(2015) 03 MAD CK 0309

In the Madras High Court

Case No : Tax Case (Appeal) No. 56 of 2015

Commissioner of Income Tax — APPELLANT

Vs

Voora Property Developers P. Ltd. — RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 143(3), 263, 80-IB, 80IB(10)

Citation : (2015) 373 ITR 317

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Advocate : T. Ravi Kumar, Standing Counsel, for the Appellant

Judgement

R. Sudhakar, J.—This tax case (appeal) is filed by the Revenue as against the order dated July 31, 2014, made in I.T.A. No. 92/Mds/2014 on the file of the Income-tax Appellate Tribunal, Madras "C" Bench, for the assessment year 2007-08 raising the following substantial questions of law:

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee-firm was eligible to claim deduction under section 80-IB(10) especially when the assessee had failed to fulfill the primary condition in relation to the size of area of 1 acre plot for each housing plot as laid down in the statute?

(ii) Is not the finding of the Tribunal had especially when the entire land on which six projects were constructed was only 1.06 acres of land and, therefore, the conditions stipulated under section 80-IB(10) in relation to development of size of each plot being 1 acre was not satisfied?"

The brief facts of the case in a nut-shell are as follows:

The assessee is a company engaged in the business of construction and sale of residential flats. The assessee owns a land measuring 1.065 acres at Kamaraj Salai, Kottivakkam in Chennai. The assessee developed a residential project on the said land and within the project the assessee constructed six housing towers, which were approved by the CMDA by six separate permits. For the assessment year under consideration, the assessee filed its return of income on October 31, 2007, admitting nil income. While computing the total income, the assessee claimed a sum of Rs. 2,40,76,271 as deduction under section 80-IB(10). The case of the assessee was selected under CASS and notice under section 143(2) was issued on September 12, 2008. Scrutiny assessment under section 143(3) was completed on December 31, 2009. The Assessing Officer allowed the claim of the assessee under section 80-IB(10) for the assessment year under consideration.

2. Finding that the order of the Assessing Officer is prejudicial to the interests of the Revenue, the Commissioner of Income-tax passed an order under section 263 of the Income-tax Act holding that the assessee did not comply with the provisions of section 80-IB(10) and remitted the matter to the Assessing Officer to examine the claim of deduction under section 80IB(10) afresh. Accordingly, the Assessing Officer passed an order under section 143(3) read with section 263 of the Income-tax Act holding that the assessee had developed six separate projects in one single piece of land measuring 1.065 acres and the assessee did not fulfill the essential condition of the minimum area of one acre for a single project as laid down under section 80IB(10) of the Income-tax Act. Consequently, the Assessing Officer disallowed the deduction granted earlier to the assessee.

3. As against the said order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who upheld the findings of the Assessing Officer, thereby dismissed the appeal.

4. Aggrieved by the same, the assessee filed an appeal before the Tribunal.

5. Before the Tribunal, the assessee contended that there were six blocks with different names in the housing scheme and the CMDA had granted planning permits for the different blocks separately, however, on a same date. The assessee also contended that the allottees were given approximately 1,022 sq. ft. of undivided share of land and that was supported by sale deeds executed by each of the individual. In support of their contention, the assessee relied upon the decision of the Bombay High Court in the case of The Commissioner of Income Tax 25, C/11, Room No. 209, 2nd Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 Vs. M/s. Vandana Properties, 602B, Prem Nagar, Off. SV P Road, Borivali (West), Mumbai - 400092, (2012) 3 BomCR 531 : (2012) 114 BOMLR 1159 : (2012) 254 CTR 258 : (2013) 353 ITR 36 : (2012) 206 TAXMAN 584 .

6. The Tribunal, on hearing both sides, came to hold that the assessee had developed a project in a land measuring 1 acre and 6.5 cents and allotted 1,022 sq. ft. of undivided share of land to each of the 48 allottees and, hence, the assessee is entitled to the benefit of section 80-IB(10) of the Income-tax Act as

a composite scheme. For better clarity, the findings of the Tribunal reads as follows:

"5. We have heard the submissions made by the representatives of both sides and have perused the orders of the authorities below. We have also examined the judgment of the hon''ble Bombay High Court-on which the learned counsel for the assessee has placed reliance. The benefit of section 80-IB(10) has been denied to the assessee only on the ground that the assessee has been granted separate permits for construction of different blocks in the project. It has not been disputed by the Revenue that the assessee is having land more than one acre as envisaged under section 80-IB(10). As it is evident from the records, the assessee has raised construction of 6 different blocks giving them different names for the purpose of convenience and identification. The learned counsel for the assessee has placed on record a copy of the sale deed in respect of one of the allottees, to show that all the allottees have been given undivided share in land from the total area of 1.065 acres. The sale deed is at pages 51 to 63 of the paper-book. At page 61 in schedule A, the details of the entire property are given. A perusal of schedule A shows that the land is situated at No. 141, Kottivakkam Village, Saidapet Taluk, Chingelpet District within the Registration District of Madras. The total extent of land is 1 acre and 6.5 cents, i.e., 46,392 sq. ft. Each allottee gets 1,022 sq. ft. undivided share of land as stated in schedule A. There are 8 residential units in each block and in total there are 48 allottees. Thus, it is clearly evident that all the allottees have been given undivided share in the total land measuring 1.065 acres. We find force in the submissions made by the learned counsel for the assessee that all the 6 blocks are part of the same housing project. A further perusal of the records show that permits have been granted for each block on the same day which further fortifies the claim of the assessee that the projects are part of the composite housing scheme."

