

आयकर आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.588/Chny/2016  
निर्धारण वर्ष /Assessment Year: 2011-12

**M/s. TVH Ekanta,**  
No.21, TVH Triveni,  
C.V. Raman Road,  
Chennai – 600 018.

**PAN: AAEFT 8163D**  
(अपीलार्थी/Appellant)

**Vs.** The ACIT,  
Non-Corporate Circle – 3,  
Chennai.

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA Nos.607 & 3422/Chny/2016  
निर्धारण वर्ष /Assessment Years: 2011-12 & 2012-13

The ACIT,  
Non-Corporate Circle – 3,  
Chennai.

(अपीलार्थी/Appellant)

**Vs.** **M/s. TVH Ekanta,**  
No.21, TVH Triveni,  
C.V. Raman Road,  
Chennai – 600 018.

**PAN: AAEFT 8163D**  
(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by  
राजस्व की ओर से /Revenue by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख /Date of Pronouncement

: Shri G. Baskar, Advocate  
: Shri Sailendra Mamidi, PCIT

: 20.08.2019

: 18.11.2019

**आदेश / O R D E R**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee as well as the Revenue filed the appeals for the  
assessment year 2011-12 against the order of the Commissioner of

Income Tax (Appeals)-4, Chennai in ITA No.38/2014-15/2011-12/CIT(A)-4 dated 22.12.2015. The appeal in ITA No.3422/Chny/2016 is filed by the Revenue against the order of the Commissioner of Income Tax(Appeals)-4, Chennai in ITA No.86/2015-16/A.Y.2012-13/CIT(A)-4 dated 12.09.2016 for the assessment year 2012-13.

2. M/s. TVH Ekanta, the assessee, a firm is engaged in the business of developing and construction of housing project at Coimbatore. The assessee developed and constructed a project namely, M/s. TVH Ekanta consisting 314 residential units and claimed deduction U/s.80IB(10). A survey was carried out in the assessee's premises, the project sites were inspected books of account, documents were impounded. During the course of assessment, the Assessing Officer required the DVO to report the built-up area of each of the 314 residential units. The DVO has confirmed that 45 flats had exceeded the threshold area of 1500 sq.ft., and hence the Assessing Officer held that the corresponding profit was not allowable for deduction U/s.80IB. The Assessing Officer has also found that 15 units in the projects were sold to 7 persons. Out of which, 6 persons were allotted 2 flats and in respect of 1 person 3 flats were allotted. Such allotments were in violation of Section 80(IB)(10)(f) and hence the

Assessing Officer disallowed deduction U/s.80IB(10)(f). Since the assessee made the above violations, the Assessing Officer held that the entire residential project is not disentitled for the deduction and accordingly concluded the assessments. Aggrieved, the assessee filed appeals before the CIT(A).

2.1 In respect of the 45 flats, the Id.CIT(A) held that though the super built-up area exceeded 1800sq.ft., the built-up area after excluding the common area was less than 1500 sq.ft. Accordingly, he deleted the corresponding disallowances of deduction U/s.80IB. Aggrieved against such decisions, the Revenue filed the appeals for the assessment years 2011-12 and 2012-13.

2.2 With regard to allotment of 15 apartments to same individuals with or without spouses, the Id. CIT(A) held that they were allotted well before 19.08.2009 by entering into an agreement of construction before the amendment made to Clause (f) of Sub-Section 10 to Section 80(IB), which was inserted by Finance No.2 Act 2009 came into force from 01.04.2010, before which there was no restriction in the allotment of more than one apartment to one individual or any other person mentioned in the said clause. Therefore, he held that the

disallowance made U/s.80IB (10) in respect of these 12 apartments cannot be upheld. Therefore, he directed to allow the assessee's claim. In respect of the balance 3 apartments, the Id.CIT(A) concluded that they were in violation of the provisions of Section 80IB(10)(f). Therefore, he restricted the disallowance to that extent. Aggrieved against such decision, the assessee filed the appeals for the assessment years 2011-12.

3. The grounds raised in the appeal of the assessee are reproduced as under:

*1. The Commissioner of Income Tax (Appeals) erred directing the AO to disallow the claim for deduction u/s.80IB(10) in respect of the 3 flats purchased by M/s. N. Sridhar and Ankurkumar.*

*2. The Commissioner of Income Tax (Appeals) ought to have seen that the assessee had not deviated from the provisions of Sec.80IB(10) even in respect of these 3 flats.*

*3. The Commissioner of Income Tax (Appeals) ought to have further seen that even assuming that there is deviation in respect of these 3 flats, it is very trivial both in terms of numbers as well as built-up area and hence should have been ignored.*

*4. For these reasons and other grounds that may be adduced at the time of hearing it is prayed that exemption claimed u/s.80IB(10) may be granted in toto.*

