



TCA No.482 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2025

Delivered on : 23.09.2025

CORAM

THE HON'BLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

TCA No.482 of 2016

Commissioner of Income Tax
Business Circle XIII
Chennai

: Appellant

versus

M/s.Indra Housing
No.19, Govindan Street,
Ayyavoo Colony,
Aminjikarai Chennai 600 029
PAN AACFI 5832 J

: Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai dated 18.12.2015 in ITA No.1133/MDS/2015.

For Appellant : Mr.J.Narayanasamy,
Senior Standing Counsel,
and Mr.S.Rajesh,
Junior Standing Counsel
for Income Tax Department

For Respondent : Mr.T.Banusekar



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JUDGMENT

THE CHIEF JUSTICE

This appeal was admitted on the following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the joint venture agreement entered on 21.12.2005 with the firm, M/s. Indra Housing (which came into existence vide Partnership Deed dated 29.11.2007) can be held to be genuine and valid as there is no partnership firm, M/s. Indra Housing as on 21.12.2005?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for deduction u/s.80IB (10) in the absence of any demonstrable evidence regarding any expenses incurred by the assessee towards the eligible project to substantiate that the assessee involved development of the eligible project without noting that no details were produced by the assessee either before the Assessing Officer or at the time of appellate proceeding before the Commissioner of Income Tax (Appeals) or at the time of appellate proceedings before the Income Tax Appellate Tribunal?

(iii) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate



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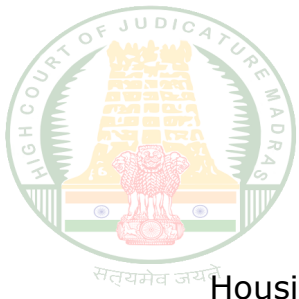
Tribunal was right in deciding that the assessee is eligible for deduction u/s. 80IB (10) without appreciating the fact that all the approvals such as planning permit, building permit and completion certificate from the statutory authorities were obtained only in the name of M/s.Iswaryalaxmi Properties P Ltd and not in the name of the assessee?

Relevant facts leading to the filing of the instant appeal by the

Revenue:

2. The respondent, assessee firm, M/s.Indra Housing, claims to be engaged in the business of development of residential apartments, real estate and civil contract works. It filed its return of income declaring NIL income after claiming deduction under Section 80IB (10) of the Income Tax Act, (for short, 'the Act') of Rs.7,94,98,820/- on 11.10.2010 and a revised return on 12.10.2010. The case of the assessee was selected for scrutiny and scrutiny assessment was completed on 30.03.2013, after disallowing the deduction as claimed under Section 80IB (10) of the Act.

2.1 It was noticed that the assessee is a firm constituted through a partnership deed dated 29.11.2007. The assessee M/s.Indra



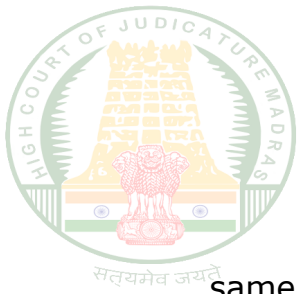
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Housing, represented through Mr.V.G.Rajendran, claim to have entered into a joint venture development agreement with four land owners viz., M/s.D.G.Lakshmi, D.V.Kasthuri, D.L.Madhusudhan and G.Damodharan, represented by their power of attorney holder M/s.Iswaryalaxmi Properties Private Ltd. It was also noticed that as per the recitals of joint venture development agreement, four partners were entitled to 50% of the constructed area, along with undivided share of land towards land contributed for housing project, and the share of profit was defined as 20% for each partner. As declared in the revised return, the share of profit was shown as 22.5% for first four partners and only 10% for the fifth partner.

3. During assessment, it was also noticed that the housing project approval was obtained by M/s.Iswaryalaxmi Properties P Ltd from the Chennai Metropolitan Development Authority (for short, the CMDA) for construction of two blocks consisting of 60 flats, on 20.03.2007. The project completion certificate was also obtained by M/s.Iswaryalaxmi Properties P Ltd on 31.12.2008.

3.1 The Assessing Officer also noticed that net profit shown by the developer in his other group concerns engaged in the



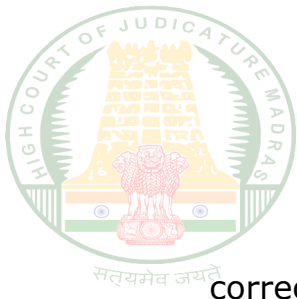
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same line of business activity, which included Mr.V.J.Rajendran, Proprietor, Indra Arcade, Indra Foundation Private Ltd. and Indra Homes. Each of them declared huge turnover and profit for various assessment years.

4. The details as submitted by the assessee in its return as well as in the revised return claiming total deduction as against the net profit of Rs.7,94,98,820/-, having scrutinised the same, the Assessing Officer found that the assessee group has been showing very erratic net profit ranging from 1.06% to 46% in various years, despite the fact that three concerns are in the business of flat promotion. The net profit of 46% shown in the case of M/s.Indra Homes for assessment years 2008-09 was also found to be very unusual. In the case of M/s.Indra Housing (Firm), it had shown net profit at 30.31%. On such consideration, the Assessing Officer opined that the assessee firm had admitted huge profit in cases where exemptions under Section 80IB of the Act were claimed and in other cases net profit is shown very less.

5. On the basis of such scrutiny made, the Assessing Officer required the assessee to submit certain documents to verify the



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correctness and entitlement of its claim under 100% deduction under Section 80IB (10) of the Act.

5.1. The assessee was asked to furnish the following information:

“(1) Original partnership deed dated 29.11.2007 of M/s.Indra Housing;

(2) Any kodisil to the above partnership deed. If so, original and copy of the same;

(3) Original JDA with Iswaryalakshmi Properties P Ltd.

(4) Books of accounts in the case of M/s.Indra Housing for FY 2009-10 relevant to asst year 2010-11

(5) Current A/c and capital A/c of partners & ledger account with narrations.

(6) Project expenses details with supporting bills/ vouchers.

(7) Account copy of Iswaryalakshmi Properties P Ltd in the books of M/s.Indra Housing.