7. The Tribunal taking note of the facts in the case of The Commissioner of Income Tax 25, C/11, Room No. 209, 2nd Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 Vs. M/s. Vandana Properties, 602B, Prem Nagar, Off. SV P Road, Borivali (West), Mumbai - 400092, (2012) 3 BomCR 531 : (2012) 114 BOMLR 1159 : (2012) 254 CTR 258 : (2013) 353 ITR 36 : (2012) 206 TAXMAN 584 , which followed the CBDT Circular dated 4th May 2001, came to hold that the assessee is eligible to claim deduction under section 80-IB(10) of the Income-tax Act in respect of the project "Voora Prithvi" situated at Kamaraj Salai, Kottivakkam.

8. Aggrieved by the order of the Tribunal, the Revenue is before this court raising the abovementioned questions of law.

9. Heard learned standing counsel appearing for the Revenue and perused the materials placed before this court.

10. We find, on facts, there appears to be no dispute or confusion, except the

plea of the Department that the assessee did not fulfill the requirements prescribed under section 80-IB(10) of the Income-tax Act. On facts, we find that there is no dispute in the approval granted by the CMDA in respect of the composite housing scheme. When the Legislature introduced 100 per cent deduction under the Income-tax Act, it was known that the local authorities could approve a housing project to the extent permitted under the Development Control Rules. When the project fulfils the criteria for being approved as a housing project, then, deductions cannot be denied under section 80-IB(10) of the Act merely because the assessee had obtained separate plan permits for the six blocks. If the conditions specified under section 80-IB are satisfied, then deduction is allowable on the entire project. Since the project was approved in accordance with Development Control Rules, the assessee would be entitled to 100 per cent deduction on the entire project approved by the local authority.

11. The abovesaid view was fortified by this court in an identical circumstance in the decision in CIT v. Shantiniketan Property Foundation (P.) Ltd. reported in [2012] 83 CCH 267 Chen HC, wherein this court referring to the decision in the case of The Commissioner of Income Tax 25, C/11, Room No. 209, 2nd Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 Vs. M/s. Vandana Properties, 602B, Prem Nagar, Off. SV P Road, Borivali (West), Mumbai - 400092, (2012) 3 BomCR 531 : (2012) 114 BOMLR 1159 : (2012) 254 CTR 258 : (2013) 353 ITR 36 : (2012) 206 TAXMAN 584 and following the decision of this court dated November 2, 2012, in the case of Viswas Promoters P. Ltd. v. Asst. CIT T.C. Nos. 1014 of 2009, 857 of 2010 and 190 to 192 of 2012 and W.A. No. 471 of 2010 [2013] 1 ITR-OL 169 (Mad.) held as Mows:

"3. As rightly pointed out by the learned counsel for the assessee, applying the decision of the Bombay High Court in The Commissioner of Income Tax 25, C/11, Room No. 209, 2nd Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 Vs. M/s. Vandana Properties, 602B, Prem Nagar, Off. SV P Road, Borivali (West), Mumbai - 400092, (2012) 3 BomCR 531 : (2012) 114 BOMLR 1159 : (2012) 254 CTR 258 : (2013) 353 ITR 36 : (2012) 206 TAXMAN 584 , this court had already considered a similar issue in Viswas Promoters P. Ltd. v. Asst. CLT T.C. Nos. 1014 of 2009, 857 of 2010 and 190 to 192 of 2012 and W.A. No. 471 of 2010, dated November 2, 2012 [2013] 1 ITR-OL 169 (Mad.) and allowed the assessee''s appeal. We may point out her that the present assessee''s stand is on a better footing than that of the decision of the Bombay High Court. The facts in the decision of the Bombay High Court related to the case of the assessee putting up extra blocks in the land, where there were already five buildings. As far as the order passed by us in Viswas Promoters P. Ltd. v. Asst. CIT T.C. Nos. 1014 of 2009, 857 of 2010 and 190 to 192 of 2012 and W.A. No. 471 of 2010, dated November 2, 2012 [2013] 1 ITR-OL 169 (Mad.) is concerned, as in the present case, several blocks were put up in a larger area which admittedly exceed the required area specified in clause (a) sub-section 10 of section 80-IB, viz., one acre. Thus, applying the decision of this court rendered in Viswas Promoters P. Ltd. v. Asst. CIT T.C. Nos. 1014 of 2009, 857 of

2010 and 190 to 192 of 2012 and W.A. No. 471 of 2010, dated November 2, 2012 [2013] 1 ITR-OL 169 (Mad.), we have no hesitation in rejecting the Revenue''s appeal, thereby confirm the order of the Tribunal."

The abovesaid decision of this court squarely applies to the facts of the present case. In the present case also, the assessee constructed six blocks in a land measuring one acre and 6.5 cents which admittedly exceed the required area specified in clause (a) sub-section (10) of section 80-IB, viz., one acre. Accordingly, following the abovesaid decision of this court, this tax case (appeal) stands dismissed. No costs.

