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

INCOME TAX APPEAL NO. 55 OF 2014
WITH
INCOME TAX APPEAL NO. 56 OF 2014
WITH
INCOME TAX APPEAL NO. 970 OF 2014
WITH
INCOME TAX APPEAL NO. 971 OF 2014
WITH
INCOME TAX APPEAL NO. 973 OF 2014
WITH
INCOME TAX APPEAL NO. 979 OF 2014

The Commissioner of Income Tax,
Central-IV, Mumbai .. Appellant

v/s.

M/s. Backbone Unity Joint Venture .. Respondent

Mr. N.C. Mohanty for the appellant
Mr. Atul Jasani for the respondent

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

DATED : 11th JULY, 2016.

P.C.

1. All these six appeals under Section 260A of the Income Tax Act, 1961 (the Act) assail the order dated 26th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order dismissed Revenue's six appeals seeking imposition of penalty under Section 271(1)(c) of the Act. These appeals relate to Assessment

Years 2003-04 to 2008-09.

2. The Revenue has urged the following substantial question of law:-

> *Whether in the facts and circumstances of the case and in law, the Tribunal was correct in granting relief overlooking and also ignoring the provisions of law contained in Explanation inserted by Finance Act, 2007 to Section 80IA(4) with retrospective effect from 01.04.2000?*

3. At the very outset, Mr. Jasani, learned Counsel for the respondent assessee pointed out that the impugned order of the Tribunal dismissed the Revenue's appeal by following its decision in *DCIT Vs. M/s. Unity Chopra (Joint Venture)* and *DCIT Vs. Thakur Mhatre Unity Joint Venture*. It is further stated that the Revenue had preferred appeals against the orders passed by the Tribunal in *Unity Chopra (Joint Venture) (supra)* and *Thakur Mhatre Unity Joint Venture (supra)* being Income Tax Appeal No.2078 of 2013 and other connected matters and Income Tax Appeal No. 2425 of 2013 and connected matters respectively. This Court, by orders dated 23rd November, 2015 and 25th April, 2016 dismissed the Revenue's aforementioned Appeals in *Unity Chopra (Joint*

Venture) and *Thakur Mhatre Unity Joint Venture (supra)*. In the above view, it is submitted that these appeals need not be entertained as the issue stands concluded by orders of this Court in favour of the respondent assessee.

4. Mr. Mohanty, learned Counsel for the Revenue contests the above position. According to him there is a difference between the orders passed by the Tribunal in this case and that passed by the Tribunal in *Unity Chopra (Joint Venture)* and *Thakur Mhatre Unity Joint Venture (supra)*. In as much as in the above cases, the issue for consideration was the amendment made by substitution of the Explanation to Section 80IA(4) of the Act by Finance Act, 2009. In the present case, the question as formulated itself points out the fact that the issue for consideration is the amendment made by addition of Explanation to Section 80IA(4) of the Act by the Finance Act, 2007. In the above view, it is his submission that the issue arising herein is not covered by the orders of this Court dated 23rd November, 2015 and 25th April, 2016.

5. We find that the impugned order of the Tribunal itself records the submission of the representative of the Department that similar issue has been decided by the Tribunal in other cases belonging to the

same group. However, reliance is yet placed upon the findings of the Assessing Officer. Be that as it may, it is an indisputable position that prior to the substitution of the Explanation to Section 80IA(4) of the Act by the Finance No.2 Act, 2009, the entire issue of availability of the benefit of Section 80IA(4) of the Act in respect of a Works Contract awarded by the Central / State Government Authorities was debatable. This is evident from the fact that the Jaipur Bench of Tribunal itself in *Om Metals Infraprojects Ltd. Vs. Commissioner of Income Tax,* which while considering the Explanation brought in by Finance Act, 2007, had held that the benefit of Section 80IA(4) of the Act is available even to a person like the respondent assessee. The debate came to a rest only after the Explanation of 2007 was substituted by a new Explanation brought in by the Finance Act No.2, 2009. Prior thereto, the issue was admittedly debatable. It is pertinent to note that the issue was resolved by substitution of the Explanation by Finance Act (No.2), 2009 when the assessment was pending. Moreover, in the present case, the return of income was filed claiming the benefit of Section 80IA(4) of the Act on 4th July, 2008 i.e. much prior to substitution of Explanation by Finance Act, 2009. Thus, in the context of the issue being debatable, the claim for benefit of Section 80IA(4) of the Act in its Return of Income cannot invite penalty.

6. In the above view, the question as formulated in all the appeals do not give rise to any question of law. Thus, not entertained.

7. All six Appeals are dismissed. No order as to costs.

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