

## Chapter 5: Assessment of impact of tax incentives provided to housing projects

**5.1** In order to promote the housing sector and to encourage better availability of dwelling units for the lower and middle class sections of society, section 80-IB(10)<sup>32</sup> was introduced in the Income Tax Act, 1961 in 1998. Under this section, subject to fulfillment of certain conditions deduction from profit was to be allowed to the builder. This chapter highlights the attempt of audit to ascertain whether the benefits intended in introducing section 80-IB(10) of the Act were achieved by allowing deductions to the real estate sector.

The specific tax incentives provided by the Government have a definite revenue impact, known as 'Revenue Foregone' and may be viewed as an indirect subsidy to tax payers. The quantum of revenue foregone may be used to assess the impact of tax deduction incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector. The details of revenue foregone during last four FYs are shown in Table 5.1 below.

Financial Year	Amount of Revenue foregone (₹ in crore)		
	Corporate	Firms/BOI/AOP	Individual <sup>33</sup>
2013-14	180.1	266.0	82.0
2014-15	105.4	172.9	63.6
2015-16	56.9	136.6	40.3
2016-17	65.27	89.92	22.7

Source: Figures are as per respective Receipt Budget

Against a query of the Audit, whether the Government of India have put in any mechanism to monitor the impact of the tax incentives like under section 80-IB(10) of the Act, the Ministry replied (January 2018) that such concessions are provided to various sectors upon specific requests/ recommendations made by the administrative ministries under the jurisdiction of which such sectors are covered and that specific sectoral analysis of revenue foregone may be undertaken by the administrative Ministry which has recommended direct tax concessions as a policy initiative to lead development of that sector.

Thus, the Ministry does not have any mechanism to assess the impact of revenue foregone in terms of creating affordable housing and its effect on growth in the housing sector.

**Recommendation:** *The Ministry may like to put in place a mechanism whereby the ITD gets inputs from the concerned administrative Ministry before it*

<sup>32</sup> abolished w.e.f. 1.4.2016

<sup>33</sup> includes deduction allowed other than under section 80-IB(10)

*reviews the incentives given in schemes under the provisions of the Act so that the Ministry is in a position to monitor and measure the benefits of tax incentive to the intended groups.*

The CBDT stated (July 2018) that administrative ministries were being requested to provide an impact assessment study in respect of tax concessions provided for the sectors under their jurisdiction and provide a cost-benefit analysis on various aspects.

ITD did not have any information with it with regard to impact of revenue foregone on growth in housing sector when the Audit asked for the same which gives reasons to believe that the benefits of tax incentives for the intended groups are not being monitored.

## **5.2 Affordable criteria and allowance of deduction**

### **5.2.1 Non-existence of affordability criteria**

Section 80-IB(10) of the Income Tax Act, 1961 provides for hundred *per cent* deduction of profit derived from an undertaking engaged in the business of development or construction of housing projects subject to fulfillment of certain conditions viz.

- completion of the project within the prescribed period,
- size of plot of land which has a minimum area of one acre,
- maximum built-up area of residential unit up to 1,000 sq. ft. for Delhi and Mumbai and its outskirts within 25 Kms from its municipal limits and 1,500 sq. ft. for other areas,
- not more than one residential unit in the housing project is allotted to any person not being an individual.
- non-allotment of unit to the spouse or minor children of an individual to whom unit is allotted in the housing project, etc.

In addition, section 80AC provides that the return of income for an assessment year has to be filed before the due date specified under the Act to avail deduction under section 80-IB(10) in that assessment year. For claiming deduction under section 80-IB(10), the assessee is required to file a certificate from chartered accountant in the prescribed form 10CCB.

As per report of Technical Group on Urban Housing shortage<sup>34</sup>, prepared in 2012, there was overall shortage of 18.78 million housing units, out of which, 96 *per cent* of shortage was in the economically weaker section (EWS) and low income group (LIG) categories. In November 2017, the Minister of State

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34 Source: Government of India Ministry of Housing And Urban Poverty Alleviation, National Buildings Organisation [www.mhupa.gov.in](http://www.mhupa.gov.in)

in-Charge, Housing and Urban Affairs stated that shortage in housing has been assessed at 10 million.

A Task Force<sup>35</sup> set up by the Ministry of Housing and Urban Poverty Alleviation (MHUPA) suggested parameters for a affordable house for households belonging to EWS/LIG categories as a unit

- (i) with carpet area most likely between 300 and 600 sq. ft. (i.e. 27.87 to 55.74 sq. mtr.), with
- (ii) the cost not exceeding four times the household gross annual income;
- (iii) EMI/rent not exceeding 30 *per cent* of the household's gross monthly income.

