IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-12-2015

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case Appeal No.1172 of 2015

Commissioner of Income Tax
Chennai. .. Appellant/Respondent

Versus

M/s.Elegant Estates,
No.1B/3, First Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020. .. Respondent/Appellant

Prayer: Appeal presented to the High Court against the order of the Income Tax Appellate Tribunal Madras `A' Bench, dated 27.2.2015, in ITA No.2902/Mds/2014 against the AACFE 1274G A.Y.2010-2011, dated 20.03.2013.

For Appellant : Mr.J.Narayanasamy

O R D E R

(Judgment of the Court was made by M.JAICHANDREN,J.)

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, dated 27.2.2015, in ITA No.2902/Mds/2014.

2. The brief facts of the case, necessary for the disposal of the appeal, are as follows:

2.1) The assessing officer, while completing the assessment of the assessee, for the assessment period 2010-2011, had found that the assessee had built two flats, namely Flat Nos.401 and 403, measuring 1572 square feet and 1653 square feet, respectively, exceeding 1500 square feet limit. Consequently, the deduction under Section 80IB(10) of the Income Tax Act, 1961 (hereinafter referred to as `the Act'), had been denied to the assessee. The assessing officer had held that Section 80IB(10) of the Act clearly stipulates that the units built should be less than or equal to 1500 square feet to qualify the project for deduction, under Section 80IB(10) of the Act. Since there was a breach of the condition in the construction of the two flats, as they were measuring more than 1500 square feet, the assessing officer had denied the deduction, under Section 80IB (10) of the Act, to the entire project/flats sold during the year.

2.2) Aggrieved by the assessment order, the assessee had filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), had confirmed the assessment order holding that the assessee is not entitled for deduction, under Section 80IB(10) of the Act, in respect of the entire project/flats sold during the year.

2.3) Challenging the order of the Commissioner of Income Tax (Appeals), the assessee had filed an appeal to the Income Tax Appellate Tribunal. The Tribunal had held that the assessee would not be entitled for deduction, under Section 80IB(10) of the Act, proportionately, only in respect of the two flats, which had been built exceeding 1500 square feet. The Tribunal had held that the assessee would be entitled for deduction, under Section 80IB(10) of the Act, in respect of the other flats, which were less than 1500 square feet in extent.

2.4) Aggrieved by the said order of the Income Tax Appellate Tribunal, the appellant has filed the present appeal before this Court under Section 260A of the Act, raising the following substantial question of law:

> "Whether on the facts and in the circumstances of the case the tribunal was right in holding that the assessee will be entitled for deduction u/s 80IB(10) with respect to income from flats measuring less than 1500 sq ft limit and assessee will not entitled for deduction u/s 80IB(10) proportionately only with respect to the income from the 2 flats exceeding the limit of 1500 sq ft when the assessee had considered all the flats as forming part of single project on interpretation of the provisions of section 80IB(10) (c)."

3. The learned counsel appearing on behalf of the appellant had submitted that the order passed by the Income Tax Appellant Tribunal is erroneous in law and contrary to the facts and circumstances of the case. The Tribunal had erred in holding that the assessee would not be entitled for deduction, under Section 80IB(10) of the Act, proportionately, in respect of the two flats, which had been built with an extent of more than 1500 square feet.

4. The learned counsel had further submitted that the Tribunal had erred in holding that the assessee would be entitled for deduction, under Section 80IB(10) of the Act, in respect of the other flats in the project in question, which were built less than 1500 square feet.

5. It had been further submitted that the Tribunal ought to have held that, as per Section 80IB(10) of the Act, the assessee is entitled for the deduction, in respect of the project "Elegant Estate Palmere Gardens" only, if all the residential units in the said project not exceed 1500 square feet in area and even if one unit exceeds the said limit, the assessee would not be entitled for deduction of the entire income from the housing project.

6. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the findings of the Income Tax Appellate Tribunal, `A' Bench, Chennai, dated 27.2.2015, is right in law, as it is in consonance with the findings of this court, in CIT Vs. Arun Excello Foundations (P) Ltd, (2013) 212 Taxman 342 (Mad), wherein, it has been held that the language used in the relevant provision of law does not bar a deduction claim altogether if some of the units sold exceed the specified dimensions.

7. In view of the submissions made by the learned counsels appearing on behalf of the appellant, as well as the respondent and in view of the decisions rendered by this court, in CIT Vs. Arun Excello Foundations (P) Ltd, (2013) 212 Taxman 342 (Mad), we find that the order passed by the Tribunal, dated 27.2.2015, is correct in the eye of law. Hence, the contentions raised on behalf of the appellant cannot be countenanced. Thus, the question of law raised in the appeal is answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.Commissioner of Income Tax
Chennai.

2.The Income Tax Officer,
Business ward-III(3)
Chennai-600 034

3.The Income tax Appellate Tribunal
Ä"bench Chennai

+2 cc to Mr.J.Narayana Swamy Advocate sr.66048

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