In the High Court of Judicature at Madras

Dated: 02.03.2015

CORAM

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Mrs.JUSTICE S.VIMALA

Tax Case (Appeal) Nos.78 to 81 of 2015
& connected M.Ps.

The Commissioner of Income Tax
Trichy. ... Appellant in the above T.C.(A)s

Vs.

M/s.Mangalam Estates,
No.60, Mangamma Nagar
Srirangam, Trichy. ... Respondent in the above T.C(A)s

APPEALs under Section 260-A of the Income Tax Act against the order dated 11.04.2013 made in I.T.A.Nos.1809 to 1812 respectively / Mds/2010 on the file of the Income Tax Appellate Tribunal, 'C' Bench for the assessment years 2004-05 to 2007-08 respectively against the order of the commissioner of Income Tax(Appeals); Trichirappalli, dated 29/9/10 made in ITA.No.294 to 299/09-10, against the Asst. Commissioner of Income Tax, Central Circle-I, Trichirappalli, dated 31/12/09 made in PAN No.AAHFM 7875L in Assessment year 2004-2005 to 2007-08.

For Appellant : Mr.J.Narayanaswamy
Standing Counsel for Income Tax

COMMON JUDGMENT
(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee need not own land and then develop cum build the housing project of the purpose of claiming deduction under Section 80IB(10)?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Section 80IB(10) did not stipulate any such condition for the year relevant to the assessment year 2004-05, being the

commencement of the project 'shri vijayarangem' and the subsequent amendment imposing bar on building commercial area in excess to 2000 sq.ft. Will not be applicable to earlier period?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 80IB(10) provide for partial deduction to the housing project with respect to the units within the stipulated built up area where the same project contains unit exceeding the stipulated built up area?”

2. The assessment in the above cases relate to the assessment years 2004-05 to 2007-08.

3. The issues involved in the above Tax Case (Appeals) that whether the assessee is entitled to deduction under Section 80IB(10) of the Income Tax Act have already been decided by this Court in T.C.(A)Nos.581 & 582 of 2011 and 314 & 315 of 2012 dated 01.11.2012 in favour of the assessee and against the Revenue holding that for the purpose of considering the deduction, it is not necessary that the assessee, engaged in developing and construction of housing project, should be the owner of the property. It is also held "when the local authority, being part of Chennai Metropolitan Development Authority and also the approving authority, thus having certified about the completion, we do not find any justifiable ground to invoke Explanation (2) to sub-section (10) of Section 80IB of the Income Tax Act for the purpose of negativing the claim. In any event, going by the fact that the Explanation cannot have a control on the substantive provision, as a matter of construction, we agree with the assessee's contention and we have no hesitation in confirming the order of the Tribunal. In the light of the above-said facts, we reject the Revenue's appeal." It is also held that the assessee is entitled to deduction in respect of the built up area exceeding 1500 sq.ft. on a proportionate basis. Accordingly, all the questions have been dealt with by this Court in the decision dated 01.11.2012.

4. Hence, following the above-said decision of this Court, the above Tax Case (Appeals) are dismissed and the order of the Tribunal stands confirmed. No costs. Consequently, connected M.P.s are also dismissed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

SL

To

1. The Income Tax Appellate Tribunal, "C" Bench, Chennai.

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

3. The Assistant Commissioner of Income Tax, Central Circle-I, Tiruchirappalli.

+4cc's to M/s.J.Narayana Swamy, Advocate, S.R.No.11763 to 11766

Tax Case (Appeal) Nos.78 to 81 of 2015
& connected M.Ps.

CA(CO)
CA(11/03/2015)