

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.7.2020

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL Nos.533 & 534 of 2018 & CMP.No.11130 of 2018

(heard through video conferencing)

The Commissioner of Income
Tax, Business Ward III(1),
Chennai.

...Appellant

Vs

M/s.Astoria Leathers, Chennai-32.

...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961
against the common order dated 27.12.2017 made in ITA.Nos.2673
and 2674/Mds/2014 on the file of the Income Tax Appellate Tribunal,
Chennai 'C' Bench respectively for the assessment years 2008-09 and
2010-11.

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For Appellant : Mr.M.Swaminathan, SSC and
Mrs.V.Pushpa, SC & Ms.S.Premalatha, SC
For Respondent : Mr.A.S.Sriraman

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals, by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 27.12.2017 made in ITA.Nos.2673 and 2674/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Act) respectively for the assessment years 2008-09 and 2010-11.

2. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel and Mrs.V.Pushpa and Ms.S.Premalatha, learned Standing Counsel appearing for the appellant – Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent.

3. The appeals have been admitted on 23.8.2018 on the following substantial question of law :

"Whether the Income Tax Appellate Tribunal was correct and justified in directing the Assessing Officer to allow deduction under Section 80IB(10) of the Income Tax Act, 1961 to assessee land owner when it had not incurred any expenses towards development or construction of the housing project ?"

4. We find from the impugned order that the Tribunal remanded the matter to the Assessing Officer for a fresh consideration with a specific direction. We quote the relevant portion of the impugned order as hereunder :

"It is not clear from the materials available on record as to whether the developer M/s.KGEYES Residency Pvt. Ltd. was allowed to claim deduction of profits from its share of 66% alone and if it is so, then, the assessee should be allowed to claim deduction of similar profits and gains of its share of 34%. Accordingly, the Assessing Officer is directed to verify the above facts from the assessment order of the developer M/s.KGEYES Residency Pvt. Ltd., and decide the issue afresh in accordance with law after allowing an opportunity of being heard to the assessee. In case the assessee has incurred any expenditure towards land development as noticed by the learned CIT(A) and the developer M/s.KGEYES Residency Pvt. Ltd., has claimed deduction under Section 80IB(10) of the Act of only its share of 66%, then the assessee should be allowed to claim deduction under Section 80IB(10) of the Act of its share

of 34%. Thus, the ground raised by the Revenue in both the assessment years is allowed for statistical purposes.”

5. From the observations/directions issued by the Tribunal, we are of the view that the Revenue should not be aggrieved by such a direction of the Tribunal. Nevertheless, the substantial question of law framed for consideration has to be answered. To answer the substantial question of law, we need not labour much, as an identical question was considered and decided by a Division Bench of this Court, to which **one of us (TSSJ) was a party, in TCA.No.177 of 2018 vide judgment dated 30.1.2019 [M/s.Bashyam Constructions Pvt. Ltd. Vs. DCIT]**. In fact, the nature of transaction is also the same. After taking into consideration the decisions of this Court in the cases of (i) **CIT Vs. Sanghvi & Doshi Enterprise [reported in (2013) 29 Taxman.com 386]**, (ii) **ITO Vs. Doshi Enterprise [reported in (2013) 55 Taxmann.com 500]**, (iii) **CIT Vs. Ceebros Property Development (P.) Ltd. [reported in (2014) 41 Taxmann.com 263]**, the decisions of the High Court of Gujarat in the cases of (i) **CIT vs. Radhe Developers [reported in (2012) 17 Taxmann.com 156]**, (ii) **CIT vs. Moon Star Developers [reported**

in (2014) 88 CCH 0211] and (iii) **CIT vs. Prathama Developers [reported in (2013) 32 Taxmann.com 336]**, the decision of the Bombay High Court in the case of **CIT vs. Cajetano Mario Pereira [reported in (2014) 88 CCH 0152]** and the decision of the Hon'ble Supreme Court in the case of **CIT vs. Veena Developers [reported in (2015) 93 CCH 0184 ISCC]**, the substantial questions of law framed therein were answered to the following effect :

"14. It is interesting to note that in all these decisions, the Revenue placed reliance on the aspect of ownership as a criteria for grant of deduction under Section 80IB of the Act and submitted that Section 80IB(10) contemplates grant of deduction and it being a deduction provision, the same has to be complied in absolute terms by the assessee. The Courts have held that in a case of development, the developer is also entitled to claim deduction and ownership is not the criteria. Unfortunately, in the instant case, the Revenue took a reverse stand contrary to the consistent stand taken by them before this Court and other High Courts, which was rejected by the High courts and affirmed by the Hon'ble Supreme Court.....

21. *The correctness of the above finding was not considered by the Tribunal and the Tribunal merely stated that no expenses were recorded in the P & L account. Therefore, the contention advanced by the Revenue in this regard is not tenable. That apart, a plain reading of Section 80IB(10) of the Act evidently makes it clear that deduction is available in a case where an undertaking develops and builds a housing project. The Section clearly draws the distinction between 'developing' and 'building'. In the preceding paragraphs, we have noted the factual position as could be culled out from the joint venture agreement, which clearly shows that the assessee is the developer and M/s.ETA is the builder and mutual rights and obligations are inextricably linked with each other and undoubtedly, the project is a housing project thereby, the assessee would be entitled to claim deduction under Section 80IB (10) of the Act."*

