IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1891 OF 2013

The Commissioner of Income Tax-15,
Mumbai 400 020 ... Appellant
v/s
M/s Sai Shraddha Construction,
Mumbai 400 088 ... Respondent

Mr A.R. Malhotra with Mr N.A. Kazi for Appellant.

Mr S.C. Tiwari with Ms Rutuja Pawar for Respondent.

CORAM : M.S. SANKLECHA AND
B.P. COLABAWALLA JJ.

DATE : 27th JANUARY, 2016

P.C.:-

1. This Appeal by the Revenue under section 260A of the Income Tax Act 1961 (the Act) challenges a common order dated 21st November 2012 passed by the Income Tax Appellate Tribunal, Mumbai. The impugned order of the Tribunal dealt with AYs 2005-06, 2006-07 and 2007-08. The present Appeal relates to the order of the Tribunal for the AY 2007-08.

2. Mr Malhotra, learned counsel for the Revenue has re-

framed the questions of law. At the hearing, Mr Malhotra presses only the following questions of law for our consideration :-

> "(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the Assessee has not violated the provisions of section 80 IB(10) without taking into consideration the clinching evidence gathered by the survey team which had found that there are many residential units in the building admeasuring more than stipulated limit of 1000 sq.ft. after including the exclusive terrace ?"

> "(B) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of CIT(A) regarding project completion method ?"

> "(C) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the deletion of addition of Rs.1,32,495/- made on account of excess allotment of area to Hindustan Candle Manufacturing Co.Pvt.Ltd. While purchasing development rights from the said Company ?"

3. So far as questions (A) and (B) above are concerned, Mr Malhotra, learned counsel for the Revenue very fairly states that the impugned order of the Tribunal was a common order passed for not only the subject Assessment Years but also for

AYs 2005-06 and 2006-07. The questions (A) and (B) above were also involved for AYs 2005-06 and 2006-07. The Revenue had preferred Appeals against the common order dated 21st November 2012 of the Tribunal for the AYs 2005-06 and 2006-07 raising both the aforesaid questions in their Income Tax Appeal Nos.1920 of 2013 and 1900 of 2013. However, both the Appeals and the above questions were dismissed by order dated 18th January 2016.

4. Accordingly, for the reasons indicated in our order dated 18th January 2016 rendered in Income Tax Appeal Nos.1920 and 1900 of 2013 in respect of the same Respondent – Assessee questions (A) and (B) as proposed do not raise any substantial questions of law.

5. Accordingly, questions (A) and (B) are not entertained.

6. So far as question (C) is concerned, we find that the Revenue's contention that the amount of Rs.1,32,000/- has to be added being the sale of excess area to M/s Hindustan Candle

Manufacturing Co.Pvt.Ltd. leading to an increase in the profits of the Respondent – Assessee. However, both the CIT (Appeals) and the Tribunal, have in their orders, rendered a finding that the Respondent – Assessee had fulfilled all conditions laid down in Section 80 IB(10) of the Act for housing project. Consequently, the entire profits from the housing project would be entitled to deduction thereunder. Thus, even if the amount of Rs.1,32,000/- is added to the profits of the Respondent – Assessee as contended by the Revenue it would have no impact on the tax payable as the entire profit including the addition made would be entitled to deduction under Section 80 IB(10) of the Act. In the above view, the response to question (C) as proposed by the Revenue in the facts of the present case would be academic. Accordingly, it does not give rise to any substantial question of law, thus not entertained.

7. Accordingly, Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**