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

INCOME TAX APPEAL NO. 854 OF 2014

The Commissioner of Income Tax-25
Mumbai .. Appellant

v/s.

M/s. Vandana Enterprises .. Respondent

Mr. A.K. Saxena for the appellant
Mr. Sameer Dalal for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 15th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 21st August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. The Revenue has urged only the following question of law for our consideration :-

> *"Whether the alterations made by the developers in combining residential units to make them bigger than the minimum area of*

1000 sq.ft. prescribed as permissible could be considered a violation of the provisions of sub-section 80IB (10)(c), thereby disentitling the assessee for the said deduction ?

3. We find that the impugned order of the Tribunal rejected the Revenue's appeal before it on the issue arising herein by following its order for Assessment Years 2003-04 and 2004-05.

4. Being aggrieved by the order of the Tribunal for Assessment Years 2003-04 and 2004-05, the Revenue had preferred two appeals being Income Tax Appeal Nos. 61 of 2013 and 77 of 2013 relating to Assessment Years 2003-04 and 2004-05. This Court by an order dated 19th December, 2014 found that the questions as proposed did not give rise to any substantial question of law and consequently the appeals were dismissed.

5. The submission on behalf of the Revenue that the orders passed by the Tribunal in the earlier Assessment Years 2003-04 and 2004-05 would not apply for the subject assessment year, is not supported by any submission before the Tribunal to point out that the distinction in facts in the earlier assessment year and in the subject assessment year.

Nor is any attempt made before us by the Revenue to show any distinguishing features in the subject assessment year to that existing in Assessment Years 2003-04 and 2004-05. In the above view, the impugned order of the Tribunal cannot be faulted with.

6. Therefore, the appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**