in any year certain chargeability was not brought to tax, however, in the subsequent year it can be brought to tax thereby by-passing the principles of res-judicata since it would be the decision taken in the greater interest of the country as a whole.

8. In a famous decision of the **Hon'ble Supreme Court** in the case of **Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC)**, it has been held that the principles of res-judicata does not apply in the Income Tax proceedings since each assessment year is independent unit in itself and therefore, what decided in one year may not apply in the following year. Further, in the case of **Instalment Supply (Pvt.) Ltd. Vs. Union of India, AIR 1962 SC 53**, the Hon'ble Supreme Court held that "in tax matters there is no question of *res judicata* because each year's assessment is final only for that year and does not govern later years." The principle of

res judicata is not the creature of any statute or the handiwork of any code of law. It is the gift of public policy. The Hon'ble High Court of Bombay in the case of **H.A. Shah and Co. Vs. CIT (1956) 30 ITR 618 (Bom.)** has held that "the principle of estoppel or res judicata does not strictly apply to the Income Tax authorities" and yet declaring that *"an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision and if the Tribunal giving the earlier decision has taken into consideration all material evidence."*

9. That in the case of the assessee company for A.Y.2009-10, the Ld. CIT(Appeals) had observed that the order No.116 dated 16.08.2005 which the assessee claimed to be an approval from the local authority is actually the permission order to start the construction work of the building i.e. residential project, viz. "C.G Heights". Also, the CIT(Appeals) refuting the claim of the assessee company that its case was covered by Section 80IB(10)(a)(iii) of the Act, had observed that as the same was inserted only vide the Finance Act, 2010 w.e.f. 01.04.2010, i.e. much later than the date of approval of the project; thus, the same was not covered by the said sub-clause. Also, the CIT(Appeals), to fortify his aforesaid observation, had taken note of the fact that the Municipal Corporation, Raipur, had in its "completion certificate" dated 24.08.2016 categorically stated that the

housing project of the assessee company was approved vide letter No.21/83/2005, dated 18.03.2005.

10. The Ld.CIT(Appeals) therefore observed that the Municipal Corporation, Raipur had approved the housing project of the assessee company vide its letter No.21/83/2005 dated 18.03.2005 and as observed by the Ld.CIT(Appeals), and the "completion certificate" dated 24.08.2016 issued by the Municipal Corporation, Raipur, therein specifically makes a mention that the housing project of the assessee company was approved vide letter No.21/83/2005 dated 18.03.2005. All these observations by the Ld. CIT(Appeals) has been concurred with and upheld by the Tribunal vide its order dated 11.12.2023 and thereafter, examined each facts in detailed manner regarding claim of deduction u/s.80IB(10) of the Act of the assessee. Further, the Tribunal holds that it was in concurrence with the CIT(Appeals) that the Municipal Corporation, Raipur, vide its letter No.116, dated 16.08.2005, had given permission to the assessee company to start construction work of the building and the same was not an approval of the residential project, viz., "C.G. Heights." That on examination of the entire facts, the Tribunal had upheld the order of the Ld.CIT(Appeals) wherein it was held that as the housing project of the assessee company, viz., "C.G Heights" was approved by the Municipal Corporation, Raipur vide letter No.21/83/2005 dated 18.03.2005, i.e., prior to 31.03.2005; therefore, as per the provisions of Section 80IB(10)(a)(ii) of the Act, the assessee company

was obligated to have completed the construction of the said housing project within four years from the end of the financial year, in which, the same was approved by the local authority, i.e., latest by 31.03.2009.

11. The Tribunal further observed that there was no evidence place on record to prove that the "completion certificate" was issued by the chartered engineer before 31.03.2009 and was furnished with the local authority within the prescribed period. It was observed that the Chartered Engineers had, on 22.12.2010, for the first time, furnished a "completion certificate" of the housing project with the Nagar Palika, Raipur, the CIT(Appeals) had rightly observed that the assessee company had made an application for obtaining the "completion certificate" of its housing project from the local authority for the first time on 22.12.2010, which, however, was beyond the prescribed period as contemplated u/s. 80IB(10)(a)(ii) of the Act. In fact, it was held that the observation of the Ld. CIT(Appeals) was correct for the fact that the assessee company had wrongly claimed that it had filed with Municipal Corporation, Raipur, an application for obtaining a "completion certificate" of its housing project vide letter dated 25.08.2007. That finally the Tribunal upheld the view taken by the Ld. CIT(Appeals) holding that since the "completion certificate" issued for the housing project of the assessee company, viz., "C.G. Heights" was beyond the prescribed period for completion of the project for getting benefit u/s. 80IB(10) of the Act,

therefore, the Ld.CIT(Appeals) had rightly held that the assessee company was ineligible for claim of deduction under the said statutory provision.

12. That now the assessee company had come before the Tribunal only with respect to "Ground of appeal No.6" which was recalled through the miscellaneous application's order in MA No.17/RPR/2024 wherein the said ground is hit that the principles of res-judicata are not applicable in the income tax proceedings as already examined by us. In the said ground, the assessee has contended that just because the allowability of deduction was examined by the A.O for A.Y.2008-09, therefore such allowablity was also applicable for A.Y.2009-10 as well. However, as it has been discernible from the foregoing paras where the Tribunal has dealt with in detailed the facts and circumstances pertained to the claim of deduction u/s.80IB(10) of the Act and had dismissed the claim of the assessee upholding the order of the Ld.CIT(Appeals).

13. In such scenario, we are of the considered view that the "Ground of appeal No.6" shall not come to any rescue to the assessee since already the Tribunal had examined the facts for A.Y.2009-10 and had dismissed the claim of deduction u/s.80IB(10) of the Act in the case of the assessee. Accordingly, the "Ground of appeal No.6" raised by the assessee is dismissed. **Thus, the Ground of appeal No.6 raised by the assessee company is dismissed**.

14. In the result, appeal of the assessee company is dismissed.

Order pronounced in open court on 14th day of July, 2025.

Sd/-	Sd/-
ARUN KHODPIA	**PARTHA SARATHI CHAUDHURY**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 14th July, 2025
**SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.