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

INCOME TAX APPEAL NO. 1714 OF 2013

The Commissioner of Income Tax-13, Mumbai ..Appellant

Vs.

Dushayant Development Corporation ..Respondent

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Mr. P.C. Chhotaray, Advocate for Appellant.
Mr. B.V. Jhaveri, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 7 JULY 2015

P.C.:

This appeal by revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 1 February 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 2004-05. The impugned order set aside penalty imposed under Section 271(1)(c) of the Act on invoking Section 273B of the Act.

3. The revenue has framed the following questions of law for our consideration:

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is

correct in canceling the penalty u/s 271(1)(c) imposed by the A.O. when the revised return was filed after the survey was done.

(ii) Whether the Tribunal has rightly held that the revised return filed by the Assessee in the present case is voluntarily even though it is filed after survey report."

4. The respondent-assessee had filed return of income claiming benefit of deduction under Section 80IB(10) of the Act in respect of its building project called New Haridas Park bearing Wing A to D. Thereafter there was a survey conducted on the appellant's premises. Subsequent thereto, the respondent-assessee filed a revised return of income withdrawing its claim for the benefit of Section 80IB(10) of the Act in respect of its building project called New Haridas Park consisting of Wings being A to D on the ground that as it is part of the original project of Haridas Project consisting of Wings A to G. The Revised Return was held to be invalid by the Assessing Officer who also imposed a penalty of Rs.17.87 lacs under Section 271(1)(c) of the Act for having furnished inaccurate particulars.

5. In appeal, the CIT(A) upheld the imposition of penalty under Section 271(1)(c) of the Act. On further appeal, the Tribunal by the impugned order concluded that there was a basis for the respondent-assessee to claim that Wings A to D constructed by it would be a separate project from the original project of "Haridas Park" consisting of Wings E to G. The second phase required extensive modification of the plan. It was for these considerations that the Tribunal accepted the alternative contention that in any event the view taken by the respondent-assessee that Wings A to D formed a separate project was in the facts, a plausible view. Therefore there was a reasonable cause for the respondent-assessee having incorrectly claimed the benefit of Section 80IB(10) of the Act. Thus the impugned order held no penalty be imposed in view of Section 273B of the Act.

6. The grievance of the revenue is that the respondent-assessee is not entitled to claim the benefit of Section 80IB(10) of the Act in respect of project Wings A to D. There is no dispute with regard to the same. It is further submitted that the revised return was filed only after the survey was conducted by the revenue. This

is not factually correct as the Tribunal in the impugned order observes that there was nothing on record to indicate what was the finding in survey. In the absence of some positive evidence on the part of the revenue that it is the survey which led the respondent-assessee to file revised return of income and/or withdraw its claim for the benefit of Section 80IB of the Act, it is not open to hold that only because of the survey, the claim for benefit of Section 80IB of the Act was withdrawn.

7. In these circumstances, we find that the view taken by the Tribunal on the facts before it was a very possible view. Thus the questions of law as proposed by the revenue are not substantial questions of law.

8. Accordingly, the appeal is dismissed. No order as to costs.

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