

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.4420/Mum/2025

(Assessment year: 2011-12)

ITA No.4421/Mum/2025

(Assessment year: 2012-13)

Komal Enterprises Shop No.6, Mathura, Mahatma Phule Road, Dombivli(W), Dist. Thane, Pin- 421202 PAN:AAJFK5729M	vs	ITO Ward 3(3), Kalyan 2 nd Floor, Rani Mansion, Murbad Road, Kalyan (W), Dist. Thane- 421301
APPELLANT		RESPONDENT

Assessee by : Shri Subodh Ratnaparkhi
Respondent by : Shri Hemanshu Joshi (CIT DR)

Date of hearing : 22/01/2026
Date of pronouncement : 30/01/2026

ORDER

Per: Anikesh Banerjee (JM):

Both the appeals filed by the assessee against the separate orders of the NFAC, Delhi [for brevity 'the Id. CIT(A)], orders passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2011-12 and 2012-13, date of both the orders 29.05.2025. Both the impugned orders emanated from the order of the Ld. Income-tax Officer, Ward 3(3), Mumbai (for brevity the

“Ld. AO”) order passed under section 143(3) r.w.s. 147 of the Act date of orders 28.12.2018.

2. Both the appeals have same nature of fact and have a common issue. Both the appeals have taken together, heard together and disposed of by a common order. **ITA No.4420/Mum/2025 for A.Y. 2011-12** is taken as lead case.

3. Assessee has taken the following grounds.

“1. The Hon CIT(A) erred in upholding the re-opening the assessment u/s 147 of the I. Tax Act 1961, by issue of notice u/s 148 dt 26.03.2018, not appreciating that the original assessment was completed u/s 143(3) and four years had lapsed from the end of the relevant asst year and as per first proviso to sec 147, the re-opening could not be without any omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment which being not the case, the re-opening of assessment u/s 147 is bad-in-law and the asst. order flowing therefrom is required to be struck down on that count.

2. The Hon CIT(A) erred in upholding the re-opening the assessment u/s 147 of the I. Tax Act 1961, by issue of the notice u/s 148 dt 26.03.2018, not appreciating that such re-opening was not valid as per law and therefore the notice u/s 148 dt. 26.03.2018 as well as the assessment order flowing therefrom were required to be struck down and quashed as bad-in-law.

3. The Hon CIT(A) erred in not appreciating that the Id AO had framed the assessment u/s 143(3) r.w.s. 147 of the I.T Act, 1961 on 28.12.2018, without issuing notice u/s 143(2) and therefore the re-assessment proceedings completed without issue of notice u/s 143(2) were invalid and bad in law and hence the order u/s 143(3) r.w.s. 147 dt 28.12.2018 was required to be struck down on that count.

4. The Hon CIT(A) erred in upholding the addition of Rs.3,40,39,914/- made by the Id AO by disallowing deduction claimed u/s 80IB (10) of the I. Tax Act, 1961, not appreciating that the housing project developed by the appellant fulfilled the conditions prescribed by u/s 80 IB(10) of the I.T Act 1961 and therefore the benefit of deduction u/s 80IB(10) of the IT Act, 1961 was required to be granted as claimed in the return of income.

5. *The Hon CIT(A) erred in denying the appellant the deduction claimed u/s 801B(10) to the extent of Rs.3,40,39,914/- on the ground that commercial establishments of the housing project, exceeded the limit prescribed by sub section (d) to sec 801B(10), ignoring the fact that the housing project for which deduction u/s 801B (10) was claimed by the appellant did not contain any commercial premises and therefore the disallowance on the above ground was not justified.*

6. *The Hon CIT(A) erred in holding that the appellant was not eligible for deduction u/s 801B(10) to the extent of Rs.3,40,39,914/- for the reason that certain residential units in the housing project had built up area exceeding 1000 sq. ft., not appreciating that the appellants project at village Bopar, Manpada Road, Dombivili was beyond 25 kms from the limits of Mumbai city and therefore eligible for units having built up area upto 1500 sq. feet and therefore disallowance was not justified.*

7. *The Hon CIT(A) erred in holding that the appellant was not eligible for deduction u/s 801B(10) to the extent of Rs.3,40,39,914/- for the reason that certain units in the housing project developed by the appellant did not comply with the conditions of sec 801B(10), not appreciating that in such a situation, the appellant would be eligible for proportionate deduction in respect of all those units of the housing project which complied with the conditions of sec 801B(10) of the I.T Act, 1961 and therefore deduction u/s 801B(10) was required to be granted accordingly.*

