

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.9.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case (Appeal) No.314 of 2011

Commissioner of Income Tax,
Chennai.

Appellant

Vs.

Shri.C.Subba Reddy (HUF),
'Sukriti', 19/1, 3rd Cross Street,
R.A.Puram, Chennai 600 028.

Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 10.12.2010 made in ITA No.1907/Mds/2008. Appeal against the order dated 31.03.2008 made in ITA.No.142/07-08 on the file of the Commissioner of Income Tax (Appeals)-VI, Chennai-34 for the Assessment year 2005-06 & as against the order dated 05.12.2007 made in PAN:AACHC2523G on the file of the Assistant Commissioner of Income Tax, Circle II, Chennai 600 034 for the Assessment year 2005-06.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel &
Mrs.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.S.Sridhar

JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case under Section 260-A of the Income Tax Act by raising the following purported substantial question of law arising from the order passed by the Income Tax Appellate Tribunal on 10.12.2010 for the Assessment Year 2005-2006:-

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 80IB?"

2. Heard Mr.T.Ravikumar and Mrs.R.Hemalatha, learned Senior Standing Counsels appearing for the Appellant/Revenue and Mr.S.Sridhar, learned counsel appearing for the Respondent/Revenue.

3. The issue involved in the present Appeal filed by the Revenue is squarely covered by the Judgment of a co-ordinate Bench of this court in the Assessee's own case for the preceding Assessment Year 2004-2005.

4. The question of law raised before us in the present Appeal filed by the Revenue is about the entitlement of the Assessee to get deduction under Section 80IB of the Act.

5. The relevant findings of the learned Tribunal in the impugned order dated 10.12.2010 are quoted below for ready reference:-

"The other issue raised in this appeal is regarding benefit of section 80-IB(10) given regarding car parking area sold to the flat owners which according to Revenue does not form part of the built-up area for the purpose of verifying the permissible limit of 1500 sq.ft prescribed in the section. The case of the Revenue is that covered Car parking allotted to buyers is only for regulating parking in the complex and to avoid confusion in parking. As the car parking area is not a deemed place and it is only a common amenity provided to buyers in the complex in which CMDA, i.e. the planning authority, does not consider the car parking for Floor Space Index (FSI) of the building. It was also argued that under Tamil Nadu Apartments Act, only parking area is defined as a 'common amenity'. In our opinion, the ld. CIT (Appeals) has correctly held that built-up area is only the inner measurement of the residential units at the floor level plus projections and balconies plus thickness of the walls. But, the car parking area is not a living space and it is a common area which can be accessed by anyone since it has no boundary wall. The Tamil Nadu Apartments Ownership Act defines the same and this definition takes the same out of the purview of the built-up area. Undeniably, the car parking area is allotted and belonged to buyers alone. It cannot be said to be a private area and has to be treated as common area and has to be excluded from the calculation of built-up residential units particularly keeping in view the agreements and the Tamil Nadu Apartments' Ownership Act.

Consequently, we dismiss this ground also."

6. The relevant portion from the Judgement of the co-ordinate Bench of this court in CIT v. Subba Reddy (HUF) (373 ITR 105) is also quoted below for ready reference:-

"12. It is seen that car park has been separately shown in the agreement and according to the assessee, the same does not form part of the residential unit for the purpose of determining the maximum built-up area, in view of the definition for the term 'built-up area' came into effect from 01.04.2005. The Commissioner of Income Tax (Appeals) relied upon the provisions of the Tamil Nadu Apartment Ownership Act, 1994, wherein Section 3(h) defines the term 'common areas and facilities' in which clause 3 states that the basements, cellars, yards, gardens, parking areas and storage spaces are common areas. Hence, following the said provision, the Commissioner of Income Tax (Appeals) allowed deduction.

13. In the absence of any specific definition for the term 'built-up area' during the relevant period, the reasoning of the Commissioner of Income Tax (Appeals), which was confirmed by the Tribunal is justified. Nevertheless, we find that Section 80IB(10) of the Income Tax Act speaks about the residential unit having a maximum built-up area of 1500 sq.ft. to claim deduction. Even in the definition under Section 80IB(14)(a), which came into effect from 01.04.2005, "builtup area" was defined as inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls, meaning thereby, the actual residential portion of the property. It, however, clearly states that it will not include common area shared with other residential units. Hence, the definition under Section 80IB(14)(a), could, at best, throw some light as to how the built-up area of the residential unit should be computed for the purpose of determining deduction under Section 80IB(10) of the Income Tax Act.

14. From a reading of the above-said provisions, we find that there is no justification in including the car park in the definition of the built-up area of the residential unit for the purpose of determining the maximum built-up area. In such view of the matter, we are inclined to accept the reasoning of the Commissioner of Income Tax (Appeals) drawing support from the Tamil Nadu Apartment Ownership Act, 1994, which was confirmed by the Tribunal. Accordingly, the

second substantial question of law is answered against the Revenue and in favour of the assessee."

7. In view of the fact that the matter is covered by the decision of the co-ordinate Bench of this court, the present Appeal is disposed of in terms of the decision of the co-ordinate Bench holding that the Assessee is entitled to the benefit of deduction under Section 80IB of the Act. Accordingly, the Appeal filed the Revenue is liable to be dismissed and the same is hereby dismissed. The question of law is answered in favour of the Assessee and against the Revenue.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

ssk

To

1.The Income Tax Appellate Tribunal
A Bench Chennai

2.The Commissioner of Income Tax (Appeals)VI,
Chennai-34

3.The Assistant Commissioner of Income Tax,
Circle -II, Chennai 600 034

+1 cc to Mr.T.Ravikumar Advocate sr29965

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