IN THE HON'BLE HIGH COURT OF TELANGANA, AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

W.P. NO. OF 2019

BETWEEN:

M/s. Alpine Estates,
A Partnership Firm incorporated under the
Indian Partnership Act, 1932
having its office at
5-4-187/3 & 4, 2nd floor,Soham Mansion,
Ranigunj, Secunderabad-500003.
represented by its Partner Sri Soham Modi,
S/o. Late Sri Satish Modi, aged about 50 years,
R/o. Plot No.280, Jubilee Hills, Road No.25,
Hyderabad – 500 034.

... Petitioner

AND

1. Union of India represented by its Secretary,
   Department of Revenue, Ministry of Finance,
   North Block, New Delhi -110001.

2. The Deputy Commissioner of Income Tax,
   Circle-10(1),Room No. 515, 5th Floor,
   'A' Block, I. T. Towers,A.C. Guards,
   Masab Tank, Hyderabad - 500004.

3. The Assistant Commissioner of Income Tax,
   Circle-10(1), 5A, I. T. Towers,
   A.C. Guards, Masab Tank,
   Hyderabad - 500004.

4. Income Tax Officer,
   Ward – 10(3), 5th Floor, A Block,
   I.T. Towers, AC Guards, Hyderabad - 500004.

... Respondents

AFFIDAVIT

I, Soham Modi, S/o.Late Satish Modi, aged about 50 years, R/o. Plot No. 280, Jubilee Hills, Road No. 25, Hyderabad - 500034 do hereby solemnly affirm and state on oath as follows:

For ALPINE ESTATES
Partner

1. I am a Partner in the Petitioner firm herein and as such well acquainted with the facts of this case. I am authorised to file this affidavit on behalf of the Petitioner firm herein.

2. The Petitioner firm is engaged in the business of real estate development and filed its return of income for the Assessment Year 2014-15 on 27-09-2014claiming deduction u/s. 80IB (10) of the Income Tax Act, 1961 (hereinafter referred to as "the Act') to the extent of Rs. 2,92,72,864/- and returned an income of Rs. 21,82,260/-. The case of the Petitioner was selected for scrutiny under CASS (Computer Assisted Scrutiny Selection) and notice u/s. 143(2)was issued by the 4th Respondent herein on 28-08-2015 calling for information. The Petitioner responded to the notice vide its letter dated 08-12-2016and submitted all information as called for by Respondent No. 4. A copy of such notice dated 28-08-2015 and Petitioner's reply dated 08-12-2016 are being filed as **Annexures P1& P2**. Accordingly, the assessment of the Petitioner was completed u/s. 143(3) of the Act vide order dated10-12-2016resulting in 'Nil' demand. A copy of such assessment order dated 10-12-2016is annexed as **Annexure –P3.**

3. As things stood thus, Respondent No. 2 issued a notice dated 26-03-2019u/s. 148 of the Act re-opening the assessment of the Petitioner for the Assessment Year 2014-15. The Petitioner responded to the said notice vide its letter dated 22-04-2019and asked for the reasons for reopening of the assessment u/s. 147 of the Act.Copies of such notice issued u/s. 148 of the Act and reply given by the Petitioner asking for reasons for reopening are filed as **Annexures P4& P5**. Respondent No. 2 vide letter dated 06-05-2019 communicated the reasons to the Petitioner by stating that the Financials for the Assessment Year 2014-15of the Petitioner firm show that the Petitioner has debited an amount of Rs.1,83,87,647/- towards construction expenses and held that in order to claim deduction under Section 80IB of the Act, the Petitioner is required to complete the construction of the project within 5 years from the end of the financial

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Partner

year in which the housing project was approved by the local authority. In the present case the project was approved on 29-03-2007, therefore as per the provisions of section 80IB of the Act, the project ought to have been completed on or before 31-03-2012. In view of the same, he concluded that the Petitioner claimed construction expenses of Rs. 1,83,87,647/- for the AY: 2014-15, which implies that the construction was still in progress during the financial year relevant to the assessment year 2014-15. Accordingly, Respondent No. 2 re-openedthe assessment of the Petitioner u/s. 147 of the Act.A copy of such reasons stated by Respondent No. 2 vide letter dated 06-05-2019is being filed as **Annexure – P6.**

