IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1578 OF 2013
WITH
INCOME TAX APPEAL NO. 1577 OF 2013

The Commissioner of Income Tax-II, Pune ..Appellant

Vs.

M/s Kharade Patil ..Respondent

....

Mr. Suresh Kumar, Advocate I/b Vipul Bajpayee for Appellant.
None for Respondent.

....

CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 17 AUGUST 2015

P.C.:

These appeals by the revenue challenging the common order dated 29 October 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The common impugned order disposes of appeals for the Assessment Years 2004-05 and 2005-06.

2. Mr. Suresh Kumar, the learned Counsel for the revenue urges only the following question of law for our consideration:

> "(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the issue of notice u/s 148 was bad in law as the proceedings initiated were merely on the change of opinion without appreciating the facts that the issue of completion of project was never before the Assessing Officer in the course of proceedings u/s 143(3) and the Assessing Officer, in the original assessment order u/s 143(3) had not formed any opinion about the completion of the project?"

3. The Tribunal by the impugned common order for both the assessment years has taken a view that the notices for reopening assessment were bad as it was based on a change of opinion. The Assessing Officer had during the regular assessment proceedings under Section 143(3) of the Act had occasion to consider the claim of the respondent-assessee before allowing benefit of deduction under Section 80IB(10) of the Act. This finding was based on the order of assessment passed for the two subject Assessment Years under Section 143(3) of the Act, both on which records the fact that the Assessing Officer had made a personal visit to project site and personally verified that the respondent-assessee had not constructed

any commercial units and area of each residential units is less than 1500 sq.ft. Besides holding in both the assessment orders passed that the respondent-assessee had satisfied all the conditions laid down for claiming the benefit of deduction under Section 80IB(10) of the Act.

4. The grievance of the revenue is that the completion certificate in respect of Wing 'D' which is one of the building in the concerned housing project was not filed by the respondent-assessee. Consequently, the issuing of the impugned notice would not amount to change of opinion.

5. We find that the impugned order of the Tribunal records the fact that the assessment orders passed in regular assessment proceedings in the subject assessment years has held that conditions laid down in Section 80IB(10) of the Act had been fulfilled by the respondent-assessee. This itself presupposes that the order of assessment passed in the two subject assessment years had applied its mind to the eligibility of the respondent-assessee to the benefit of deduction under Section 80IB(10) of the Act.

6. In the above view, we find that the impugned order of the Tribunal cannot be found fault with. Moreover, the impugned order merely records a finding of fact which is evident from the order of the Assessing Officer passed in regular assessment proceedings for the two subject years. This finding of fact is not shown to be perverse or arbitrary. Thus the question as formulated does not give rise to any substantial question of law.

7. Accordingly, in the above view, both the appeals dismissed. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**