

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1181, 1182 & 1183/Mds/2015

निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11 & 2011-12

The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 4(2),  
Chennai - 600 034.

v. M/s Khivraj Tech Park Ltd.,  
1, SIDCO Industrial Estate,  
Guindy, Chennai - 600 032.

(अपीलार्थी/Appellant)

PAN : AACCK 4418 P

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Jayaram Raipura, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri Ajith Kumar Choradia, CA

सुनवाई की तारीख/Date of Hearing : 07.06.2016

घोषणा की तारीख/Date of Pronouncement : 24.08.2016

### **आदेश /ORDER**

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

All the three appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals) – II, Chennai, dated 03.11.2014 and pertain to assessment years 2009-10, 2010-11 and 2011-12. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. The only issue arises for consideration in all the three appeals is with regard to deduction claimed by the assessee under Section 80-IA of the Income-tax Act, 1961 (in short 'the Act').

3. Shri Jayaram Raipura, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 80-IA of the Act in respect of rental income received from building. According to the Ld. D.R., it is not the business of the assessee to lease out the properties, therefore, the income has to be classified as income from house property. Hence, according to the Ld. D.R., the assessee is not eligible for deduction under Section 80-IA of the Act.

4. On the contrary, Shri Ajith Kumar Choradia, the Ld. representative for the assessee, submitted that the assessee constructed a building called "Olympia Tech Park". It has all infrastructure facilities with all specifications and amenities required for IT park. Under normal circumstances, the rental income from property has to be classified as income from house property. In the instant case, according to the Ld. representative, the Olympia Tech Park is located in STPI notified area and CBDT also approved the

building for deduction under Section 80-IA(4)(iii) of the Act by an order dated 15.11.2006. Therefore, according to the Ld. representative, when the assessee is systematically providing services to the software development companies, by providing specified area in the building and other infrastructure facility, this has to be classified as business of the assessee, therefore, according to the Ld. representative, the rental income has to be necessarily classified as "income from business". According to the Ld. representative, the CIT(Appeals) by placing reliance on the judgment of Madras High Court in CIT v. Elnet Technologies Ltd. (2013) (213 Taxman 129), found that the income from letting out house property has to be treated as income from business, therefore, eligible for deduction under Section 80-IA of the Act. In view of the above, according to the Ld. representative, the contention of the Ld. D.R. that the income has to be classified as income from house property is not justified. Referring to the grounds of appeal raised by the assessee, the Ld. representative submitted that the judgment of Madras High Court in CIT v. Chennai Properties and Investments Ltd. (266 ITR 685) was reversed by the Apex Court, therefore, the judgment of Apex Court in Chennai

Properties and Investments Ltd. would support the case of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee established "Olympia Tech Park" for providing infrastructure facilities to software development companies. It is in STPI notified area. The only contention of the Revenue is that the income from building has to be classified as income from house property, therefore, the assessee is not eligible for deduction under Section 80-IA of the Act. The building of the assessee is not a mere building. It has infrastructure facilities for the purpose of development of software. The assessee is systematically providing services besides letting out the property. Therefore, the judgment of Apex Court in Chennai Properties and Investments Ltd. v. CIT (2015) (373 ITR 673) would squarely applicable to the present case. Hence, this Tribunal is of the considered opinion that the income from letting out of the property has to be classified as "income from business" and the assessee is eligible for deduction under Section 80-IA of the Act. Therefore, this

Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. In the result, all the three appeals filed by the Revenue stand dismissed.

Order pronounced on 24<sup>th</sup> August, 2016 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 24<sup>th</sup> August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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