

आयकर अपीलीय अधिकरण, ' बी ' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2267/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

M/s. Ganapathi Leather Products P Ltd.,
No. 8B, 2nd Floor,
Wellington Estate,
53, C-in-C Road, Egmore,
Chennai - 600 008.

The Income Tax Officer,
Vs. Corporate Ward 2(3),
Chennai.

[PAN: AABCG 8143Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. Supriya Pal, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.09.2016

घोषणा की तारीख/Date of Pronouncement

: 14.12.2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The assessee has filed appeal against the order of Commissioner of Income Tax (Appeals) - 6, Chennai in ITA No. 35/CIT(A)-6/2015-16 dated 12.07.2016 passed u/s. 143(3) and 250 of the Income Tax Act.

2. The following grounds raised by the assessee are:
 - 2.1 The CIT(A) erred in confirming the disallowance of the claim of deduction u/s. 80 IB (10) of the Act aggregating to Rs. 5,31,25,988/- in the computation of taxable total income without assigning proper reasons and justification.
 - 2.2 The CIT(A) failed to appreciate that non production of the completion certificate was beyond the control of the appellant and ought to have appreciated that the completion of the housing project was never in doubt in as much as ought to have appreciated that the presumption of non completion of the housing project based on the non availability of the completion certificate was not correct and not justified thereby vitiating the findings in Para 4.4 of the impugned order.
 - 2.3 The CIT(A) failed to appreciate that the decision referred to in the impugned order to reject the claim of the said deduction was not appreciated that the purposive theory as well as the liberal interpretation of the provisions under scrutiny were not taken note of in the said decision thereby vitiating the conclusion reached in the present case.
 - 2.4 The CIT(A) failed to appreciate that having taken on record the evidences demonstrating the completion of the housing project, the

technical stand taken to reject the claim for deduction was wholly unjustified and not sustainable in law.

2.5 The CIT(A) failed to appreciate that the conditions prescribed to make the claim for the said deduction u/s. 80 IB (10) of the Act were complied with concurrently on the facts and in the circumstances of the case.

2.6 The CIT(A) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

3. The Brief facts of the case, that the assessee company is engaged in the business of infrastructure development and filed the Return of Income for assessment year 2012-13 on 21.09.2012 with total income of Rs 2,35,490/-. Subsequently, the case was selected for scrutiny under CASS and Notice u/s. 143(2) of the Act was issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The Assessing Officer found that the assessee company has taken up the infrastructure development along with another group company for promoting the House project in the outskirts of Chennai under the name of "Vandalur park" and claimed deduction u/s. 80 IB (10) of the Act Rs. 5,31,25,988/- and also computed tax liability under provisions of section 115JB of the Act.

4. The Ld. AO has called for certain details in respect of completion of projects and considered the various facts and came to the conclusion that the assessee has not complied the conditions U/s. 80 IB (10) of the Act and not submitted Completion Certificate. The assessee has obtained permission from CMDA through approval dated 27.03.2006 and also from Commissioner, Kattankalathur Town Panchayat on 31.03.2006, whereas the commercial area exceeded 3% of the total constructed area and the permission was obtained by the assessee including commercial block and project is not wholly Residential. Hence, assessee is not eligible for the benefit of deduction u/s. 80 IB (10) of the Act. The Ld AR submitted that the project was developed on the land area exceeding 1 acre and allottees of flats are not identical and none of the construction area of flat exceeded 1500 sq. ft., and construction was completed on 28.08.2009 within the five years from the date of approval from the CMDA on 27.03.2006. Further, the assessee filed Writ Petition No. 26812/2009 in the High Court of Madras and as per the directions of Hon'ble High Court. The Member Secretary, CMDA is required to issue Completion Certificate. The Ld. AO find that the assessee has obtained permission in respect of commercial block being a separate commercial block and where construction works started in financial year 2013-14, and certificate was issued by Katankalathur Panchayat Union on 31.03.2006 referring as "Group development multi-storied building and commercial building". The Ld. AR submitted that the commercial project in Block No. 6 was progressed in the year 2013-14, whereas, the residential blocks construction was completed on 28.08.2009. The assessee has failed to comply

the condition of provisions of section 80 IB (10) before 31.03.2011 as the project is incomplete and Completion Certificate was not submitted. Further, Block No. 6 commercial built up area exceeding 3% of construction area and cannot be delinked from the residential project and the Ld. AO relied on judicial decision and distinguished the case mentioning the planning permission was obtained on 27.03.2006 and with above observations disallowed the claim u/s. 80 IB (10) of the Act and Assessed the total income of Rs. 5,33,61,478/- and passed order u/s. 143(3) of the Act dated 30.03.2015.

