

# ***Pro-rata benefit under section 80IB allowed to developer of housing projects basis number of flats meeting the specified conditions***

October 7, 2018

## ***In brief***

In a recent ruling,<sup>1</sup> the Pune bench of the Income-tax Appellate Tribunal (Tribunal) held that the taxpayer should be entitled to a pro-rata deduction under section 80IB of the Income-tax Act, 1961 (the “Act”) on the profits earned, excluding the profits earned on two flats that were allotted to the spouses of the respective individuals.

Further, the Tribunal also held that where the taxpayer had made an application for the completion certificate within the prescribed timeframe, it would not be disentitled to claim deduction under section 80IB of the Act merely because the completion certificate had not been received.

## ***In detail***

### ***Facts***

- The taxpayer was a company engaged in the business of developing and building housing projects.
- The taxpayer had developed a housing project and allotted multiple flats to members of the same family.
- Further, the taxpayer had made an application with the local authority for the completion certificate of the clubhouse within the prescribed time limit. However, the taxpayer did not receive the completion certificate on time for it to be submitted before the tax officer (TO) during the assessment proceedings.
- As per section 80IB(10) of the Act, deduction in respect of profits derived from developing and building housing projects was admissible, subject to, *inter alia*, the conditions that no more than one flat should be allotted to an individual, including the spouse or minor child of the individual, and the completion certificate should be obtained from the local authority. The taxpayer claimed deduction under section 80IB(10) of the Act despite not complying with some stipulated conditions.
- The TO disallowed the deduction claimed by the taxpayer under section 80IB completely, for non-fulfilment of the specified conditions.
- On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] held that the taxpayer was eligible to claim deduction under section 80IB of the Act on a pro-rata basis, except for the profits earned on flats allotted to members of the same family. However, the CIT(A) disallowed the deduction claimed on profits earned from the clubhouse, as the taxpayer was unable to furnish the completion certificate even after a period of time.

<sup>1</sup> ITA Nos. 1974 to 1976/ PUN/ 2016  
CO Nos. 40 to 42/ PUN/ 2018

### Issues before the Tribunal

- Whether the CIT(A) was correct in allowing deduction under section 80IB of the Act on a pro-rata basis, even when the taxpayer had violated one of the conditions for claiming deduction, i.e., allotting multiple flats to members of the same family?
- Whether the CIT(A) was correct in disallowing deduction under section 80IB of the Act on a pro-rata basis in respect of profits from the clubhouse, for non-submission of the completion certificate?

### Tribunal's ruling

- The Tribunal noted that the taxpayer had violated the provisions of section 80IB(10) of the Act by allotting multiple flats to some individuals and their spouses.
- However, the Tribunal relied on judgements of the Madras High Court (HC)<sup>2</sup> to hold that the taxpayer was entitled to claim the deduction on pro-rata basis on the profits earned, excluding the profits earned on two flats that were allotted to the spouses of the respective individuals.
- Further, with respect to non-submission of the completion certificate for the clubhouse

the Tribunal relied on the judgement of the Bombay HC.<sup>3</sup> The Court held that in case the application was made on time before the local authority and although no completion certificate was received, it would suffice as compliance with the conditions stipulated under section 80IB(10) of the Act.

- Consequently, the Tribunal held that merely because the completion certification was not received from the local authority, it should not disentitle the taxpayer's claim of deduction under section 80IB(10) of the Act on the profits earned from the clubhouse.

### The takeaways

- The Tribunal has laid down a ratio that non-compliance with certain qualificatory conditions should not disentitle a taxpayer from claiming tax holiday under section 80IB of the Act. However, a pro-rata disallowance, to the extent of the non-compliance, should be made in such cases. It is necessary to evaluate whether the principle laid down by the Tribunal could be applied in interpreting other tax holiday

provisions as well. However, since the law is still not clear on this issue, it is expected to be a subject of litigation in the coming years.

- The Madras HC<sup>4</sup> and Karnataka HC<sup>5</sup> have also held that the proportionate deduction under section 80-IB should be available to a taxpayer even if one of the specified conditions are not fulfilled. In this regard, it is pertinent to note that the Panaji bench<sup>6</sup> and the Bangalore bench<sup>7</sup> of the Tribunal have upheld the complete disallowance of deduction under section 80IB of the Act in similar fact patterns. The decision of the Tribunal that an application for completion certificate within the stipulated timeframe should be sufficient compliance for claiming deduction under section 80IB of the Act, should favour genuine cases, where the local authorities have not issued the completion certificate due to reasons beyond the control of taxpayers.

### Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

<sup>2</sup> CIT v. Arun Excelllo Foundation Private Limited [Tax Appeal No. 1348 and 1349 of 2007 (Madras)] and Vishwas Promoters Private Limited v. ACIT [Tax Appeal No. 1014 of 2009 (Madras)]

<sup>3</sup> CIT v. Hindustan Samuh Awast Limited [2015] 377 ITR 150 (Bombay)

<sup>4</sup> CIT v. Elegant Estates [2016] 383 ITR 49 (Madras)

<sup>5</sup> PCIT v. Oceanus Dwellings Private Limited [2017] 395 ITR 376 (Karnataka)

<sup>6</sup> DCIT v. Models Construction Private Limited [ITA No. 415/PNJ/2015]

<sup>7</sup> Shri Syed Aleemullah v. DCIT [ITA No. 389 of 2016 (Bangalore ITAT)]

## Our Offices

### Ahmedabad

1701, 17th Floor, Shapath V,  
Opp. Karnavati Club,  
S G Highway,  
Ahmedabad – 380051  
Gujarat  
+91-79 3091 7000

### Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th  
Floor, Road No. 10, Banjara Hills,  
Hyderabad – 500034,  
Telangana  
+91-40 44246000

### Gurgaon

Building No. 10, Tower - C  
17th & 18th Floor,  
DLF Cyber City,  
Gurgaon – 122002  
Haryana  
+91-124 330 6000

### Bengaluru

6th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bengaluru – 560 008  
Karnataka  
+91-80 4079 7000

### Kolkata

56 & 57, Block DN.  
Ground Floor, A- Wing  
Sector - V, Salt Lake  
Kolkata - 700 091  
West Bengal  
+91-033 2357 9101/  
4400 1111

### Pune

7th Floor, Tower A - Wing 1,  
Business Bay, Airport Road,  
Yerwada, Pune – 411 006  
Maharashtra  
+91-20 4100 4444

### Chennai

8th Floor  
Prestige Palladium Bayan  
129-140 Greems Road  
Chennai – 600 006  
Tamil Nadu  
+91 44 4228 5000

### Mumbai

PwC House  
Plot No. 18A,  
Guru Nanak Road(Station Road),  
Bandra (West), Mumbai – 400 050  
Maharashtra  
+91-22 6689 1000

### For more information

Contact us at  
[pwctr.knowledgemanagement@in.pwc.com](mailto:pwctr.knowledgemanagement@in.pwc.com)

## About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com)

In India, PwC has offices in these cities: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Jamshedpur, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit [www.pwc.com/in](http://www.pwc.com/in)

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

©2018 PwC. All rights reserved

## Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.