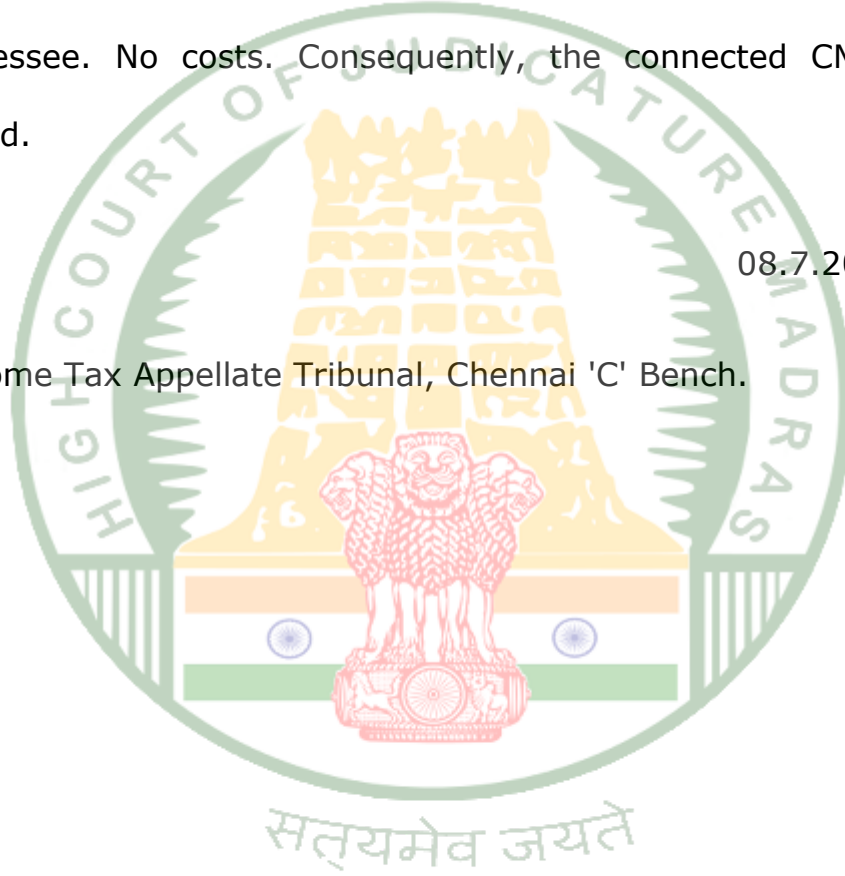
6. Thus, following the above decision, the substantial question of law framed in these appeals is answered against the Revenue. Accordingly, the above tax case appeals are dismissed. We make it

clear that the orders of remand by the Tribunal stand confirmed and the Assessing Officer shall scrupulously follow the directions issued by the Tribunal, which directed the Assessing Officer to verify the assessment order of the developer and decide the issue afresh in accordance with law after affording an opportunity of being heard to the assessee. No costs. Consequently, the connected CMP is also dismissed.

08.7.2020

To
The Income Tax Appellate Tribunal, Chennai 'C' Bench.

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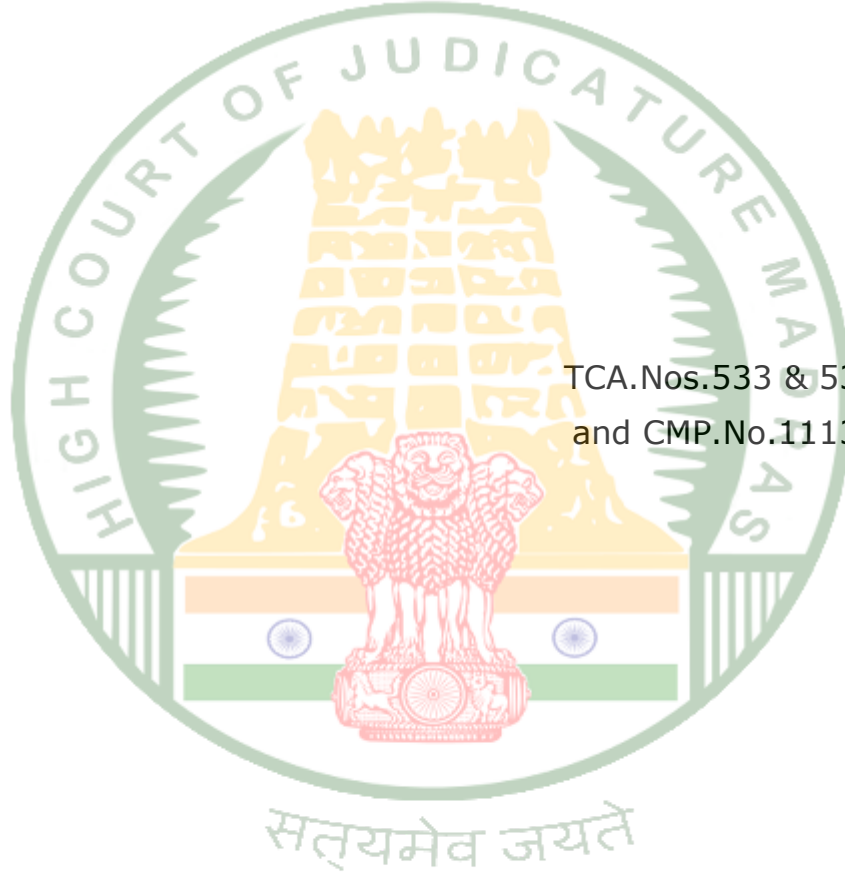


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