(8) Account copy of M/s.Indra Housing in the books of Iswaryalakshmi Properties P Ltd

(9) Copies of sale deed for the 60 flats sold

(10) Cost of construction with break up details.

(11) Sri Rajendran one of the partner in M/s.Indra Housing shown less profit in the other concerns run by him



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and huge profits in the concerns where 80IB (10) claimed. A note substantiating to be filed.

(12) Cash flow statement from the date of constitution of the firm.

(13) Partner's asst details such as copy of return of income, statement of taxable income, P&L A/c, Balance sheet from AY 2008-09 onwards;

(14) Ledger account copy with M/s.Indra Arcade & Estates, M/s.Indra Foundations P Ltd, M/s.Indra Educational & Charitable Trust, M/s.Indra Homes, Sri S.Vasu

(15) Details of financial charges paid with breakup

(16) Compensation of Rs.4,19,935/- paid debited under administrative expenses. Furnish details to whom the same was paid and TDS effected on this

(17) Details of purchase, site expenses, maintenance charges with supporting evidences.”

6. In response to the summons and details called for, Mr.V.G.Rajendran, appeared on 26.03.2013 and a sworn statement was recorded from him. However, the details as called for, were not submitted till the date, the assessment order was passed, even after reminders over phone (as recorded in the assessment order). The assessment was accordingly completed, based on the materials available on record.



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7. The assessee's claim of deduction under Section 80IB of the Act, was disallowed taking into consideration the pre-conditions and requirements of 80IB (10) of the Act and the materials which were provided by the assessee. The Assessing Officer made pertinent observations in paragraphs 11, 12, 13, 14 and 15 of its order to finally conclude that the assessee firm had no direct role in the development of project.

7.1. The Assessing Officer also noticed that the completion certificate, as issued by the local authority, also stood in the name of M/s.Iswaryalaxmi Properties P Ltd, which claimed to have completed the project.

7.2. The Assessing Officer also noted that the assessee firm has not produced books of account to verify as to who has actually constructed the project and also the cost of constructions, bills, vouchers etc. It was also noticed that all correspondence produced before the Department indicated the name of M/s.Iswaryalaxmi Properties P Ltd only.



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8. The Assessing Officer finally concluded that the assessee firm peeked its nose in order to get exemption under Section 80IB (10) of the Act and therefore, disallowed the claim.

9. Aggrieved by the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), which too was dismissed, affirming the order of the Assessing Officer.

10. The reasons assigned were inter alia that the assessee was not the owner of the land; the building plan approval and completion certificate were not in the name of the assessee; M/s.Iswaryalaxmi Properties P Ltd, on whose name the building plan approval and completion certificate were obtained, was a loss making company, having carry forwarded losses and therefore, would not be worthwhile to claim the benefit of Section 80IB (10) of the Act.

11. During the course of appeal, the CIT (Appeals) required the assessee to furnish details to verify whether any deduction under



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Section 80IB (10) of the Act was claimed by M/s.Iswaryalaxmi Properties P Ltd. Upon perusal of the statement of income furnished for the relevant Assessment Year 2010-11, it was found that M/s.Iswaryalaxmi Properties P Ltd had shown a net loss and still it had, for earlier years, carried forward losses. An inference was drawn that the entire transaction was so designed that the assessee, by virtue of a joint venture development agreement, could claim deduction in M/s.Indra Housing as the carry forward losses in the case of M/s.Iswaryalaxmi Properties P Ltd would not help the full benefit of Section 80IB (10) of the Act.

12. It was thus concluded that as the basic facts with reference to books of accounts reflected that the assessee is the person undertaking the risk, and other resultant responsibilities have not been established, the Assessing Officer's order was upheld.

13. The assessee then approached the Income Tax Appellate Tribunal (for short, the ITAT) by filing appeal. The Appellate Tribunal allowed the appeal, reversing the findings of the Assessing Officer, affirmed by CIT (Appeals) that the assessee firm peeked its nose in



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order to get exemption under Section 80IB (10) of the Act, though it was not eligible.

14. The Appellate Tribunal having noted the grounds of rejection by the subordinate authorities, observed that though the Assessing Officer had made remarks in the order that assessee failed to produce bills, vouchers, books of accounts etc. to justify the veracity of its claim, it has simply accepted the profit declared by the assessee, which shows that the Assessing Officer has not rejected the books of accounts of the assessee but accepted the income and expenditure shown by it in its profit and loss account and its balance sheet.

14.1. The Appellate Tribunal further observed that the assessee has no bar for arranging its state of affairs in any manner that is legally acceptable to conduct its business activities and derive maximum benefits under the provisions of the Act. The appellate authority analysed the joint venture development agreement with particular reference to recitals contained in clause 1 to 13 and concluded that the assessee had undertaken to complete the project with all risks attached to the project and was therefore eligible to claim the reward also. It also recorded a finding that the entire project was



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developed as a joint venture between the owners of the land and the assessee firm. As per the joint venture agreement, the owners of the land and the assessee firm had their respective roles in the development of the project, jointly sharing the risk involved in the project and also executing the project. It was further concluded that the entire project was developed by both the parties, i.e. the owners of the land and assessee firm on the land extending more than one acre (106 cents) as stipulated under the Act and no other associate concern of the assessee claimed benefit of Section 80IB (10) of the Act on the same project as the entire profit was declared in the hands of the assessee firm only and deductions claimed accordingly. On such consideration, the appeal was allowed and assessment, as framed by the Assessing Officer and affirmed by CIT (Appeals) was reversed, and the assessee was held entitled to claim deduction under Section 80IB (10) of the Act, holding the same to be fully justified.

Submissions on the first question of law :-

Submissions of learned counsel for the Revenue :

15. Learned counsel for the Revenue contended that the entire transaction, claimed to be a joint venture agreement between the



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owners of the land and the assessee firm, is expediently doubtful and was intended only to somehow claim deduction under Section 80IB (10) of the Act by the assessee firm which was non-existent on the date on which the parties claimed to have entered into joint venture development agreement i.e. 21.12.2005. He would submit that the partnership itself came to existence on 29.11.2007, it being the case of the assessee itself.

