

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

VISWAS PROMOTERS PRIVATE LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX

HIGH COURT OF MADRAS

CHITRA VENKATARAMAN & K. RAVICHANDRABAABU, JJ.

Tax Case (Appeal) Nos.1014 of 2009, 857 of 2010 and 190 to 192 of 2012 and W.A.No.471 of 2010 and M.P.Nos.1, 1, 1, 2 and 2 of 2012

2nd November, 2012

(2012) 83 CCH 069 ChenHC

(2013) 255 CTR (Mad) 149 : (2013) 81 DTR (Mad) 68

Legislation referred to

Section 80IB(10)

Case pertains to

Asst. Year 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09

Decision in favour of

Assessee

Deduction u/s.80IB(10)—Composite housing project—Allowability—Assessee engaged in business of development and construction of flats formulated four schemes, namely, Agrini, Vajra, Porkudam Phase I and Porkudam Phase II—Assessee claimed deduction u/s 80IB(10) in respect of flats measuring less than 1500 sq.ft. of built up area and did not claim deduction in respect of flats exceeding an extent of 1500 sq.ft.—AO rejected assessee's claim on ground that deduction was for the project as a whole and all residential units in project must satisfy conditions of having built up area of less than 1500 sq.ft.—CIT(A) held that within composite building project, if there were both eligible and ineligible units, assessee would be eligible to claim deduction in respect of eligible Units—However, Appellate Tribunal viewed that a project could not be approved in piecemeal and blocks of residential units were parts of a project and not project by itself and thereby denied assessee's claim of deduction u/s. 80IB(10)—Held, housing projects u/s. 80IB refers to any building other than road, bridge or other structure—Each block in the larger project by name "Agrini" and "Vajra", has to be taken as an independent building and hence a housing project, for the purpose of considering a claim of deduction—Within a composite housing project, where there are eligible and ineligible units, the assessee can claim deduction in respect of eligible units in the project and even within the block, the assessee is entitled to claim proportionate relief in the units satisfying the extent of the built-up area—Assessee is entitled to claim deduction in respect of all blocks forming part of projects called Agrini and Vajra, but to the extent of each of the blocks satisfying the conditions u/s. 80IB(10), the assessee would be entitled to the relief on a proportionate basis—Assessee's appeal allowed

Held:

Housing projects considered herein u/s. 80IB refers to any building other than road, bridge or other structure. Thus, going by the definition of "housing project" to mean the construction of "any building" and the deduction u/s. 80IB of the Act is hundred per cent of the profits derived in the previous year relevant to the assessment year from such housing project complying with the condition, each block in the larger project by name "Agrini" and "Vajra", has to be taken as an independent building and hence a housing project, for the purpose of considering a claim of deduction.

(Para 13)

Thus, going by the definition of "housing project" under Explanation to s. 80HHBA of the Act as referred to above as the construction of "any building" and the wordings in s. 80IB(10) of the Act, the question of rejection in entirety of the project on account of any one of the blocks not complying with the conditions, does not arise. assessee is entitled to succeed both on the principle of proportionality as well as by reason of the construction on the meaning of the expression "housing project" as referring to construction of any building and the wordings in s. 80IB(10) of the Act. In the circumstances, we hold that the mere fact that one of the blocks have units exceeding built-up area of 1500 sq.ft, per se, would not result in nullifying the claim of the assessee for the entire projects. Consequently, in respect of each of the blocks, the assessee is entitled to have the benefit of deduction in respect of residential units satisfying the requirement u/s. 80IB(10)(c) of the Act. CIT vs. Brahma Associates (2011) 333 ITR 289 and CIT vs. Vandana Properties (2012) 206 TAXMAN 584., **relied**

(Para 14)Conclusion:

Within a composite housing project, where there are eligible and ineligible units, the assessee can claim deduction in respect of eligible units in the project and even within the block, the assessee is entitled to claim proportionate relief in the units satisfying the extent of the built-up area.

