

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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. Nos.2886 & 2887/CHNY/2017
निर्धारण वर्ष /Assessment years : 2010-11 & 2014-15.

The Deputy Commissioner of
Income Tax,
Corporate Circle 5(1)
Chennai-34.

Vs.

M/s. Ramaniyam Real Estates
P. Ltd,
No.17/35, II Main Road,
Gandhi Nagar,
Adyar, Chennai 600 020.

(अपीलार्थी/Appellant)

**[PAN AAACR 2276A]
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Sanath Kumar Raha, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri. N. Arjunraj, C.A.

सुनवाई की तारीख/Date of Hearing : 27-09-2018
घोषणा की तारीख /Date of Pronouncement : 01-10-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

These are appeals filed by the Revenue for the impugned
assessment years directed against orders dated 30.08.2017 of Id.
Commissioner of Income Tax (Appeals)-3, Chennai.

2. Appeal of the Revenue for the assessment year 2010-2011 is taken up first for disposal.
3. Grievance of the Revenue is that Id. Commissioner of Income Tax (Appeals) allowed a claim of deduction of ₹52,24,783/- made by the assessee u/s.80IB(10) of the Income Tax Act, 1961 (in short "the Act"), which was denied by the Id. Assessing Officer.
4. Id. Counsel for the Revenue submitted that assessee engaged in the business of developing housing projects had claimed deduction u/s.80IB(10) of the Act. However, according to the Id. Departmental Representative, assessee was not eligible for such deduction since it was only a works contractor. As per the Id. Departmental Representative, construction agreements entered by the assessee clearly indicated that assessee did not undertake any investment risk. According to the Id. Departmental Representative, assessee was only constructing residential houses for buyers who had entered agreement with it. Thus, as per the Id. Departmental Representative, assessee could not be considered as an undertaking executing housing projects.
5. Per contra, Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that similar issue had come up before this Tribunal in assessee's own

case for assessment year 2009-2010. As per the Id. Authorised Representative, this Tribunal vide its order dated 30.08.2013 in ITA No.1593/Mds/2012 had held the assessee to be eligible for such deduction.

6. We have considered the rival contentions and perused the orders of the authorities below. The question whether assessee was eligible for deduction u/s.80IB(10) of the Act had come up before this Tribunal in appeals for assessment years 2008-2009 as well as for assessment year 2009-2010. What was held by this Tribunal at paras 2 & 3 of the order dated 30.08.2013 in ITA No.1593/Mds/2012 is reproduced hereunder:-

'2. When the appeal was taken up, Ld. Counsel for the assessee submitted that the issue regarding eligibility for deduction under Section 80-IB(10) of the Act stood decided in favour of the assessee in ITA Nos.1246 &1247/Mds/2011, dated 15th May, 2013. Vis-à-vis the second issue, the Id. Counsel for the assessee submitted that apportionment of interest was not decided by the Commissioner of Income Tax (Appeals), though raised by the assessee. Ld. D.R. fairly admitted that averments of the assessee's counsel were correct.

3. We have perused the orders and heard the contentions. In so far as the assessee's claim of deduction under Section 80-IB(100) of the Act is concerned, the issue had come up before this Tribunal on Revenue's appeal in ITA Nos.1246 & 1247/Mdws/2011. Ld. Commissioner of Income Tax

(Appeals) had held this issue in favour of the assessee relying on his own order on assessee's appeal for assessment year 2008-09. Revenue's appeal against such order of the Id. Commissioner of Income Tax (Appeals) stood dismissed by this Tribunal on this particular issue vide its order dated 15/05/2013 in ITA Nos.1246 & 1247/Mds/2011".

The fact situation being same, we are of the opinion that Id. Commissioner of Income Tax (Appeals) was justified in following the above order of the Tribunal. We therefore do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

7. Now, we take up appeal of the Revenue for assessment year 2014-2015.

8. Sole grievance raised by the Revenue is that Id. Commissioner of Income Tax (Appeals) deleted the disallowance made by the Id. Assessing Officer u/s.14A of the Act, r.w.Rule 8D of the Income Tax Rules, 1962 (in short "the Rules")

9. Id. Counsel for the Revenue submitted that though assessee was not having any exempt income, Section 14A r.w.r.8D had to be applied considering CBDT Circular No.5/2014, dated 11.02.2014.

10. Per contra, Id. Authorised Representative strongly supported the order of the Commissioner of Income Tax (Appeals). Reliance was placed on the judgment of Hon'ble Jurisdictional High Court in the case of *Redington India Ltd vs. Addl. CIT (2016) 97 CCH 0219*.

11. We have considered the rival contentions and perused the orders of the authorities below. The question whether a disallowance u/s. 14A of the Act could be made when there was no exempt income claimed by an assessee stands answered by the judgment of Jurisdictional High Court in the case of *Redington India Ltd vs. Addl. CIT (supra)*. What was held by the Jurisdictional High Court at para 15 is reproduced hereunder:-

'15. The exemption extended to dividend income would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income there cannot be a disallowance of expenditure in relation to such assumed income. (Madras Industrial Investment Corporation Ltd vs. CIT (225 ITR 802)). The language of Sec. 14A(10) should be read in that context and such that it advances the scheme of the Act rather than distort it''.

In the circumstances, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals).

12. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on Monday, the 1st day of October, 2018, 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: 1st October, 2018.

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 |