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

INCOME TAX APPEAL NO. 161 OF 2014

Commissioner of Income Tax-20,
Mumbai .. Appellant

v/s.

Vijay Mallya .. Respondent

Mrs. S.V. Bharucha for the appellant
Ms. Aarti Sathe a/w Mr. Kalpesh Turalkar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 16th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 8th May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2002-03.

2. The Revenue urges following two questions of law for our consideration :-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deciding the eligibility of

deduction without considering the mandatory conditions stipulated u/s 80IB and 80IB(10) of the Act?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not giving any findings about the difference between the developer builder and construction contractor for the purpose of claiming deduction u/s 80IB(1) of the Act?"

3. Mrs. Bharucha, learned Counsel appearing for the Revenue very fairly states that both the questions as raised herein stands concluded by the decision of the Gujarat High Court in ***Commissioner of Income Tax Vs. Radhe Developers, 341 ITR 403***. In fact, the impugned order of the Tribunal places reliance upon the aforesaid decision in *Radhe Developers (supra)* while dismissing the Revenue's appeal before it. In fact, as pointed out by Counsel, the decision of the Gujarat High Court in *Radhe Developers (supra)* has been agreed to by this Court in ***Commissioner of Income Tax Vs. Cajetano Mario Pereira***, (Income Tax No.22 of 2014), decided on 5th March, 2014. No distinction in the present facts from that in Radhe Developers (supra) has been pointed out to us which would warrant our taking a different view.

4. In view of the above, the questions as formulated does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**