5. Aggrieved by the order, the assessee filed an appeal with the CIT(A). In the appellant proceedings, the Ld. AR of the assessee argued the grounds and reiterated the submissions of assessment proceedings. Where the Ld. AO has erred in disallowing the claim u/s. 80 IB (10) of the Act without appreciating the facts and there is no violation of terms and conditions and common permission was obtained in respect of the commercial block from the CMDA. The Ld. AO without verifying the facts has disallowed the claim and the Ld. AR filed written submissions referred by Ld. CIT(A) at page 2-3 of the order. Further, the Ld. CIT(A) relied on the judicial decisions on the completion of construction of Housing projects and placed reliance on the Hyderabad Tribunal decision dealt at Page No. 6 to 9 of the order and unilaterally concluded that the furnishing of Completion Certificate from the local authority is mandatory and confirmed the action of the Assessing Officer in disallowing the claim u/s. 80 IB (10) of the Act

and dismissed the appeal. Aggrieved by the order, the assessee has filed an appeal before the Tribunal.

6. Before us, the Ld. AR of the assessee argued the grounds and submitted that project Completion Certificate from Competent Authority is required to be submitted for claim of deduction u/s. 80 IB (10) of the Act. The assessee company has completed the project within stipulated time and filed Writ Petition in Hon'ble High Court of Madras and Hon'ble Court has directed the Member Secretary, CMDA to grant the Completion Certificate. The assessee company has obtained composite permission for Commercial Block and Residential Block. Whereas, Block No. 6 is a commercial block and no construction was taken up and only during the financial year 2013-14 the construction was started. The Ld. CIT(A) has considered the findings of the Assessing Officer and submissions of assessee and observed at Para 4.2 of his order on the provisions of section 80 IB (10) of the Act and pre-requisite conditions of obtaining the Completion Certificate and relied on judicial decisions. The assessee has raised the ground before CIT(A) in Respect of commercial building, where, commercial building was constructed with residential block it has to be treated independently. The Ld. CIT(A) has not given any findings / adjudicated on facts on proportionate deduction to be allowed in respect to Residential Block building and the order of CIT(A) is silent on this issue. Contra, the Ld. DR relied on the order of the lower authorities and also emphasized on the findings of the Assessing Officer in the assessment order where the assessee

has not complied with the requisite necessary conditions for claim i.e., completion certificate from local authority, and obtained common permission for commercial and residential blocks and opposed the grounds..

7. Further, the Ld. AR replied to the submissions of the Ld. DR that the assessee has completed the project and complied the conditions and the Ld. AO has denied deduction u/s. 80 IB (10) of the Act and further the Ld. AR demonstrated before us that the CIT(A) has not given any finding on ground raised in respect of commercial property Block no. 6 and disposed off the appeal and prayed for allowing the grounds of Assessee appeal.

8. We heard the rival submissions, perused the material on record, judicial decisions cited on deduction u/s. 80 IB (10) of the Act. The Assessing Officer denied deduction u/s. 80 IB (10) of the Act for non-compliance of three essentials requirements (i) production of Completion Certificate, (ii) eligibility of House building project were structure of commercial project exceeded 3% of total constructed area, and (iii) CMDA permission for Residential and commercial project, where commercial project started in the financial year 2013-14. The Ld. AR argued that the assessee has sought orders from Hon'ble High Court of Madras directing CMDA to issue Completion Certificate and the Ld. CIT(A) has overlooked the factual aspects. We considered the findings of the Ld. CIT(A), were the assessee has raised the disputed grounds before the CIT(A) on

Completion Certificate and claim of deduction on composite planning permission of Residential and Commercial Block. We found the CIT(A) discussed on the Completion Certificate relying on judicial decisions and has not given any comments or findings on composite planning deduction u/s. 80 IB (10) of the Act. The LD. AR drew our attention to ground No. 4 raised before the CIT(A), which read as under:

" The ITO failed to appreciate that the conditions prescribed for the eligibility to make the claim for deduction in the computation of taxable total income were fulfilled independently as well as concurrently on the facts and in the circumstances of the case and ought to have appreciated that the issue relating to furnishing of the completion certificate and the understanding of the composite planning permission including the commercial block while considering the claim for deduction u/s. 80 IB (10) of the Act technical in nature."

On further perusal of the order of appellate authority, there is no finding by the Ld. CIT(A) whether the deduction has to be allowed on common composite permission obtained including Commercial Block. Considering the Apparent facts, provisions of law and legal ground raised by the assessee, we are of the opinion that the assessee company has claimed deduction u/s. 80 IB (10) of the Act and obtained common permission for commercial block which was not considered by the Ld. CIT(A) and passed the dismissal order. In the interest of justice, we set aside the order of CIT(A) and remit the entire disputed issue to the file of the CIT(A) to adjudicate the ground raised by the assessee discussed above and

pass a speaking order, nevertheless to state that the Assessee should be provided with adequate opportunity of hearing before disposal of appeal on merits.

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

Order pronounced on Wednesday, the 14th day of December, 2016 at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 14th December, 2016

JPV

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. |