MHUPA set up another Task Force in November 2010 for developing transparent qualified criteria and a separate set of guidance for affordable housing in PPP projects for circulation to states. The Task Force in its Report of November 2012 considered an affordable house as an individual dwelling units with a carpet area of not more than 60 sq. mt. and preferably within the price range of 5 times the annual income of the household; and recommended that

- Minimum size of a habitable EWS dwelling unit should be of a carpet area of 21-27 sq. mt. EWS category and 28-40 sq. mt. for LIG category,
- the maximum household income for the EWS and LIG category should be ₹ 8,000/- and ₹ 16,000/- per month or an annual income of ₹ 100,000 for EWS and ₹ 200,000/- for LIG,
- provisions of section 80-IB(10) be made applicable for Affordable Housing projects sanctioned after 31<sup>st</sup> March 2008, at least for 10 years till 2018 which fulfill the conditions prescribed by the MHUPA.

Reserve Bank of India in its notification<sup>36</sup> dated 15 July 2014 also indicated to consider ₹ 10 lakh as cost of construction of dwelling unit in a housing project exclusively for the purpose of construction of houses only for EWS and LIG.

There is a multiplicity of criteria for classifying housing projects for EWS/LIG groups by the Government of India on the basis of the size/affordability of the dwelling units.

Audit observed that dwelling units having built-up area as prescribed in section 80-IB(10) were being offered by the builders, availing deduction under section 80-IB(10), between ₹ 16 lakh (Delhi) to ₹ 3.15 crore (Mumbai). As such, these were out of reach for EWS and LIG categories, as a person earning rupees one

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35 'High Level Task Force on Affordable Housing for All' under the Chairmanship of Shri Deepak Parekh, Chairman of the Housing Development Finance Corporation Limited (HDFC) (2008)

36 RBI/2014-15/127 -DBOD.BP.BC.No.25 / 08.12.014 / 2014-15 July 15, 2014 on Issue of Long Term Bonds by Banks – Financing of Infrastructure and Affordable Housing.

lakh per annum is unlikely to afford such costly dwelling units. Thus, the purpose of providing deduction under section 80-IB(10) for better availability of housing to EWS and LIG section of the societies were not being met to that extent.

### **5.2.2 Irregularities in allowing deduction under section 80-IB(10)**

During examination of the assessment records, provided in selected assessment charges, Audit noticed that the ITD did not ensure that the pre-conditions for availing the benefits under the provisions of section 80-IB(10) were fulfilled in respect of 72 cases involving tax effect of ₹ 270.68 crore. The deduction was allowed despite non fulfilling of the requisite pre conditions such as filing of return of income beyond due date, project not completed within the specified time, the built up area of the residential unit being more than provided in the section; allotment of more than one residential unit, income not derived from business of developing and building housing project, non-production of report in Form 10CCB and non-maintenance of separate accounts of business of developing and building housing projects etc.

Five cases are illustrated below:

- a. In Karnataka, PCIT-IV Bengaluru charge, the assessments of an assessee Shri Syed Aleemulah for the AYs 2012-13 and 2013-14 were completed under section 143(3) in March 2015 and March 2016 determining income of ₹ 24.66 lakh and ₹ 14.01 lakh after allowing deduction of ₹ 2.81 crore and ₹ 4.57 crore under section 80-IB(10) respectively.

Audit observed that in AY 2012-13, the assessee had allotted more than one Flats (No. 902, 1002 in B-Block and 1103 in A-Block) to Mr. Hidayath and his family members.

Audit also observed that for AY 2013-14 an inspection of the project was carried out by the departmental officer on the direction of concerned JAO in March 2016 which showed three duplex apartments viz. B-901 & B-1001, B-902 & B-1002 and B-903 & B-1003 had a built up area of more than 3,100 sq. ft. which exceeded the prescribed limit of 1,500 sq. ft. Further, apartment no. B-902/B-1002 were allotted to a single person. Thus, this project did not qualify for the deduction under section 80-IB(10). However, the AO did not take into consideration this inspection report during scrutiny assessment and allowed deduction.

Hence the deduction of ₹ 7.38 crore (₹ 2.81 crore + ₹ 4.57 crore) claimed for unqualified projects was required to be disallowed. The mistakes had resulted in short levy of tax of ₹ 240.72 lakh (₹ 86.83 lakh + ₹ 153.89 lakh).

