

***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.)***