Submissions of learned counsel for the Assessee :

16. On the other hand, learned counsel for the assessee would submit that the Revenue did not raise any such ground to doubt the very existence of the joint venture development agreement between the parties, in rebuttal of assessee's claim of deduction but only claimed that the assessee had failed to produce material evidence/information as desired by the Assessing Officer. Even before CIT (Appeals) or the Appellate Tribunal, this issue was not raised and is being raised for the first time before this Court. In any case, it is contended by learned counsel that the date of registration of partnership is not material. The joint venture development agreement was a joint effort, which began in 2005, and in course of time, the



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unregistered partnership came to be registered in 2007. The project took much more time to complete as the completion certificate was submitted only on 31.12.2008. Various details and information which were submitted by the assessee firm before the Assessing Officer at the time of scrutiny assessment, therefore, could not have been rejected on that count alone. Had the Assessing Officer asked for any such clarification, the assessee could have submitted those information to the satisfaction of the Assessing Officer, as to in what circumstances the firm was registered in 2007, i.e. after the date on which joint venture agreement was executed.

Analysis and conclusion:-

17. Having gone through the order passed by the Assessing Officer, CIT (Appeals) and the Appellate Authority, we find that in none of those proceedings, this issue was raised and therefore, there was no occasion for the Assessing Officer or any of the authorities to examine on this factual aspect. However, the facts of the case lay bare. It is not a case where the assessee has disputed either the date of joint venture development agreement or the date of constitution of partnership deed. If we look into the joint venture development



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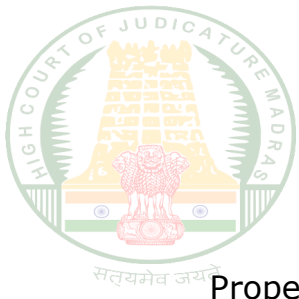
agreement dated 21.12.2005, we notice that the second party is shown as M/s.Indra Housing, represented by its partner Mr.V.G.Rajendran. It does not refer to M/s.Indra Housing as a registered partnership firm.

17.1. This appeal was admitted on the above questions of law way back on 19.08.2016. However, after receiving notice of admission of appeal on the questions of law as framed by this Court, the assessee did not come out with any material to explain as to how the assessee firm, registered as partnership firm, claimed to be in existence, in the eye of law, as on the date the joint venture development agreement was entered into.

17.2. A bare perusal discloses that the partnership deed was entered into at Chennai on 29.11.2007. Curiously enough, the partners are as below:-

- (i) Mrs.D.G.Lakshmi
- (ii) Mr.D.L.Madhusudhan
- (iii) Mrs.D.V.Kasturi
- (iv) Mr.G.Damodharan

All represented by their power of attorney Mr.D.L.Madhusudhan, Managing Director of M/s.Iswaryalaxmi



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Properties P Ltd (the deed of power of attorney having been registered on 14.12.2004);

(v) Mr.V.G.Rajendran

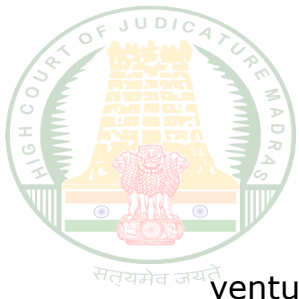
17.3. The following were the parties to joint venture development agreement dated 21.12.2005:

- (i) Mrs.D.G.Lakshmi;
- (ii) Mr.D.L.Madhusudhan
- (iii) Mrs.D.V.Kasturi
- (iv) Mr.G.Damodharan

All represented by their power of attorney Mr.D.L.Madhusudhan, Managing Director of M/s.Iswaryalaxmi Properties P Ltd., being the party of the first part; and,

M/s.Indra Housing, represented by its partner Mr.V.G.Rajendran.

18. The partnership acquired its legal status and entity only upon it being formed and registered, as evident from the partnership deed with effect from 29.11.2007. It is quite evident that on the date of execution of joint venture agreement on 21.12.2005, there was no partnership firm in existence in the eyes of law. Therefore, the joint



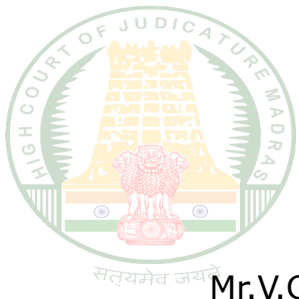
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venture development agreement cannot be said to be entered between a registered partnership firm having legal status and owners of the land; but only as between the owners of the land and Mr.V.G.Rajendran.

18.1. Furthermore, it is also clear that the owners of the land were the partners in the assessee firm along with Mr.V.G.Rajendran. Further, in the joint venture development agreement, owners of the land viz., M/s.D.G.Lakshmi, D.L.Madhusudhan, D.V.Kasturi and G.Damodharan, were represented by their power of attorney Mr.D.L.Madhusudhan, who claimed to be the Managing Director of M/s.Iswaryalaxmi Properties P Ltd.

19. It being a case of assessment of a partnership firm and not of an individual, in order to claim deduction under 80IB (10) of the Act, the evidence regarding the role played by the partnership firm as legal entity alone would be relevant. As the partnership deed was not in existence till 29.11.2007, it cannot be said that the joint venture development agreement was between the owners of the land and the assessee firm M/s.Indra Housing. In the eyes of law, the joint venture development agreement was as between the owners of the land and



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Mr.V.G.Vijendran. The firm came into existence and acquired its legal status only with effect from 29.11.2007. Even if it were to be accepted that the role of developer played by Mr.V.G.Rajendran and investment made by him as party to joint venture development agreement from 21.12.2005 to 28.11.2007 and thereafter, as partner of M/s.Indra Housing, the assessee firm, as legal entity, could not include any investment in the housing project prior to its date of registration, subject to submission of the relevant material evidence from 29.11.2007 up to the date of issuance of completion certificate i.e. 31.12.2008. Though it may not be necessary to prove joint venture only by way of a joint venture agreement, we have to hold that there was no joint venture development agreement in the eyes of law, as between the owners of the land and assessee firm M/s.Indra Housing between the period from 21.12.2005 to 28.11.2007.

20. Consequently, the first question of law is answered in the manner that the joint venture development agreement entered on 21.12.2005 is not genuine and valid, as there was no partnership firm M/s.Indra Housing as on 21.12.2005.



