IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

Tax Case (Appeal).No.450 of 2015

Commissioner of Income Tax
No.63, Raced Course Road
Coimbatore ...Appellant/Appellant

Vs

Shri M.R.Rathindran
No.3/570, Gandhi Nagar
K.Vadamadurai
Coimbatore-641 017
PAN:AGQ PR 5812 F ... Respondent/Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "C" Bench dated 27th January 2015 in ITA.No.441/Mds/2013.

against the Order of the Commissioner of Income Tax(Appeals)-I, Coimbatore dated 5.12.2012 in Appeal NO.314/11-12 and

against the Order of the Income Tax Officer Ward II(3) Coimbatore, dated 30.12.2011 in PAN AGQPR 5812 F.

For appellant :Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax Dept.
For respondent : Mr.R.Venkata Narayanan.

JUDGMENT

(Delivered by R.SUDHAKAR, J.)

This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal Madras "C" Bench dated 27th January 2015 in ITA.No.441/Mds/2013 for the assessment year 2005-06.

2. The Revenue seeks admission of the Tax Case (Appeal) by raising the following substantial questions of law:-

"1.Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in law in deciding that the undertaking of the assessee is entitled for deduction u/s.80IB(10) of the Act wherein residential units were constructed measuring more than 1500

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sqft on pro-rata basis ?

2. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in allowing proportionate deduction u/s.80IB(10) when there is no provision for allowing proportionate deduction in section 80IB of the Act ?

3. Whether on the facts and circumstance of the case, the Appellate Tribunal was right in allowing deduction u/s.80IB(10) when they obtained the Planning permission only from local Panchayat Authority and completion certificate from Panchayat President, which are contravention of clause (1) of Section 80IB(10) of the Act?"

3. The facts in a nutshell are as under:-

The assessee is the Proprietor of M/s.Sri Vari Builders, engaged in construction of houses. The assessee had filed returns of income for the assessment years 2000-01 to 2005-06 together on 12.09.2008 belatedly with delay of four to five years. In the returns of income, the assessee has claimed huge amounts as deduction under Section 80IB(10). A survey under Section 133A was conducted in this case on 23.09.2009 and at the time of survey, it was observed that the assessee has not satisfied the conditions stipulated under Section 80IB(10) of the Income Tax Act, 1961 to be eligible for the deduction. Notice under Section 148 of the Act was issued on 15.12.2010 and in response to that, the assessee filed a fresh return claiming Rs.1,82,90,595/- as deduction under Section 80IB(10) of the Act. Subsequently, notice under Section 143(2) of the Act was issued and after due process, the assessment for the year under consideration was completed under Section 143(3) read with Section 147 of the Act by denying the claim of the assessee made under Section 80IB(10) of the Act. Aggrieved by the same, the assessee filed appeal before the Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals), by following the decision in assessee's own case for the assessment years 2003-04 and 2004-05, directed the Assessing Officer to allow the claim of the assessee under Section 80IB(10) of the Act. On being aggrieved by this order, the Revenue filed appeal before the Income Tax Appellate Tribunal.

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5. The Income Tax Appellate Tribunal, perused the closing stock of land as on 31.03.2005 and other particulars filed by the assessee and the findings of the Commissioner of Income Tax (Appeals) in this regard and pointed out that this aspect requires detail examination as to on what basis the revised profit and loss account was submitted and considered for arriving the assessed income of Rs.3,19,50,557/- , when as per the original audited Profit and Loss Account, the closing stock as on 31.03.2005 was shown as NIL; as to how the suppressed closing stock was worked out to Rs.33,12,500/-; that the sale of vacant sites have been omitted to be accounted. As such, the Income

Tax Appellate Tribunal set aside the order passed by the CIT(Appeals) on the said issue and remitted the matter back to the Assessing Officer to examine with evidence on project-wise sale of sites and material facts and to decide the issue de novo. Aggrieved by the said order, the Revenue is with the present Tax Case (Appeal).

6. When the matter was taken up, learned counsel appearing on either side submitted that the issue raised in this case as to whether the assessee is entitled for deduction under Section 80IB(10) of the Income Tax 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 in the case of M/s.Viswas Promoters Private Limited V. The Assistant Commissioner of Income Tax, 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.

7. Accordingly, following the above-said decision in the case of M/s.Viswas Promoters Private Limited V. The Assistant Commissioner of Income Tax (supra), the above Tax Case (Appeal) is dismissed and the order of the Tribunal stands confirmed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To
1.The Commissioner of Income Tax
No.63, Raced Course Road
Coimbatore.
2.The Income Tax Officer, Ward II(3), Coimbatore
3.The Commissioner of Income Tax(Appeals)-I
Coimbatore.
4.The Assistant Registrar,
The Income Tax Appellate Tribunal, 'C' Bench, Chennai.
IIIrd Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

1 cc to M/s.T.R.Senthilkumar , Advocate Sr.No.37690

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