IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.07.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.Nos.127 & 128 of 2016
and
CMP.No.1955 of 2016

The Commissioner of Income Tax,
Chennai. ... Appellant/Appellant in both TCAs

vs.

M/s.Arihant foundations & Housing Ltd.,
271, Poonamallee High Road,
Chennai - 600 010. .. Respondent/Respondent in both TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 13.01.2012 in ITA.Nos.1326 & 1327/Mds/2011 for the Assessment Years 2006-2007 & 2008-2009. Against the Order of the commissioner of Iincom Tax Appeals III Chennai 600 034 dated 27.04.2011 in ITA No. 640/08-09A III in the assessment year 2006-07.

Against the order of the commissioner of Income Tax Appeals III Chennai III Chennai 600 034 dated 15.04.2011 in ITA No. 699/10-11/A III in the assessment year 2008-09.

Against the order of the Deputy commissioner of Income Tax company circle I(i) Chennai 34 dated 30.12.2010 PA/GIR No. AAACA 7402P/Ax-691 in the assessment year 2008-2009 & 2006-2007 respectively.

For Appellant in both TCAs : Mr.T. Ravi Kumar
Senior Standing Counsel

For Respondent in both TCAs : Mr. R.Sivaraman

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

We have heard Mr.T. Ravikumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Sivaraman, learned counsel for the respondent.

2. The appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the orders dated 13.01.2012 made in ITA.Nos.1326 & 1327/Mds/2011 on the file of the Income Tax Appellate Tribunal, Chennai, "A" Bench (for brevity, the Tribunal) for the Assessment Years 2006-2007 & 2008-2009.

3. The appeals were admitted on the following substantial questions of law:-

> “Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals), who had allowed the claim of deduction under Section 80IB(10), even though the assessee has not furnished the completion certificate of the Chennai Metropolitan Development Authority, which is the competent Local Authority as per law?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in granting relief under Section 80IB(10), especially when the Chennai Metropolitan Development Authority, vide their letter dated 17.12.2008, clearly stated that no completion certificate has been given to the assessee in view of the unauthorized construction and also due to the fact that the construction was not in accordance with the approved plan and had forfeited the security deposit?
>
> (iii) Whether the approval issued by the Corporation of Chennai is valid for the projects undertaken by the assessee, especially when the plan was sanctioned by the Chennai Metropolitan Development Authority and not the Corporation?
>
> (iv) Whether the reasoning and the finding of the Tribunal is proper, especially when the planning permit was issued for the ground floor plus four floors on 14.10.2003 by the Chennai Metropolitan Development Authority, but the assessee had constructed stilt plus 11 floors and had claimed deduction under Section 80IB(10) by violating law?
>
> (v) Whether the Tribunal was right in granting deduction under Section 80IB(10) based

on the completion certificate issued by the Corporation of Chennai on 06.07.2009, especially when the assessee was to complete the housing project on or before 31.03.2008? and

(vi) Whether the Tribunal was right in upholding the orders of the Commissioner of Income Tax (Appeals) in restricting the addition to 5% of the dividend income under Section 14A read with Rule 8D?"

4. The learned Senior Standing Counsel appearing for the appellant submits that the above appeals are not pursued by the Revenue on account of the Low Tax Effect in terms of Circular No.17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in these cases are less than the threshold limit.

5. In the light of the said submissions, the above Tax Case Appeals are dismissed as withdrawn on account of the Low Tax Effect. The substantial questions of law framed are left open. In the event the tax effect in these cases is above the threshold limit fixed in the said Circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gv

To
1. The Income Tax Appellate Tribunal,
Chennai,600 090.

2.The Commissioner of Income Tax Appeals III.
Chennai 600 034.

3.The Deputy Commissioner of Income Tax
Company circle I(i),
Chennai 600 034.

+1cc to M/s.T.RaviKumar,Advocate, SR No. 32213

T.C.A.Nos.127 & 128 of 2016
and
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MG(CO)
B.VC (02/08/2021)