

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3463/Chny/2016

निर्धारण वर्ष /Assessment Year : 2013-14

&

आयकर अपील सं./ITA No.966/Chny/2017

निर्धारण वर्ष /Assessment Year : 2012-13

M/s Doshi Estates,
3H, Century Plaza,
560, Anna Salai, Teynampet,
Chennai - 600 018.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 3,
Chennai - 600 034.

PAN : AAGFD 4592 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 01.08.2019

घोषणा की तारीख/Date of Pronouncement : 01.10.2019

आदेश /O R D E R

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

Both the appeals are filed by the assessee. When the appeal in I.T.A. No.3463/Chny/2016 is directed against the order of the Commissioner of Income Tax (Appeals) - 4, Chennai, dated 24.10.2016, the appeal in I.T.A. No.966/Chny/2017 is directed

against the order passed under Section 263 of the Income-tax Act, 1961 (in short 'the Act') by the Principal Commissioner of Income Tax-5, Chennai, dated 21.03.2017. We heard both the appeals together and disposing the same by this common order.

2. The only issue arises for consideration is disallowance of deduction claimed under Section 80-IB(10) of the Act.

3. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the assessee is a partnership firm consisting five partners. According to the Ld. counsel, one Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran are the joint owners of the land at Old State Bank Colony, III Street, Tambaram. Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran entered into an agreement with the assessee-partnership firm and also executed power of attorney in favour of Shri Mehul H. Doshi. In fact, according to the Ld. counsel, the undivided share of land was sold by Shri Mehul H. Doshi on behalf of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. The sale proceeds of the land was credited in the books of account of the assessee-partnership firm. According to the Ld. counsel, the assessee developed the land as per the joint development agreement with Shri V. Chandrasekaran and Smt.

Saraswathi Chandrasekaran and claimed exemption under Section 80-IB of the Act. However, the Assessing Officer rejected the claim of the assessee on the ground that the profit on sale of the land was suppressed. According to the Ld. counsel, the market value of the land was paid by the assessee-firm to the land owners, therefore, it may not be correct to say that the taxable income was suppressed by making a claim for deduction under Section 80-IB of the Act. Merely because two sons of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran were partners in the partnership firm, according to the Ld. counsel, the Assessing Officer doubted the entire transaction. According to the Ld. counsel, the partnership firm was an independent and separate assessable unit. Under the Income-tax Act, the assessee's children are also independent. Merely because the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran are partners in the assessee-partnership firm, according to the Ld. counsel, it cannot be construed that the transaction of the assessee with Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran are dubious method to avoid payment of tax. When the land owners transferred the land to the partnership firm for construction of multistoried building on payment of market rate of land, the Assessing Officer is

not justified in disallowing the claim of the assessee. According to the Ld. counsel, the entire sale consideration received from the prospective purchasers for sale of undivided share of land was passed on to the land owners, namely, Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran and not even a single penny was retained by the partnership firm. According to the Ld. counsel, the observation of the Assessing Officer that Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran got more money than the market value of the land since their children are having 35% of shares in the partnership firm is not correct. According to the Ld. counsel, the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran might have received profit in proportion to their shares as per partnership deed, that does not mean that the land owners shifted the profit on sale of land to the partnership firm so as to transfer the profit to the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran.

4. Shri G. Baskar, the Ld.counsel for the assessee further submitted that the land owners' share of sale proceeds is a composite one, consisting of consideration for sale of undivided share of land as well as the built-up area. The consideration

collected by the assessee-firm towards the cost of the land was passed on to the land owners, namely, Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. Therefore, according to the Ld. counsel, no part of sale proceeds of undivided share of land was included in the computation of eligible profit under Section 80-IB of the Act. According to the Ld. counsel, the land forms integral part of the housing project. The gain on sale of land is also eligible for deduction under Section 80-IB of the Act.

5. Shri G. Baskar, the Ld.counsel for the assessee, further submitted that the partnership firm was constituted on 01.10.2008. The business of the partnership firm is to develop the land by constructing multi-storied residential flats. According to the Ld. counsel, 21 months before the formation of partnership firm, Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran had executed agreement for sale and also executed irrevocable power of attorney for sale of land to the prospective buyers. Therefore, according to the Ld. counsel, it is not correct to say that Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran colluded with the assessee-firm. Referring to the order of the CIT(Appeals), more particularly page 8, the Ld.counsel submitted that the

Assessing Officer misunderstood the business transaction of the assessee with Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. The children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran, namely, Shri Prem Chandrasekaran and Shri Akil Chandrasekaran contributed to the capital of the assessee-partnership firm to the extent of 35% of the total investment. The Assessing Officer was under the impression that Shri Prem Chandrasekaran and Shri Akil Chandrasekaran were admitted to the partnership firm without any capital contribution. According to the Ld. counsel, the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran are not only eligible for profit in the partnership firm, they are also equally liable for the losses suffered by the partnership firm.

