

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.8/Mds/2017
निर्धारण वर्ष /Assessment year : 2013-2014.

The Deputy Commissioner of Income Tax,
Corporate Circle 1(1)
Chennai 600 034. **Vs.** M/s. Acestar Properties Pvt. Ltd,
12, South Mada Street,
Srinagar Colony,
Saidapet,
Chennai 600 015.

(अपीलार्थी/Appellant)

[PAN AAFCA 7237B]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Mohd. Mustafa, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. B. Ramakrishnan, C.A.

सुनवाई की तारीख/Date of Hearing : 29-11-2017
घोषणा की तारीख /Date of Pronouncement : 29-11-2017

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

In this appeal filed by the Revenue, which is directed against an order dated 17.10.2016 of the Id. Commissioner of Income Tax (Appeals)-1, Chennai, it is aggrieved that Id. Commissioner of Income

Tax (Appeals) allowed the claim of deduction under section 80IB(10) of the Income Tax Act (in short "the Act"), made by the assessee.

2. Ld. Counsel for the Revenue submitted that assessee was promoting a project called "la celeste" for which it claimed deduction u/s.80IB(10) of the Act. As per Id. Authorised Representative project which was conceived in the area of 9.87 acres was approved by the CMDA on 25.03.2008. As per Id. Departmental Representative though assessee complied with the conditions stipulated u/s.80IB(10) of the Act with regard to building approval, completion certificate and date of approval of the plan, it had not complied with the essential requirement that size of the residential units should not exceed 1500 Sq.ft. As per Id. Departmental Representative each of the residential units in the project had private open terrace of 100 to 700 sq.ft. If such private open terrace was included in the built up area, it exceeded 1500 sq.ft and thus according to Id. Departmental Representative, assessee was not eligible for claiming deduction u/s.80IB(10) of the Act. As per Id. Departmental Representative, Id. Commissioner of Income Tax (Appeals) had allowed the claim of the assessee taking a view that built up did not include such terrace area, relying on a judgment of Jurisdictional High Court in the case of *M/s. Ceebros Hotels Pvt. Ltd. vs.*

DCIT (TCA No.581 of 2008, 1186 of 2008 and 136 of 2009, dated 19.10.2012) As per Id. Departmental Representative private terrace area had to be considered as integral part of built up area. Id. Commissioner of Income Tax (Appeals), according to the Id. Departmental Representative fell in error in giving relief to the assessee.

3. Per contra, Id. Authorised Representative submitted that this Tribunal in assessee's own case for assessment years 2010-11, 2011-12 and 2012-2013 in ITA Nos.858, 859 & 860/Mds/2016, dated 28.04.2017 had considered the very same issue and decided it in favour of the assessee.

4. We have perused the orders and heard the rival contentions. Question before us is whether private open terrace should be included in the built up area for construing the limits specified in Sec. 80IB(10) of the Act. We find that the very same issue had come up before this Tribunal in assessee's own case for assessments years 2010-11, 2011-12 and 2012-2013. This Tribunal in its decision dated 28.04.2017 held as under paras 8 to 10 of its order:-

“8. We have carefully gone through the judgment of Madras High Court in Ceebros Hotels Pvt. Ltd. (supra), a copy of which is available at page 8 of the paper-book. The Madras High Court found that while contemplating deduction under Section 80-

IB(10) of the Act to a housing project approved by the local authority, the area excluded from the working of built-up area by the local authority, cannot be taken as built-up area. In fact, the Madras High Court has observed as follows at para 36 of its judgment:-

“Given the fact that contemplation of deduction is to Housing Projects approved by the Local Authority, we hold that once the Local Authority have excluded open terrace from the working of built-up area, it is not open to the Revenue to review the approval given by the competent authority to hold that terrace would also be included in the built-up area. As already held the definition also does not speak in different language from what is given in the measurement provision of Bureau of Indian Standards in the context of the definition of Balcony in the Indian Standard.”

9. In view of the above judgment of Madras High Court, it is necessary to examine the housing project approved by the local body. In other words, whether the so-called private open terrace said to be attached with private residential unit would form part of built-up area as per housing project or it was excluded from the approval granted by local authority. Since the copy of building approval was not available on record, this Tribunal is of the considered opinion that the matter needs to be reconsidered. 10. Moreover, from the order of the Assessing Officer it appears that in each floor there is a projection, which was termed as “private open terrace”. The entry to such open terrace is only from inside the residential unit. It is not open to other residents to enter that place. Therefore, it is not a common area like open terrace. In view of the above, this Tribunal is of the considered opinion that the matter needs to be re-examined and bring on record whether the so-called private open terrace forms part of built-up area in the approval given by local authority or not. Since the approval of local authority is not available on record, the matter needs to be reconsidered. Accordingly, the orders of the lower authorities are set aside. The Assessing Officer shall re-examine the matter afresh in the light of the approval granted by the local authority to the housing project, which shall be brought on record to ascertain whether the so-called private open terrace is part of built-up area or not. The Assessing Officer shall re-examine the matter afresh, in

accordance with law, after giving a reasonable opportunity to the assessee''.

We find that this Tribunal had remitted the issue back to the Id. Assessing Officer for examining the matter afresh considering the approval given by the local authorities for the housing project, for ascertaining whether private open terrace was part of built up area or not. Similar directions are given for the impugned assessment year also.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Wednesday, the 29th day of November, 2017, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 29th November, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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