4. The common grounds raised in both the appeals filed by the Revenue are reproduced as under:

*“2. Proportionate Allowance of Deduction u/s.80-IB(10):*

*2.1 The ld. CIT(A) erred in holding that the assessee is entitled for deduction under section 80-IB(10) of the Income Tax Act despite the fact that the residential project developed by the assessee firm is found to have violated the conditions laid down u/s.80-IB(10)(c) and (f).*

*2.2 The ld. CIT(A) ought to have appreciated the rationale expressed by the Andhra Pradesh High Court in the case of Chairman, Andhra Pradesh Welfare Board Vs. CIT reported in 12 Taxman 242 (AP) and denied deduction u/s.80-IB(10) entirely.*

*2.3 It is submitted that the decision of the Bombay High Court in the case of Brahma Associates [2011] 9 Taxmann.com 289 on proportionate disallowance has not been accepted by the Revenue and taken up before the Hon'ble Supreme Court by way of SLP.*

*2.4 The ld. CIT(A) failed to appreciate that the benefit of deduction is extended to the residential project and not to the individual residential flats comprised in it. Therefore, when the project violates the conditions, even by reason of non-compliance by a single flat, the project should automatically lose the benefit of deduction.*

*3. Incorrect Definition to Private Terrace:*

*3.1 The CIT(A) erred in holding that the private terrace cannot be classified as projection and omitting it to get included in computing the built-up area.*

*3.2 The ld. CIT(A) erred in applying the decision of the Hon'ble Madras High Court in the case of Subba Reddy (HUF) (2015) 56 taxmann.com 204 (Mad.) which was rendered in respect of a project, the development of which was undertaken prior to the date of insertion (01.04.2015) of the definition of 'built-up area' under the Act.*

*4. Incorrect Extension of Benefit of Deduction to Profits on Sale of Non Residential Areas:*

*4.1 The CIT(A) ought to have denied deduction u/s.80-IB(10) in respect of the profits earned on sale of exclusive car park and private terrace, when he had concluded that the same are not part of residential area.”*

5. The Id.AR as well as the Id.DR canvassed their cases on the above lines, taking us through the relevant portion of the assessment orders and the orders of the CIT(A) and pleaded their respective stand.

6. We heard the rival submissions and gone through the relevant material. The project consisted of 314 residential units in 14 blocks (A1 to A7 – 7 Blocks, B1 to B7 – 7 Blocks). The Assessing Officer referred to the DVO, requiring him to report the built-up area of each of the 314 residential units. Based on the report, the Assessing Officer found that in 45 number of units, the built-up area as defined in the Act has exceeded above 1500 sq.ft. Therefore, he required the assessee to show cause, why the deduction claimed U/s.80IB should not be disallowed. The assessee furnished its objections. The Assessing Officer countered that objection with other material viz., the statement given by the architect and the licensed surveyor, etc. We are of the opinion that the reply given by the assessee should have been forwarded by the Assessing Officer to the DVO, to consider the

assessee's objection technically with or without further inspection from the DVO's side depending upon the requirements of fact finding. On receipt of such report and after affording the due opportunity to the assessee, the built-up area of the impugned residential units should be determined. In the facts and circumstances, we deem it fit to remit these issues back to the Assessing Officer for a fresh examination on the above lines.

6.1 With regard to the disallowance made U/s.80IB(10)(f), the Id.CIT(A) held that the date of construction agreement was made before 19.08.2009 and therefore he allowed the appeal for 12 units. However, we find from Para 29 of the order of the Id.CIT(A), that the earliest agreement was made on 15.06.2007 and the latest agreement was made on 17.02.2011 and the earliest date of registration was 29.06.2007 and the latest date of sale deed for UDS registration was 17.12.2011. The Hon'ble Supreme Court, in the case of Commissioner of Income Tax Vs. Balbir Singh Maini, 398 ITR 531 (SC), held that "there is no contract in the eye of law in Force u/s.53A after 2001 unless the said contract is registered. This being the case, and it being clear that the said JDA was never registered. Since the JDA has no efficacy in the eye of law, obviously no "transfer' can be said to have

taken place." Therefore, the facts and circumstances of this case require re-verification of facts and application of law. Since the main issue of determination of built-up area is remitted back, we deem it fit to remit this issue back to the Assessing Officer for a fresh examination. The Assessing Officer after giving due opportunity to the assessee shall determine the above issues in accordance with law.

7. In the result, the assessee's appeal for assessment year 2011-12 and the Revenue's appeals for assessment years 2011-12 & 2012-13 are treated as partly allowed for statistical purposes.

Order pronounced in the Court on 18<sup>th</sup> November, 2019 in Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)  
(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

( एस जयरामन )  
(S. Jayaraman)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 18<sup>th</sup> November, 2019

**RSR**

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