

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Nos.494 of 2018

The Commissioner of Income Tax,
Chennai.

...Appellant/Respondent

-vs-

M/s. Ramesh Rajan Construction P Ltd.
No.87, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

...Respondent/Appellant

Tax Case Appeal under Section 260-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai in I.T.A No.3137/Mds/2016, dated 22.03.2017 for the assessment years 2010-11, against the order dated 30/06/2016 made in ITA.NO.41/2013-14/CIT/(A)-3 on the file of the Commissioner of Income Tax(Appeals)-3 chennai against the order dated 21.03.2013 made in PAN/GI.NO.AACCR7887H, on the file of the Assistant Commissioner of Income Tax, Company Circle-V(3), Chennai.

For appellant : Mr.T.Ravi Kumar

For Respondent: Mr.A.S.Sriraman

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

These Tax Case Appeals by the assessee, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A No.3137/Mds/2016, dated 22.03.2017 for the assessment years 2010-11.

2.The above Tax Case Appeal has been filed raising the following substantial questions of law:-

"(i) Whether the Tribunal is right in deleting the disallowance made u/s.80IB(10) especially as per Finance Act 2009, introduced with effect from 01.04.2010 applicable to the Assessment year 2010-11 year and the Assessee, has not satisfied the condition of clause (f) of 80IB(10) applicable to current year and therefore not entitled to deduction?

(ii) Whether the Tribunal ought to have followed the decision of the Apex Court in the case of Reliance Jute and Industrial Ltd reported in 2 Taxman 471(SC) wherein it was held that a right claimed by an assessee under law in force in a particular assessment year is ordinarily available only in relation to the proceeding pertaining to that year?

(iii) Whether the Appellate Tribunal is correct in law in setting aside the order of the DRP dated 24.11.2015 in misreading para 3.2.1 and para 3.3.4 on the interpretation of the provisions in sub-sections (5), (7) and (8) of Section 144C of the Act proving perversity in recording findings at paras 7 & 8 of the impugned order both on facts and in law?"

3. We have heard Mr.T.Ravi Kumar, learned counsel for the appellant and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

4. During the assessment proceedings the Assessing Officer found that the assessee has claimed deduction of Rs.5,86,13,568/- under Section 80IB(10) of the Act. The assessee sold two flats each to one Mr.M.Gandhi and Mr.Shivakumar, which was held to be in violation of sub clause (f) of explanation to Section 80 IB (10) of the Act. The Assessing Officer held that the assessee did not satisfy the conditions for allowing the deduction under Section 80 IB 8(10) of the Act and accordingly disallowed the sum of Rs.5,86,13,568/- and added back to the income.

5. The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-III, Chennai in ITA No.41/2013-14, who by order dated 30.06.2016 confirmed the addition. The assessee filed an appeal before the Tribunal which was allowed by the impugned order. In doing so, the Tribunal referred to its earlier decision in an identical case in the case of ACIT Vs. Elegant Estates in ITA Nos.224 & 225/Mds/2016 & CO Nos.51 &

52/Mds/2016. Challenging the said order the Revenue is before us by way of this appeal.

6. Mr.T.Ravi Kumar, learned counsel for the Revenue sought to canvass two issues before us. The first issue is with regard to the contention that the assessee is not a developer but a works contractor. In this regard, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of K.Raheja Development Corporation Vs. State of Karnataka reported in [2005 (5) SCC 162]. However, going through an order passed by the CIT(A), we find that this issue was decided in favour of the assessee and the revenue did not prefer any appeal against the said finding recorded by the CIT(A) in paragraph 5 and 6 of its order dated 30.06.2016. Therefore, the Revenue is not entitled to canvass the said contention before this Court. Accordingly, substantial question of law no.3 is rejected.

7. Substantial questions of law no.1 & 2 relate to the claim of deduction, which was rejected by the Assessing Officer by referring to the amendment with effect from 01.04.2010, Finance Act 2009 for the assessment year 2010-11.

8. Mr.T.Ravi Kumar, learned counsel for the Revenue referred to the decision of the Hon'ble Supreme Court in the case of Reliance Jute & Industries Ltd. Vs. Commissioner of Income Tax [1979 (120) ITR 0921] and a decision of the Allahabad High Court in the case of Krishna Mohan Agrawal Vs. Commissioner of Income Tax [2007 (295) ITR 0190] for the proposition that it is a cardinal principle of tax law is the law to be applied is that which is in force in the assessment year in question unless otherwise provided expressly or by necessary implication.

9. In our considered view, this issue does not arise in the instant case as on facts, as recorded by the Tribunal, the transactions took place much prior to the amendment coming into force. The registered sale deed and the agreements had been executed and the transaction stood concluded in November 2008 much prior to the amendment. In fact, this issue is subject matter of consideration before the Tribunal in the Elegant Estates (Supra) and the stand taken by the assessee was accepted by the Tribunal. This order was carried by the Revenue by way of appeal to the Hon'ble Division Bench of this Court which was dismissed by judgement dated 19.06.2018 in the case of Commissioner of Income Tax, Chennai Vs. Elegant Estates [2018 (425) ITR Madras].

10. In the aforementioned decision, this question was considered by the Hon'ble Division Bench and it was held that it was not a question of law much less a substantial question of law.

11. For the above reasons, we find that there is no substantial question of law arising for consideration. Accordingly, this tax case appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Income Tax Appellate Tribunal, "A" Bench, Chennai

2.The Commissioner of Income Tax(Appeals-3)
Chennai.

3.The Assistant Commissioner of Income Tax,
Company Circle-V(5), Chennai.

+1cc to Mr.S.Sridhar, Advocate sr.46765

+1cc to Mr.T.Ravikumar, Advocate sr.46851

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