In the High Court of Judicature at Madras

Dated : 22.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice N.KIRUBAKARAN

Tax Case Appeal No.1208 of 2015 and MP.No.1 of 2015

M/s.Prime Developers, Tirupur. ...Appellant

Vs

The Income Tax Officer, Ward-I(4),
Tirupur. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 23.9.2015 made in I.T.A.No.933/Mds/2013 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench preferred against the order of the Commissioner of Income Tax (Appeals)-II, Coimbatore dated 12.02.2013 made in Appeal No.146/11-12 preferred against the Assessment order of the Income Tax Officer Ward 1(4) Tirupur dated 30.12.2011 made in PA.NO.AAIFP0122G for the assessment year 2009-10.

For Appellant : Dr.Anita Sumanth
For Respondent : Mr.T.R.Senthilkumar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This tax case appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961, was admitted on 17.12.2015 on the following substantial questions of law :

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the denial of relief under Section 80IB of the Act, when the appellant satisfies all parameters in this regard ? and
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not following the rationale of the earlier orders of the Tribunal accepting the position that the appellant is a 'developer' in accordance with consistency?"

2. Heard Dr.Anita Sumanth, learned counsel for the assessee and Mr.T.R.Senthilkumar, learned Standing Counsel for the Department.

3. The assessee, which is a firm, entered into an agreement titled as 'Joint Development Agreement' with an entity known as 'Prime Textiles Limited' (now known by a different name) on 17.1.2005. The said entity was the owner of a piece of land. Under the agreement, the assessee agreed to develop the land, put up constructions of flats and sell them to third parties.

4. The assessee claimed themselves to be developers and claimed relief under Section 80IB of the Act. This was accepted in respect of the assessment years 2007-08 and 2008-09. However, in respect of the assessment year 2009-10, the Assessing Officer took the view that the assessee is not a developer, but a contractor. The Commissioner (Appeals) confirmed the assessment order and the Tribunal also upheld the same, forcing the assessee to come up with the above appeal.

5. It is seen from paragraph 7 onwards of the order of the Tribunal that there is no dispute on the following facts :

(i) that the assessee entered into an unregistered agreement titled as 'Joint Development Agreement' on 17.1.2005 with the owner of the land of an extent of about 3.91 acres

(ii) that under the said agreement, the assessee was to engage architects, prepare a plan for the development of the land into a complex of residential apartments with suitable amenities

(iii) that the assessee should obtain approval from the Local Body for all the activities

(iv) that the assessee should market the proposed apartments to third parties by entering into necessary agreements and

(v) that the assessee should put up a construction to the extent of about 5,85,000 sq.ft.

6. Pursuant to the said joint development agreement, the land owner applied for necessary permission from the Local Body and the building plan was approved on 3.5.2005. Thereafter, the deeds of conveyance of undivided shares in the land were executed by the land owner in favour of the third parties. Those third parties entered into separate construction agreements with the assessee.

7. Based on the fact that it was the owner, who applied for building plan approval and that the assessee merely entered into construction agreements with the purchasers of undivided shares of the land, the Tribunal came to the conclusion that the assessee was only a contractor. But, in the process, the Tribunal lost sight of one important distinction. The assessee no doubt played the role of contractor in so far as purchasers of undivided shares of the land are concerned.

8. But, in so far as the owner of the land is concerned, the assessee actually acted as the developer. They had undertaken the following activities namely (i) engagement of architects (ii) preparation of building plans for approval (iii) coordinating with the Local Body for the grant of building plan approval (iv) identification of purchasers of flats and (v) entering into agreements of construction with them. All the above activities cannot be undertaken, if a person was merely a contractor. Therefore, primarily, the view taken by the Tribunal appears to be wholly unsustainable.

9. Drawing our attention to the Explanation inserted towards the end of Sub-Section (10) of Section 80IB, it is contended by the learned Standing Counsel for the Department that the benefit of Section 80IB is not available to any undertaking, which executes a housing project or a works contract awarded by any person. This Explanation was inserted by Finance Act 2/2001 with effect from 1.4.2001.

10. But unfortunately for the Department, the above Explanation has no application to the case on hand. The assessee did not execute a housing project as a works contract for the owner of the land. The relationship that the assessee had with the purchasers of undivided shares has been misunderstood as the relationship that they had with the owner of the land. Therefore, the Tribunal was wrong in holding the appellant to be a mere contractor.

11. Accordingly, the questions of law are answered in favour of the appellant. The tax case appeal is allowed. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Officer, Ward-I(4), Tirupur.

2. Commissioner of Income Tax Appeals-II,
Coimbatore.

3. The Income Tax Appellate Tribunal,
Madras 'B' Bench, Chennai.

TCA.No.1208 of 2015
and MP.No.1 of 2015

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