IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-12-2025

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL

TCA No. 388 of 2011

Commissioner Of Income Tax
CHENNAI

Appellant(s)

Vs

Smt C.Rajini
Sukriti 19/1 3rd Cross Street,
R.A. Puram Chennai -28

Respondent(s)

PRAYER

The Tax Case Appeal has been filed under Section 260A of Income Tax Act, 1961 as against the order passed by the Income Tax Appellate Tribunal in ITA No.1239/mds/2008 dated 10.12.2010.

For Petitioner: Mr. T. Ravikumar,
Senior Standing Counsel

For Respondent(s):
M/s.A.S.Sriraman
For Sole Respondent

ORDER
(Order of the Court was made by P.Dhanabal J.)

This appeal has been preferred as against the order passed by the Income Tax Appellate Tribunal in ITA No.1239/mds/2008 dated 10.12.2010.

2. The learned Senior Standing Counsel appearing for the appellant would submit that the Assessing Officer while completing the assessment for the assessment year 2005-2006 under Section 143(3) of the Act disallowed the deduction under Section 80IB on the ground that the assessee is not the owner of the land and he had not invested any money for the development of the land as per Section 80IB(10) but had merely executed a works contract. Aggrieved by the said order of the Assessing Officer, the Assessee preferred an appeal before the Commissioner of Income Tax appeals and the Authority held that the ownership of land is not a criteria for claiming the deduction under Section 80IB and the Assessee is entitled for deduction since the Assessee had developed the land. Therefore, the Assessee is entitled for deduction under Section 80IB. Aggrieved by the said order, the present appeal has been filed by the revenue. The Tribunal dismissed the appeal holding that the Assessee is entitled for deduction under Section 80IB. In fact, the Tribunal ought to have appreciated that the assessee is not the owner of the land and therefore, he is not eligible for deduction under Section 80IB. The Tribunal ought to have appreciated that the assessee had only executed a Works contract and therefore,

he is not eligible for deduction under Section 80IB. However the Tribunal erroneously held that the assessee is a developer and a builder. Therefore, the Tribunal erred in holding that the assessee is a beneficial owner and therefore, he is eligible for deduction under Section 80IB.

3. The learned counsel appearing for the respondent would submit that the assessee had obtained development projects through Power of Attorney after making full payment, of the settled consideration, for the land to its owner. As per the assessee, all the activities connected with development of land, including demolition, approval, preparation of scheme drawings and submission of plans to CMDA, have been undertaken by the assessee. All the activities connected with selling of flats were carried out by the assessee herself. The land owner, after receiving full considering, did not spend even a single pie towards its developmental activities. Therefore, the character of the transaction has to be taken into consideration irrespective of the fact in whose name transaction was given as it would not necessarily decide the nature of transaction. Therefore, the Tribunal has passed a reasoned order and the appeal is liable to be dismissed.

4. This Court heard both sides and perused all the materials available on record.

5. At the time of admitting the appeal, this Court formulated the following ***substantial question of law:***

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 80IB?"

6. In this case, this appeal is relating to the assessment year 2005-2006. The assessee has claimed deduction under Section 80-IB(10) to the tune of Rs.13,32,29,388/-. Thereafter, scrutiny assessment was passed on 16.11.2007 by disallowing deduction under Section 80-IB(10) of the Income Tax Act, on the ground that the assessee is not the owner of the land and she has also not developed the property. Apart from this, the Assessing Officer has also disallowed the payment of Rs.5,30,250/- paid to Corpus Fund to the Flat Owners' Association. The Tribunal after referring the judgments of Hon'ble Supreme Court in ***CIT v. Podar Cement Ltd., reported in (1992) 5 SCC 482 and Mysore Minerals Ltd., v. CIT reported in (1999) 7 SCC 106, i***n which, it has been held that *though there is no formal conveyance, the concerned party could be considered to be the beneficial owner a*nd the Tribunal, after perusing

the construction agreement, found that the assessee is not only a builder, but is also a developer of the property in question, therefore, fulfilled the conditions laid down in Section 80-IB (10) of the Act.

7. Further, the learned counsel appearing for the respondent relied upon a judgment of Hon'ble Division Bench of this Court in ***Commissioner of Income Tax, Chennai v. Subba Reddy (HUF) reported in [2015] 56 Taxmann.com 204 (Madras) a***nd the present issue is covered by the said judgment, wherein the Hon'ble Division Bench of this Court held, in Paragraph No.6, as follows:-

> *6. As far as the first substantial question of law is concerned, both the learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee submitted that first question of law is covered by a decision of this Court dated 02.11.2012 in T.C. (A) Nos.137 and 138 of 2009, wherein, the Division Bench of this Court following the earlier decision of this Court dated 19.10.2012* ***Ceebros Hotels (P) Ltd., v. Dy. CIT (T.C. No.581 of 2008, dated 19.12.2012)*** *held that for the purpose of claiming deduction, it is not necessary that the assessee, who is engaged in the business of developing and construction of housing project, should be the owner of the land.*

8. Therefore, from the reading of the above said judgment, it is clear that for the purpose of claiming deduction, it is not necessary that the assessee, who is engaged in the business of developing and construction of housing project, should be the owner of the land.

9. This case is covered by the above said judgment in ***Commissioner of Income Tax, Chennai v. Subba Reddy (HUF) reported in [2015] 56 Taxmann.com 204 (Madras).***

10. In view of the same, the substantial question of law is answered in favour of the assessee. The Tribunal was right in holding that the assessee is entitled for deduction under Section 80-IB of the Income Tax Act.

11. In the result, this appeal is ***dismissed.*** There shall be no order as to costs.

(ANITA SUMANTH J.) (P.DHANABAL J.)
01-12-2025

mjs
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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