6. The Ld.counsel for the assessee further submitted that the entire funds for the project were raised on the security of the land agreed to be purchased from Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. Therefore, according to the Ld. counsel, the observation of the Assessing Officer that Shri Prem Chandrasekaran and Shri Akil Chandrasekaran, the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran earned

their respective profit in the partnership firm without any risk element is not correct. The very fact that the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran also liable for the losses of the partnership firm shows that they are taking risk in the business. Referring to profit margin of the partnership firm, the Ld.counsel submitted that profit margin in any business, not only in civil construction, would depend upon various factors. In this case, according to the Ld. counsel, the time gap between the joint development agreement and the sale of flats was very long. Moreover, the land was situated in a strategic location. According to the Ld. counsel, the project was commenced when the real estate business was in boom. Therefore, the profit margin declared by the partnership firm is not an unusual one.

7. The Ld.counsel for the assessee further submitted that unless there is a material to suggest that the profit margin or the market value of the land was suppressed or shifted with a motive to reduce the profit and to avoid payment of tax, the Assessing Officer cannot doubt the transaction at all. In this case, according to the Ld. counsel, without any basic material, the Assessing Officer has simply presumed that the profit was shifted and the tax liability was

reduced. For coming to a conclusion, the Assessing Officer simply presumed that children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran were inducted in the partnership firm. According to the Ld. counsel, merely because the children of Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran are partners in the partnership firm, there cannot be any presumption that taxable income was shifted or reduced. Other than imagination, according to the Ld. counsel, both the authorities below had no material to doubt the transaction. Therefore, according to the Ld. counsel, there is no reason to disallow the claim of deduction under Section 80-IB of the Act.

8. On the contrary, Shri S. Bharath, the Ld. Departmental Representative, submitted that Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran entered into a joint development agreement on 05.01.2007, copy of which is available at page 49 of the paper-book, in respect of 2.61 acres of land located at Old State Bank Colony, III Street, Tambaram. According to the Ld. D.R., the assessee-partnership firm constructed a housing project known as "Nakshatra" comprising 195 dwelling units. Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran had also executed a power

of attorney favouring Shri Mehul H. Doshi for sale of undivided share of land. According to the Ld. D.R., the Assessing Officer came to a conclusion that for sale of land to the prospective purchasers of the flats, the rate which was below the market rate was fixed and paid to Smt. Saraswathi Chandrasekaran. Therefore, the Assessing Officer came to a conclusion that Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran devised a method to reduce the taxable income and to claim sale proceeds as exempt from taxation by introducing their own children, namely, Shri Prem Chandrasekaran and Shri Akil Chandrasekaran as partners in the assessee-partnership firm with 35% of stake. According to the Ld. D.R., Shri Prem Chandrasekaran and Shri Akil Chandrasekaran are sharing only the profit. The Assessing Officer has also found that in the business of joint development, the sharing ratio of the constructed area normally between the builder and owner of the land would be in the ratio of 65:35. Therefore, according to the Ld. D.R., the Assessing Officer found that the share of profit given to the sons of the land owners is nothing but sale consideration pertaining to the land.

9. Referring to the assessment order, more particularly para 6, the Ld. D.R. pointed out that the claim of the assessee that market value of the land as determined by the Registration authorities was paid to the land owners, therefore, the ordinary profit was transferred to the owners of the land, was found to be not correct. According to the Ld. D.R., in the case of housing project, the cost of land would normally be more than the guideline value. In this case, according to the Ld. D.R., the property was transferred at the rate of guideline value. According to the Ld. D.R., the profit on sale of land was also included as profit from housing project. Moreover, the exorbitant profit shown by the assessee for claiming deduction under Section 80-IB of the Act clearly suggests that there was a devise adopted by the partnership firm along with the owners of the land Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran so as to reduce the tax liability. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

10. We have considered the rival submissions on either side and perused the relevant material available on record. In both the appeals, the issue arises for consideration is disallowance of

deduction claimed by the assessee under Section 80-IB(10) of the Act. The Assessing Officer disallowed the claim of the assessee under Section 80-IB(10) of the Act that the profit is approximately 50%. The Assessing Officer also found that the profit of the business included the cost of land sold by Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. The Assessing Officer further found that a part of cost of land was diverted as share of profit to Shri Prem Chandrasekaran and Shri Akil Chandrasekaran, the children of the land owners.

