IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 678 OF 2016

The Pr. Commissioner of Income Tax .. Appellant

v/s.

M/s. Vaman Estate .. Respondent

Mr. N.C. Mohanty for the appellant
Mr. Jehangir Mistri, Senior Counsel a/w Mr. Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 27th NOVEMBER, 2018.

P.C.

1. This appeal filed by the Revenue challenges the judgment dated 15.07.2015 of Income Tax Appellate Tribunal ("the Tribunal" for short).

2. Following questions are presented for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the re-assessment proceedings under Section 147 of the Act is invalid?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the re-assessment is based on mere change of opinion?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in dismissing the appeal of the Revenue without going into the merit of the case regarding admissibility of deduction under Section 80IB(10) in respect of Tans Residency Project?

3. The issue pertains to the Assessment Year 2004-05. The central question is of the validity of re-assessment proceedings initiated by the Assessing Officer in the context of the assessee's claim of deduction under Section 80IB(10) of the Income Tax Act, 1961 ("the Act" for short). In the return of income filed by the assessee for the said assessment year, the principal claim was of deduction under Section 80IB(10) of the Act arising out of income from development of a housing project. In the assessment carried out by the Assessing Officer, he disallowed a part of the claim after detailed scrutiny. Such assessment was reopened by the Assessing Officer by issuance of notice, which was done beyond the period of four years from the end of relevant assessment year. In order to issue such notice, the Assessing Officer had recorded the detailed reasons. The gist of his reason was that a similar claim was lodged by one M/s. Abode Builders for the same housing project. In the course of examination of such claim of the said assessee, the Assessing Officer had detected certain defects.

The Assessing Officer had rejected the claim *inter alia* on the ground that the development and construction of housing project had commenced prior to 01.10.1998 (which was the crucial date for claiming the benefits under Section 80IB(10) of the Act). The Assessing Officer of the present assessee, therefore, found that the assessee was not entitled to the deduction since one of the essential requirements of the provision was breached. He noted that these facts were not disclosed by the assessee and not brought to the notice of the Assessing Officer during the assessment. Therefore, there was failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment.

4. During the course of re-assessment proceedings, the assessee strongly opposed the ground of re-assessment. The Assessing Officer did not accept such opposition upon which the assessee carried the matter in appeal. The CIT(A) allowed the appeal. He was of the opinion that during the scrutiny assessment, there was no failure on the part of the assessee to disclose truly and fully all material facts. Even on merits, he was of the opinion that there was no evidence to suggest that the development and construction of the housing project commenced prior to 01.10.1998. On such grounds, the assessee's

appeal was allowed.

5. The Revenue carried the matter in further appeal before the Tribunal. The Tribunal by giving separate independent reasons confirmed the decision of the CIT(Appeals) by the impugned judgment. The Tribunal was of the opinion that in absence of any failure on the part of the assessee to disclose true facts, the reopening of assessment beyond the period of four years was not permissible. This decision of the Tribunal is challenged in the present appeal.

6. We have heard the learned Counsel for the parties and perused the documents on record. It is undisputed that in the original assessment, the Assessing Officer had examined the assessee's claim of deduction under Section 80IB(10) of the Act at some length. To the extent he was dis-satisfied, the claim was disallowed. Such assessment was sought to be reopened only on the ground that in case of M/s. Abode Builders where similar claim was raised in connection with the same housing project, the Assessing Officer had detected certain breaches which dis-qualified the assessee from claiming deduction. Essentially, according to the Assessing Officer, the development and construction of the housing project had commenced prior to

01.10.1998.

7. The CIT(A) in a detailed consideration of all the relevant aspects of the matter came to the conclusion that there was no failure on the part of the assessee to disclose full material facts. He in fact recorded that there was no material to suggest that the development and construction of the housing project had commenced prior to 01.10.1998. After referring to the materials on record during the original scrutiny assessment, the CIT(A) observed as under :-

> *"Thus the above facts and circumstances suggest that it was a case where all the necessary material required for the computation of income and verification of claim of deduction u/s 80IB(10) was furnished before the AO during the survey as well as asstt proceedings and the deduction was allowed in asstt order u/s 143(3) by the AO after due examination of the same at various stages from survey till completion of last assessment passed on 31/12/2010 u/s 143(3) r/w 254. In the asstt order the AO has mentioned about the joint venture agreement between the assessee and abode builders in respect of the Trans Residency project and after going through the documents submitted or facts noted during survey, the AO found no discrepancy other than those mentioned in the asstt order. ....*

The only basis on which the AO formed the belief that the assessee had commenced the construction before 1998, is the findings of the AO of in asstt order of abode builders who in turn has relied upon the same Joint venture agreement dated 28/8/2001, which was already furnished to the AO of appellant during the original asstt proceedings vide reply dated 15/11/2006 along with copy of approved plan, IOD and CC and the deduction was allowed by the AO after examination of the same. The IOD dated 8/1/97 and CC dated 24/7/2002 available before the AO clearly mentioned that the application for approval of plan was given in 1996. The copy of the joint venture agreement dated 28/8/2001 was also on record of AO which finds mention in the first page of the asstt order dated 27/12/2006. Further, since the AO had made specific queries during the asstt proceedings asking for approval plans, IOD, CC etc. which were provided to AO vide letter dated 15/11/2006 and the AO after considering the same has made part disallowance of deduction u/s 80IB(10) in the asstt order u/s 143(3), it cannot be said that the AO did not consider the details already furnished by the assessee while allowing the remaining deduction u/s 80IB(10) in respect of Trans Residency Project. The case was continuously scrutinized u/s 143(3) in AY 2004-05, 2005-06, 2006-07 and 2007-08 and in all the years the different AOs have after examining the details already on record have consistently allowed the deduction u/s 80IB(10) in respect of Trans Residency project (except for receipts from parking space).”

8. It was in this view of the CIT(A), the Tribunal has confirmed the impugned judgment observing that the assessee had made full disclosure of all relevant facts during the original scrutiny assessment.

9. As noticed by the CIT(A), all necessary facts were before the Assessing Officer while deciding the original assessment. During such assessment, the assessee's claim of deduction was also minutely examined by the Assessing Officer. Reopening of assessment beyond the period of four years was, therefore, correctly dis-allowed by the CIT(A) and the Tribunal. As noted, the only source available with the Assessing Officer to contend that relevant material was not brought on record by the assessee was assessment in case of M/s. Abode Builders. Here also, there is one vital defect in the logic adopted by the Assessing Officer. We do not find any where any material to suggest that the development and construction of the housing project commenced before 01.10.1998. Even in the reasons recorded, the Assessing Officer has not linked any material in order to make this observation. He has mainly relied on the findings of the Assessing Officer of M/s. Abode Builders. This conclusion was reversed by the CIT(A) noting that in fact all along there was evidence suggesting that the commencement of construction of the housing project was some time in the year 2002.

The learned Counsel for the assessee points out that the assessment order in case of M/s. Abode Builders was set aside by the CIT(A) and the same was confirmed by the Tribunal.

10. Be that as it may, we do not find any failure on the part of the assessee to disclose truly and fully all relevant facts as correctly held by the CIT(A) and the Tribunal pursuant to the detailed discussion. Therefore, no question of law arises.

11. The appeal is dismissed accordingly.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**