



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case (Appeal) Nos. 797, 870 and 871 of 2010

M/s.Macro Marvel Projects Ltd.,
'GC' Glenden Plaza'
813, Poonamallee High Road
Kilpauk, Chennai 600 010

... Appellant in all appeals

Versus

Assistant Commissioner of Income Tax
Company Circle-IV (1)
121, Nungambakkam High Road
Chennai 600 034

... Respondent in all appeals

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "B" Bench, passed in (i) M.P.No.257/Mds/2009 in I.TA.No.194/Mds/2008 dated 18.12.2009 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 10.07.2009 made in ITA.No.194/Mds/2008 for the Assessment Year 2003-2004 against the order of the Commissioner of Income Tax (Appeals) V, Chennai dated 02.10.2007 made in ITA.No.103/2006-2007, PAN/GIR No.AACCM8816D for the Assessment Year 2003-2004 against the order of the Commissioner of Income Tax (Appeals)-V, Chennai dated 26.06.2007, made in ITA.No.103/2006-2007, PAN/GIR.No.AACCM8816D for the Assessment Year 2003-2004 against the order of the Income Tax Officer, Company Ward IV(1), Chennai dated 31.03.2006 made in PAN/GIR.No.AACCM8816D for the Assessment Year 2003-2004.

(ii) M.P.No.259/Mds/2009 in I.TA.No.2259/Mds/2007 dated 08.01.2010 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 04.04.2008 made in ITA.No.2259/Mds/2007, PAN No.AACCM8816D for the Assessment Year 2003-2004 against the order of the Commissioner of Income Tax (Appeals) V, Chennai dated 26.06.2007 in ITA.No.103/2006-2007, PAN No.AACCM8816D for the Assessment Year 2003-2004 against the order of the Income Tax Officer, Company Ward IV(1), Chennai



dated 31.03.2006 in PAN No.AACCM8816D for the Assessment Year 2003-2004 and

(iii) Order dated 10.07.2009 in I.TA.No.194/Mds/2008 against the order of the Income Tax Appellate Tribunal, Chennai, 'B' Bench in ITA.No.194/Mds/2008 dated 10.07.2009 for the Assessment Year 2003-2004 against the order of the Commissioner of Income Tax (Appeals) V, Chennai dated 25.06.2007 made in ITA.No.103/2006-2007, PAN No.AACCM8816D for the Assessment Year 2003-2004 against the order of the Income Tax Officer, Company Ward IV(1), Chennai dated 31.03.2006 PAN No.AACCM8816D for the Assessment Year 2003-2004.

For Appellant : Mrs. Sree Lakshmi Valli
in all the appeals

For Respondent : Mr. Karthik Ranganathan
Senior Standing Counsel
in all the appeals

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R. MAHADEVAN, J)

All these tax case appeals are filed by the appellant/Assessee questioning the correctness and/or validity of the orders of the Income Tax Appellate Tribunal, Chennai, "B" Bench, passed in (i) M.P.No.257/Mds/2009 in I.TA.No.194/Mds/2008 dated 18.12.2009 (ii) M.P.No.259/Mds/2009 in I.TA.No.2259/Mds/2007 dated 08.01.2010 and (iii) I.TA.No.194/Mds/2008 dated 10.07.2009 respectively.

2. On 20.10.2010, all these Tax Case appeals were admitted by this Court by raising the following substantial questions of law:

T.C.A. No. 797 of 2010

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the appellant was not entitled to deduction under Section 80 IB of the Income Tax Act in respect of the housing project undertaken and constructed by it?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the relief sought for by the appellant amounted to a review of the order of the Income Tax Appellate Tribunal and not merely a rectification of mistake?"



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T.C.A. No. 870 of 2010

“(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not restoring the appeal which was withdrawn by the appellant in the peculiar circumstances of the case?

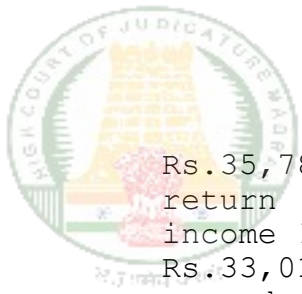
(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the petition for restoration of the appeal?”

