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

INCOME TAX APPEAL NO. 613 OF 2014

The Commissioner of Income Tax-V,
Pune .. Appellant

v/s.

Pharande Developers .. Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
G.S.KULKARNI, J.J.

DATED : 5th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 25th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. The Revenue has urged following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in granting the assessee's

claim of deduction u/s 80IB(10) of the I.T. Act, 1961 by not including terrace and canopy as part of residential unit, when the same were used exclusively for respective units and not part of common or shared area with others?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal erred or not in holding that the amended provisions u/s 80IB(10)(d) would not be applicable w.e.f. 01.04.2005 as the plan was approved by Municipal Authorities and construction was commenced prior to such date?

(iii) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in holding that the disallowance made u/s 40A(ia) of the Act is a part of eligible profit for computing the deduction u/s 80IB(1), whereas this allowance make the provision of Section 40A(ia) redundant?

3. Re. question nos. (i) and (ii) :-

(a) Mr. Tejveer Singh, learned Counsel appearing for the appellant Revenue very fairly states that the issues arising herein stands concluded against the Revenue and in favour of the respondent assessee by the decision of this Court in ***Commissioner of Income Tax Vs. Happy Home Enterprise, 372 ITR 01*** and the order dated 24th April, 2015 passed in Revenue's Appeal being Income Tax Appeal No.1628 of 2013 (CIT Vs. M/s. Raviraj Kothari Punjabi Associates).

(b) In the above view, questions (i) and (ii) as raised by the Revenue do not give rise to any substantial question of law. Thus, not entertained.

4. **Re. question no. (iii) :-**

(a) Mr. Tejveer Singh, learned Counsel for the appellant Revenue states that an identical question has been admitted by this Court in Income Tax Appeal No.435 of 2014 on 30th August, 2016. We find that by order dated 30th August, 2016 the Revenue's Appeal has been admitted on the following questions of law :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal erred in holding that the assessee satisfied the condition that the "project is on the size of a plot of land which has a minimum area of one acre" and accordingly is entitled to deduction u/s 80IB of the Income Tax Act, 1961 ?*
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> *(ii) Whether on the facts and circumstances of the case and in law, the decision of the Income Tax Appellate Tribunal to allow deduction under Section 80IB(10) on the amount of statutory disallowance made under Section 40(a)(ia) of the Income Tax Act, 1961, has made the provisions of Section 40(a)(ia) redundant?*

(b) In the above case, availability of benefit of deduction under Section 80IB of the Act was a subject matter of dispute before this Court as is evident from question no. (i). It is in that context, that the question (ii) raised therein was also admitted. In the present case, the Revenue does not dispute the entitlement of respondent assessee to the benefit of deduction under Section 80IB of the Act. In the result, even if, the stand of the Revenue is accepted in this case and the expenditure claimed is disallowed for not having deducted tax at source, the only result would be that the disallowed expenditure would be added to the total income of the respondent assessee. However, this additional income (arising on disallowance of expenditure) undisputedly would also be entitled to 100% deduction from tax under Section 80IB(10) of the Act.

(c) In the above view, admitting question (iii) in the present facts would be academic. However, we may clarify that this decision is rendered in the context of the facts arising herein particularly the fact that the Revenue is not disputing the respondent assessee's entitlement of benefit of deduction under Section 80IB of the Act. In the above view, question (iii) as framed does not give raise to any substantial question of law. Thus, not entertained.

5. The Appeal is dismissed. No order as to costs.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**