

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**" D " BENCH, CHENNAI**

**श्री चंद्र पूजारी, लेखा सदस्य एवं**  
**श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष**  
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
आयकर अपील सं./ **I.T.A. No. 1353/Mds/2014**  
(निर्धारण वर्ष / Assessment Year : 2009-2010)

Prasad and Company,  
No.24,Ganthinagar,  
3<sup>rd</sup> Street,  
Tirupur 641 603

The Income Tax Officer,  
Vs Ward I(4),  
Tirupur.

[PAN: AAIFP 9785H]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : T. Banusekar, C.A.  
प्रत्यर्थी की ओर से / Respondent by : Shri. N. Madhavan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 17.06.2015.  
घोषणा की तारीख /Date of Pronouncement : 19.06.2015

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal by assessee is directed against the order of the  
Commissioner of Income Tax (Appeals)-II, Coimbatore, dated  
18.02.2014 for the assessment year 2009-2010.

2. The only grievance of the assessee in this appeal is with regard to non grant of deduction u/s.80IB(10) of the Income Tax Act.

3. The brief facts of the case are that the assessee claimed deduction u/s.80IB(10) of the Act on the profit earned at ₹1,15,25,539/- and the claim of the assessee was rejected by the Assessing Officer on the reason that the assessee is a contractor and not a developer after examining the agreement entered by the assessee with the purchaser in view of the Explanation inserted w.r.e.f. 01.04.2001 by the Finance Act 2009. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. The Id. Authorised Representative for assessee submitted that the assessee is a developer who has undertaken construction of flats with various owners though assessee is not a owner of the land. The Id. Authorised Representative for assessee further submitted that the

assessee is entitled for deduction u/s.80IB(10) of the Act in view of the following decisions:-

- (i) *CIT vs. Radhe Developers (2012) 341 ITR 403 (Guj).*
- (ii) *CIT vs. Sanghvi and Doshi Enterprise (2013) 214 Taxman 463 (Mad).*
- (iii) *CIT vs. Mahalakshmi Housing 2012-TIOL -951-HC- MAD -IT.*
- (iv) *CIT vs. Ceebros Property Development (P) Ltd. (2012) 83 CCH 98 (Madras HC)*
- (v) *CIT vs. Moon Star Developers 2014 (4) TMI 1042-(Guj H.C)*

6. On the other hand, the Id. Departmental Representative relied on the order of the lower authorities and submitted that in the agreement, the assessee was called as "contractor" and it cannot be considered as "developer" and assessee has not taken any risk or made any investment in the project and the cost of construction was incurred by respective flat owners and as such deduction u/s.80IB(10) cannot be granted.

7. We have heard both the parties and perused the material on record. The contention of the assessee's counsel is that the assessee though is not owner of the land, it has developed the housing project, providing the necessary infrastructure, providing housing loans for the buyers, it has involved from the commencement of the project to the completion of the project, and in view of the order of the co-ordinate bench in the case of *Sanghvi & Doshi Enterprise vs.*

*ITO (2011) 131 ITD 151 (Chen)*, the assessee is entitled for deduction u/s.80IB(10) of the Act. Admittedly, as held by the coordinate bench in the case of *Sanghvi & Doshi Enterprise* confirmed by Madras High Court, the assessee need not be a owner of the land to grant deduction u/s.80IB (10), if the assessee undertakes all the risk involved from the commencement of the project to the completion of the project. In other words, if the assessee undertook development of the project in terms of section 80IB(10) of the Act, the assessee is entitled for deduction u/s.80IB(10) of the Act. In our view, to give a finding whether the assessee is actually a developer or contractor, one has to see the agreement the assessee entered with the prospective buyer. Though there is an elaborate discussion in the assessment order, the contents of all the agreements which the assessee entered with the prospective buyer were not discussed. In our opinion, it is appropriate to go through the agreements entered with the prospective buyers alongwith financial statements to see the details of investment made by assessee and decide the issue in the light of the judgment of Madras High Court in the case of *Sanghvi & Doshi Enterprise [2013] 29 taxmann.com 386 (Madras)*. Accordingly, we remit the entire issue to the file of Assessing Officer with direction to examine whether the assessee made investment by

itself, executed development work and carried out civil works, deployment of technical personal, plant and machinery, technical knowhow, expertise and financial resources before handing over the completed project to the owner of the flats. If it is so, then the assessee has to be treated as developer rather than contractor. In other words, the assessee would not be denied deduction u/s.80IB(10) if the contract involves design, development, financial involvement and technical knowhow from assessee's side itself.

8. Accordingly, we remit the entire issue to the file of the Assessing Officer for fresh consideration.

9. In the result, the appeal of the assessee in ITA No.1353/Mds/2014 is partly allowed for statistical purposes.

Order pronounced on Friday, the 19th day of June, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद )

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:19.06.2015.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2. प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

Sd/-

(चंद्र पूजारी )

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