4. Further, the Petitioner filed its objections to the proposed reassessment vide its letter dated 05-09-2019 wherein it substantiated its stand as to submission of all details during the course of regular assessment to Respondent No. 2.The Petitioner submitted that during the course of regular assessment, the construction account and other details were furnished from time to time as called for by Respondent No. 2. The details of construction expenses incurred were also furnished. In view of the same, all the details pertaining to its claim of deduction relating to construction expenses incurred by it were available with the Respondent No. 2. Respondent No. 2 after verifying all the details furnished by the Petitionercompleted the assessment of the Petitioner for the assessment year 2014-15 raising 'Nil' demand. In view of the same, the proposed re-opening on mere change of opinion is bad under law. The Petitioner once again on 07-10-2019 filed another letter before Respondent No. 3 submitting the break-up of the construction expenses of Rs. 1,83,87,647/- claimed by the Petitioner. Copies of such objections dated 05-09-2019 and letter dated 07-10-2019 filed by the Petitioner are filed as **Annexures P7& P8.**

5. It is submitted thatRespondent No. 3replied to the objections filed by the Petitioner wherein she stated that the Petitioner has not completed the housing project within the time stipulated under the Act which is one of

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the preconditions to claim deduction under Section 80IB (10) of the Act. As such she relied on Explanation 2 to Section 147 of the Act and stated that as no satisfactory note with regard to admissibility of deduction u/s. 80IB of the Act was made in the assessment order, the objections filed by the Petitioner for reopening of the assessment proceedings lack merit. Hence, re-opening of assessment is correct and as per law.Secondly, Respondent No. 3 with respect to Petitioner's submission that it has submitted all the particulars during assessment proceedings, stated that mere production of books of account and other material facts does not amount to disclosure of information in a complete manner. A copy of such order dated 14-11-2019 is being filed as **Annexure P9**.

6. It is submitted that the scope of reassessment u/s. 147 of the Act is very limited and is available on certain grounds.In the present case, Respondent No.2 re-opened the assessment of the Petitioner on the ground that there was failure on the part of the Petitioner to complete the housing project within the stipulated time of five years from the date of approval of the project. As per Respondents No. 2 and 3, the due date being 31-03-2012 for completion of the project, incurring of expenses amounting to Rs. 1,83,87,647/- in the AY: 2014-15 on such project by the Petitioner is bad. Further, Respondents No. 2 and 3 relied on Explanation 2 to section 147 by stating that mere production of books of account and other material facts does not amount to disclosure of information in a complete manner. In this regard, it is submitted that the Petitioner during the course of assessment for the AY: 2014-15 placed all materialfacts along with documentary evidence in support of its claim under 80IA of the Act before Respondent No. 2. In view of the same, Respondent No. 2 was fully aware of such expenses incurred by the Petitioner. Further, it is pertinent to mention here that there is no dispute as regards the fact that the expenses amounting to Rs. 1,83,87,647/- were incurred by the Petitioner on the said project for which a claim u/s. 80IA was made.In view of the above, it can be inferred that the Respondents were well aware

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of the claim of exemption made by the Petitioner u/s. 80IA of the Act for the aforesaid project (for which due date for completion was 31-03-2012) in the AY: 2014-15.

7. Moreover, the nature of expenses incurred by the Petitioner were mostly on finishing works. Respondent No. 2 ought to have appreciated that out of 270 flats in the aforesaid project only 179 flats were sold up to the date of grant of final Occupancy Certificate (OC) i.e., 20-03-2011. Most of the flats remained unsold even after the grant of OC by the Authorities. Further, the sales were down because of recession. In view of the same, the Petitioner in order to promote sales resorted to several offersto attract the purchasers to book the flats viz., free modular kitchen, free furniture etc. As such the Petitioner was successful in persuading the prospective purchasers to book the flats in view of giving of such offers/concessions. Copies of letters of confirmation issued by the Petitioner in favour of such customers are collectively filed as **Annexure P10**.Further, the Petitioner had no other option except to incur such expenditure in order to sell such flats even after the construction was complete in all respects and Occupancy Certificatewas granted by the Authorities.

8. Moreover, there is no allegation of suppression made by Respondent No. 2. In view of the same, taking a divergent view on the selfsame facts tantamount to mere change of opinion and nothing else. Further, the expression 'escaped assessment' clearly postulates that the income for a particular assessment year went unnoticed by the Assessing Officer and because of it not being noticed by him for any reason, it escaped assessment.Further, there is no reference made by Respondent No. 2 in the impugned notice that any information which he came across subsequently resulted in reopening of the assessment.

