

आयकर अपीलार्थ आधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1846/Chny/2014

निर्धारण वर्ष/Assessment Year: 2009-10

Income Tax Officer,  
Ward-XV(1),  
Chennai – 600 034.

(अपीलाथ/Appellant)

Vs. Smt. Jagadeeswari,  
No.40, G-2,  
Jagannathapuram,  
III Street, Chennai-031.  
(प्रत्यथ/Respondent)

अपीलाथ क ओर से/ Appellant by : Mr. Sridhar Dora, JCIT  
प्रत्यथ क ओर से /Respondent by : Mr. T. Banusekar, CA  
सुनवाई क तारख/Date of Hearing : 14.05.2019  
घोषणा क तारख /Date of  
Pronouncement : 17.05.2019

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Ld CIT (A)-V, Chennai in ITA No. 248/13-14(A)-V, dated 31/01/2014 for the assessment year 2009-10.

2. Smt A. Jagadeeswari, the assessee, is a proprietor of PJP Promoters engaged in the business of property development. For the Assessment

Year 2009-10, the assessee claimed deduction u/s 80-IB(10) in respect of the project at Gangai Nagar, Velachery. For the AY 2007-08 also, the assessee claimed deduction u/s 80IB(10) in respect of this project. The AO denied the deduction therein for the following reasons, viz., (i) the assessee was only a 'contactor' not a 'developer' as envisaged u/s 80IB(10) of the Act; (ii) had not obtained completion certification from the local authority and (iii) the units constructed by the assessee exceeded the maximum limit of 1500 sq. ft per unit laid down in section 80IB(10) of the Act. Though, the CIT (A) has allowed the assessee's claim for AY 2007-08, apart from the reasons mentioned in AY 2007-08, the AO denied the assessee's claim of deduction, inter alia, for the reason that the assessee had obtained approval for construction from the competent authority for each block separately at different point of time and it was not a composite project comprised in a area of one acre as envisaged in the section.

3. Aggrieved, assessee filed appeal before the Ld CIT (A) and the CIT (A) allowed the appeal.

4. Aggrieved against the order of the Ld CIT (A), the Revenue filed this appeal with the following Grounds of Appeal:-

- “1. *The order of the Ld CIT (A) is contrary to law and facts of the case.*
2. *The Ld CIT (A) erred in holding that the assessee is entitled for relief u/s 80IB(10).*

3. *The Ld CIT (A) erred in allowing relief even though the assessee has not produced completion certification from local authority.*
4. *The CIT (A) failed to note that the units constructed by the assessee exceeded the maxim limit of 1500 sq ft per unit.*
5. *The Ld CIT (A) failed to note that approval for construction from the competent authority has been obtained for each block separately at different point of time, thus making them independent project comprised in an area lesser than that specified in the section i.e., one acre.*
6. *It is submitted that the order of the ITAT relied upon by the CIT (A) in the assessee's own case for the assessment year 2007-08 has not become final and the issue is being contested in further appeal by the department.*
7. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld CIT (A) may be set-aside and that of the Assessing Officer be restored."*

5. The Revenue has also filed the following the Additional Grounds of

Appeal:-

- “1. *The assessee had not filed all the copies of plan approvals and has now filed the same before the CIT (A), constituting evidence in Rule 46A.*
2. *The approval has been obtained for two different plots situated in the addresses at (a) New Secretariat Colony, 4<sup>th</sup> Street, Velachery, Chennai – 600 042 and (b) Gangai Nagar, 1<sup>st</sup> Main road, Velachery, Chennai – 600 042.*
3. *The CMDA approval for the plot at Sl No. (1) bearing Survey No.486/1 is obtained for an area admeasuring 27,039.21 sq ft and the plot at Sl No. (2) bearing Survey No. 482 is obtained for an area admeasuring 31,798.80 sq ft. All the other plan approvals from Sl No. 3 to Sl No. 16 are construction approvals in the above said 2 plots.*
4. *For claim of deduction u/s 80IB-(10) of the IT Act. 1961, Clause (b) to sub-section 10 to section 80IB clearly stipulates that “ the project is on the size of a plot of land which has a minimum area of one acre”.*

*It is seen from the plan approvals submitted before the CIT (A) that the assessee has obtained approval for 2 different plots of land not contiguous in nature and situated in 2 different streets. Though the plots together admeasure more than one acre, the condition stipulated in section 80IB(10)(b) is that the project is on the size of a plot of land which has a minimum area of one acre. The two plots separately measure 27,039.21 sq ft and 31,798.80 sq ft which is clearly less than an acre ( 1 acre = 43200 sq ft). Hence, it is apparent that neither of the two projects qualify for deduction u/s 80IB(10).*

5. *The plan approvals for individual plots are obtained on different dates for construction of ground floor and first floor. If the construction agreement is obtained, it can be verified that if the construction on each plot in the ground floor and first floor is for an individual buyer and if it is so, none*

