
(2012) 02 KAR CK 0072

In the Karnataka High Court

Case No : IT Appeal No's. 421 and 422 of 2009

Commissioner of Income Tax, Central Circle

APPELLANT

Vs

Shravanee Constructions

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 80 IB (10)

Citation : (2012) 209 TAXMAN 6

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; S.R. Anuradha, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—ITA No. 421/2009 pertains to the assessment year 2003-04 and ITA 422/2009 pertains to the assessment year 2004-05 in respect of very same assessee and in respect of very same housing project. Therefore, they are taken up for consideration together and disposed off by this common order. The revenue has preferred these appeals against the order of the Tribunal, which has granted benefit of Section 80IB(10) of the Income Tax Act, 1961 (for short hereinafter referred to as the Act) on the ground that the assessee was an integral part of the construction activities.

2. The assessee firm is engaged in the business of development and construction of residential flats. It came into existence in the year 1995. It purchased agricultural land measuring 2 acres 39 guntas for an amount of Rs. 11,24,100/- at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk. The sale deed was not registered. A Memorandum of Understanding was entered on 16.05.1996 with the land owners and the assessee took possession of the property. On 19.12.1997, a joint development agreement was entered into by the assessee as "consenting witness" with (i) the landlords as "owners"; and (ii) M/s. Purvankara Projects Ltd., Mumbai as "promoters", to develop a residential apartment on the above land. As per the agreement dated 19.12.1997, the promoters were to pay

a consideration of Rs. 45,00,000/-and to deliver 2296 of the super built area to the consenting witness, namely the assessee. As a consequence of the agreement, the assessee firm got the land converted into non-agricultural land and got the work commencement letter dated 11.05.1999 from the Byatarayanapura City Municipal Corporation. On 30.03.2001 another joint development agreement was made wherein the earlier agreement was improved by retaining the same terms and conditions. A further supplement agreement was made on 20.04.2001 in which the modalities for dividing the super built area were mentioned. Out of the total 211 flats that were to be constructed as per the projects, 40 flats in different blocks were allotted to the assessee. The assessee sold some of the flats and claimed the income on sale of the flats as deduction u/s 80IB(10) of the Act. The Assessing Officer on verification of the records found that the assessee has not satisfied the conditions laid down in Section 80IB(10) of the Act. It was ascertained from M/s. Purvankara Projects Ltd., that they had not claimed deduction in respect of flats allotted to the assessee. The Assessing Officer further found that some clarification was required from the assessee to allow the claim of the assessee with regard to whether the role of the assessee firm"s in the above project could be interpreted as development and construction activity for the purpose of Section 80IB(10) of the Act. The assessee made an application to the Additional Commissioner of Income Tax requesting to allow its claim u/s 80IB(10). The Additional Commissioner of Income Tax held that although the assessee satisfied most of the conditions laid down in Section 80IB(10), however, since the assessee itself has not developed and built the housing project, he held that the deduction u/s 80IB(10) could not be made available to the assessee. He further held that the provisions of Section 80IB(10) provided for deduction of profits from housing project from the total income, to an undertaking which had done the work of developing and building the approved housing project. Since the housing project was carried out by M/s. Purvankara Projects Ltd., by virtue of the agreements and the assessee has not developed and built the project on its own, the Commissioner of Income Tax (Appeals) held that the assessee is not entitled for deduction. Aggrieved by the aforesaid two orders, the assessee preferred an appeal to the Tribunal. The Tribunal held that the assessee not only obtained the permission/sanction for the construction but also has done the work of making the land useful for the apartment construction, providing roads, supervising the construction activity along with Purvankara Projects Ltd. Therefore, the assessee is an integral part of the development and construction activities. The assessee is not merely the land owner who had agreed to part with the land. Normally, once the land is transferred to the developer, the developer does the entire activity, whereas in the instant case, the assessee as mentioned above, has also done additional activities, which are integral parts of developing the project. Therefore, it held that the assessee is entitled to the benefit of tax under the aforesaid provisions. Aggrieved by the said order, the revenue is in appeal.

3. The substantial question of law that arise for consideration in these appeals is

as under:

Whether the Tribunal was correct in holding that the assessee is entitled to deduct u/s 80IB(10) of the Act admittedly when the assessee has not carried out activity of developing and building house project and has merely assisted the developer/promoter in the project?

4. Sub-section (10) of Section 80IB enables an undertaking, which is 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. The said section also provides the conditions to be fulfilled before claiming benefit of deduction under the said provision.

5. In the instant case, all those conditions are fulfilled. However, the dispute is when the assessee has not built the housing project, is he entitled to the benefit of the aforesaid provision.

6. As stated earlier, it is not merely building housing project, which attracts this provision. It is developing and building housing project, which attracts the provision. In the order passed by the Commissioner of Income Tax (Appeals), the development and construction activities undertaken by the assessee are listed. They are:

(i) Obtaining khatha from municipality;

(ii) Obtaining plan sanction for construction of apartment on the said property by the local authority;

(iii) Making the land usable for the purpose of apartment construction by providing proper road and to give an approach to the site;

(iv) Jointly supervising the construction of the apartments buildings;

(v) Marking the apartments falling to the share of the assessee;

(vi) Also undertaking the levelling the road and removal of rocky surface in the said land and made it usable for the purpose of construction of the apartment complexes.

7. In terms of the agreement, which are not in dispute, the assessee not only undertook the aforesaid development activities on the land in question, but in fact, he entered into an agreement of sale with the owners of the land, paid the entire consideration but he did not take a registered sale deed in his name. On the contrary, the procedure adopted is he in turn entered into a joint development agreement with the builder and the owner of the land was made a party to the said proceedings. Thus, the assessee contributed the land, undertook the aforesaid developmental activities in the said land and thus, complied with all other conditions, which have to be fulfilled before claiming benefit u/s 80IB(10) of the Act. The builder has invested the money in the

construction. It is after completion of the building in terms of the agreement, the assessee was given 22% share of the building area. It is after sale of the built area, in terms of Section 80IB(10), the assessee is claiming deduction. As is clear from the joint development agreement, the undertaking of developing and building housing project was jointly undertaken by the assessee and the builder. Therefore, in respect of the residential units numbering 211 in all, the persons who undertook this undertaking are entitled to the benefit of Section 80IB(10) of the Act in proportion to the share to which they are entitled to in the built up area. In that view of the matter, the contention of the revenue that the assessee did not undertake any developmental or building activity and therefore, he cannot individually claim the benefit has no substance. That is not the requirement of law. Keeping in mind, the object with which this provision is introduced when all persons who have made investments in this housing project which is for the benefit of middle and lower class people and, when they have complied with all the conditions prescribed under the aforesaid provision, both of them are entitled to hundred per cent benefit of tax deduction as provided under the said provision. In that view of the matter, we do not see any merit in these appeals. The substantial question of law is answered in favour of the assessee and against the revenue. Accordingly, the appeals are dismissed.