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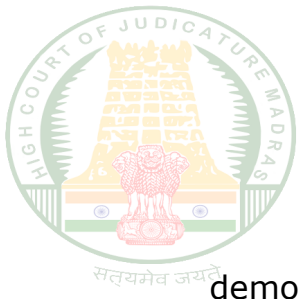
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Second Substantial Question of Law :

Submissions of learned counsel for the appellant :

21. Learned counsel for the Revenue would submit that the Assessing Officer disallowed the claim under Section 80IB (10) of the Act as the claim of the assessee was based only on a bare joint venture agreement and declaration of income and profits, without there being any proof. The Assessing Officer issued notices to the assessee for production of all the relevant documents, including the bills and vouchers as prima facie proof of investment by the assessee, if at all it claimed to be a developer, but it was never produced. Neither the books of accounts nor bills, nor any vouchers were produced, despite repeated demands. This created serious doubts as to whether the assessee's claim of having incurred huge expenditure in the housing project was at all genuine. Even before the CIT (Appeals), no evidence was produced to substantiate its claim of having invested in the project, so as to entitle the assessee to claim deduction under Section 80IB (10) of the Act. Therefore, the appeal was rejected.

21.1. However, it is argued, the Appellate Tribunal, based on conjunctures and surmises, and without there being any



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demonstrable evidence, allowed the claim of deduction only based on recitals of the joint venture agreement and that the assessee had declared its total income as well as profit, and the books of accounts, and other details of expenditure were not rejected. The joint venture development agreement itself was a highly doubtful document because on the date of entering into joint venture, the assessee firm was not even born. The recitals regarding payment of Rs.50 lakhs were made by Mr.G.Rajendran, who claimed to be partner of an unregistered partnership firm. Non-production of any materials despite repeated demands was a doubtful circumstance which was duly considered by the Assessing Officer and CIT (Appeals) but the Appellate Tribunal completely failed to take into consideration, much less traverse, such emphatic findings of the authorities below. The Tribunal also failed to take note of specific findings recorded by the Assessing Officer and CIT (Appeals) that M/s.Iswaryalakshmi Properties Private Limited would not stand to gain even if it claims deduction under Section 80IB (10) of the Act because it was running losses and it has carried forward the losses also. Moreover, in the joint venture, as the recitals go to show, M/s.Iswaryalakshmi Properties Private Limited was not a party but at the most, it could be treated only as a power of attorney holder of the

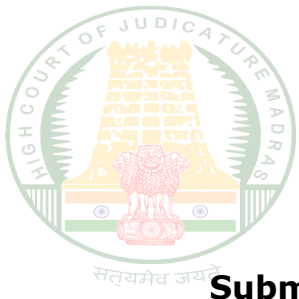


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land owners, which is clear from the power of attorney placed for perusal of this Court in this appeal. The assessee is not entitled to claim 100% deduction under Section 80IB (10) of the Act unless the conditions stated therein are proved. It was not only the proof of expenditure which was required to be proved but also the period during which the instrument was made and expenditure was incurred was relevant. Therefore, it could be inferred that M/s.Iswaryalakshmi Properties Private Limited which was not party to the joint venture, may have developed some project and all the documents relating to development of project standing in the name of M/s.Iswaryalakshmi Properties Private Limited were sought to be utilized by the assessee only in order to claim 100% deduction under Section 80IB (10) of the Act. The joint venture development agreement is itself a back dated document.

21.2. Alternative submission of the assessee that it has sub-contracted the work, was also not supported from any bills and vouchers collected by the sub-contractor and there is no detail whatsoever of receipts of Rs.28 crores, as disclosed in the return.



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Submissions of learned counsel for the respondent- assessee

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22. Per contra, learned counsel for the respondent assessee argued that the Assessing Officer and CIT (Appeals) failed to see that the assessee was a party to the joint venture development agreement and a huge amount of Rs.50 lakh was paid through cheque, by its partner, which is an evidence of infusing funds in the housing project. The assessee filed its return declaring gross total income and profit also. Books of account and balance sheet were submitted along with returns but they were not rejected, much less scrutinised. Even the expenditure as claimed by the assessee was not rejected. Therefore, it was not open to partly accept and partly reject the documents. The material evidence which was placed by the assessee before the Assessing Officer failed to prove the role of the assessee in the housing project as part of the joint venture undertaking.

22.1. During the course of argument, learned counsel for the respondent also produced before the Court, letter dated 25.3.2013, which is claimed to be submitted before the Assessing Officer on 30.03.2013. This, according to the assessee, was the list of various documents which were submitted before the Assessing Officer which were not taken into consideration by the Assessing Officer or by

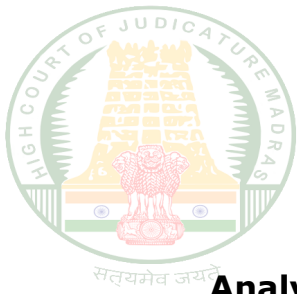


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the CIT (Appeals). All these materials were duly appreciated by the Tribunal and order was passed in favour of the assessee, declaring it to be entitled to deduction under Section 80IB (10) of the Act. Lastly, it is submitted that looking at the object and purpose of granting 100% deduction to undertakings which had developed housing project for common people, the Appellate Tribunal's approach could not be faulted and cannot be said to be contrary to the provisions of law or perverse, so as to warrant any interference.

22.2. In support of his submission, learned counsel for the respondent has relied upon the following decisions:

(i)	Bashyam Constructions (P) Ltd. vs. Deputy Commissioner of Income Tax, Corporate Circle, Chennai	[2019] 103 taxmann.com 425 (Madras)
(ii)	Principal Commissioner of Income Tax vs. Green Associates	[2019] 105 taxmann.com 80 (SC)
(iii)	Commissioner of Income Tax vs. Sahajanand Associates	[2014] 44 taxmann.com 458 (Gujarat)
(iv)	Commissioner of Income Tax vs. Sanghvi and Doshi Enterprise	[2013] 29 taxmann.com 386 (Madras)
(v)	Commissioner of Income Tax vs. Radhe Developers	[2012] 17 taxmann.com 156 (Gujarat)



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Analysis and Conclusion:

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23. The respondent assessee claimed 100% deduction under Section 80IB (10) of the Act claiming it to be part of the undertaking which is said to have developed housing projects. In support of its claim for deduction and as proof of it being one of the parties to the joint venture, it has produced a copy of the joint venture development agreement, partnership deed of the assessee firm before the Department, along with its return, balance sheet and books of accounts. The case of the assessee was taken up in scrutiny and notice under Section 142(1) of the Act was issued on 24.07.2012, in response to which, the assessee was represented and was asked to file certain documents in connection with the assessment proceedings. The assessee filed details on 20.08.2012. The Assessing Officer, from the partnership deed filed, noticed that the partnership itself was constituted on 29.11.2007 with partners. It also noted that as per the partnership deed, four persons were the owners of the land, who had brought the land to an extent of 106 cents of land and value of the land brought in as capital, with details submitted.