- b. In Goa, PCIT Panaji charge, assessment of M/s Anand Developer for the AY 2012-13 was completed under section 143(3) in March 2015 at returned income of ₹ 0.62 lakh after allowing deduction of ₹ 3.19 crore as claimed by the assessee. Audit noticed that the assessee had filed the return of income on 31.12.2012, i.e. after due date of filing of return i.e. 30.09.2012. As the return of income was not filed before the due date, deduction allowed under section 80-IB(10) was required to be disallowed. However, the ITD did not consider the disallowance resulting in short levy of tax of ₹ 1.51 crore.
- c. In Delhi, PCIT-3, assessment of M/s Pearls Infrastructure Projects Limited for the AYs 2011-12 and 2012-13 was completed under section 153A read with section 143(3) in March 2016 at returned income ₹ 12.92 crore and ₹ 27.57 crore respectively. The assessee had claimed deduction of ₹ 1.93 crore and ₹ 4.91 crore under section 80-IB(10) respectively. Audit observed that the assessee was not eligible for this deduction since the assessee had not complied with the conditions laid down in the section 80-IB(10).
- (i) The assessee has shown completion of one project (Pearls Gateway Tower, Vadodara, Gujarat) in AY 2011-12. Audit noticed that all the flats constructed in this project were more than prescribed size of 1,500 sq. ft.
- (ii) The assessee has shown completion of another project (Nirmal Chhaya Tower, Zirakpur, Punjab) in AY 2012-13, wherein out of 751 dwelling units, 520 units were of more than prescribed size of 1,500 sq. ft. Besides, in this project, 433 units were sold to a company (M/s PACL Limited).
- (iii) No project completion certificate from the competent authority to substantiate that the project was completed within the time schedule and certificate in form 10CCB was available in the assessment records for both the AYs.

Thus, the AO failed to watch the compliance of provisions of section 80-IB(10) and allowed the deduction resulting under assessment of income of ₹ 6.84 crore involving short levy of tax of ₹ 3.37 crore including interest.

- d. In Goa, PCIT Panaji charge, assessment of M/s Prudential Developer for the AY 2010-11 was completed under section 143(3) read with section 147 in April 2013, AYs 2011-12 and 2013-14 under section 143(3) in April 2013 and March 2016 respectively after allowing deduction under

section 80-IB(10) of ₹ 15.37 lakh, ₹ 3.25 crore and ₹ 28.55 lakh respectively. Audit observed that

- (i) As per Form 10CCB the project was under construction in AY 2010-11.
- (ii) Two units in Project Pristine were allotted to Mr. Rohan Ramchandra Pai Pannandikar and his spouse Mrs. Nutan Rohan Pannandikar (Flat nos. 2/T-1 and 2/T-2).
- (iii) Two units in the Project were allotted to Mr. Sunher Nipun Thanawalla and Ms. Lina Nipun Thanawalla (Flat no. 4/T-1) and Mr. Sunher Nipun Thanawalla and Mr. Nipun Thanawalla (Flat no. 4/T-2).

Thus, the AO has allowed deduction to a non-eligible project and which was under construction in AY 2010-11. Failure to comply with the provisions ibid has resulted in short levy of tax of ₹ 1.42 crore for the three AYs.

- e. In Maharashtra, Pr. CIT (Central-III), Mumbai charge, the assessment of M/s Hubtown Limited for the assessment year 2014-15 was completed under section 143(3) in December 2016. Audit observed that the assessee withdrew ₹ 15.06 crore from purchases stating that this purchase was made from a supplier which was appearing in the list of bogus dealers published by Maharashtra Sales Tax department. Audit noticed that though this withdrawal resulted into increase in profit, however, this withdrawal did not result into any increase in tax revenue as the same was allowed as deduction under section 80-IB(10). This resulted into undue benefit to the assessee.

From the above, it can be seen that the AOs had committed such errors in the assessments ignoring clear provisions in the Act which obviously reflect weaknesses in internal controls on the part of ITD which need to be addressed.

Enforcement of conditions for allowing deductions under section 80-IB(10) was weak, leading to benefits being availed by non-eligible persons/unintended groups. Thus, the targeted groups could not be benefited and the revenue foregone on this count year after year by the Government may have benefitted unintended persons.


**Recommendation:** *The Ministry may ensure the verification of certificate in form 10CCB and in the case of the certificate found to be incorrect, the Chartered Accountant may be held accountable.*

The CBDT accepted (July 2018) the recommendation.

### 5.3 Conclusion

The Ministry does not have any mechanism to assess the impact of revenue foregone in terms of creating affordable housing and its effect on growth in the housing sector. There is a multiplicity of criteria for classifying housing projects for EWS/LIG groups by the Government of India in terms of the size/affordability of the dwelling units. The purpose of providing deduction under section 80-IB(10) for better availability of housing to EWS and LIG section of the societies were not being met to the extent that the prices of dwelling units were out of reach of these target groups. Enforcement of conditions for allowing deductions under section 80-IB(10) was weak, leading to benefits being availed by non-eligible persons/unintended groups. Thus, the targeted groups could not be benefited and the revenue foregone on this count year after year by the Government may have benefitted unintended persons.

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