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

INCOME TAX APPEAL NO. 238 OF 2013
ALONG WITH
INCOME TAX APPEAL NO. 239 OF 2013

Commissioner of Income Tax -II … Appellant in both appeals.

v/s

M/s. Prime Properties … Respondent in both appeals.

Mr.Suresh Kumar for the appellant.

None present for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 28TH JULY, 2015

P.C.:

These two appeals by the revenue challenge the orders dated 22 February 2012 and 26 April 2012 passed by the Income Tax Appellate Tribunal, relating to assessment years 2003-04 and 2004-05 respectively.

2 Both the appeal were admitted on 14 January 2013 on the following substantial questions of law :-

(1) Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal did not err in holding

that the clarification of the built-up area introduced by way of Section 80IB(14)(a) with effect from 1/4/2005 cannot be applied retrospectively ?

(2) Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal did not err in holding that the clarification of the built-up area introduced by way of Section 80IB(14)(a) with effect from 1/4/2005 can only be applied to projects which have been sanctioned after 1/4/2004 ?

3 Mr.Suresh Kumar, learned counsel for the revenue states that the respondent who is in the business of construction of buildings, had obtained sanction for its housing project prior to 1 April 2005. In view of the above, the contention of the assessee is that insertion of Section 80IB(14)(a) by Finance (No.2) Act, 2004, with effect from 1 April 2005 would have no application in respect of building projects which has been approved prior to 1 April 2005.

4 This issue, it is submitted, now stands concluded in view of the decision of this Court in ***C.I.T. v/s Raviraj Kothari Punjabi Associates*** (in Income Tax Appeal No.1628 of 2013) rendered on 23 April 2015 and the decision of the Supreme Court in ***C.I.T. v/s Sarkar Builders,*** reported in ***375 I.T.R. 392,*** which concludes the issue in favour of the respondent-assessee.

5 Mr.Suresh Kumar further points out that same issue had come up for consideration in respect of this respondent-assessee itself for the assessment year 2005-06 on 27 July 2015 and the same

was answered in favour of the respondent assessee in view of the decision of the Supreme Court in ***Sarkar Builders*** (supra).

6 In view of the above, both questions are answered against the appellant revenue and in favour of the respondent-assessee.

7 Accordingly, appeals stand disposed of in above terms.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***