IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO.25 OF 2016
(The Pr. Commissioner of Income Tax, Nagpur-1 vs. M/s. Swapnashilp Developers)
AND
INCOME TAX APPEAL NO.26 OF 2016
(The Pr. Commissioner of Income Tax, Nagpur-1 vs. M/s. Swapnashilp Developers)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri Anand Parchure, Advocate with Shri B. Mohata, Advocate for appellant.
Shri K.P. Dewani, Advocate for respondent.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATED : OCTOBER 24, 2016

Since the questions involved in these Income Tax Appeals are identical and since the appeals pertain to the eligibility of the assessee for deduction under Section 80IB(10) of the Income Tax Act, 1961 for two consecutive assessment years, they are heard together and are decided by this common order.

By these appeals, the appellant – Revenue challenges the concurrent orders of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal holding that the respondent assessee was eligible for deduction under Section 80IB (10) of the Income Tax Act, 1961.

The respondent assessee is dealing in real estate and develops housing projects. For the assessment year 2009-10, the assessee had computed the net profit at Rs.37,79,941/- and had claimed deduction under Section 80IB (10) of the Act. Similarly, for the assessment year 2010-11, the net profit computed by the assessee was Rs.1,60,61,384/- and deduction under Section 80-IB(10) of the Act was claimed at Rs.1,55,03,286/-. An enquiry was conducted in the claim of the assessee for deduction. The assessee produced the relevant documents including the copies of the development agreement, the sanctioned plan and the permission from the Local Authority before the Assessing Officer. The Assessing Officer held that the assessee was not entitled to claim the deduction under Section 80IB(10) of the Act. According to the Assessing Officer, the provisions of Section 80IB(10) of the Act were not complied with by the assessee as the assessee was initially the owner of few plots and subsequently had purchased some plots from their owners and the development sanction was not in respect of one acre of plot. According to the Assessing Officer, the assessee had not submitted the relevant documents for proving that the approval was granted by the Gram Panchayat, Besa for the development of one acre of plot.

Being aggrieved by the orders of the Assessing Officer, the assessee filed two separate appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeals filed by the assessee and held that the assessee was entitled for deduction under Section 80IB(10) of the Act.

Being aggrieved by the orders of the Commissioner of Income Tax (Appeals), the appellant – Revenue filed two separate appeals before the Income Tax Appellate Tribunal that were dismissed by the order dated 3/9/2015. The orders of the Income Tax Appellate Tribunal, as also the orders of the Commissioner of Income Tax (Appeals) are challenged by the Revenue in these appeals.

On hearing the learned Counsel for the parties and on a perusal of the orders of the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals), it appears that a clear finding of fact is recorded by both the Authorities that the Gram Panchayat – Local Authority had granted the sanction for construction and development of more than one acre of plot and separate permissions were not granted by the Gram Panchayat for construction and development in favour of the Vendors - owners, from whom the assessee had purchased the plots, before securing the permission from the Local Authority, as required, for claiming deduction under Section 80-IB (10) of the Act. Both the Authorities have recorded a finding that the assessee had satisfied the Authorities that the permission for the housing project was in respect of more than one acre of plot and the housing project was completed within the time specified by the provisions of Section 80IB(10) of the Act. While holding so, both the Authorities have considered the documents tendered by the assessee before the Assessing Officer as also the record of Gram

Panchayat, Besa. The Authorities have further held that Gram Panchayat, Besa was the Local Authority for granting the sanction or permission for the development of the housing project. According to both the Authorities, the conditions that were required to be satisfied for seeking deduction under the provisions of Section 80IB (10) of the Act were satisfied in the case of the assessee and, therefore, the Assessing Officer had committed an error in holding that the assessee was not entitled to deduction under the said provision.

We find that the findings recorded by the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) are based on a proper appreciation of the material on record and they do not give rise to any substantial question of law. The submission made on behalf of the appellant – Revenue that in similar matters in respect of other development projects, this Court has admitted the appeals on two substantial questions of law and, therefore, these appeals should be admitted is not well founded. We have perused Income Tax Appeal Nos. 16/2016, 17/2016 and 20/2010. In the said appeals, it was the case of the Revenue that there was no permission from the Local Authority for the development of one acre of plot and separate permissions were secured for construction of houses of individual plot owners. Also, in those appeals it was the case of the Revenue that the housing project was not completed within the time prescribed under Section 80IB(10) of the Act. Such is not the case here. In the present matters, both the Authorities have concurrently recorded a finding of fact that the development of the housing project was completed within the time prescribed under Section 80IB(10) of the Act. In the admitted appeals, though it was sought to be canvassed on behalf of the Revenue that Gram Panchayat, Besa was not the `local authority', a substantial question of law was not framed in that regard. We further find from a reading of the judgment in the case of **Commissioner of Income Tax vs. Cajetano Mario Pereira**, reported in **2014 (88) CCH 152,** **t**hat this Court had considered the permission – approval granted by the Village Panchayat for the housing project to be as one granted by the `local authority' in accordance with the provisions of Section 80IB(10) of the Act.

Since no substantial question of law arises in these appeals, the appeals are dismissed with no order as to costs.

JUDGE JUDGE

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