

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2018

CORAM:

**THE HONOURABLE Ms.JUSTICE INDIRA BANERJEE, CHIEF
JUSTICE**

and

THE HONOURABLE Ms.JUSTICE P.T. ASHA

T.C.A.Nos.179 and 180 of 2018

The Commissioner of Income Tax,
Chennai. ... Appellant/Appellant
in both appeals

Vs.

M/s.Elegant Estates,
No.1B/3, 1st Main Road,
Gandhi Nagar,
Adyar,
Chennai-600 020. ... Respondent/Respondent
in both appeals

Prayer in both appeals:

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against an order dated 19.05.2016 passed by the Income Tax Appellate Tribunal, Madras "B" Bench in I.T.A.Nos.224 and 225 /Mds/2016.

For Appellant : Mr.T.R.Senthil Kumar
in both appeals

For Respondent : Mr.Sivaraman
in both appeals

COMMON JUDGMENT

The instant Tax Case Appeals have been filed by the Revenue, challenging the common order dated 19.05.2016 passed by the Income Tax Appellate Tribunal, Madras "B" Bench in I.T.A.Nos.224 and 225 /Mds/2016.

2. The facts giving rise to these appeals are very briefly enumerated hereinafter: The respondent assessee, a firm engaged in the business of real estate development, filed its return of income for the assessment year 2011-2012 electronically on 30.9.2011, declaring a total income of Rs.29,77,127/-. The return was processed under Section 143(1) of the Income Tax Act, 1961, hereinafter referred to as "*the said Act*" on 15.1.2012. Likewise, for the assessment year 2012-2013, the respondent assessee filed return of income electronically on 28.3.2012 declaring a total income of Rs.69,29,550/-.

3. The case was, however, selected for scrutiny to verify the assessee's claim of deduction of Rs.8,87,57,581/- and 4,35,48,266/- for the two assessment years respectively under Section 80IB of the said Act in respect of two flats in a housing project sold to two members of the same family, Smt. Latha Ramachandran and Shri K.Ramachandran, being husband and wife.

4. By assessment orders dated 10.3.2014 and 2.3.2015, the Assessing Officer disallowed deduction of Rs.8,87,57,581/- and Rs.4,35,48,266/- under Section 80IB of the said Act on the ground that two adjacent flats, that is, Flat No.403 and Flat No.404, had been sold to the members of the same family, Smt. Latha Ramachandran and Shri K.Ramachandran, who, as stated above, are husband and wife. The super built-up area of Flat No.404 was 1572 Sq.Ft. and Flat No.403 was 1653 Sq.Ft., the total being 3225 Sq.Ft.

5. Clause (f) of sub-section 10 of Section 80IB of the said Act, as amended with effect from 1.4.2010, reads as hereunder:

"Section 80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

(1) to (9)

(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) to (e)

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

(i) the individual or the spouse or the minor children of such individual,

(ii) the Hindu undivided family in which such individual is the karta,

(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta."

6. The claim was disallowed on the ground that the sale of the flats was recognized on 31.3.2010, being the previous year 2009-2010, relevant to the assessment year 2010-2011. The Assessing Officer was of the view that provisions of Section 80IB(10) of the said Act were not attracted, since two flats had been sold to the same couple contravening Clause (f) of Section 80IB(10), extracted herein above.

7. Being aggrieved, the respondent assessee filed appeals before the Commissioner of Income Tax (Appeals)-15, Chennai. It is the contention of the appellant that the assessee is not eligible for deduction under Section 80IB(10) of the said Act, since conditions prescribed thereunder, have not been complied with.

8. By orders dated 18.11.2015, the Appellate Commissioner allowed the appeals, *inter alia*, holding that the flats in question were sold on 14.1.2008 and 16.7.2008 respectively and that the amendment of Section 80IB of the said Act, which was prospective with effect from 1.4.2010, had no application.

9. Assailing the said orders, the Revenue appealed to the learned Tribunal. By the order impugned in these appeals, the appeals of the Revenue have been dismissed by the learned Tribunal.

10. The questions of law involved in these appeals are:

- (i) *Whether the assessee was entitled to deduction under Section 80IB(10) of the said Act of Rs.8,87,57,581/- and Rs.4,35,48,266/- respectively in respect of the two residential flats in the housing project measuring 1653 Sq. Ft.*

and 1572 Sq. Ft. respectively (total area being 3225 Sq.Ft.) sold to the husband wife couple?

(ii) Whether on the facts and circumstances of the case, the Tribunal had erred in holding the assessee is entitled for deduction under Section 80IB(10) on the ground that amendment brought on 01.04.2010 vide the Clause (f) to Section 80IB(10) barring sale of the flats to the related persons, is prospective in nature and the flats were sold vide agreements prior to the amendment?