8. *The appellant craves leave to add, alter, amend and/or vary any of the above grounds of appeal at any time before the decision of the appeal."*

4. The brief facts of the case are that the assessee is a partnership firm and engaged in business of construction of residential complexes. The partnership firm filed his return on 25.08.2011 declaring total income nil after claiming deduction u/sec. 801B (10) of the Act. The case was originally selected under CASS to verify the taxability of sale of property as reported in AIR. The order u/sec. 143(3) of the Act was passed on 21.05.2015 by allowing deduction u/sec. 801B (10). On verification the Ld. AO found that the assessee has not fulfilled the basic condition for availing deduction u/sec. 801B(10) of the Act amount of Rs.3,40,39,914/- that is commercial space in housing project exceeded prescribed

limit of 5% though the housing project was even 25 km. from municipal corporation of Mumbai city. Further, build up area of the same of residential flats exceeded prescribed limit of 1000 sq. feet, making the housing project ineligible for deduction u/sec. 80IB (10) amount to Rs.3,40,39,914/-. The Ld. AO treated the return as escape assessment and issue the notice u/sec. 148 of the Act. Finally the reassessment was completed and the addition was made by disallowing the deduction claimed u/sec. 80IB(10) amount to Rs.3,40,39,914/-. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) upheld the impugned reassessment order. Being aggrieved the assessee filed an appeal before us.

5. The Ld. AR argued and filed a paper book containing **page 1 to 176** which has been placed on record. The Ld. AR advance his argument and invited our attention in assessment order, framed u/sec. 143(3) of the Act by the Ld. AO considering the deduction claimed by the assessee u/sec. 80IB(10) of the Act. The relevant observations contained in the original assessment order in **para no.3 to 5** is reproduced as below:

“3. In response to the notices u/s. 143(2)/142(1) of the I.T. Act, Shri L. K. Dedhia CA, Authorized representative of the assessee, attended from time to time and explained the return of income. He also filed various submissions in support of return of income as per detailed questionnaire. The relevant part of the submission have been placed on record after due verification. The assessee's Representative has also submitted a copy of Tax audit report in Form no 3CB/3CD and form No. 10CCB with copy of Computation of income profit & loss account, balance sheet, copy of partnership deed, loan confirmations, Ledger of contractor and transporters, computation of income, copy of plan approval letter, copy of completion certificate etc. The issues arising in this case have been decided after carefully considering the assessee's written submissions and the information furnished. The firm has maintained regular books of accounts which are duly audited.

4. The assessee firm is engaged in business of 'Builders and Developers' under the name and style of M/s. Komal Enterprises. During F.Y. 2010-11 the firm has under taken a residential project named "SarvodayAnand" at Bhopar Village, Manpada Road, Dombivli (E).

5. The firm is engaged in the business of Civil construction, builder & developer of housing project and running the business under the name & style of M/s. Komal Enterprises, Dombivli (E). The firm has 4 partners. During F.Y. 2010-11 the firm has under taken a residential project named 'SarvodayAnand' at Survey No. 237, Hissa No. 4 & Survey No. 42, Hissa No. 3, situated at Bhopar Village, Manpada Road, Dombivli (E). The plan was passed & approved by the local authority i.e. Kalyan-Dombivli Municipal Corporation, (KDMC) by its Sanction order dtd. 21/07/2006 thereafter assessee has submitted revised approval of plan which is approved by KDMC vide letter dtd. 05/11/2008. As per provision of the Act the project was completed before 31/03/2012 (as per condition of sec. 80IB(10)), During the financial year firm has completed building/Wing No A,B,C,D & E. During the year under consideration, as per construction profit & loss account assessee has shown WIP at Rs. 14,63,70,000/-. It is seen that the assessee firm is following Percentage Completion method and during the year under consideration firm has declared profit Rs 3,48,42,934/- before interest & remuneration to the partner and claimed deduction u/s. 80IB (10) of the I.T. Act, under chapter VIA and has thus arrived at Nil income."

6. The Ld. AO supplied the recorded reason after submission of the return u/sec. 148 of the Act by the assessee. The observations of the Ld. AO contained in recorded reason are reproduced as below:

" The assessee is a partnership firm and engaged in the business of building construction work. The assessee has e-filed its return of income for the AY 2011-12 on 25.08.2011 disclosing total income of Rs.NIL/ and the same has been processed on 31.12.2011. Thereafter, order u/s 143(3) was passed on 05.02.2014 by the ITO Ward 3(1), Kalyan by accepting returned income.