*of the same would qualify for deduction u/s 80IB(10) as the built up area of all the residential units shall not exceed 1500 sq ft as stipulated in clause (c) of sub-section 10 of section 80IB(10) of the Act. The floor wise built-up area of the residential units of the approved plot of sl no. 1 even if taken individually, exceed 1500 sq ft as can be observed from the plan approval submitted. The Hon'ble High Court of Madras issued orders in respect of the assessee for the AY 2007-08 vide TC (A) No. 257 of 2012 dated 12/11/2014 on this issue to allow proportionate deduction only for those residential units which do not exceed 1500 sq ft.*

6. *It is comprehended that the additional evidence submitted by the assessee before the Ld CIT (A) as per Rule 46A have not come to her rescue, but substantiated that the assessee is eligible for claim deduction u/s 80IB(10) of the Act. The issue is similar for the AYs 2009-10 and 2007-08, wherein the assessee has claimed deduction u/s 80IB(10) for those years too."*

6. The Ld Departmental Representative presented his case on the lines of the Grounds of Appeal and Additional Grounds of Appeal.

7. Per contra, the Ld Authorised Representative inviting our attention to the Hon'ble Jurisdictional High Court decision in the assessee's own case in Tax Case (Appeal) No.257 of 2012, dated 12/11/2014, submitted that the Revenue went on appeal against the decision of the ITAT in the assessee's case for the AY 2007-08 wherein the same project was involved and the High Court has confirmed the orders of the ITAT, rejected Revenue's appeal and held that the assessee is entitled to deduction in respect of the built-up area exceeding 1500 sq ft on a proportionate basis. Further, he submitted that this Tribunal in the assessee's own case for the AY 2008-09 for the same project allowed the assessee's appeal in ITA No. 245/Mds/2017 and C.O. No. 30/Mda/2017, dated 20/11/2017 and he invited our attention to the following portion of the ITAT order:-

“8. *We have heard the rival submissions and carefully perused the material available on record. It is pertinent to mention that on the same project the Ld CIT (A) as well as the Tribunal has decided the appeal in favour of the assessee for the earlier assessment year 2007-08. Moreover for the relevant assessment year, the Ld CIT (A) has also made a finding that the project was designed as a composite project at the proposed site at survey no. 486/1 and 482. The project of the assessee was also in an area more than one acre. The approvals were obtained on unit basis only for the benefit of taking advantage of the relevant rules of the local authority. Further from the order of the Ld CIT (A), it is apparent that he had arrived at the conclusion in favour of the assessee after considering the facts of the case and the decision of various higher judiciaries on the identical issue. Therefore, in these circumstances we do not find it necessary to interfere in this order. Hence, the Revenue’s appeal is devoid of merits. It is ordered accordingly.*”

and submitted that since the same project continues from AY 2007-08 onwards, and since the earlier appeals were decided in its favour, the Revenue’s appeal may be dismissed.

8. We have heard the rival submissions and perused the material on record. The assessee claimed deduction u/s 80IB(10) of the Act for the same project from the AY 2007-08 onwards. This Tribunal has allowed the assessee’s claim for the AY 2007-08. On Revenue’s appeal, the Hon'ble Jurisdictional High Court has decided the issue in favour of the assessee for the AY 2007-08 but held that the assessee is entitled to deduction in respect of the built up area exceeding 1500 sq ft on a proportionate basis. For this assessment year, the CIT (A) gave a finding, inter alia, that the project was designed as a composite project at the proposed site at Survey No.486/1 and 482 at New Secretariat Colony, Velachery, Chennai. The project of the assessee was also in an area of more than one acre. The approvals were also obtained on unit basis only

for the benefit of taking advantage of the relevant rules of the Local Authority. Further, from the order of the CIT (A), it is apparent that he had arrived at the conclusion in favour of the assessee after considering the facts of the case and the decision of various higher judiciaries on the identical issue etc. On identical facts and circumstances, this Tribunal allowed the assessee's appeal in AY 2008-09, supra. Therefore, under these circumstances, in accordance with the decision of the Hon'ble Jurisdictional High Court (supra) and the coordinate Bench decision, supra, the assessee's appeal is allowed. However, the assessee is entitled to deduction in respect of the built-up area exceeding 1500 sq ft on a proportionate basis. The AO shall examine this aspect and allow the deduction in accordance with Jurisdictional High Court decision, supra. Thus, the Grounds of appeal as well as the Additional Grounds of Appeal raised by the Revenue are partly allowed.

9. In the result, Revenue's appeal is treated as partly allowed.

Order pronounced on the 17<sup>th</sup> May, 2019, in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 17<sup>th</sup> May, 2019.

OKK

आदेश कॆ ढतललढ आषत/Copy to:

1. अढीलथल/Appellant
2. ढढयथल/Respondent
3. आयकर आयुत (अढील)/CIT(A)
4. आयकर आयुत/CIT
5. ढढागीय ढढढढध/DR
6. गडढढढढढ/GF