T.C.A. No. 871 of 2010

“(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in setting aside the order of the Commissioner of Income-Tax (Appeals), on the ground that there is no error apparent on the face of the record, which could be rectified?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal ought not to have confirmed the order of the Commissioner of Income-Tax (Appeals), holding that the appellant is entitled to relief under Section 80IB(1) of the Income Tax Act?”

3. The Appellant-Assessee is a public limited company registered under the Companies Act, 1956 and engaged in the business of land development and construction. On 01.12.2003, the appellant filed their return of income for the assessment year 2003-2004 admitting an income of Rs.4,69,426/-. The respondent-Assessing Officer processed the return of income on 20.01.2004 and issued a notice under Section 143 (1) of the Income Tax Act (in short, the Act) dated 17.11.2005, calling upon the appellant to submit certain particulars. The representative of the appellant also appeared before the respondent on 28.11.2005 and submitted documentary evidence. Thereafter, the respondent scrutinised the return of income submitted by the appellant and noticed that the appellant originally claimed deduction of Rs.28,32,048/- under Section 801B(10) of the Act in respect of the projects undertaken by them titled "Marvel Apoorva" and "Wood Creek County". However, in the revised return of income filed on 03.02.2006, they have restricted their claim of deduction to the project "Marvel Apoorva" only and claimed deduction of Rs.68,79,782/- and disclosed net loss of



Rs.35,78,307/-. In the return of income as well as the revised return of income submitted by the appellant, the gross total income before deduction under Section 801B(10) was indicated as Rs.33,01,474/-. The respondent also noticed that "Marvel Apoorva" was developed by the appellant in a large extent of land measuring 2.70 acres and the project consists of commercial as well as residential blocks. According to the respondent, deduction under Section 801B(10) is allowable only for a housing project and when the appellant had constructed a commercial cum residential blocks, they are not entitled for deduction. Therefore, the assessment order dated 31.03.2006 was passed disallowing the deduction under Section 801B(10) of the Act.

4. Aggrieved by the order of assessment dated 31.03.2006 passed by the respondent, the appellant preferred I.T.A. No. 103/2006-2007 before the Commissioner of Income Tax (Appeals). The appellate Authority, by order dated 26.06.2007 dismissed the appeal.

5. As against the said order dated 26.06.2007 of the Commissioner of Income Tax (Appeals), the appellant filed I.T.A. No. 2259/Mds/2007 before the Tribunal. During the pendency of the appeal, the Appellant filed a Rectification Petition in I.T.A. No. 103/2006-2007 on 20.08.2007 before the Commissioner of Income Tax (Appeals)/Appellate Authority on the ground that the measurement/total area over which the commercial blocks were constructed, has been incorrectly recorded. Further, it was stated that the project of the appellant had the approval of the Chennai Metropolitan Development Authority. Having regard to the above submission, the rectification Petition was ordered by the Commissioner of Income Tax (Appeals) on 02.10.2007 and the claim of the appellant for deduction under section 801B(10) was allowed. Therefore, the appellant withdrew I.T.A. No. 2259/Mds/2007 on 04.04.2008 filed before the Tribunal. As against the order dated 02.10.2007 of the Commissioner of Income Tax (Appeals) allowing the rectification petition of the appellant, the Department has filed I.T.A. No.194/Mds/2008 before the Tribunal.

6. The Tribunal, after considering the materials made available, has allowed the appeal filed by the Department in I.T.A. No. 194/Mds/2008 on 10.07.2009, setting aside the order dated 02.10.2007 passed by the Commissioner of Income Tax (Appeals) observing that after dismissing the appeal filed by the appellant, it was not open to the Appellate Authority to allow the rectification petition on the ground that it is a rectifiable mistake. It was also stated that the Commissioner of Income Tax (Appeals) has in fact reversed it's own order under the garb of modification or rectification, which is not legally permissible. As against this order dated 10.07.2009, Tax Case (Appeal) No. 871



of 2010 is filed by the appellant.

