

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" 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 No.1733/Mds/2013

निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of  
Income Tax,  
Business Circle – I,  
Chennai - 600 034.

M/s C. Subba Reddy (HUF),  
v. Prop: Ceebros Property Development,  
No.19, III Cross Street, R.A. Puram,  
Chennai - 600 028.

(अपीलार्थी/Appellant)

PAN : AACHC 2523 G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. Milind Madhukar Bhusari, CIT  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 12.10.2015

घोषणा की तारीख/Date of Pronouncement : 18.12.2015

### **आदेश /O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-VI, Chennai, dated 26.04.2013 and pertains to assessment year 2009-10.

2. Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 80-IB of the Income-tax Act, 1961 (in short 'the Act') in respect of construction of residential cum commercial project. According to the Ld. D.R., Section 80-IB(10) of the Act is applicable only in respect of housing project and not for commercial project. Referring to the assessment order, the Ld. D.R. pointed out that the approval granted by the Chennai Metropolitan Development Authority is for construction of residential cum commercial construction. Therefore, the assessee is not eligible for deduction under Section 80-IB of the Act.

3. The Ld. D.R. further submitted that the assessee has not included the common area and car park area specifically earmarked for particular flat owners in the built-up area. Referring to Section 80-IB of the Act, the Ld. D.R. pointed out that the assessee can claim deduction under Section 80-IB in respect of the constructions which are less than 1500 sq.ft. If the common area and car park area allotted to a particular individual are taken into account, then the built-up area exceeds the limit of 1500 sq.ft. fixed under the Act,

therefore, the assessee is not eligible for deduction under Section 80-IB(10) of the Act.

4. The Ld. D.R. further pointed out that the Assessing Officer made disallowance under Section 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962 at ₹15,68,912/-. However, the CIT(Appeals) restricted the same at ₹3,24,195/-. According to the Ld. D.R., the assessee has made huge investment in various mutual funds and liquid cash plans and earned dividend income to the extent of ₹1.13 Crores. Therefore, the CIT(Appeals) is not justified in restricting the disallowance at ₹3,24,195/-.

5. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that no doubt, the building plan was approved for residential cum commercial project. According to the Ld. counsel, it is a joint venture project. The entire commercial building in the project belongs to M/s Shyamala Pictures and Hotels Pvt. Ltd. In other words, the land belongs to M/s Shyamala Pictures and Hotels Pvt. Ltd. For the purpose of compensating the land owner in respect of the share allotted to the assessee, the entire commercial building was given to them. M/s Shyamala Pictures and Hotels Pvt. Ltd. retained the entire commercial building as their own investment

and it is not sold to the public. According to the Ld. counsel, as per the development agreement, the land owner M/s Shyamala Pictures and Hotels Pvt. Ltd. is entitled to share of the building and the assessee is entitled to remaining land. The assessee is claiming deduction only in respect of the share allotted to the assessee. Since no part of the commercial building was allotted to the assessee, according to the Ld. counsel, the assessee is not claiming any deduction in respect of the commercial building which was allotted to the owner of the land, namely, M/s Shyamala Pictures and Hotels Pvt. Ltd. The Ld.counsel further submitted that the cost of the land, which was allotted to the assessee, in pursuance to the joint development agreement, was met by constructing the commercial building to the owner. Therefore, the assessee has not developed any commercial project. Merely because a composite approval was obtained from competent authority for construction of the building, it cannot be said that the assessee has developed a commercial project. Referring to the contention of the Ld. D.R. with regard to built-up area, the Ld.counsel submitted that built-up area does not include common area or the car park area. In fact, an identical issue came before this Tribunal in the assessee's own case for assessment year 2004-

05 and the CIT(Appeals) has followed this order of the Tribunal for assessment year 2004-05. The only objection of the Revenue in the grounds of appeal is that an appeal was filed before the High Court against the decision of this Tribunal for the assessment year 2004-05. Now the High Court by judgment dated 27.01.2015 in CIT v. Subba Reddy (HUF) has approved the order of the Tribunal. In view of this judgment of Madras High Court, according to the Ld. counsel, the CIT(Appeals) has rightly granted deduction under Section 80-IB(10) of the Act.

6. Referring to the disallowance made under Section 14A of the Act, the Ld.counsel for the assessee submitted that the assessee has declared the dividend income of ₹1,13,13,773/-. The assessee specifically claimed before the Assessing Officer that no expenditure was incurred for earning the dividend income. Hence there was no question of any disallowance. However, according to the Ld. counsel, the CIT(Appeals) restricted the disallowance to ₹3,24,195/-. Hence, no interference is called for.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The first objection of the Revenue is that the assessee has constructed a

residential cum commercial complex. Admittedly, it is a joint venture project and the land belongs to the land owner M/s Shyamala Pictures and Hotels Pvt. Ltd. As per the joint development agreement, the assessee was allotted the residential block. The cost of the land in which the residential project was developed by the assessee was met by constructing commercial building to the owner in the other block of the land. This is obvious from joint development agreement. In fact, the commercial building was retained by the land owner M/s Shyamala Pictures and Hotels Pvt. Ltd. No part of the commercial building was allotted to the assessee. Therefore, this Tribunal is of the considered opinion that as per the joint development agreement, when the assessee was given only the residential area, and the assessee is claiming deduction under Section 80-IB(10) of the Act only in respect of residential area, there is no reason to disallow the claim of the assessee. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority on this issue.

8. Now coming to the built-up area, which exceeds 1500 sq.ft., admittedly, the Assessing Officer found that the common area and car park area have to be included in the built-up area. This was the

subject matter of appeal before the High Court in the assessee's own case for assessment year 2004-05. The Madras High Court, after referring to the definition of "built-up area" which came into effect from 01.04.2005, found that there is no justification in including car park area in the definition of "built-up area" of residential unit for the purpose of determining the maximum built-up area. The Madras High Court has also found that the common area shared with other residential unit cannot be treated as part of built-up area. In view of this judgment of Madras High Court in the assessee's own case for assessment year 2004-05, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly followed the order of this Tribunal. Therefore, the order of the CIT(Appeals) is confirmed.

9. Now coming to the disallowance made by the Assessing Officer under Section 14A of the Act, the assessee is not maintaining any books of account. The assessee claims that no expenditure was incurred. The fact remains that the assessee invested in the mutual funds to the extent of ₹77.50 Crores and earned dividend income of ₹1,13,13,772/-. For making such huge investment, naturally the managerial expenses have to be incurred.

Therefore, the disallowance has to be computed in respect of the expenditure relatable to managerial expenses. Therefore, the CIT(Appeals) restricted the disallowance to ₹3,24,195/-. This Tribunal do not find any reason to interfere with the order of the CIT(Appeals). Accordingly, the order of the CIT(Appeals) is confirmed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 18<sup>th</sup> December, 2015 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
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चेन्नई/Chennai,  
दिनांक/Dated, the 18<sup>th</sup> December, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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