23.1. Importantly, the Assessing Officer noticed the share of profit defined as 20% for each partner as per the deed of



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partnership. It also noticed that the first four partners of M/s.Indra Housing gave general power of attorney in favour of M/s.Iswaryalakshmi Properties Private Limited represented by its managing director, to look after the sale and allied matters and incidentally, Mr.Madusudhan was one of the partners of M/s.Indra Housing. M/s.Iswaryalakshmi Properties Private Limited was represented by its Managing Director Mr.Madusudhan, who claims to have entered into a joint venture agreement on 21.12.2005 with M/s.Indra Housing, claiming to be represented by its partner Mr.V.G.Rajendran, for development of flats. It also noticed that the project was approved by CMDA on 20.03.2007 and the approval letters were written in the name of M/s.Iswaryalakshmi Properties Private Limited, followed by completion certificate issued on 31.12.2008. The Assessing Officer then went on to notice that the share of profits was shown as 22.5% for the first four partners and 10% for the fifth partner, which varied from the original partnership deed. At the same time, the assessee firm admitted net profit at the rate of 30.31%.

23.2. The Assessing Officer also noted the claim of net profit shown by the developer in other group concerns engaged in the same line of business activity, viz., Mr.V.J.Rajendran, Proprietor, Indra



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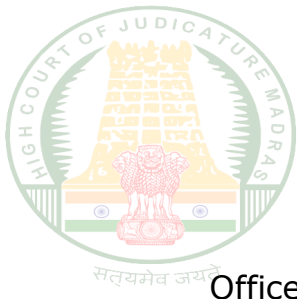
Arcade, Indra Foundations Private Ltd. and Indra Homes.

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23.3. From the close analysis of the aforesaid materials, the Assessing Officer noted that the assessee group has been showing very erratic net profit ranging from 1.06% to 46% in various years, despite the fact that the three concerns are in the business of flat promotion. It further noted that the net profit of 46% shown in the case of M/s.Indra Homes for assessment years 2008-09 was very unusual. In the case of M/s.Indra Housing (Firm), it had shown net profit at 30.31%. From this, the Assessing Officer inferred that the assessee firm had admitted huge profit in cases where exemptions under Section 80IB of the Act were claimed and in other cases, net profit was shown very less.

23.4. Having so considered the materials on record, the Assessing Officer, in exercise of power of assessment of income, required the assessee to furnish documents, which have already been extracted herein above.

23.5. In response to the summons and details called for, though Mr.V.G.Rajendran, parter of the assessee firm, appeared on 26.03.2013 and gave a statement. However, the details called for were not furnished even thereafter. In these circumstances, the Assessing



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Officer proceeded to complete the assessment, and having noticed the statutory requirement of Section 80IB (10) of the Act, concluded that the assessee failed to establish that it was eligible for deduction under Section 80IB (10) of the Act. The documents which were submitted by the assessee were noted but were not found sufficient as proof of assessee having invested in the project as developer, admittedly, it being not the owner of the land. It recorded a specific finding that the assessee has not furnished details of how much undivided share of land along with the constructed area went to four partners, who were the owners of the land, and because of this arrangement, 106 cents of land would have been reduced to 1 acre.

24. In addition to the above circumstances and having recorded a finding that the assessee failed to produce any document of expenditure by the assessee in the housing project (undertaking). The Assessing Officer also noted that all the certificates were standing in the name of M/s.Iswaryalakshmi Properties Private Limited. Therefore, the claim of deduction under Section 80IB (10) of the Act was rejected and income of Rs.7,94,98,820/- was held exigible to tax, finding that the assessee firm peeked its nose in order to get exemption to which it



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was not entitled to under the law.

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26. Even the CIT (Appeals) noted that no books of accounts nor bills were produced to verify as to who actually constructed the project. It also noted that when the assessee was inquired as to whether M/s.Iswaryalakshmi Properties Private Limited had claimed any deduction under Section 80IB (10) of the Act, it came to be noticed that it had shown net loss and still, it had, during earlier years, carried forward losses, meaning thereby that the entire transaction has been so designed that the assessee, by virtue of a joint venture development agreement, would claim deduction in M/s.Indra Housing, as the carry forward losses in the case of M/s.Iswaryalakshmi Properties Private Limited could not help the full benefit of Section 80IB (10) of the Act. It further noted that though during the course of appeal proceedings, the assessee was reiterating that he was the developer, but never produced books nor other details for verification to support its claim for Section 80IB (10) of the Act.

27. However, we find that the Appellate Tribunal reversed the aforesaid detailed findings recorded by the Assessing Officer and CIT



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(Appeals) only on the aspect that there was a joint venture agreement reflecting the partnership as party, and that the income and profits declared by it as also the books of accounts were not rejected.

28. An undertaking may claim deduction in respect of profits and gains from housing project in accordance with the provisions contained in Section 80IB (10) of the Act. The relevant provision in Section 80IB (10) of the Act, necessary for decision making in the present case is extracted below:

“10. The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, (2008) by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, [but not later than the 31st day of March, 2005], within four years from the end of the financial year in which the housing project is approved by the local authority.

[(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of



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April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.]

Explanation.- For the purposes of this clause,

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed [three] per cent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher.]

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project



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is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:-

- (i) the individual or the spouse or the minor children of such individual,*
- (ii) The Hindu undivided family in which such individual is the karta,*
- (iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta]”.*

29. A rational, fair and logical interpretation of the aforesaid provisions would reveal that the statutory policy of grant of deduction is aimed at granting benefits to undertaking, developing and building housing projects, before the cut-off date i.e. 31.03.2008. The scheme allows deduction up to 100% of profit derived in the previous year, relevant to assessment year from such housing project, on fulfillment of certain conditions, incorporated in clauses (a), (b), (c), (d), (e) and (f).