11. The relevant year would be the year of the actual sale and not the year when the revenue chooses to recognize the sale. In the instant case, the Appellate Commissioner and the learned Tribunal concurred in the factual finding that the actual sale of the flats in question took place on 14.1.2008 and 16.7.2008 respectively, long before the amendment of Section 80IB(10) of the Income Tax Act. The Appellate Commissioner and the learned Tribunal very rightly held that the amendments were prospective with effect from 1.4.2010.

12. In view of the factual concurrent finding of the Appellate Commissioner and the learned Tribunal that actually sale of flats in question took place in 2008, long before the amendment of Section 80IB of the said Act, which is prospective, there is no question of law,

let alone substantial question of law, involved in these appeals. It is well settled that right of appeal is not automatic, but is conferred by statute. The right of appeal to the High Court conferred under Section 260A of the said Act is a limited right of appeal, restricted only to substantial questions of law. The appeals cannot, therefore, be entertained.

13. In any case, the question of whether an assessee would be liable to full deduction or only proportionate deduction or for that matter no deduction under Section 80IB(10) in respect of the two flats exceeding 1500 Sq. Ft. purchased prior to 1.4.2010 is covered by a judgment and order of a Division Bench of this Court of co-ordinate strength in *Commissioner of Income Tax, Chennai v. Elegant Estates*, reported in (2017) 79 taxmann.com 397 (Madras). As a Bench of co-ordinate strength, we are bound by the aforesaid decision, with which we, in any case, agree fully. Of course, the Revenue has taken these orders on further appeal to the Supreme Court and the matter is pending consideration.

For the reasons discussed above, these appeals are dismissed.
No costs. Consequently, C.M.P.No.2393 of 2018 is closed.

(I.B. C.J.,) (P.T.A. J.,)

19.06.2018

Speaking Order /Non-speaking order

Internet: Yes

Index : Yes

mps/sasi

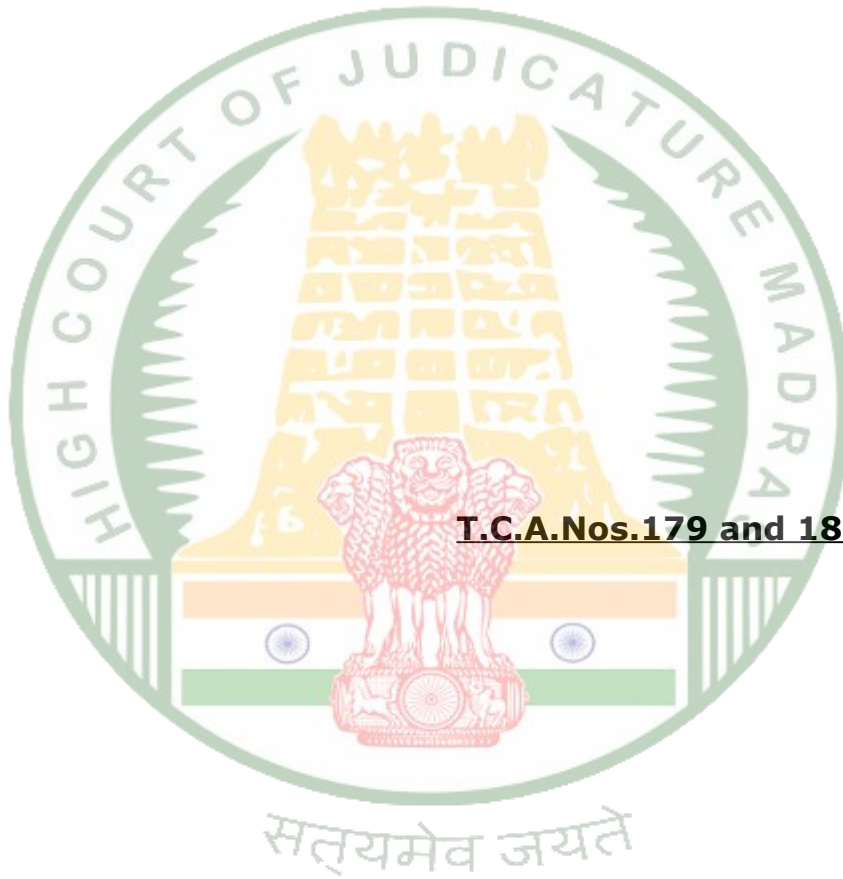
To

1. The Registrar
Income Tax Appellate Tribunal,
Madras "B" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-15
Chennai.
3. The Assistant Commissioner of Income Tax
Non-Corporate Circle-15(1), Chennai.
4. The Deputy Commissioner of Income Tax
Business Circle-III, Chennai – 34.

(9)

THE HON'BLE CHIEF JUSTICE
and
P.T. ASHA, J.

(sasi)



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