7. As against the order dated 10.07.2009 passed by the Tribunal in I.T.A. No. 194/Mds/2008 filed by the Department, the appellant has filed M.P. No. 257 of 2009 in I.T.A. No. 194/Mds/2008 before the Tribunal to review its order dated 10.07.2009 passed in the appeal preferred by the Department. The Tribunal dismissed the Miscellaneous Petition filed by the appellant on 18.12.2009. Aggrieved by the same, the appellant has filed Tax Case (Appeal) No. 797 of 2010.

8. Subsequently, the appellant has filed another petition in M.P. No. 259 of 2009 in I.T.A. No. 2259/Mds/2007, to recall the order dated 04.04.2008 passed by the Tribunal, recording the withdrawal of the appeal in I.T.A. No. 2259/Mds/2007 preferred by the appellant. The Tribunal refused to accept the plea of the appellant to recall the order dated 04.04.2008 and dismissed the Miscellaneous Petition on 08.01.2010. This order dated 08.01.2010 is the subject matter of Tax Case (Appeal) No. 870 of 2010 filed by the appellant.

9. When these appeals are taken up for consideration, the learned counsel for the appellant submitted that similar questions of law raised in these appeals were already decided in favour of the appellant by the Honourable Supreme Court in (CIT Vs. Sarkar Builders) reported in 375 ITR 392. In that it was held by the Honourable Supreme Court that when a housing project is approved, with or without commercial user to the extent permissible under the Rules/Regulations, then, deduction under Section 801B (10) would be allowed. In other words, if a project could be approved as a housing project having residential units with permissible commercial user, then it is not open to the income tax authorities to contend that the expression 'housing project' in Section 801B(10) is applicable to projects having only residential units. It was further held that amendment of the Act came into force on 01.04.2005 and as long as the development/construction commenced on or after 01.10.1998 and completed before 31.03.2005, the assessee is entitled to the deduction. Therefore, the learned counsel for the appellant submitted that in the light of the above decision of the Honourable Supreme Court, it has to be examined as to whether the appellant has completed the construction of the housing projects before the amendment or after the coming into force of the amendment vis-a-vis the entitlement of the appellant to get deduction under Section 801B (10) of the Act.

10. The learned counsel for the appellant also placed reliance on the decision of the Division Bench of the Gujarat High Court in (Umakant Leasing and Financing Company vs. Deputy Commissioner of Income Tax reported in (2015) 57 Taxmann.com 4



(Gujarat) wherein it was observed, the assessee withdrew the appeal filed before Tribunal on the ground that they have already obtained relief by way of rectification order passed by the Commissioner of Appeal. Subsequently, the Tribunal allowed the appeal filed by the Department and set aside the rectification order. In such event, the Assessee is entitled to recall the order passed by the Tribunal, recording the withdrawal of the appeal filed by the assessee. By placing reliance on this decision, the learned counsel for the appellant would contend that the appellant is entitled to recall the order of the Tribunal, by which they were permitted to withdraw the appeal.

11. The learned Senior Standing Counsel appearing for the respondent has not disputed the ratio laid down in the above decisions. However, he would submit that the applicability of the above decisions have to be examined by the Tribunal and it cannot be gone into by this Court in these Tax Case Appeals. Therefore, he prayed this Court to remand the matter to the Tribunal for fresh consideration.

12. In view of the above submissions of the learned counsel for both sides, the impugned orders passed by the Tribunal are set aside. The matters are remanded to the Tribunal for passing appropriate orders on merits and also in the light of the decisions referred hereinabove. Such exercise shall be completed by the Tribunal as expeditiously as possible, after providing opportunity of hearing to the appellant. Accordingly, the Tax Case Appeals are disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kas/rsh

To

1. The Assistant Commissioner of Income Tax
Company Circle-IV (1)
121, Nungambakkam High Road
Chennai 600 034
2. The Income Tax Appellate Tribunal,
Chennai, "B" Bench.



3. The Commissioner of Income Tax (Appeals)-V,
Chennai.

4. The Income Tax Officer,
Company Ward - IV(1),
Chennai.

+2ccs to M/s.G.Baskar, Advocate, S.R.Nos. 9308, 9309

TCA. Nos.797, 870 & 871/2010

SMI (CO)
SU(29/03/2022)