02. The assessee is a builder developer and had completed a project called **Sarvoday Anand** at Dombivli. The assessee was allowed deduction of Rs.3,40,39,914/- under section 80IB(10) of the Act, for the project during A.Y. 2011-12. On verification, it is found that the project mentioned above, in Dombivli is located within 25 kms from the municipal limits of Mumbai. The distance from the outer limits of Mumbai municipal limits to Village Bhooper, Manpada Road, Dombivli, where the project is located, is less than 25 kms and as such the construction of flats exceeding 1000 sq. Ft. Built up area makes the project ineligible for deduction as per provisions of section 80IB(10) (c) of the I.T. Act, 1961.

2.1 It is further noticed that The assessee firm entered into an agreement on 21.05.2008 with M/s Ameet Developer for development of residential cum commercial building comprises of five residential and one commercial wings on plot admeasuring of 10549.73 sqmetres which included commercial construction of 1742.5 sq. mtrs. Thus, the percentage of commercial area to total area was 16.51%. Whereas, as per provisions of IT Act, the built up area of the shops and other commercial establishments included in the housing project does not exceed three percent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher. Thus, the assessee firm was not fulfilled the basic condition for availing deduction u/s 80IB(10) of the IT Act.

2.3 This has resulted in violation of one of the basic conditions for availing the benefit of deduction, which was aimed to promoting affordable housing. Hence, the deduction should not have been allowed to the assessee. The escapement of income is due to the reason that assessee failed to disclose correct particulars of income.”

7. The assessee submitted objections to the recorded reasons on 11/09/2018 vide letter dated 10/09/2018, a copy of which is annexed at **pages 43 to 45** of the APB. The relevant extracts of the objections contained in paragraphs 3 to 4.1 thereof are reproduced below:

“3. In this case originally assessment u/s 143(3) of the LT Act, 1961 was completed by the ITO, Ward 3(1), Kalyan on 05.02.2014, wherein our total income was determined at Rs.Nil, after allowing deduction u/s 80IB(10) amounting to Rs.3,40,39,914/-. As is noted in the said assessment order, the then AO had examined all the issues relevant to A.Y.2011-12, including the eligibility of our claim for deduction u/s 80IB(10) of the I.T Act, 1961. Only after due examination of our claim and verification of relevant records, the Id. AO had accepted our claim for deduction u/s 80IB(10) of the IT Act, 1961 in respect of the residential housing project "Sarvodaya Anand" developed by our firm at village Bhopar, Manpada Road, Dombivli (E), Dist. Thane.

4. The reasons recorded prior to issue of notice u/s 148 has raised two issues by which our claim for deduction u/s 80IB(10) of the IT Act, 1961 is sought to be challenged. We address the said issues as under.

4.1 Compliance with conditions of sub-clause (c) of section 80IB(10)-Bulls-up area of flats

In the reasons recorded, it is mentioned that our project "Sarvodaya Anand" at village Bhopar, Manpada Road, Dombivli (E), Dist. Thane is situated within 25 kms from the municipal limits of Mumbai and therefore having constructed flats having area exceeding 1000 sq. ft., the provisions of sub section (c) of section 80IB(10) stand breached. In the said regards, the reasons recorded do not throw light as to how a conclusion has been arrived at that our project is located within 25 Kms municipal limit of Mumbai.

Be that as it may, the provisions contained in sub-clause (c) of section 80IB(10) read as under.

"(c) the residential unit has a maximum built up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place and"

It may please be appreciated that the word used in this particular sub-section is Municipal limit of the City of Mumbai. The municipal limit of the city of Mumbai ends on the Central side between Sion and Kurla. The distance of the project from the said location being more than 25 Kms by road and the maximum built up area permissible to us in respect of residential units is 1500 Sq. ft. and not 1000 Sq. ft. It may kindly be appreciated that none of the residential units of our project exceed 1500 sq. feet (built up area).

To appreciate the above point, it is humbly submitted that the meaning of the exact term used in the sub-section is required to be considered. The Municipal limits of the "City" of Mumbai as well as "the Corporation" of Greater Mumbai are separately defined in the Mumbai Municipal Corporation Act of 1988 and they have to be accordingly so understood. This distinction which is crucial for determining the permitted area of built up units in the housing project is not euphemistic or imaginary but is the touchstone for implementation of Development Control Rules of the Corporation of Greater Mumbai."

