IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.3.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.231 of 2019

Commissioner of Income Tax
Non-Corporate Ward-10(1)
Chennai. .. Appellant

Vs.

M/s.Anjali Foundations,
25 Barnaby Road,
Kilpauk, Chennai 600 010.
PAN: AANFA 8459 L .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 8.10.2018 made in ITA No.1211/Chny/2018.

Against the order of the Income Tax Officer, Non Corporate Ward 10(1), Chennai 34 dated 14.09.2017 and made in PAN No.AANFA8459L for the Assessment Year 2009-10.

Against the order of the Principal Commissioner of Income Tax, Chennai 3, chennai dated 29.03.2017 and made in C.No.3033/263/PAI7-3/2016-17 for the Assessment Year 2009-10.

Against the order of the Inocme Tax Officer, NEW10(1), Chennai 34, dated 30.03.2015 and made in PAN No.AANFN8459L for the Assessment Year 2009-10.

Against the order of the Income Tax(III) (i/c), Chennai dated 28.03.2014 and made in C.No.3033(26)/CIT-III/263/2013-14 for the Assessment Year 2009-10.

Against the order of the Income Tax Officer, Business Ward-XIII(1), Chennai 34 dated 29.12.2011 and made in PAN No.AANFA8459L for the Assessment Year 2009-10.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
N/s.V.Pushpa

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case (Appeal) under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal on 8.10.2018 for the Assessment Year 2009-2010:-

> "i) Whether the Tribunal was right in quashing the order under Section 263 by holding that it is purely on change of opinion?
> ii) Whether the Tribunal was justified in holding that the order under Section 263 of the Act passed by the CIT is purely based on change of opinion when the CIT has clearly brought out the facts not considered by the Assessing Officer while allowing the deduction?"

2. Learned Senior Standing Counsel for the Revenue, Mr.M.Swaminathan contended that the Assessee in the present case M/s.Anjali Foundations was only the land owner which gave the land to its Joint Venture Partner M/s.Narendra Properties Ltd., which constructed the building on the said land and therefore, the benefit of deduction under Section 80IB(10) of the Act was available only to the said Joint Venture Partner M/s.Narendra Properties Ltd. and not to the land owner M/s.Anjali Foundations and since the Assessing Authority has granted the said benefit to the present land owner and therefore, Commissioner of Income Tax was justified in revising that order under Section 263 of the Act and denying the said benefit to the present Assessee, the landowner M/s.Anjali Foundations.

3. Section 80IB(10) of the Act is quoted below for ready reference:-

> "(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) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—
> (i) in a case where a housing project has been approved by the local authority before the 1st

day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;"

4. Having hearing the learned counsel for the Revenue, we are satisfied that there is nothing in Section 80IB(10) of the Act to deny the benefit of Deduction to the land owner also, who is equally a partner in the "development" of Industrial Undertaking other than the Infrastructure Development Undertaking. Without the land, obviously, the construction of building cannot be undertaken and therefore, the land owner is an integral part of the development of the Buildings. It is considered to be an Industrial Undertaking other than Infrastructure Development in view of the said provision. Merely because the land owner does not undertake the construction work himself, the land owner cannot be excluded

from the ambit and scope of Section 80IB(10) of the Act.

5. The Tribunal has, therefore, has by citing its earlier decision in the case of Sri Lakshmi Brick Industries, dated 22.11.2012 wherein such benefit was allowed to the extent of 1/2 to both the land owner and the developer who constructed the building in question, has rightly given the said benefit to the land owner, the present Assessee before us and has rightly set aside the order passed by the Commissioner of Income Tax under Section 263 of the Act. The relevant portion of finding of the Tribunal is quoted below for ready reference:-

> "We have considered the rival submissions. At the outset, it is to be appreciated that the order of assessment can be revised when both the conditions are met, first being the order is erroneous, and the second being the order is prejudicial to the interests of the Revenue. The view of the Revenue seems to be any order granting deduction to an assessee is prejudicial to the interest of the Revenue. We are not in agreement with this view, in so far as, if the Act provides for granting a particular benefit or deduction to an assessee, the granting of such deduction or benefit to the assessee cannot be deemed as prejudicial to the interest of the Revenue. One has to take out of one's mind that the granting of statutory deduction is an erroneous order prejudicial to the interests of the Revenue. The issue of the order being erroneous however needs to be shown. Just a claim that the order is an erroneous would not make an order erroneous. What is the error would have to be specifically pointed out. In the present case, the Principal Commissioner of Income Tax has raised the issues that the claim of deduction under Section 80-IB(10) has been made by both the land owner, being the assessee herein and the Joint Venture Partner, being M/s.Narendra Properties Ltd. The assessee has categorically brought to the attention of the Principal Commissioner of Income Tax, in response to show-cause notice that the decision of the Tribunal vide order dated 22.11.2012 in the case of Sri Lakshmi Brick Industries has dealt with this issue proposed in the revision order and the Bench has categorically concluded in paras 9 and 10 that the land owner under similar circumstances would be entitled for the benefit of deduction under Section 80-IB(10) of the Act in the computation of the taxable total income. This view has been

clearly expressed by the Appellate Authority and the learned Assessing Officer has in the course of assessment followed such view expressed by the Appellate Authority, when granting the assessee benefit of deduction under Section 80-IB of the Act. Thus clearly the revision as done by the Commissioner of Income Tax under Section 263 of the Act is based exclusively on change of opinion, which is not permissible, when passing a revision under Section 263 of the Act. The Order under Section 263 of the Act is based purely on change of opinion and the same being impermissible under the provisions of the Section 263, the order dated 29.3.2017 passed by the Principal Commissioner of Income Tax under Section 263 of the Act in the case of the assessee herein stands quashed."

6. We, therefore, do not find any substantial question of law to be arising in this Appeal filed by the Revenue and it is devoid of merit and accordingly, it is dismissed. No costs. Copy of this judgment be sent to the Respondent/Assessee forthwith.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax
Non-Corporate Ward-10(1)
Chennai.

2. The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai

3. The Income Tax Officer,
Non-Corporate Ward-10(1)
Chennai.

4. The Principal Commissioner of Income Tax,
Chennai -3, Chennai.

5. The Income Tax-III(i/c),
Chennai.

6. The Income Tax Officer,
Business Ward-XIII(i),
Chennai 34.

+1 cc to Mr.M.Swaminathan, Advocate, Sr.No. 24391

T.C.(A) No.231 of 2019

SV(CO)
CSL/01.06.2019