11. There is no dispute about the statutory conditions imposed for allowing deduction under Section 80-IA of the Act. For disallowing the claim of the assessee, the Assessing Officer referred the provisions of Section 80-IA(10). We have carefully gone through the provisions of Section 80-IA(10) of the Act. Section 80-IA of the Act is for deduction in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development. Whereas, Section 80-IB of the Act is for deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertaking. The CBDT clarified by circular No.4 of 2009 dated 30.06.2009 that Section 80-

IB(10) deduction is in respect of housing projects. The Assessing Officer observed that the provisions of Section 80-IB(10) are governed by Section 80-IA(10) of the Act. However, there is no such reference in any of the provisions of Section 80-IB of the Act. It was also not brought to the notice of the Bench by the Ld. D.R. how Section 80-IA(10) would be applicable for allowing deduction under Section 80-IB of the Act. Section 80-IB(10) of the Act, as clarified by the CBDT, is only for housing projects. However, Section 80-IA is for infrastructure development. Even assuming for argument sake that Section 80-IA of the Act is applicable, this Tribunal is of the considered opinion that there is no material to suggest that the business of the assessee-partnership firm was so arranged in such a way to produce more than the ordinary profit.

12. It is an admitted fact that the assessee-partnership firm is maintaining books of account. No defect was pointed out either by the Assessing Officer or by the CIT(Appeals) in the books maintained in the regular course of business activity. The Assessing Officer found that the cost of the land which was said to be taken from Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran for joint development by the assessee-partnership

firm was valued at guideline value. The market value was not paid to Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. It is a well settled principle of law that market value of the land is not a constant or fixed price. It may fluctuate depending upon various factors such as area of the land, location of the land, infrastructure facility available around the land, access to the public road, etc. The State Registration Department, after considering all these facts, fixed the value which is known as guideline value to guide the Sub-Registrar to determine the market value. The guideline value may not always reflect the market value. Sometimes, the guideline value may be less or it may be more depending upon the area and location of the property. When the assessee entered into a joint development agreement for transfer of part of the land to the partnership firm at a particular price, this cannot be said that the value determined for transfer of part of land or the entire land is a device to increase the profit of the assessee-firm.

13. The Assessing Officer as well as the CIT(Appeals) found that the market value of the land was fixed at a very lower rate since the children of the owners of the land were partners in the assessee-firm. There may be a justification for making allegation like this

when the children of the land owners alone are partners. In this case, apart from the children of the owners, there are other partners who are not related to the land owners at all. The other partners may not cooperate with the land owners to purchase the land or to take the land on joint development so as to reduce the profit of the firm. Moreover, the land owners also may not transfer the land for a price less than the market value since the third party partners who are in the assessee-firm indirectly get the benefit. Therefore, when the third party individuals are partners in the assessee-firm apart from the children of the land owners, this Tribunal is of the considered opinion that the contention of the Revenue that the land in question was transferred to the partnership firm at a guideline value in order to increase the profit of the assessee-firm so as to claim deduction under Section 80-IB(10) of the Act has no merit at all. Moreover, the contention of the Ld. D.R. that the land was transferred at the guideline value so as to shift the profit to the partnership firm is not supported by any material.

14. The next contention of the Revenue is that the profit is more than 50%. As observed earlier, the assessee is maintaining books of account in the regular course of business activity and the land

was taken by way of joint development agreement and the Revenue authorities have not doubted the books of account maintained in the regular course of business. Therefore, when the book result discloses the profit at 50%, the Revenue cannot doubt that the profit was exorbitant or improbable one. The profit generated by the assessee-firm is supported by the books of account maintained in the regular course of business activity, therefore, the Revenue authorities have no justification to doubt the percentage of profit. Moreover, the children of the land owners, namely, Shri Prem Chandrasekaran and Shri Akil Chandrasekaran are partners in the firm with 35% of stake. Therefore, naturally they are eligible for 35% of the profit of the firm. 65% of the profit would go to the other partners who are not in any way related to the land owners, namely, Shri V. Chandrasekaran and Smt. Saraswathi Chandrasekaran. The land owners may not prefer to give 65% of the shares to the third parties who are not connected with them. In such circumstances, this Tribunal is of the considered opinion that there is no arrangement as projected by the Ld. D.R. to shift the profit to the partnership firm so as to claim a higher rate of deduction under Section 80-IB(10) of the Act.

15. In view of the above, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow deduction under Section 80-IB(10) of the Act as claimed.

16. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the court on 1st October, 2019 at Chennai.

Sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st October, 2019.

Kri.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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