Amk

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

INCOME TAX APPEAL NO. 1218 OF 2014

The Commissioner of Income –V .. Appellant
Vs.
M/s. Sukhwani Buildcon .. Respondent.

Mr. Tejveer Singh for the Appellant.
Mr. Jitendra Jain a/w. Mr. Jas Sanghavi i/b PDS Legal for the Respondent.

CORAM : M. S. SANKLECHA AND A. K. MENON, JJ.
DATE : 19th DECEMBER, 2016.

P. C. :

1. The appeal is filed under Section 260A of the Income Tax Act, 1961 (the 'Act') challenging the order 28.10.2013 for the Assessment Year 2006-07 and 2007-08 passed by the Income Tax Appellate Tribunal, Pune.

2. Mr. Tejveer Singh, learned counsel appearing for the Revenue urges only the following two questions of law for our consideration:

> *"1. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in allowing the deduction u/s. 80IB (10) when the Housing Project consisted of commercial area exceeding the maximum area of 2000 sq. ft. as prescribed under section 80IB(10) of the Income Tax Act, 1961?*
> *2. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in allowing the deduction u/s. 80IB (10) on the issue of violation of Section 80IB(10)(c) when the enquiries made by the A.O. clearly established that the combining of the 3 flats are technically not feasible unless the necessary alteration in basic RCC structure of building is made and which can be made by the builder assessee itself and not by the purchaser?"*

3. **<u>Regarding question No.1</u>**

The impugned order of the Tribunal dismisses the Revenue's appeal by following the decision of this Court in the case of **Brahma Associates and Others (2011) 239 CTR (Bom) 30**. Mr. Tejveer Singh, learned counsel appearing for the Revenue very fairly states that the issue has also now been concluded by the decision of the Apex Court in **CIT Vs. Sarkar Builders, 375 ITR 392** against the Revenue and in favour of the respondent-assessee. In the above view, question No.1 does not give any rise to the substantial question of law.

4. **<u>Regarding question No.2</u>**

The impugned order of the Tribunal while dismissing the Revenue's appeal upheld the order dated 07.06.2012 of the Commissioner of Income Tax (Appeals). On the facts the CIT (Appeals) as well as Tribunal found that the respondent-assessee had not sold 3 flats after combining them in one flat having an area of excess of 1500 sq. ft. In fact, it renders a finding of fact that the respondent-assessee had sold 3 independent flats to one buyer, namely, Dr. Oomer K. George. Further before the Authority, Dr. Oomer K. George has also filed evidence affirming that he has purchased 3 flats and combined them all into 1 flat, after purchase. Dr. Oomer K. George also further pointed out that the respondent-assessee had no role to play in his joining the 3 flats into 1 flat. In view of the above, concurrent finding of fact the question proposed does not give rise to any substantial question of law. Thus, not entertained.

5. The appeal is disposed of in the above terms. No order as to costs.

[A.K. MENON, J.] **[M. S. SANKLECHA, J.]**