IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

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

T.C.A.Nos.196, 197 & 198 of 2018
and
C.M.P.Nos.3235 to 3240 of 2018

M/s.SPR Builders
No.57, Narayana Mudali Street,
Sowcarpet,
Chennai - 600 079
PAN:ABEFS 7408K .. Appellant

Versus

The Income Tax Officer,
Non Corporate Ward - 6(3)
Chennai - 600 006. .. Respondent

Prayer:- These Tax Case Appeals filed under Section 260 A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, ''B'' Bench, Chennai dated 28.07.2017 passed in I.T.A.No.2378/Mds/2014, I.T.A.No.2843/Mds/2016 and I.T.A.No.3359/Mds/2016 relating to the Assessment Years 2010-11, 2011-12 and 2012-13 respectively. Preferred against the order passed by commissioner of Income Tax Appeals(A)-IV, Chennai-34 dated 11.06.2014 made in ITA 845/13-14 order passed by the Commissioner of Income Tax Appeals-5 dated 29.07.2016 and 06.10.2016 ITA No.65/CIT(A)-5/2015-16, ITA No.66/CIT(A)-5/15-16 preferred against the order passed by the Income Tax officer, Business ward-XII(3) dated 30.03.2013 and 31.03.2015 for the Assessment year 2010-11, 2011-12, 2012-13 respectively.

For Appellant : Mr.A.S.Sriraman
For M/s.S.Sridhar
[in all T.C.As]

For Respondent : Mr.T.Ravikumar
Senior Standing counsel
[in all T.C.As]

COMMON JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 28.07.2017 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.2378/Mds/2014, I.T.A.No.2843/Mds/2016 and I.T.A.No.3359/Mds/2016 for the Assessment Years 2010-11, 2011-12 and 2012-13 respectively. These appeals were filed, raising the following Substantial Questions of Law for consideration:

> “1. Whether the Appellate Tribunal is correct in applying the amended provisions of law in section 80 IB(10) of the Act to the residential units allotted much prior to the date of the said amendment in insertion of clause(f) with effect from 1.4.2010 for prohibiting the claim of deduction of profits earned from the housing project in the computation of taxable total income?
>
> 2. Whether the Appellate Tribunal is correct in reading the condition prescribed in clause (f) into clause (c) below the section 80 IB (10) of the Act despite the allotment of the disputed residential units by independent legal documents prior to the insertion of clause (f)?
>
> 3. Whether the Appellate Tribunal is correct in applying the inspection report carried after lapse of three years from the completion of the housing project for presuming violation of the conditions in section 80 IB (10) of the Act to reject the claim for deduction of profits earned from the housing project in the computation of taxable total income?
>
> 4. Whether the Appellate Tribunal is correct in ignoring the completion certificate issued by the CMDA, the competent authority who is empowered to certify the completion of the project in accordance with the planning permit issued for the housing project while wrongly placed reliance upon the belated inspection report to reject the claim for deduction of profits u/s 80 IB (10) of the Act in the computation of taxable total income?
>
> 5. Whether the Appellate Tribunal is competent to ignore the evidence placed on record in three volumes to substantiate the compliance of all the conditions in section 80 IB (10) of the Act while fortifying the claim for such deduction in the computation of taxable total income as against the wrong reliance on the belated inspection report?

6. Whether the Appellate Tribunal is correct in rejecting the claim for deduction u/s 80 IB (10) of the Act in its entirety despite the accepted legal position for granting proportionate deduction taking into consideration the violation of the conditions on certain residential units in the housing project?”

2. We have heard Mr.A.S.Sriraman for M/s.S.Sridhar, learned counsel for the appellant / assessee and Mr.T.Ravikumar, learned Senior Standing counsel for the respondent / Revenue.

3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) “disputed tax” has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per

Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore these appeals in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeals and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, we direct the appellant / assessee to file the Form No.I on or before 02.12.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeals stand disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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Index: Yes / No
Internet: Yes / No
Speaking Order/Non-Speaking Order

To
1. The Income Tax Appellate Tribunal,
' B' Bench, Chennai.

2.The Income Tax Officer,
NM corporate land 6(3),
Chennai.

3.The Commissioner of Income Tax,
Appeals-IV, Chennai-34.

4.The Commissioner of Income Tax,
Appeals-V, Chennai-34.

5.The Income Tax Officer,
Business ward XII(3),
Chennai.

+1cc to M/s.T.RaviKumar,Advocate, SR No.36037

T.C.A.Nos.196, 197 & 198 of 2018

BP(CO)
B.VC (03/08/2021)