IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 1 OF 2012

The Commissioner of Income Tax
Aayakar Bhavan, near Holy Cross
School, Cantonment,
AURANGABAD ...Appellant

versus

Hindustan Samuh Awas Limited,
Block 1-9, First Floor, Narayan Plaza
Cannaught Place, CIDCO
AURANGABAD ...Respondent

WITH
INCOME TAX APPEAL NO. 2 OF 2012

The Commissioner of Income Tax
Aayakar Bhavan, near Holy Cross
English School, Cantonment,
AURANGABAD ...Appellant

versus

Hindustan Samuh Awas Limited,
Block 1-9, First Floor, Narayan Plaza
Cannaught Place, CIDCO
AURANGABAD ...Respondent

.....
Mr. Alok M. Sharma, advocate for appellant
Mr. Anil S. Bajaj, advocate for respondent sole
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CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.

DATED : 2nd FEBRUARY, 2015

ORAL JUDGMENT (PER A.V. NIRGUDE, J.):-

1. These Appeals by Revenue challenged the judgment and order passed by the Income Tax Appellate Tribunal, Pune, in Appeal Nos. 945 to 950/PN/2010. The facts leading to these Appeals are as under :

2. The respondent is a builder and developer company. They had undertaken a Mega Housing Project on a layout covering an area of about 25 acre at Aurangabad. The project was approved in February, 2000. The respondents completed part of the project and obtained Completion Certificate for that part of the project from Aurangabad Municipal Corporation on 10.10.2008. The respondent sought exemption under Section 80-IB(10) of the Income Tax Act in all the assessment years 2002-2008. It was their case that the profit made in these years from the sale of flats etc. from this project is exempted from Income Tax. Their claim was denied by the Assessing Officer on the ground that Completion Certificate was not issued on or prior to 31.03.2008. Relevant provision of the Income Tax Act reads as under :

> "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,—

(i) 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;

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

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

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

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher;

(e) not more than one residential unit in the housing project is allotted to any person not 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;*

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking

> which executes the housing project as a works contract awarded by any person (including the Central or State Government)."

3. The respondent's appeal before the Commissioner of Income Tax (Appeals), was dismissed. As against this, the respondent went before Income Tax Appellate Tribunal, where the impugned order was passed.

4. The ITAT held that in view of the fact that the respondent had made application seeking Completion Certificate prior to 31.03.2008, the date on which the Completion Certificate was issued was not material. It also held that the delay in obtaining Completion Certificate was not attributable to the respondent. This delay was beyond their control.

5. The following substantial question of law arises in these appeals:

> "Is it permissible in law to compute the date on which the completion certificate in respect of housing is issued by the local authority as provided in explanation to section 80IB(10) of the Income Tax Act? If yes, how?"

6. We have heard the submissions at bar at length. We have

also perused the opposite view expressed by the Commissioner (Appeals), in his judgment. In the said judgment, he opined that the explanation to Section 80-IB(10)(a)(ii) of the Act must be strictly construed. He rejected the respondent’s contention that this provision has introduced a doubt. He preferred the literal interpretation of Section 80-IB(10) and the explanation referred to above.

7. Mr. Sharma, learned council for the appellant contended that we should adhere to the opinion expressed by the Commissioner (Appeals) and set aside the judgment of the ITAT. In support of his contentions, he placed reliance on the following judgments :

i. Union of India vs. Dharamendra Textile processors reported in 2008 SCC (13) 369, and (para 13 and 14)

ii. Commissioner of Central Excise, Bhavnagar vs. Saurashtra Chemicals Limited, reported in (2007) 10 SCC 352. (para 13)

Para Nos. 13, 14 and 15 in the case of Union of India vs. Dharmendra Textiles (supra) read as under:-

“13. It is well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition

which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements.

14. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See institute of Chartered Accountants of India v. Price Waterhouse 1977 (6) SCC 312). The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846) 6 MOO pc1, the courts cannot aid the legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel 1989 (3) SCC 234). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [see Stock v. Frank Jones (Tipton), Ltd 1978 (1) ALL ER 948.] Rules of interpretation do not permit the courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. The courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the act itself. (Per Lord Loreburn, L. C. in Vickers Sons")

15. The question is not what may be supposed and has been intended but what has been said. "statutes should be construed *not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them".*

Para No.13 in the case of Commissioner of Central Excise, Bhavnagar vs. Saurashtra Chemicals Limited (supra) reads as under:-

13. A beneficent statute may have to be considered liberally but where a statute does not admit of more than one interpretation, literal interpretation must be resorted to. The provision allows taking of credit but the same is circumscribed by the condition as is apparent from the use of the words "subject to" and is limited to an amount not exceeding 50% of the duty paid on such capital goods. The term "subject to" in the contest assumes some importance. In Ashok Leyland Ltd. v. State of T.N. This Court held: (SCC p. 36, para 79)

"79. … 'Subject to' is an expression whereby limitation is expressed. The order is conclusive for all purposes."

This Court further noticed the dictionary meaning of "subject to" stating: (SCC p. 38, paras 92-93)

92. Furthermore, the expression 'subject to' must be given effect to.

93. In Black's Law Dictionary, 5th Edn. at p. 1278, the *expression 'subject to' has been defined as under:*

'Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. Homan V. Employers Reinsurance Corpn."

8. The learned council for the appellant asserted that though Sub-section (10) is a provision relating to exemption, since the explanation does not introduce any uncertainty, it must be read and interpreted literally.

9. On the other hand, learned council for the respondents contended that even assuming that there is no doubt arising from the interpretation of Section 80-IB and the explanation referred to above, there is scope for holding that the interpretation had inducted an element, which goes against the spirit and purpose of the Section. He also placed reliance on a judgment of Gujarat High Court in the case of ***CIT vs. Tarnetar Corporation reported in [2014] 362 ITR 174 (Guj.)*** on the point. We have perused the judgment of Gujarat High Court and found that the situation before the Gujarat High Court was similar. The High Court was examining the correctness of the findings recorded by the Income Tax Appellate Tribunal. The High Court mainly placed reliance on the crucial fact that the application

seeking Completion Certificate was submitted to the Municipal Corporation prior to 31.03.2008 and therefore, they confirmed the finding of the Court that the requirement of Section was not mandatory in nature.

10. We have no difficulty to accept this contention. We also hold that the explanation is quite clear and does not introduce any uncertainty. In other words, date of completion of a project has to be the date of issuance of Completion Certificate by the Municipal authority.

11. The question we raise here is whether the explanation introduced an element of harshness to such an extent that it rendered the main provision nugatory? In our view, the explanation is introduced recently to put an end to a controversy, which might arise before the Assessing Officer about the date of completion. The intention of the legislature in providing explanation to fix the date of completion of a project is quite helpful when this provision is utilized in practice. In our view the explanation has introduced an unnecessarily strictness in the provision which is in the nature of exemption and not in the nature of charging. Sub-section (10) mentions that a housing project should be complete before 31.03.2008 so as to get the exemption. Completion of housing

project is a physical act. It can be demonstrated on the spot and also through a certificate issued by an architect who is appointed for supervising the construction work. He is a professional who would declare that the project is complete. Unfortunately, Sub-section (10) and the explanation do not give any importance to the issuance of such Completion Certificate by the concerned architect. It gives importance only to the certificate of Municipal authority. It is common knowledge that an application for Completion Certificate submitted to the Municipal Authorities is accompanied by a Completion Certificate issued by the concerned architect. No doubt, the Municipal authorities then cause inspection of the site and verify the claim. Thereafter, they issue Completion Certificate. But, if a project is really complete before 31.03.2008 and an application is moved quite in time, for seeking Completion Certificate from the Municipal authorities, and if they do not take steps urgently and delay the issuance of Completion Certificate from their side, can it be said that such certificate would alone decide the date of completion of the project? The answer is in negative.

12. In the facts of this case, admittedly, the Architect of the project had given a certificate prior to 31.03.2008. The respondent submitted application to the Municipal authority along with such certificate well in time on 25.03.2008. It seems that the Municipal

authorities directed the respondent to deposit certain amount for issuance of Completion Certificate on 27.03.2008 and the amount was accordingly deposited on 31.03.2008. Thereafter, the certificate was issued in October, 2008. This delay cannot be attributed to the respondent assessee.

13. In view of this, we are inclined to hold that the project, for which exemption is sought, was completed prior to 31.03.2008 and therefore, we are inclined to record our answer in affirmative to the substantial question of law referred to above. Both the appeals are accordingly dismissed.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

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