In favour of:

Assessee

Cases referred to :

Bengal Ambuja Housing Developments Ltd. vs. CIT Cir.X., Kolkata in ITA No.1595/Kol/2005 dated 24.03.2006

CIT vs. Brahma Associates (2011) 333 ITR 289

CIT vs. Vandana Properties (2012) 206 TAXMAN 584

Counsel appeared

C.V.Rajan, R.Sivaraman **for the appellant.**: T.R.Senthil Kumar **for the Respondent**

CHITRA VENKATARAMAN, J.

1. The assessee is on appeal as against the order of the Tribunal relating to the assessment years

2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 in T.C.No.1014 of 2009, T.C.No.857 of 2010 and T.C.Nos.190, 191 and 192 of 2012 respectively. Although a composite question of law is raised in these Tax Cases, since the issues relate to the same transaction, the substantial questions of law framed in respect of the assessment year 2004-05 in T.C.No.1014 of 2009 extracted herein, fit in with the questions raised in the other cases too and hence, is apposite to other Tax Cases. The substantial questions of law raised in respect of assessment year 2004-05 read as under:

(i) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in denying under Section 80IB(10) in respect of project Agrini and Vajra for flats less than 150 sq.ft. on proportionate basis?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in holding that in a consolidated residential units having more than 1500 sq.ft. And less than 1500 sq.ft., proportionate deduction under Section 80IB(1)(c) cannot be allowed for flats less than 1500 sq.ft.?

2. The assessee herein is engaged in the business of development and construction of flats. There were four projects to its credit by name Agrini, Vajra, Porkudam Phase II and Porkudam Phase II. Of these four projects, in Agrini and Vajra, the assessee had constructed and sold flats measuring less than 1500 sq.ft as well as more than 1500 sq.ft. The assessee claimed deduction under Section 80IB(10) of the Income Tax Act (hereinafter referred to as "the Act") in respect of flats measuring less than 1500 sq.ft. of built up area and did not claim deduction in respect of flats exceeding an extent of 1500 sq.ft., i.e., for 32 flats in Agrini and one flat in Vajra exceeding 1500 sq.ft.

3. On a notice issued by the Officer as to why the claim of the assessee under Section 80IB of the Act on a proportionate basis should not be disallowed on account of the violation of the conditions laid down under Section 80IB(10)(c) of the Act, the assessee pointed out that it had claimed deduction only on a proportionate basis in respect of flats less than 1500 sq.ft. of built-up area; that they were marking separate records for different units and that they had not violated the conditions. The Assessing Officer viewed that the deduction under the Section being for the project as a whole and all the residential units in the project must satisfy the conditions therein, namely, built up area to be less than 1500 sq.ft., on the admitted facts as to the units having built-up area more than 1500 sq.ft., the assessee was not eligible for deduction for the entire projects Agrini and Vajra, but was only eligible for deduction in respect of the other two projects namely, Porkudam Phase I and Porkudam Phase II, where there was no violation.

4. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), wherein it was specifically pointed out by the assessee that all these four independent projects were commenced at different points of time; each project was an identifiable independent project having separate plan. The assessee had not claimed any deduction in respect of the residential units having plinth area of more than 1500 sq.ft. The assessee claimed that there was no violation to reject the claim of the assessee with reference to the Units satisfying the conditions under Section 80IB of the Act in respect of each block. The Commissioner of Income Tax (Appeals) pointed out that in respect of each of the projects, separate blocks are identifiable; out of the total built-up area of 2,81,900 sq.ft. in the two housing projects, only an area of 50,610 sq.ft related to units in excess of 1500 sq.ft., which come to 19.36 percent. Referring to Section 80IB(10)(c) of the Act, he held that within the composite building project, if there were both eligible and ineligible Units, the assessee would be eligible to claim deduction in respect of eligible Units. Relying on the decision of the Income Tax Appellate Tribunal, Calcutta Bench, in the case of Bengal Ambuja Housing Developments Ltd. Vs. CIT Cir.X., Kolkata in ITA No.1595/Kol/2005 dated 24.03.2006, the Commissioner of Income Tax (Appeals) pointed out that the assessee was entitled to succeed in respect of Units which satisfied the conditions of 1500 sq.ft as given under Section 80IB(10)(c) of the Act, that proportionate deduction was available to the eligible units.

5. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal, which pointed out that the assessee had formulated four schemes, namely, Agrini, Vajra, Porkudam Phase II and Porkudam Phase II. These four schemes were approved by the local authorities. The Tribunal viewed that a project could not be approved in piecemeal; that the approval was for the entire project; and blocks of residential units were parts of a project and not project by itself. Since in respect of a block, the assessee did not comply with the conditions stipulated under Section 80IB (10) of the Act, all the blocks comprising in that particular project would lose the relief. Aggrieved by this, the assessee is on appeal before this Court.

6. Learned counsel appearing for the assessee placed before us the sanction given by the competent authority in respect of each of the blocks in each project and submitted that the consistent case of the assessee had been that each block is a project by itself and that the claim itself was restricted only to those Units which are less than 1500 sq.ft. Thus the view of the Tribunal that each block of residential units could not be considered as a separate project, is erroneous in law. He further pointed out that a similar relief, as had been claimed by the assessee, was granted by the Income Tax Appellate Tribunal, Calcutta Bench, in the case of Bengal Ambuja Housing Developments Ltd. Vs. CIT in ITA No.1595/Kol/2005 dated 24.03.2006, which was confirmed by the Calcutta High Court in ITA No.458/2006 by order dated 05.01.2007. In the light of the decision of the Calcutta High Court, the Tribunal's order is wrong. Learned counsel pointed out that having regard to the decision of this Court in T.C.Nos.1348 and 1349 of 2007 dated 10.10.2012, the assessee has to succeed on the principle of proportionality to the extent of the units satisfying Section 80IB(10)(c) of the Act in the matter of granting deduction.

7. Per contra, learned Standing Counsel appearing for the Revenue countered the claim of the assessee and placed reliance on the decision of the Tribunal.

8. Heard learned counsel appearing on either side and perused the material placed on record.

9. It is seen from the narration of facts before the Commissioner of Income Tax (Appeals) as well as before the other authorities, that in the project under the name "Agrini", separate blocks were there, the details of which read as follows:

Sector	Name	Plinth area(in sft)	No. of Units	Land allocated area
Sector-I	SREENIDHI	2140	48	04.65 acres
Sector-1A	SREENIDHI	1690	4	
Sector-II	VIMAL1	1265	40	01.04 acres
Sector-IIIA	MITHRA	1050	160	03.08 acres
Sector-IIIB	MITHRA DELUXE & NIRMAL DELUXE	1095	36	
Sector-IV	NIRMAL	875	240	03.53 acres
Sector-V	VAANYA	650	150	01.41 acres

10. It is not denied by the Revenue that as far as the project "Vajra" is concerned, as in the case of

Agrini, there are six blocks consisting of 24 flats. The dispute in these cases herein is on an issue as to whether the assessee has to lose the deduction in respect the entirety of the projects "Vajra" and "Agrini", solely by reason of the fact that one of the blocks developed by the appellant in this project, had flats exceeding 1500 sq.ft.

11. It is an admitted fact that each one of blocks had separate sanction from the competent authority. Even though the larger area comprised in the name and style of "Agrini" and "Vajra" is stated to be the master plan of the project, it is not denied by the Revenue that each block in each of the projects has its own specification; hence, had gone for planning approval by the competent planning authority. In the background of this, the question that arises for consideration is as to whether the assessee would lose its claim for deduction in respect of those blocks which satisfied the conditions under Section 80IB(10) of the Act by reason of some of the blocks not satisfying the condition under Section 80IB(10) of the Act.

12. It is not denied by the Revenue that there is no definition of the expression "Housing project" under Section 80IB of the Act. The said expression is defined under Explanation to Section 80HHBA of the Income Tax Act, which reads as under:

"Section 80HHBA- DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM HOUSING PROJECTS IN CERTAIN CASES.

...

