

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.224 & 225/Mds/2016

&

**C.O. Nos.51 & 52/Mds/2016**

(in I.T.A. Nos.224 & 225/Mds/2016)

निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

The Assistant Commissioner of  
Income Tax,  
Non-Corporate Circle – 15,  
Chennai - 600 034.

v. M/s Elegant Estates,  
No.1B/3, 1<sup>st</sup> Main Road,  
Gandhi Nagar, Adyar,  
Chennai - 600 020.

(Appellant)

PAN : AACFE 1274 G

(Respondent & Cross Objector)

अपीलार्थी की ओर से/Appellant by : Sh. Pathlavath Peerya, CIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 13.04.2016

घोषणा की तारीख/Date of Pronouncement : 19.05.2016

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)–15, Chennai, dated 18.11.2015, for the assessment years 2011-12 and 2012-13. The assessee has filed cross-objections. Since

common issue arises for consideration in both the appeals and both the cross-objections, we heard the appeals and cross-objections together and disposing of the same by this common order.

2. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 80-IB(10) of the Income-tax Act, 1961 (in short 'the Act') in respect of the housing project. The Assessing Officer, however, found that two adjacent flats, viz. Flat Nos.403 and 404, are sold to the same persons, namely, Smt. Latha Ramachandran and Shri K. Ramachandran. The built-up area of the flat was 3225 sq.ft., which is excess of 1500 sq.ft. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessee is not eligible for deduction under Section 80-IB(10) of the Act since the condition prescribed in Section 80-IB(10) was not complied with. However, on appeal by the assessee, the CIT(Appeals) found that the assessee sold the flats prior to amendment to Section 80-IB(10) of the Act, therefore, the amendment made in Section 80-IB(10) of the Act cannot be applied to deny the benefit of deduction under Section 80-IB(10) of the Act. The CIT(Appeals) referred to the order of this Tribunal in the assessee's own case for the assessment year

2010-11 in I.T.A. No.2902/Mds/2014 dated 27.02.2015 and found that the flats sold prior to the amendment cannot be subject matter of disallowance under Section 80-IB(10) of the Act. According to the Ld. D.R., the Revenue has already filed an appeal before the Madras High Court against the order of this Tribunal in the assessee's own case for assessment year 2010-11 and in fact, the High Court confirmed the order of this Tribunal by its judgment dated 07.12.2015. Now the Revenue has filed an appeal before the Apex Court and the same is pending.

3. On the contrary, Shri R. Sivaraman, the Ld.counsel for the assessee, submitted that an identical issue in respect of very same project was raised before this Tribunal for assessment year 2010-11. This Tribunal found that the amendment made to Section 80-IB(10) of the Act by inserting clause (f) by Finance Act, 2009 with effect from 01.04.2010, was prospective in operation. Therefore, the residential unit transferred before the amendment may not be hit by clause (f) in Section 80-IB(10) of the Act. The Tribunal further found that flat Nos.403 and 404 measure more than 1500 sq.ft. It does not mean that there is a bar for allowing deduction altogether. According to the Ld. counsel, if some of the units sold exceed the

specified area, the consequential disallowance, at the best, has to be proportionate only to the residential units which exceed specified area.

4. The Ld.counsel for the assessee further submitted that when the Revenue challenged before the Madras High Court in Tax Case Appeal No.1172 of 2015, the High Court found that in view of the earlier judgment of Madras High Court in CIT v. Arun Excellow Foundations (P) Ltd. (2013) 212 Taxman 342, the order passed by this Tribunal is correct in the eye of law. Accordingly, the order of this Tribunal was confirmed. Now the only contention of the Revenue before this Tribunal is that an appeal is pending before Apex Court. According to the Ld. counsel, mere pendency of an appeal before the Apex Court cannot be a ground for not following the judgment of Madras High Court and the decision of co-ordinate Bench of this Tribunal.

5. Referring to the cross-objections filed by the assessee, the Ld.counsel for the assessee submitted that the CIT(Appeals) has rightly not adjudicated the claim under Section 80-IB(10)(c) of the Act. During the year under consideration, according to the Ld.

counsel, no flat was sold / allotted to any individual more than one residential unit. The flat Nos.403 and 404 were sold in the assessment year 2010-11, which was subject matter of appeal before this Tribunal in I.T.A. No. 2902/Mds/2014 (supra). This Tribunal found that the assessee is eligible for deduction proportionately and that was confirmed by the High Court. Therefore, according to the Ld. counsel, in respect of the very same flats for which deduction was already granted under Section 80-IB(10) of the Act cannot be disturbed by applying the provisions of Section 80-IB(10)(f) of the Act.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The claim of deduction under Section 80-IB(10) of the Act was rejected by the Assessing Officer for both the assessment years on the ground that flat Nos.403 and 404 were sold to the same persons, namely, Smt. Latha Ramachandran and Shri K. Ramachandran. The very same issue, namely, sale of flats to Smt. Latha Ramachandran and Shri K. Ramachandran came before this Tribunal for assessment year 2010-11 in I.T.A. No.2902/Mds/2014. This Tribunal found that Section 80-IB(10)(f) introduced by Finance Act, 2009 was with effect

from 01.04.2010 and it applies prospectively. Therefore, it cannot be applied for assessment year 2010-11 and accordingly, allowed the claim of the assessee. The order of this Tribunal was confirmed by the Madras High Court. Now the matter is pending before the Apex Court. Once the claim was allowed by the co-ordinate Bench of this Tribunal in respect of the sale of residential unit to Smt. Latha Ramachandran and Shri K. Ramachandran and the order of this Tribunal was confirmed by the Madras High Court, it would not be proper for the Revenue to reopen the issue for the subsequent assessment years. As far as the sale of residential unit to Smt. Latha Ramachandran and Shri K. Ramachandran was concerned, the issue was settled by Madras High Court and now pending before Apex Court. Unless the judgment of Madras High Court was reversed by the Apex Court, there cannot be any reason for the Revenue to reopen the issue once again. Therefore, this Tribunal do not find any justification in disallowing the claim of the assessee merely because two flats were sold to Smt. Latha Ramachandran and Shri K. Ramachandran.

7. Now coming to the flats exceeded 1500 sq.ft., a co-ordinate Bench of this Tribunal found that flat Nos.403 & 404, in fact,

exceeded 1500 sq.ft. The language employed in Section 80-IB(10)(c) of the Act does not warrant deduction claim altogether if some of the units exceed the specific dimensions. The Tribunal in the earlier assessment year found that consequent disallowance has to be only on proportionate basis. This Tribunal placed its reliance on the judgment of Madras High Court in Arun Excello Foundations (P) Ltd. (supra). In view of the above, we find no reason to confirm the orders of the lower authorities and accordingly, the same are set aside.

8. In the result, both the appeals of the Revenue and both the cross-objections of the assessee are dismissed.

Order pronounced on 19<sup>th</sup> May, 2016 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 19<sup>th</sup> May, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.