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

INCOME TAX APPEAL NO. 1606 OF 2014

The Commissioner of Income Tax (Central)-I ..Appellant
Vs.
M/s Ajmera Housing Corporation (Pune) ..Respondent

....

Mr. Suresh Kumar, Advocate for Appellant.
Ms. Vsanti Patel, Advocate for Respondent.

....

CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 3 AUGUST 2015

P.C.:

This appeal filed by the revenue challenges the order dated 3 April 2014 by the Income Tax Appellate Tribunal (the 'Tribunal') for the Assessment Year 2006-07.

2. The revenue urges the following question of law for our consideration:

> "Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in deciding that the assessee is eligible for deduction u/s. 80IB(10), without considering the fact that even as per the amended provision, which was brought into the

> I.T. Act w.e.f. 01.01.2005 and applicable to A.Y. 2005-06, commercial construction of a maximum of only 2001 sq. ft. was permitted in a residential project whereas the residential project of the assesee consisted of commercial area of 5201 sq. ft. making the assessee ineligible for the deduction u/s. 80IB(10) of the I.T. Act?"

3. We find that the impugned order of the Tribunal has followed the decision of this Court in ***CIT Vs. Brahma Associates***[1]. It is fairly submitted by Mr. Suresh Kumar, learned Counsel for revenue's appeal against the order in *Brahma Associates* has been dismissed by the Supreme Court. Further the issue also now stands concluded against the revenue by the decision of Apex Court in ***CIT Vs. Sarkar Builders***[2].

4. In view of the above, the question as formulated does not give rise to any substantial question of law. Accordingly appeal is dismissed. No order as to costs.

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

1. 333 ITR 289
2. 375 ITR 392