Explanation : For the purposes of this section, - (a) "Housing project" means a project for - (i) The construction of any building, road, bridge or other structure in any part of India "

13. Section 80IA of the Act is a specific provision which deals with deduction in respect of profits and gains from industrial undertakings or enterprises engaged in the development of infrastructural facilities such as roads, bridges and other structure as regards the grant of deduction in respect of development and construction of a housing project. Section 80IB is a specific provision in respect of profits and gains from undertakings engaged in developing and constructing housing projects other than infrastructure development undertakings. Thus, housing projects considered herein under Section 80IB refers to any building other than road, bridge or other structure. Thus, going by the definition of "housing project" to mean the construction of "any building" and the deduction under Section 80IB of the Act is hundred per cent of the profits derived in the previous year relevant to the assessment year from such housing project complying with the condition, each block in the larger project by name "Agrini" and "Vajra", has to be taken as an independent building and hence a housing project, for the purpose of considering a claim of deduction. Section 80IB(10) begins by stating:

"(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,

Thus the undertaking qualifying for deduction under Section 80IB of the Act is an "undertaking developing and building housing projects" and the deduction is in respect of "profits and gains derived from" such housing project, satisfying the conditions stipulated in the clause therein. Thus, within a composite housing project, where there are eligible and ineligible units, the assessee can claim deduction in respect of eligible units in the project and even within the block, the assessee is entitled to claim proportionate relief in the units satisfying the extent of the built-up area.

14. On the facts admitted by the Revenue, in the projects "Agrini" and "Vajra", there are number of flats which are below 1500 sq.ft., and the relevant built-up area requirement is specified under Section 80IB(10)(c) of the Income Tax Act. Thus, the built-up area in some of the flats in both these projects are in excess of 1500 sq.ft., i.e., 32 flats in Agrini and only one flat in Vajra and that the assessee had not claimed any deduction on this. We hold that the Tribunal is not correct in its view, that by reason of these Units being in excess of 1500 sq.ft., the entire claim of the assessee in respect of these two projects would stand rejected under Section 80IB(10) of the Income Tax Act. Thus, going by the definition of "housing project" under Explanation to Section 80HHBA of the Act as referred to above as the construction of "any building" and the wordings in Section 80IB(10) of the Act, the question of rejection in entirety of the project on account of any one of the blocks not complying with the conditions, does not arise. Even in the case of each one of the blocks, wherever there are flats which satisfied the conditions particularly of the nature stated under Section 80IB(10)(c) of the Act, we have already upheld the case of the assessee in T.C.Nos.1348 and 1349 of 2007 dated 10.10.2012 for grant of relief under Section 80IB(10) of the Act on a proportionate basis, by following the decision of the Bombay High Court reported in (2011) 333 ITR289 (CIT Vs. Brahma Associates). Thus applying the decision of this Court in T.C.Nos.1348 and 1349 of 2007 dated 10.10.2012, we hold that the assessee is entitled to succeed both on the principle of proportionality as well as by reason of the construction on the meaning of the expression "housing project" as referring to construction of any building and the wordings in Section 80IB(10) of the Act. In the circumstances, we hold that the mere fact that one of the blocks have units exceeding built-up area of 1500 sq.ft, per se, would not result in nullifying the claim of the assessee for the entire projects. Consequently, in respect of each of the blocks, the assessee is entitled to have the benefit of deduction in respect of residential units satisfying the requirement under Section 80IB(10)(c) of the Act. In so holding, we also agree with the decision of the Bombay High Court reported in (2012) 206 TAXMAN 584 (CIT v. Vandana Properties), which was decided by the Bombay High Court on similar lines as in the assessee's case before us.

15. In the light of the above reasoning, we have no hesitation in allowing the cases filed by the assessee in respect of assessment years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09, thereby answering the substantial questions of law in favour of the assessee, that the assessee is entitled to the claim of deduction in respect of all the blocks forming part of the projects called Agrini and Vajra, but to the extent of each of the blocks satisfying the conditions under Section 80IB(10) of the Act, the assessee would be entitled to the relief on a proportionate basis.

16. In the light of this Court allowing the Tax Case Appeals, nothing survives in the writ appeal filed by the assessee, viz., W.A.No.471 of 2010 as against the dismissal of the writ petition filed for rectification of the error in the order passed by the Tribunal. In the result, the Tax Case Appeals stand allowed and the Writ Appeal stands closed. Connected M.P.Nos.1, 1, 1, 2 and 2 of 2012 stand closed. No costs.

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