

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.354/CHNY/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

The ACIT,
Non-Corporate Circle 2,
Madurai.

Vs **M/s. Vikram Multispeciality Hospital,**
3/424, Pandikovil Ring Road,
Sivagangai Main Road,
Madurai – 625 020.
PAN: AADFN 9942P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A.No.1288/CHNY/2018

(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Vikram Multispeciality Hospital,
3/424, Pandikovil Ring Road,
Sivagangai Main Road,
Madurai – 625 020.
PAN: AADFN 9942P

Vs **The ACIT,**
Non-Corporate Circle 2,
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Shri AR.V. Sreenivasan, JCIT
निर्धारिती की ओर से /Assessee by : Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of hearing : 29.08.2019

घोषणा की तारीख /Date of Pronouncement : 08.11.2019

आदेश / ORDER

Per S.JAYARAMAN, AM:

The Revenue filed the appeal against the order of the learned
Commissioner of Income Tax (Appeals)-2, Madurai in ITA

No.014/2016 dated 16.11.2016 for the assessment year 2013-14. The assessee filed an appeal against the order of the learned Commissioner of Income Tax (Appeals)-2, Madurai in ITA No.146/16-17 dated 22.02.2018 for the assessment year 2014-15.

2. M/s. Vikram Multispeciality Hospital, the assessee, is a partnership firm running a hospital. During the period relevant to assessment years 2013-14 and 2014-15, the assessee claimed deduction U/s.80IB(11C) on the ground that new hospital was constructed and started functioning from 01.04.2002. Since, the assessee did not file any completion certificate issued by the local authority, the Assessing Officer denied deduction U/s.80IB(11C). Aggrieved against those orders, the assessee filed appeals before the CIT(A) for the assessment years 2013-14 & 2014-15. The Id.CIT(A) allowed the appeal for the assessment year 2013-14 and dismissed the appeal for the assessment year 2014-15.

3. Aggrieved against the order of the CIT(A), the Revenue filed an appeal for the assessment year 2013-14 with the following grounds:-

1) The order of the CIT(A) is opposed to law, on the facts and in the circumstances of the case.

2) The CIT(A) has erred in holding that the assessee is entitled for deduction u/s,80IB(11C).

3) The CIT(A) ought to have seen that the assessee has not constructed the hospital in accordance with the regulations or bye-laws of the local authority and hence not entitled for deduction u/s.80IB(11C).

4) The CIT(A) ought to have further seen that the assessee has not submitted the completion certificate of the hospital issued by the local authority before the AO and hence ought to have sustained the disallowance made u/s.80IB(11C).

5) The CIT(A) ought to have complied with Rule.46A of the Income Tax Rules when the assessee produced certificate dated 28.03.2016 from the Executive Engineer (Planning), Madurai Corporation as the above certificate was not produced before the A.O. during the assessment proceedings.

6) For these and such other grounds that may be adduced at the time of hearing, it is prayed that the order of the CIT(A) may be reversed and that of the Assessing Officer restored.

4. Aggrieved against the order of the CIT(A), the assessee filed an appeal for the assessment year 2014-15 with the following grounds:-

1. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of deduction claimed under section 80IB(11 C) of the IT Act.

2. *The Commissioner of Income Tax (Appeals) erred in holding that the hospital building was not according to the rules and regulations of the local authority.*

3. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the Property Tax Assessment Order issued by the Corporation clearly recognizes the hospital as a legal building with 8 floors of built up area.*

4. *The Commissioner of Income Tax (Appeals) ought to have considered that a certificate once issued by a statutory authority, cannot be withdrawn frivolously vide a letter, without observing the due process of law. The Commissioner of Income Tax (Appeals) ought to have appreciated that the letter of the Executive Engineer (Planning) dated 26.12.2016 cannot therefore be relied upon.*

5. *The Commissioner of Income Tax (Appeals) ought to have seen that a certificate issued by a superior officer cannot be withdrawn by a sub-ordinate officer. In any event, he ought to have noted that the Executive Engineer (Planning) has categorically stated that it is being withdrawn only for the purpose of "avoiding controversy and loss to Government" and not due to any violation. He ought to have further noted that the withdrawal letter nowhere states that the hospital is not in accordance with the regulations or bye-laws of the local authority, which is the key point under 80IB(11 C)(iii).*

6. *The Commissioner of Income Tax (Appeals) having specifically been notified by the Appellant and by the Executive Engineer (Planning) that the plan for extension to 8 floors was submitted to the local authority and was awaiting approval, ought to have waited for the local authority to either approve or reject it before concluding that the Appellant was in violation of the condition u/s 80IB(11 C)(iii).*

5. The Id.DR presented the case on the lines of grounds of appeal and submitted that the Id.CIT(A) violated the provisions of Rule 46A.

6. We heard the rival submissions and gone through the relevant material. Since, the Revenue made out a case under Rule 46A of the Income Tax Rules, the issue in respect of the deduction U/s.80IB(11C) is restored to the file of the Assessing Officer, for a fresh examination.

7. Since the primary issue in the assessment year 2013-14 is remitted back to the Assessing Officer, the corresponding issue in the assessment year 2014-15 is also remitted back for a fresh examination. The assessee shall lay all materials in support of its contention in respect of the assessment years 2013-14 & 2014-15, respectively, before the Assessing Officer and comply with the requirements of the Assessing Officer in accordance with law. The Assessing Officer is also free to conduct appropriate enquiry as deemed fit, however, he shall furnish due opportunity to the assessee on the materials etc., to be used against the assessee and

on due consideration of the assessee's clarification / explanation shall pass the orders in accordance with law.

8. In the result, both the appeal of the Revenue and the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the court on 8th November, 2019 at Chennai.

Sd/-

(जॉर्ज माथन)
(George Mathan)
न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 8th November, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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