9. For the reasons mentioned above, it is respectfully submitted that the impugned noticedated 26-03-2019issued by Respondent No. 2 re-opening

the assessment for the Assessment Year 2014-15is arbitrary, illegal and liable to be set aside.

GROUNDS

A. The Respondents erred in reopening the assessment of the Petitioner in absence of any allegation of suppression on the part of the Petitioner.

B. The Respondents failed to consider that all the information relevant for the purpose of conducting assessment was submitted by the Petitioner hence, reopening of assessment on the selfsame facts is bad and unwarranted.

C. The Respondents erred in saying that as no satisfactory note with regard to admissibility of deduction u/s. 80IB of the Act was made in the assessment order, the reopening is correct and as per law. The Respondents ought tohave considered that they are duty bound to pass a speaking and reasoned order elaborating the facts of the case and the grounds on which the exemption is being granted to the Petitioner.In view of the same, the Petitioner should not be put to trouble on failure of the Respondents to do such exercise.

D. The Respondents erred in relying on Explanation 2 to section 147 of the Act by saying that mere production or submission of documents before the Assessing Officer does not amount to disclosure of information by the Petitioner as the Petitioner prepared and submitted a chart showing the break-up of all expenditure incurred by it on the said project in the above assessment year. A copy of such chart is being filed as **Annexure P11**.

E. The Respondents ought to have appreciated that the Petitioner had no other option except to make such offers to the prospective purchasers for sale of such flats resulting in incurring of such expenses in the above assessment year.

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10. In the circumstances stated above, the Petitionerhas no efficacious or alternative remedy, except to approach this Hon'ble Court under Article 226 of the Constitution of India. The Petitioner has not filed any writ petition, suit or other proceedings for the relief sought herein.

In view of the above, it is prayed that this Hon'ble Court may be pleased to issue a writ or order especially in the nature of writ of mandamus setting aside the impugned order dated 14-11-2019 passed by Respondent No. 3 pursuant to the notice dated 26-03-2019 issued u/s. 148 of the Income Tax Act, 1961 for the Assessment Year 2014-15 and pass such other order (s) as this Hon'ble Court deems fit and proper in the circumstances of the case.

Pending disposal of the writ petition it is prayed that this Hon'ble Court may be pleased to stay all further proceedings pursuant to the impugned order dated 14-11-2019 passed by Respondent No. 3 u/s. 147 of the Act for the Assessment Year 2014-15 by the Respondent No.3 under the Income Tax Act, 1961 and pass such other order (s) as this Hon'ble Court deems fit and proper in the circumstances of the case.

For ALPINE ESTATES

Partner

DEPONENT

Sworn and signed before me on this the
day of November, 2019 at Hyderabad

ADVOCATE :: HYDERABAD

VERIFICATION

I,Soham Modi, S/o. Late Satish Modi, aged about 50 years, R/o.Plot No.280, Jubilee Hills, Road No.25,Hyderabad – 500 034, do hereby declare that the contents mentioned above in paras 1 to 9 are true and correct to the best of my knowledge, and based on legal advice believed to be correct.

Hence verified on this day the day of November, 2019 at Hyderabad.

For ALPINE ESTATES

Partner

DEPONENT

COUNSEL FOR THE PETITIONER

IN THE HON'BLE HIGH COURT OF TELANGANA
AT HYDERABAD

NO. OF 2019

PETITIONER

VERSUS

RESPONDENTS

I/WE

Appellant-Petitioner in the above Appeal/Petition do hereby appoint and Respondent retain

DIVYA DATLA (13421)
K. PRABHAVATHI
M. NAGA DEEPAK
B. LOKESHWAR REDDY
ROHAN ALOOR
HIMANGINI SANGHI

ADVOCATES

Advocate/s of the High Court to appeal for me/us in the above Appeal/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including application for return of documents or the receipt of any money that may be payable to me/us in the said Appeal/Petition and to also to appear in all applications under Clause XV of the Letters Patents and in all applications for review and for leave to the Supreme Court of India and in all applications for review of judgment.

For ALPINE ESTATES

Partner

I certify that the contents of this Vakalatnama were read out and explained in (_____) in my presence to the executant, or executants who appeared perfectly to understand the same and made his/her/their signatures or marks in my presence.

Executed before me this day of November, 2019

ADVOCATE::HYDERABAD