8. The Ld. AR further contended that the reasons recorded by the Ld. AO factually incorrect that the assessee has entered into an agreement dated 21.05.2008 with M/s. Amit Developers for development of residential and commercial building comprising of five residential and one commercial wing. It is further mentioned that the percentage of commercial area to total area is

16.51%, thereby breaching of conditions of sub section clause (d) of section 80IB(10). In the course of original assessment the registered development agreement dated 21.05.2008 with M/s. Amit Constructions was submitted on record. The same was further referred by the assessee during the objections submitted against the recorded reason and as per the said development agreement the assessee has undertaken to develop only 5 buildings being building nos. A, B, C, D and E of the sanctioned plan. All these buildings are residential buildings with no commercial establishment therein. It is thus, the case that the development rights of commercial building were never granted to the assessee. The copy of the development agreement is duly annexed in **APB page no. 89 to 105**. So the entire observation made by the Ld. AO has no basis and without any tangible material and only by change of opinion. Hence, the notice issued U/s 148 is bad in law which is vitiated the entire proceeding.

9. The Ld. DR argued and submitted that the assessee had violated the provisions of section 80IB(10) of the Act. It was contended that, during the original assessment proceedings, the Ld. AO had not examined the issue relating to the existence of commercial units in the project, nor had the AO verified whether the project was situated within the prescribed distance of 25 km, as stipulated under section 80IB(10)(c) of the Act. The Ld. DR further invited our attention to the rebuttal submitted by the Ld. AO in response to the objections raised by the assessee against the recorded reasons for reopening. The relevant portions of the Ld. AO's rebuttal, as contained in paragraphs 5 and 6 thereof, are reproduced below:

“5. So far with the above mentioned objections raised by the assessee are concerned, it is to be mentioned here that section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction.

6. From the above it can be easily drawn that assessment proceedings u/s 147 for AY 2011-12 cannot be dropped as the above mentioned facts, circumstances and reasons recorded by the undersigned clearly indicate that there was income chargeable to tax more than one lakh that has escaped assessment for A.Y. 2011-12.”

10. We heard the rival submissions and perused the material available on record. The Ld. AR contended that, during the original assessment proceedings under section 143(3) of the Act, the issue was duly examined by the Ld. AO and the deduction under section 80IB(10) of the Act was consciously allowed. While issuing the notice under section 148 of the Act, the Ld. AO observed that the assessee had developed commercial units within the project, that the built-up area of certain flats exceeded the statutory limit, and that the project was situated within 25 km of the Mumbai Municipal limits; consequently, according to the Ld. AO, the assessee was not eligible for deduction under section 80IB(10) of the Act. The Ld. AR, on the other hand, placed reliance on the judgment of the Hon'ble **Madras High Court** in **Vishwas Promoters (P.) Ltd. v. ACIT** reported in **29 taxmann.com 19 (Mad)**, wherein it was held that each residential block in a housing project constitutes a separate housing project for the purpose of claiming deduction under section 80IB(10) of the Act. It was further held that if any part of the project satisfies the conditions prescribed under section 80IB(10), the assessee would be entitled to deduction in respect of such compliant units.

Accordingly, it was submitted that all the eligible residential units of the assessee satisfied the conditions laid down under section 80IB(10) of the Act.

With regard to the jurisdiction of the Ld. AO to reopen the assessment under section 148 of the Act, despite full and true disclosure of all material facts by the assessee during the assessment under section 143(3) of the Act, reliance was placed on the judgments of the Hon'ble **Bombay High Court** in **Anand Developers v. ACIT** reported in **425 ITR 261 (Bom)** and **Ananta Landmark (P.) Ltd. v. DCIT** reported in **439 ITR 168 (Bom)**. On perusal of the records, we find that the Ld. AO had conducted a detailed enquiry during the original assessment proceedings under section 143(3) of the Act and passed the assessment order dated 05.02.2014 after examining the conditions prescribed for allowing deduction under section 80IB(10) of the Act. The observations recorded in the reasons for reopening are not supported by any new tangible material. Respectfully following the ratio laid down in the aforesaid judicial precedents, we hold that the notice issued by the Ld. AO under section 148 of the Act, assuming jurisdiction for reopening the assessment, is bad in law. Consequently, the assessment order passed pursuant thereto is quashed, and the addition made by the Ld. AO amounting to Rs.3,40,39,914/- is deleted.

Since the appeal has been decided on the legal issue and the reassessment itself has been quashed, the remaining grounds raised by the assessee are rendered academic in nature and are accordingly kept open.

11. As the appeal of the assessee for the assessment year 2011-12 has been decided in its favour, the findings recorded therein are squarely applicable to the assessment year 2012-13 as well, *mutatis mutandis*.

12. In the result, the appeal of the assessee bearing **ITA Nos.4420 & 4421/Mum/2025** are allowed.

Order pronounced in the open court on 30th day of January 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/01/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI