(2016) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : R.P. Nos. 736, 737, 738, 745, 746 and 856 of 2015.

Global Reality and Others APPELLANT

Vs

Commissioner of Income RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:
Income Tax Act, 1961 — Section 260A, 80IB (10)

Citation : (2016) 286 CurTR 216

Hon'ble Judges : A.M. Khanwilkar, C.J.;K.K. Trivedi, J.

Bench : Division Bench

Advocate : G.N. Purohit, learned Senior Counsel with Uma Parashar, learned counsel, for the Appellant; Sanjay Lal, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. I.A.Nos.13339/2015, 13404/2015, 14926/2015, 13340/2015, 13341/2015 and 13401/2015 ? applications for condonation of delay in R.P.Nos.736/2015, 746/2015, 856/2015, 737/2015, 738/2015 and 745/2015 respectively.

2. Heard counsel for the parties.

3. In all these matters, which were disposed of together by common judgment, there is delay in filing of review petitions. The delay is ranging between 14 days to 52 days. In the interest of justice, delay applications are allowed in the respective cases.

4. By consent, review petitions are taken up for hearing forthwith.

5. The leading judgment rendered in companion cases has essentially dealt with the purport of Section 80IB (10) and in particular, condition specified in Clause (a) regarding computation of date of completion of construction of housing project for extending the benefit provided under the said provision to the assessee for the relevant period. The argument in these review petitions proceeds that the provisions of Municipal Corporation Act have been overlooked

though specifically pointed out during the final hearing of the main appeal. Further, the view taken in the judgment under appeal is not in consonance with the exposition of the Supreme Court in the case of S. Sundaram Pillai v. V.R. Pattabiraman, AIR 1985 SC 582. Both these arguments will have to be rejected.

6. For, the Court in the main appeals was concerned with the interpretation of Section 80IB (10) as amended. The provisions of Municipal Corporation Act will and can have no bearing on the interpretation of the amended provisions of the Income Tax Act which were under consideration. In other words, the purport of Section 300 of the Municipal Corporation Act cannot control the sweep of the express provision contained in the Finance (No.2) Act, 2004 which came into force with effect from 1.4.2005. The interpretation adopted by us in the judgment under review was inter-alia on the basis of the express provision contained in the Explanation below Clause (a) (ii) of Section 80IB (10) as amended. The same reads thus :-

"80IB (10)...........

(a) ?????.

(i) ?????.

(ii) ?????.

Explanation.- For the purposes of this clause,-

(i) ?????.

(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;"

Understood thus, neither the provisions of the Corporation Act which have been relied by the review petitioners in the present petitions nor the decision of the Supreme Court will be of any avail.

7. Counsel for the review petitioners in all fairness submits that the decision of the Supreme Court in S. Sundaram Pillai''s case (supra) was not dealing with the express provision such as Explanation sub-Clause (ii) below Section 80IB (10) (a) (ii). As a result, no case for review is made out.

8. Counsel for the review petitioners submits that the review petitioners be granted liberty to take recourse to remedy of appeal before the Supreme Court. It is open to the review petitioners to pursue such other remedy as may be permissible in law. This request, however, cannot be entertained in review petitions.

9. Counsel for the review petitioner in Review Petition No.738/2015 then submits that the remedy of appeal was not available to the Department in the fact situation of that case. For, the Tribunal had already set aside the decision of the lower Authority and referred back the matter to the Assessing Officer. Even so, in

our opinion, that would not warrant review of the judgment under consideration on that count, as the interpretation given to the provisions contained in Section 80IB (10) as amended by the Finance (No.2) Act, 2004 which came into force w.e.f. 1.4.2005, would still apply in all cases heard and disposed of together.

10. Taking any view of the matter all these review petitions must fail and the same are dismissed.

