IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Mrs.JUSTICE S.VIMALA

Tax Case (Appeal) No.305 of 2015

Commissioner of Income Tax
Trichy. ...Appellant

versus

M/s.Harihar Dwelling Pvt. Ltd.,
No.B-101, Harihar Residency,
No.20 Mannarpuram Main Road,
Trichy - 20. ...Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 31.10.2014 made in I..T.A..No.1275/Mds/2012 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment year 2008-2009, against the order of the Commissioner of Income Tax (A) No.44, Williams Road Contonment, Trichirapalli, dated 21.03.2012 made in ITA No. 366/2010-2011, and against the order of the Deputy Commissioner of Income Tax, Company Circle - I, Trichirapalli, dated : 24.12.2010 made in PAN/GIR No.AABCD8064D.

For appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

J U D G M E N T
(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in recalling the order passed on merits and re-considering the issues on merits and allowing the assessees appeal holding that the assessee is entitled for deduction under Section 80IB(10) when the Tribunal had earlier considered the assessees appeal on merits and had remitted the case back to the CIT (A)?"

(ii) Whether on the facts and in the circumstances of the case, the tribunal was right in holding that the assessee is entitled for deduction under section 80IB(10) by merely following the decision when no material evidence was submitted by the assessee to substantiate compliance of conditions stipulated under section 80(IB)10)?"

2. The brief facts of the case are as follows:

The assessee is in the business of flat promotion. For the assessment year in question, the assessee claimed deduction under Section 80IB(10) of the Income Tax Act. The Assessing Officer disallowed the exemption on the ground that the assessee had not fully satisfied the conditions required for claiming deduction under Section 80IB(10). Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal following the decision of the Tribunal (Calcutta Bench) and directed the Assessing Officer to allow exemption under Section 80IB(10) of the Income Tax Act. Aggrieved by the same, the Revenue preferred an appeal before the Tribunal. The Tribunal, originally, allowed the appeal ex parte holding that the completion certificate was not obtained from the local authority. Thereafter, on a petition filed by the assessee to recall the exparte order, the Tribunal recalled the order. Thereafter, the Tribunal re-heard the appeal on merits and following the decision of this Court in the case of Sangvi & Doshi held that the assessee was entitled to claim deduction under Section 80IB(10). As against the said order of the Tribunal, the Revenue is before this Court.

3. Heard learned Standing counsel appearing for the Revenue and perused the materials placed before this Court.

4. The grievance of the Revenue is that the Tribunal having remanded the matter back to the Assessing Officer, ought not to have reviewed its own order, which was passed earlier on merits. We find that the Commissioner of Income Tax (Appeals) as well as the Tribunal have given a specific finding that the building in question satisfies the requirement under Section 80IB(10) of the Income Tax Act.

5. It is seen that the issue whether the assessee is entitled to deduction under Section 80IB(10) of the Income Tax Act has already been decided by this Court in T.C.(A)Nos.1014 of 2009, 857 of 2010 and 190 to 192 of 2012 and W.A.No.471 of 2010 dated 02.11.2012 reported in [2013] 29 taxmann.com 19(Madras) in favour of the assessee and against the Revenue holding that the assessee is entitled to the claim of deduction but to the extent of each of the blocks satisfying the conditions under Section 80-IB(10) on a proportionate basis.

6. Since the issue has now been settled by this Court, we find no ground to entertain this appeal. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Madras 'C' Bench.

2. The Commissioner of Income Tax (Appeals),
Tiruchirappalli.

3. The Deputy Commissioner of Income Tax,
Company Circle I,
Trichy.

1 CC to Mr.J.Narayananswamy, Advocate SR.No. 34542

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EV (CO)
PSI (21.08.2015)