29.1. Therefore, the claim of deduction is not automatic but it is only upon fulfilment of certain conditions enumerated therein. Amongst other things, the clauses require that the undertaking must have commenced or commencing development and construction of housing project on or after 1st day of October 1998 and complete such



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construction within stipulated period, depending upon the approval of the project by the local authority.

29.2. Further, in order to be eligible for deduction, the size of plot of land involved in the project must also satisfy minimum requirement criteria.

29.3. The maximum built up area of residential unit or shops or other commercial establishments has also been provided, depending upon the city and township where such housing project is developed.

29.4. Moreover, one of the pre-condition is that, not more than one residential unit in the housing project is allotted to any person not being an individual.

29.5. Lastly, the condition incorporated in clause (f) requires certain conditions to be fulfilled by the individual.

30. The essence of Section 80IB (10) of the Act therefore requires involvement of an undertaking in developing and building housing projects approved by the local authority. Such a scheme of deduction clearly appears to be aimed at giving encouragement to providing housing units in urban and semi-urban areas, where there is



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perennial and acute shortage of housing, particularly for the middle income group citizens. In order to ensure that the benefit reaches the people eligible, the conditions as enumerated above, have been provided.

31. The word 'undertaking', as it occurs in Section 80IB of the Act, has not been defined. The ordinary meaning in common parlance of the word 'undertaking' from the Webster's dictionary is as below:

"Anything undertaken or any business, work or project which one engages in or attempts, as an enterprise. Before the work engaged in can be described as an industry, it must bear the definite character of "trade" or "business" or "manufacture" or "calling" or must be capable of being described as an undertaking in material goods or material services."

32. In the case of *R.Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248 (known as 'Bank Nationalisation Case'), the word 'undertaking' was explained as below:



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“By the word 'undertaking' is meant the entire organisation. These provisions indicate that the company whether it has a plant or whether it has an organisation is considered as one whole unit and the entire business of the going concern is embraced within the word 'undertaking'. In the case of sale of an undertaking the purchaser was required to pay all debts due by and to perform outstanding contracts comprised in the entire undertaking”

33. In the case of *Carew and Co. Ltd. v. Union of India*, (1975) 2 SCC 791, it was observed that 'Undertaking' is an expression of flexible semantics and variable connotation capable of being used in different senses in one statute and defined in legal dictionaries widely enough.

34. The word 'undertaking' as mentioned in Section 80IB of the Act, needs to be interpreted widely so as to advance the objective of the enactment. Therefore, in that sense, it could well be a joint venture and there is no rigid inflexible composition of undertaking. All that can be inferred is, it is an enterprise which is engaged in the development of housing project. However, if the undertaking on any of



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the constituent parties claim exemption under Section 80IB (10) of the Act, then it is required to satisfy the Assessing Officer that it has actually undertaken the housing project. Not only that, all conditions enumerated in Clauses (a) to (f) are required to be complied with before exemption is claimed. It is worth noticing that upon fulfilment of the condition, an undertaking is entitled to 100% deduction against the profits. It needs no authority for settled proposition that taxing statutes are required to be construed strictly and further, that all conditions claiming deduction must be fully complied with before any deduction/ exemption is claimed.

35. Keeping in forefront the scope and ambit of the meaning of the expression 'undertaking', in the context of the statutory scheme of deduction under Section 80IB (10) of the Act, and various pre-conditions mentioned therein, if we look into the order of the Assessing Officer and CIT (Appeals), it is found that there were many unusual features, which came to light during the scrutiny assessment and the very role of the assessee in the housing project required due verification. It was in this context, that the Assessing Officer required the assessee to produce various documents to satisfy that the

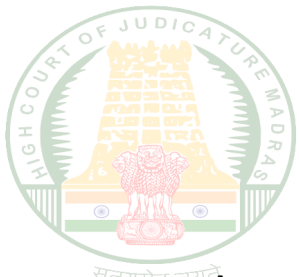


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assessee had invested in the project as developer. This was all the more necessary because the assessee claimed deduction under Section 80IB (10) of the Act on the basis of a joint venture development agreement which was executed only on 21.12.2005. The joint venture development agreement though purports to be one between four individuals represented by their power of attorney as one party and partnership firm M/s.Indra Housing as the second party, represented through its so called partner, Mr.V.G.Rajendran, it is an admitted position of record that the partnership itself was constituted and deed was executed as late as on 29.11.2007.

35.1. While answering the first question of law, this Court has elaborately dealt with this issue. It has been concluded that the very joint venture agreement is a doubtful document. This is for the simple reason that on the date of execution of the joint venture development agreement, the partnership itself was not in existence. This was one of the striking anomaly which was noted by the Assessing Officer. Though the joint venture development agreement states that Mr.V.G.Rajendran, who claims to be partner of firm, which had not even taken birth, has paid Rs.50 lakh by way of cheque; whether that cheque was ever encashed, was never brought to the notice of the



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Assessing Officer.

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36. The order passed by the Assessing Officer clearly shows that the Assessing Officer, having noticed various unusual features, had repeatedly demanded from the assessee, relevant documents, as listed in paragraph 8 of its order. The assessee failed to produce those documents. The list of documents clearly shows that the Assessing Officer was verifying with regard to the actual expenditure/ actual investment made by the assessee partnership firm. This particularly related to bills and vouchers. For the reasons best known to the assessee, it was never produced. The main aspect of inquiry before the Assessing Officer was whether the assessee firm had made any investment and played role as a developer or it was only a device to claim 100% deduction under Section 80IB (10) of the Act. It was only towards this verification, the Assessing Officer was demanding documents, which the assessee failed to produce. The only inference which could be drawn was that the assessee was having no evidence of it having made any investment in the housing project. This left Assessing Officer with no option but to reject the claim of deduction.



