

Section 80-IBA of the Income-tax Act



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- Section 80IBA was introduced by Finance Act 2016.
- The main intent for introducing this section was to incentivise affordable housing sector as a part of larger objective of the government of “Housing for All”.
- The section provides for 100% deduction of the profits of an assessee developing and building housing project if the housing project is approved by the competent authority before the 31st March, 2020 subject to certain conditions explained in further slides
- The provisions of this section take effect from 1st of April, 2017 and accordingly, apply from assessment year 2017-18.

Deduction of 100% of the profits derived from the business of developing and building housing projects, subject to certain conditions, which inter-alia provides:

- The housing project is approved by the competent authority after 1st June 2016 but on or before March 31, 2020
- The project is completed within a period of five years from the date of approval
- Carpet area of shops and other commercial establishments shall not exceed 3% of the aggregate Carpet area

Incentives for housing sector u/s 80IBA



- The project is on a plot of land measuring not less than 1000 square meters where the project is located in Delhi, Mumbai, Chennai and Kolkata (“Metros”), or 2000 square meters, where the project is located in any other place (“Other than Metros”)
- The project is the only housing project on the plot of land
- The carpet area of the residential unit in the said project is not more than 30 square meters where such project is located in Metros or 60 square Meters in area other than Metros.

- Where residential unit is allotted to an individual, no such unit shall be allotted to the individual or to the spouse or the minor children of such individual.
- The project shall utilize at least 90% of the floor area ratio permissible in respect of plot located in Metros and 80% in areas other than Metros.
- The assessee should maintain separate books of accounts in respect of the housing project.

The assessee should not act as a works contractor.
CIT vs Radhe Developers [2012] 204 taxmann.com 543 (Guj. HC)

Incentives for housing sector u/s 80IBA



- Reversal of deduction if project not completed within five years from the date of first approval. Taxability will arise in the previous year in which the completion expires.
- Simultaneous deduction in respect of such income not allowed under any other section.

Definition – For the purpose of section 80IBA

- a) Carpet Area: It shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) which is as follows:

“the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment”.

Explanation— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

Refer Circular No. 4/ 2017 dated 14 June 2017 of MahaRERA
Authority for Carpet Area.

Definition – For the purpose of section 80IBA



- b) **Competent authority:** The authority empowered to approve the building plan by or under any other law for the time being in force

- c) **Floor area ratio:** The quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land

- d) **Housing project:** A project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve subject to the provisions of this section

- e) **Residential Unit:** An independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

80IB and 80IBA Comparison

Comparison Point	80IB(10)	80IBA
Deduction available to	An undertaking	An assessee
Completion Certificate	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	The project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority
Floor area ratio	-	Metros $\geq 90\%$ Non-metros $\geq 80\%$
Books of Accounts	Maintenance of separate books of accounts not necessary	Separate Books of accounts to be maintained for the project.

80IB and 80IBA Comparison

Comparison Point	80IB(10)	80IBA
Residential Unit	-	An independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.
Allotment of residential unit to person not being an individual	Only one unit can be allotted	No such condition

80IB and 80IBA Comparison

Comparison Point	80IB(10)	80IBA
Once one residential unit is allotted to an individual, further no allotment	<ul style="list-style-type: none">- Hindu undivided family in which such individual is the karta- 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	No such condition

1. Whether section 80IBA needs to be interpreted liberally or strictly?
 - B.R. Constructions v/s ACIT, ITA No.68/Hyd/2013
 - Sigma Constructions [2013] 33 taxmann.com 523 (Hyd-ITAT)

2. Whether the ownership of the land is necessary to claim the deduction?
 - CIT v/s Radhe Developers [2012] 204 taxmann.com 543 (Guj. HC)
 - Swastik Associates [2014] 46 taxmann.com 53 (Guj. HC)

3. Meaning of “Only housing project on a plot of land” and “project as a whole”
 - Vandana Properties [2012] 19 taxmann.com 316 (Bombay HC)

4. Significance and meaning of first approval as mentioned in proviso to section 80IBA(2) vs project as a whole
 - Siddhivinayak Kohinoor venture v. ACIT [2015] 54 taxmann.com 32 (Pune – Trib)

5. Derived versus attributable?
 - “Derived from” there must be direct nexus between the profit and the business
 - Deductibility for disclosure made during search or survey. Whether provisions of section 269SS can be invoked?
 - Deductibility for disallowance made for non-deduction of TDS u/s 40(a)(ia) or under other sections
6. Allowability of section 80IBA for assessee’s following percentage completion method.
 - Vertex Homes (P.) Ltd. v/s DCIT [2015] 62 taxmann.com 285 (Hyd ITAT)
 - CBDT instruction No. 4 of 2009 dated 30/06/2009
7. Satisfaction of condition to be seen at what point of time.
 - Baba Promoters and Developers [2012] 25 taxmann.com 84 (Pune ITAT)
8. Applicability of MAT and AMT?

9. Whether approval has to be in the name of the assessee developer?
 - Shreenath Infrastructure [2014] 44 taxmann.com 461 (Guj. HC)
 - Sahajanand Associates [2014] 44 taxmann.com 458 (Guj. HC)

10. If the return is filed belated whether deduction u/s 80IBA can be claimed?
 - Refer section 80AC

11. Consequences of non-fulfillment of conditions other than completion

12. Whether prior approval is required for claiming 80IBA or approval can be obtained during the course of the project?

13. Whether deduction u/s 80IBA & 80JJAA both can be claimed?

14. ICDS impact if the percentage of completion method is followed.



QUESTIONS

Thank You



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