IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.603 of 2013

Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Vignesh Flat Housing Promotors,
No.100C, Gandhi Road,
Srirangam – 620 006. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 11.04.2013 in I.TA.No.437/Mds/2011.

Appeal against the order dated 15/12/2010 made in ITA.No.236/09-10 on the file of the Commissioner of Income Tax (Appeals), Tiruchirappalli for the Assessment year 2007-08.

and As Appeal against the order dated 30.12.2009 made in PAN.No./GIR.No.AACFV5520C on the file of the Assistant Commissioner of Income Tax, Central Circle -I, Tiruchirappalli for the Assessment year 2007-08.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondent : Mr.M.Kaushik
for Mr.S.Sridhar

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.437/Mds/2011 in respect of the Assessment Year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench, the Revenue has filed the above appeal.

2.The above appeal was admitted on the following substantial question of law:

> "1)Whether on the facts and circumstances of the case, the Tribunal was right in holding that proportionate deduction had to be allowed under Section 80IB(10) with respect to the units less than 1500 sq.ft. where the housing project

contains units with built up area exceeding 1500 sq.ft.?”

3.When the above appeal was taken up for hearing, Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant-Revenue fairly submitted that the question of law involved in the present appeal is covered by the decision of the Hon'ble Division Bench of this Court reported in *[2017] 79 taxmann.com 397 (Madras) [Commissioner of Income-tax, Chennai Vs. Elegant Estates]* wherein the Hon'ble Division Bench held as follows:

“...

2.4 Aggrieved by the said order of the Income Tax Appellate Tribunal, the appellant has filed the present appeal before this Court under Section 260A of the Act, raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case the tribunal was right in holding that the assessee will be entitled for deduction u/s 80IB (10) with respect to income from flats measuring less than 1500 sq ft limit and assessee will not entitled for deduction u/s 80IB(10) proportionately only with respect to the income from the 2 flats exceeding the limit of 1500 sq ft when the assessee had considered all the flats as forming part of single project on interpretation of the provisions of section 80IB(10)(c)."

3.The learned counsel appearing on behalf of the appellant had submitted that the order passed by the Income Tax Appellant Tribunal is erroneous in law and contrary to the facts and circumstances of the case. The Tribunal had erred in holding that the assessee would not be entitled for deduction, under Section 80IB (10) of the Act, proportionately, in respect of the two flats, which had been built with an extent of more than 1500 square feet.

4.The learned counsel had further submitted that the Tribunal had erred in holding that the assessee would be entitled for deduction, under Section 80IB(10) of the Act, in respect of the other flats in the project in question, which were built less than 1500 square feet.

5.It had been further submitted that the Tribunal ought to have held that, as per Section 80IB(10) of the Act, the assessee is entitled for the deduction, in respect of the project "Elegant Estate Palmere Gardens" only, if all the residential units in the said project not exceed 1500 square feet in area and even if one unit exceeds the said limit, the assessee would not be entitled for deduction of the entire income from the housing project.

6.Per contra, the learned counsel appearing on behalf of the respondent had submitted that the findings of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 27.2.2015, is right in law, as it is in consonance with the findings of this court, in *CIT* v*. Arun Excello Foundations (P) Ltd,* [2013] 212 Taxman 342/29 taxmann.com 149, wherein, it has been held that the language used in the relevant provision of law does not bar a deduction claim altogether if some of the units sold exceed the specified dimensions.

7.In view of the submissions made by the learned counsels appearing on behalf of the appellant, as well as the respondent and in view of the decisions rendered by this court, in *Arun Excello Foundations (P) Ltd.* (*supra*), we find that the order passed by the Tribunal, dated 27.2.2015, is correct in the eye of law. Hence, the contentions raised on behalf of the appellant cannot be countenanced. Thus, the question of law raised in the appeal is answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed."

4.The learned senior standing counsel appearing for the appellant - Revenue further submitted that in view of the judgment of the Hon'ble Division Bench of this Court, cited supra, the appeal may be dismissed.

5.Mr.M.Kaushik, learned counsel appearing for the respondent - assessee also submitted that the issue is covered by the decision of the Hon'ble Division Bench, cited supra.

6.Having regard to the submissions made by the learned counsel on either side, following the decision of the Hon'ble Division Bench of this Court, reported in *[2017] 79 taxmann.com 397 (Madras) [Commissioner of Income-tax, Chennai Vs. Elegant Estates],* the question of law is decided against the Revenue and in favour of the assessee. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai, "B" Bench.

2.The Commissioner of Income Tax(Appeals),
Tiruchirappalli.

3.The Assistant Commissioner of Income Tax,
Central Circle -I, Tiruchirappalli.

+1cc to Mr.M.Swaminathan, Advocate SR.NO..16589
+1cc to Mr.S.Sridhar, Advocate SR.NO..16593

AKM/01.04.21/ 4P- 6C/

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