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37. When we look into the order passed by the CIT (Appeals), we find that even in the appellate proceedings also, the anomalies noted by the Assessing Officer were appreciated. Even at the appellate stage, books of account or bills or vouchers were not produced to examine and verify as to who actually developed the projects. That means, even though the assessee had an opportunity, it failed to produce the required documents, which would have immediately satisfied the Appellate Authority with regard to assessee's claim of deduction. The CIT (Appeals) noted a striking feature, as seen from paragraph 7 of its order, that the entire transaction has been so designed that the assessee firm, by virtue of a joint venture development agreement, could claim deduction in M/s.Indra Housing as carry forward losses in the case of M/s.Iswaryalakshmi Properties Private Limited could not reap the full benefit of Section 80IB (10) of the Act. It was also noted that though the assessee kept on reiterating that it was the developer, but never produced books nor other details for verification for his claim for deduction under Section 80IB (10) of the Act.



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38. The order of the Tribunal, however shows that all relevant considerations, based on close analysis by the Assessing Officer and CIT (Appeals), were kept at bay and the Appellate Tribunal jumped to the conclusion of the assessee having made investment and acted as developer in the housing project, on the basis of a very doubtful joint venture development agreement, which appears to be a sham document and that the assessee had declared profits and further that the Assessing Officer had not rejected the books of account of the assessee though accepted income and expenditure shown in profit and loss account and the balance sheet.

39. In our considered view, the approach of the Appellate Tribunal was completely flawed. Various anomalies and unusual features noticed by the Assessing Officer led it to demand various documents from the assessee to verify its claim. It was a case of scrutiny assessment and it was perfectly within the authority of the Assessing Officer to satisfy with regard to the genuineness of the claim. Therefore, whatever was declared as income and expenditure in the profit and loss account and the balance sheet could always be subjected to scrutiny and it was always open for the Assessing Officer



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to verify various statements contained in the books of account. Merely because profits have been declared does not mean that the assessee would qualify for deduction. Claim for deduction under Section 80IB (10) of the Act does not merely depend upon the income and expenditure shown in the profit and loss account and the balance sheet, but on demand, to furnish proof of having undertaken the housing project individually or jointly, which in turn required, on demand, submission of necessary documents, including bills and vouchers of investment made in the project. That alone could satisfy the requirement of it being an undertaking. While the Assessing Officer and CIT (Appeals) closely scrutinised various documents, the Tribunal more or less mechanically accepted the case of the assessee.

40. The decision cited at the bar by the assessee do not come to its aid. These are decisions on the proposition that in order to be eligible to claim deduction under Section 80IB (10) of the Act, the assessee need not be land owner. However, the decisions do not support the case of the assessee where it fails to submit necessary proof of having made investment as developer in the project.



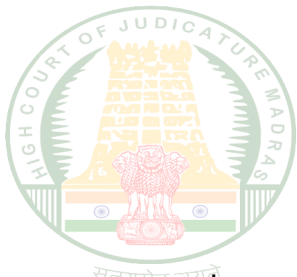
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41. During the course of argument, learned counsel for the assessee produced a copy of communication dated 25.03.2023, which contains list of certain documents. It bears a seal dated 30.03.2013 but does not contain any sign or receipt.

41.1. Be that as it may, the assessee claims to have submitted documents on the date when the assessment order was passed. Had it been so, we fail to understand as to what prevented the assessee from harping on these documents and press the same into service in appellate proceedings. On the contrary, the CIT (Appeals) has clearly recorded that the assessee has not produced any documents as demanded by the Assessing Officer. Moreover, this letter was placed for our perusal during the course of argument and we fail to understand how this letter was never referred to in any proceedings and is being placed for the first time before us.

41.2. With all vehemence at this command, learned counsel for the assessee sought to persuade us to remand the case for fresh inquiry into the claim of deduction. At this distance of time, we do not find any justification to remand the case to the Assessing Officer to verify various claims with reference to documents which are referred to in letter dated 25.03.2013, particularly when this does not



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bear any acknowledgment of receipt by the office of Assessing Officer.

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42. As an upshot of our discussion, the second question of law is answered against the assessee and in favour of the Revenue.

Submissions on the third question of law :

43. Learned counsel for the Revenue would submit that as the approval and completion certificates were obtained by M/s.Iswaryalakshmi Properties Private Limited, the assessee firm, for this additional reason, was also not entitled to claim of deduction under Section 80IB (10) of the Act.

43.1. Relying upon various decisions noted herein above, learned counsel for the assessee submitted that the legal position in this regard has been well settled.

Analysis and conclusion:

44. This question of law is required to be answered in favour of the assessee and against the Revenue, in view of series of decisions referred to above wherein, it has been consistently held that in order to claim benefit of deduction under Section 80IB (10) of the Act, the



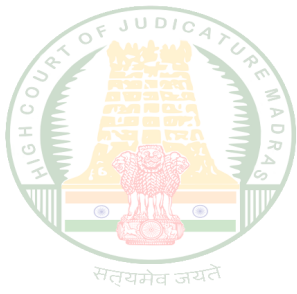
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assessee need not necessarily be the owner of the land. Even a developer could make such claim.

45. This legal position is clear from the decision of this Court in the case of *Commissioner of Income Tax vs. Sanghvi and Doshi Enterprise* [2013] 29 taxmann.com 386 (Madras). In the aforesaid case, it was held thus:

"9. As far as the claim of the Revenue that the assessee not being the owner of the building, the question of grant of deduction under sub-section (10) of Section 80 IB of the Income Tax Act was not available, the Tribunal pointed out that the ownership of the land was not the criteria to decide the status of the developer to claim deduction. Pointing out the situation where the owner may desire to retain the ownership of a portion of the land and sell it in an undivided portion, the Tribunal held that the Legislature must have taken note of such a situation in mind while providing for the deduction. Referring to the Memorandum explaining Finance Bill, 2009, introducing Explanation to [Section 80IB\(10\)](#) of the Income Tax Act, the Tribunal pointed out to the

