

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

**INCOME TAX APPEAL No.478/2015**

**&**

**ITA No.641/2015**

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX  
C R BUILDING  
QUEENS ROAD  
BANGALORE
2. THE INCOME-TAX OFFICER  
WARD-6(3)  
RASHTROTHANA BHAVAN  
NRUPATHUNGA ROAD  
BANGALORE 560001

... APPELLANTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

AND:

M/S. NARAYAN BUILDERS  
NO.101/104, 1ST FLOOR  
SESHADRIPURAM  
BANGALORE 560 020  
PAN: AAFFN 3285 R

... RESPONDENT

THESE INCOME TAX APPEALS ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:31/03/2015 PASSED IN ITA NO. 474/BANG/2013 & SP NO.77/BANG/2013 FOR THE ASSESSMENT YEAR 2009-2010 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BENGALURU IN ITA NO. 474/BANG/2013 & S.P.NO. 77/BANG/2013 DATED:31/03/2015 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-6(3), BENGALURU.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

### JUDGMENT

The appellant-Revenue, by raising the following substantial questions of law, has preferred the present appeal:

“Whether on the facts and in the circumstances of the case, the Tribunal is right in law in directing the assessing authority to give deduction under section 80IB(10) of the Act if the assessee has completed construction when the assessee had failed to file audit report in Form-10CCB along with the completion certificate obtained from the Local Authority showing the completion of construction of the building/apartment as required under the law to claim deduction under section 80IB(10) of the Act”?

2.We have heard Mr.Aravind K.V., learned counsel appearing for the appellant-Revenue. The Tribunal in the impugned order at paragraph-7 has observed thus:

“7. Having regard to the rival contentions and the material on record, we find that the Hon’ble High Court, in the case of Ittina Properties has held that where the construction of building within the stipulated period is proved, then submission of completion certificate is not mandatory. The Hon’ble court has also further considered the requirement of filing of the occupancy certificate and at para.15 has held as under:

“15. From an overall analysis of the decisions and the material on record, it is seen that if assessee has committed certain violations in the construction, then those violations could

be compounded under the 'Akrama-Sakrama' Scheme floated by the Karnataka Government. The object of this certificate is to ascertain whether the time limit provided in the provision for construction of the building had been adhered to or not by the assessee. The assessee had handed over the possession, occupants are residing in the building and they had water, electricity connection etc., meaning thereby the project was completed within the stipulated period. The Assessing Officer has not disputed this fact nor did an inspection. He assumed that submission of completion certificate is a condition precedent. If there are building violations, then it is for the municipal authorities to penalize the assessee or charge compounding fees. This aspect has been considered by the ITAT in the order extracted supra. Therefore, following the order of the coordinate bench, as well as of the Gujarat and Karnataka High Courts, we allow the appeal of the assessee and direct the Assessing Officer to grant deduction u/s 80IB of the Act. The Assessing Officer shall verify the computation made by the assessee and then determine the quantum of deduction."

As the facts and circumstances of the case before us are also similar and the assessee has proved by documents filed before the authorities below as well as before us that construction of the building was completed, the assessee has also applied for occupancy/completion certificate but was not issued by the relevant authority, we do not find that there is any case for denial of deduction u/s 80-IB(10) of the Act on

this ground. However, the documents filed by the assessee have not been verified by the AO. Therefore, we deem it fit and proper to remand the issue to the file of the AO solely for verification of the documents filed by the assessee and if it is found that the documents are genuine, then no disallowance shall be made. The ground Nos.6 and 7 are treated as allowed for statistical purposes.”

3. The aforesaid shows that, the Tribunal, while deciding the matter has been guided by the decision of this Court in case of Ittina Properties in ITA No.556/13 and allied matters decided on 15/7/2014. However, Mr.Aravind, learned counsel appearing for the appellant contends that the facts of the case in Ittina properties cannot be compared with the facts of the present case inasmuch as, in the said case, Panchayat had issued completion certificate and same was produced on record whereas, in the present case, no certificate whatsoever was issued and therefore, the Tribunal ought not to

have relied upon the decision and observation made in the case of Ittina Properties, supra.

4. We may record that, this Court, in the case of Ittina Properties supra did not take the view only because completion certificate from Panchayat was produced, but on the contrary, in the said decision it was found by this Court that neither in the Income Tax Act nor in Karnataka Municipal Corporations Act, is there any provision for issuance of completion certificate by the local authorities and therefore, Revenue ought not have insisted for production of such certificate for getting benefit under the Income Tax Act. Therefore, distinction as sought to be canvassed by the learned counsel for the appellant-Revenue would not dilute the legal position as held by this Court in the above appeal.

5. In any event, for examination as to whether the construction was completed or not, the matter is remanded by the Tribunal. When the Tribunal had followed the decision of this Court, we do not find that any substantial question of law would arise for consideration as sought to be canvassed. Hence, the appeals are dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Sk/-