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

INCOME TAX APPEAL NO. 691 OF 2014

The Commissioner of Income Tax-II
Pune .. Appellant

v/s.

M/s. A.V. Bhat Developers ..Respondent

Mr. Vipul Bajpayee 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 2007-08.

2. Mr. Bajpayee, learned Counsel for the Revenue only urges the following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing the assessee's

claim of deduction u/s 80IB(10) of the Act of Rs.1,46,24,573/-?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in failing to appreciate that the first approval in respect of the housing project had been given by the Municipal Corporation on 02.11.2003 and the said approval has to be reckoned for the purpose of granting deduction u/s 80IB(10) to the assessee in view of Explanation to the said section ?

3. The impugned order of the Tribunal upheld the view of the Commissioner of Income Tax (Appeals) [CIT(A)] in the order dated 16th June, 2010 while dismissing the Revenue's appeal. The basic controversy which arose before the Tribunal was to determine the date on which the housing project of the assessee has been approved by the local Authority in terms of clause (a) to Section 80IB(10) of the Act. This for the purposes of deciding the date of completion of the construction so as to obtain the benefit of Section 80IB(10) of the Act. The grievance of the Revenue is that the project was approved on 2nd November, 2003 which according to the Revenue would be the relevant date for the purpose of Explanation to Section 80IB(10)(a) of the Act, while according to the respondent assessee, the project was first approved on 19th January, 2005.

4. Both the CIT(A) as well as the Tribunal have rendered a finding of fact that the building plan which was approved on 2nd November, 2003 was in respect of the project distinct from the project of the respondent assessee whose building plan was approved only on 19th January, 2005 for the first time. The impugned order rendered a factual finding that originally there were three different plots and in respect of one of these plots, admeasuring 1983 sq.meters, the previous owner had obtained the building approval on 2nd November, 2003. It is only thereafter that the three plots were amalgamated by the previous owner and the amalgamated plot of an area of 7826.89 sq.meter on 1st October, 2004 was sold to the assessee. The impugned order records the fact that prior to the sale of the plot to the respondent assessee, the previous owner had not carried out any development work in respect of the plan sanctioned in the year 2003. In the above view, the Tribunal records the fact that the approval obtained on 2nd November, 2003 was in respect of a different project and was not for the building plan which was only approved on 19th January, 2005 for the first time.

5. Mr. Bajpayee, learned Counsel appearing for the Revenue contended that the project which was approved in 2003 was the same

as was approved in 19th January, 2005. Therefore, the CIT(A) as well as the Tribunal were not correct in holding that the two projects were different and that the approval obtained on 19th January, 2005 was the approval obtained on a project different from that obtained on 2nd November, 2003. We find that this Court in ***Commissioner of Income Tax Vs. Vandana Properties, 19 Taxmann.com 316*** has specifically held that the Explanation to Section 80IB(10)(a) of the Act refers to approval granted to the same housing project more than once and the said Explanation would not apply where the approval is granted to different housing projects. In view of the concurrent finding of fact by two Authorities, which is not shown to be perverse and the application of law as settled by this Court on those facts, the question of law as framed does not give rise to any substantial question of law. Thus, not entertained.

6. Therefore, the appeal is dismissed. No order as to costs.

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