IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.03.2021

CORAM:

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

T.C.A.No. 782 of 2013

The Commissioner of Income Tax,
Chennai. ... Appellant

v.

M/s. True Value Homes (India) Pvt. Ltd
TVH Triveni,
21-CV Raman Road,
Alwarpet,
Chennai - 600 018. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 18.03.2013 in I.T.A.No.1333/Mds/2012 for the Assessment Year 2005-06 against the order of the Commissioner of Income Tax (Appeals)-III Chennai dated 28.03.2012 in ITA No.798/10-11/A III, PAN No.AAACT7955Q for the Assessment Year 2005-2006 against the order of the Assistant Commissioner of Income Tax Company Circle-III(2) Chennai dated 29.12.2010 in GIR No./PAN AAACT7955Q for the Assessment Year 2005-2006.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
and Mrs. V. Pushpa

For Respondent : Mr.R.Sivaraman

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

Challenging the order passed in I.T.A.No.1333/Mds/2012 in respect of the Assessment Year 2005-06 on the file of the Income Tax Appellate Tribunal, Chennai, ''D'' Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The assessee is a builder and flat promoter. The assessee filed its return of income for the assessment year 2005-06 admitting total income of Rs.2,46,93,950/- and the return was processed under section 143(1). The assessment under section143(3) was completed on 30.11.2007. Subsequently, the assessment was reopened under section 147 due to escaping assessment. In the scrutiny assessment, assessee claimed Rs.6,29,31,397/- as deduction under section 801B(10) and the same was accepted. For the purpose of claiming deduction under section 801B(10), the project should have been completed within four years from the end of the financial year in which the housing project was approved by the local authority. On verification of record, it was seen that the assessee has not produced the completion certificate from the local authority evidencing the completion of the project within four years from the year in which the approval was obtained. Notice under section 148 was issued and served on 01.04.2010. The assessee, vide letter dated 16.10.2010, sought the return filed on 31.10.2005 to be treated as return in response to the notice issued under section 143(2) and also sought for reason for reopening vide letter dated 14.12.2010. Notice under section 143(2) was served on the assessee and thereafter assessment was finalized . Disallowance made under section 801B(10) amounting to Rs.6,29,31,393/- and the taxable income was arrived at Rs.8,76,25,346/-.

2.2 Aggrieved over the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) questioning the reopening of assessment and disallowance under section 801B (10). The Commissioner of Income Tax (Appeals) held that the reopening assessment was not valid and also the disallowance made under section 801B(10) was deleted and decided the issue in favour of the assessee.

2.3 Aggrieved over the same, the Department has filed an appeal before the Income Tax Appellate Tribunal, which upheld the order passed by the Commissioner of Income Tax (Appeals) on the question of deduction made made under section 801B(10) and decided the issue in favour of the assessee. Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

3.The appellant has raised the following substantial questions of law in the grounds of appeal :

> " (i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the reopening of assessment was bad in law?
>
> (ii) Is not the finding of the Tribunal bad by holding that the reopening of assessment was not proper especially when the Assessing Officer had not formed any opinion in the first instance while framing the assessment for the first time?

(iii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the claim of deduction made by the assessee under section 801B(10 is to be allowed?"

4. When the appeal is taken up for hearing, : Mr. M.Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the questions of law raised in the present appeal is covered by the decisions of the Hon'ble Division Bench of this court reported in 2013 (255) CTR 156 [Commissioner of Income Tax v. Sanghvi and Doshi Enterprise] wherein the Division Bench of this Court held as follows:-

" ... 32 This takes us to the second question as regards the completion certificate. As already pointed out in the preceding paragraphs, the assessee had evidently completed the construction as early as 05.03.2006, a fact which is not disputed by the Revenue. It is also an admitted fact that the approval was granted for construction, both by the Chennai Metropolitan Development Authority and the local authority, namely, Chennai Corporation. The letter of the Chennai Metropolitan Development Authority according sanction to the project as early as 23.9.2003 clearly points out that the sanction was also subject to the approval by the Corporation. Thus, with the planning details being subjected to the approval by the Corporation as the competent local authority and it having certified as to the completion as early as 28.12.2007, we are satisfied that the completion being on or before 31.3.2008, the reliance placed on Explanation (2) to reject the assessee's case could not be sustained. In any event, given the fact that the approval, which is an administrative process, is purely at the hands of the Statutory Authority concerned, over which, the assessee could not have any control, the Explanation cannot, in any manner, have a negative effect on a factual aspect of the matter, namely, completion of the construction. Thus, in a case like this, where, the local authority, being the Corporation, had already certified about the completion of the project as per the approved plan, the fact that one of the Authorities, namely, Chennai Metropolitan Development Authority had issued a letter only on 13.6.2008, per se, cannot negative the assessee's claim for deduction. ...."

5. In view of the submissions made by the learned Senior Standing Counsel appearing for the appellant, following the ratio laid down by the Hon'ble Division Bench reported in 2013(255) CTR 156 [cited supra], we decide the questions of

law in favour of the assessee and against the Revenue. In these circumstances, the Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
   Chennai, ''D'' Bench, Chennai

2. The Commissioner of Income Tax,
   Chennai.

3. The Commissioner of Income Tax
   (Appeals) - III
   Chennai-34.

4. The Assistant Commissioner of Income Tax
   Company Circle - III(2)
   Chennai-34.

+1cc to Mr.M.Swaminathan, Advocate SR.No.13491

T.C.A.No. 782 of 2013

SMI(CO)
GMY(23/06/2021)