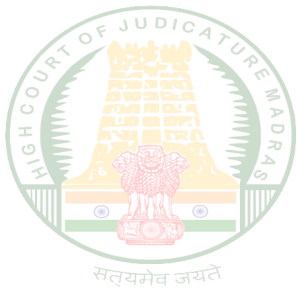


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provisions emphasised about the investment risk, which could be taken either by the owner or the builder or jointly by both. Thus, taking note of the risk elements involved in the promotion of developing a project, ownership as an element for consideration for deduction did not arise. The Tribunal further pointed out to the argument of the Revenue that as the owner was paid based on the built-up area, it was only the owner, who was the developer. Rejecting such a reasoning by the Revenue, the Tribunal pointed out that all that the owner was entitled to on the terms of the agreement between the parties was for the undivided share of the land measured in terms of the built-up area and he had no interest in the cost of construction, which the builder alone had to bear. In the circumstances, the consideration that was payable to the owner in respect of the sale of undivided share was with reference to the super built-up area. Irrespective of whether all the flats are booked or not, the owner would receive the cost of the land. Thus, on a reading of the various clauses in the agreement, the Tribunal held that the fact that the assessee was not the owner would not



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disentitle the assessee from claiming relief under [Section 80IB\(10\)](#) of the Income Tax Act. It further pointed out that the builder on its part had invested on materials and labour as and when the construction progressed and the recoupment of the investment was uncertain. Thus, irrespective of whether all the flats were booked or not, the builder would have to construct the entire building and even if there was a booking for a flat in the fourth floor and the third floor remained unbooked, the assessee nevertheless would have to go ahead with the construction of the third floor and hand over the possession of the fourth floor to the person, who had paid for the undivided share in the land. In this, the Tribunal pointed out that the risk of the assessee was multifold in contrast to the owner, who had no risk involved at all.

10. We may herein point out that on a perusal of the data furnished before this Court, we find that the flats in the other floors, viz., 5th and 7th floors were sold much ahead of the first floor flats. Apparently, keeping these facts in view, the Tribunal held that the builder



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had to invest his funds to build the entire project, the realisation from which was quite uncertain. Once the construction project not over, irrespective of the sale that had taken place, the owner would certainly ask for return on the value of the undivided share value. In the context of Clause 25 of the agreement that the builder will always have an option and the right to maintain all common services, namely, security arrangement for the entire building complex, maintenance of lifts, common passage and lobbies etc.; Clause 52 relating to the usage of certain areas by the builder and Clause 27 relating to collection of maintenance coupled with other risk involved, the Tribunal held that the assessee had the responsibility to develop and construct the housing project and the owner of the land is nowhere in the picture. Thus, the assessee was entitled to the relief under [Section 80IB](#) of the Income Tax Act and the absence of ownership would not disentitle the assessee, as a developer from claiming relief under [Section 80IB\(10\)](#) of the Income Tax Act.”



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45.1. Special Leave Petition filed against the aforesaid order was dismissed by the Hon'ble Supreme Court in *Commissioner of Income Tax vs. Sanghvi and Doshi Enterprise* [2017] 84 taxmann.com 241 (SC).

46. A Division Bench of the Gujarat High Court in the case of *Principal Commissioner of Income Tax vs. Green Associates* [[2019] 105 taxmann.com 80 (SC)], held as under:

"4. Various issues arising out of the claim of different assesseees under Section 80IB(10) of the Act came to be thrashed out by a Division Bench judgment of this Court in the case of *CIT v. Radhe Developers* [2012] 17 taxmann.com 156/204 taxman 543/341 ITR 403. The Court took note of various development agreements executed by the assessee in favour of individuals claiming that they had been engaged in the activity of housing development. Revenue's contention, that the nature of activities carried on by the assesseees would only qualify them to be the contractors executing works contract, was also considered. It was held that the assessee had undertaken the development of housing project at their own risk and cost. The owner



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of the land had accepted the full price of the land. He was therefore not concerned with the successor or failure of the housing project. In such background, reference was made to the definition of term 'transfer' under Section 2(47) of the Act and held that merely because the land was held by the original owner when the housing development project was executed, would not be detrimental to the assessee's claim of deduction under Section 80IB(10) of the Act."

46.1. Special leave petition preferred against the aforesaid order was dismissed by the Supreme Court in *Principal Commissioner of Income Tax vs. Green Associates* [2019] 105 taxmann.com 80 (SC).

46.2. The view taken by this Court in the case of *Sanghvi and Doshi Enterprises (supra)* has been reiterated again in the case of *Bashyam Constructions P Ltd. vs. DCIT* [2019] 103 taxmann.com 425 (Madras).



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47. Another Division Bench of Gujarat High Court in the case of *Commissioner of Income Tax vs. Sahajanand Associates and Commissioner of Income Tax vs. Radhe* [2012] 17 taxmann.com 156 (Gujarat) has reiterated its earlier view, which is in consonance with the consistent view which has been taken by this Court in various decisions referred to herein above.

48. Consequently, the third question of law is answered in favour of assessee and against the Revenue.

Disposition:-

49. Even though the third question of law is answered in favour of the assessee, in view of our answers to first and second question of law in favour of Revenue and against the assessee, this appeal has to be allowed.

50. The appeal of the Revenue deserves to be allowed and is accordingly allowed.



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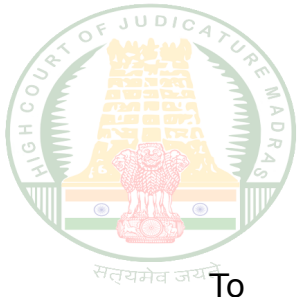
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51. The order passed by the Appellate Tribunal is set aside and the order passed by the Assessing Officer and CIT (Appeals) are restored. The assessee, accordingly, is held not eligible to deduction under Section 80IB (10) of the Act.

52. Costs are made easy.

(MANINDRA MOHAN SHRIVASTAVA, CJ.) (G.ARUL MURUGAN, J.)
23.09.2025

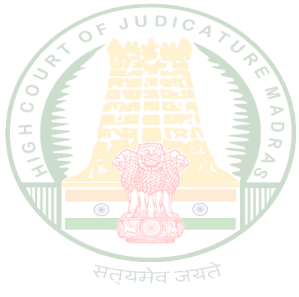
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To
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- 1.The Commissioner of Income Tax
Business Circle XIII, Chennai
- 2.The Income Tax Appellate Tribunal,
Madras "C" Bench, Chennai



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THE HON'BLE CHIEF JUSTICE
AND

G.ARUL MURUGAN, J.

(tar)

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23.09.2025