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

INCOME TAX APPEAL NO.1761 OF 2013
WITH
INCOME TAX APPEAL NO.1765 OF 2013
WITH
INCOME TAX APPEAL NO.1776 OF 2013
WITH
INCOME TAX APPEAL NO.1788 OF 2013
WITH
INCOME TAX APPEAL NO.2292 OF 2013
WITH
INCOME TAX APPEAL NO.49 OF 2014

The Commissioner of Income Tax-III,Thane ..Appellant
-***Versus***-
M/s. Madhav Construction ..Respondent

....
Mr. Tejveer Singh for the Appellant.
Mr. Mihir Naniwadekar for the Respondent.
....

CORAM: S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATE :- 23rd APRIL, 2015.

P.C.:

These appeals challenge the order passed by the Tribunal and in each of them the principal contention or issue is the deduction under section 80IB(10) of the Income Tax Act, 1961.

2] However, when these appeals were called out, Mr. Naniwadekar has placed on record a copy of the orders passed by the Tribunal on an application styled as Misc. Application and invoking the Tribunal's jurisdiction under section 254(2) of the Income Tax Act, 1961. That jurisdiction was invoked by the assessee as it desired certain mistakes or errors and stated to be apparent on the face of the record to be corrected.

3] The Tribunal has also allowed that Misc. Application and at the instance of the assessee passed a order recalling the initial order passed and impugned in these appeals. Thereafter further directions have been given and to the Assessing Officer. Even those have been given effect to.

4] When all these aspects were brought to the notice of Mr. Tejveer Singh, the learned counsel, appearing in support of these appeals for the revenue, he reported that he has no instructions but this Court should pass suitable orders protecting the rights and contentions of the revenue.

5] After hearing both sides, we find that entertaining these appeals and on the understanding of the revenue, would prejudice both sides. Thus entertaining these appeals and after the above noted subsequent development would be serving no purpose. We do not decide academic points or issues. In the circumstances, we dispose of these appeals by a clarification that we have not examined the rival contentions and on the questions of law proposed and projected by the revenue. In the event, the revenue is aggrieved by the orders passed on Misc. Applications under section 254(2) of the Income Tax Act, 1961, then, while challenging them it would be open for the revenue to raise all contentions including based on the questions proposed and the grounds in these memos of appeals. We keep them open for being raised and equally for being met with by the assessees.

6] We also clarify that, in the event, the revenue has any other powers under the Income Tax Act which can be invoked, then, disposal of these appeals will not prevent it from invoking such powers as are permissible in law. We also clarify that our orders passed in these appeals does not mean that the Misc. Applications which were filed by the assessees were maintainable or the proceedings that the revenue proposes to institute are permissible in law. All contentions of both sides on jurisdiction and maintainability so also merits of the controversy are kept open. Each of these appeals are disposed of accordingly. No costs.

(A. K. MENON, J.) **(S. C. DHARMADHIKARI, J.)**