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

INCOME TAX APPEAL NO. 577 OF 2014

Commissioner of Income Tax 25	}	**Appellant**
versus		
M/s. City Life Developers	}	**Respondents**

Mr. Arvind Pinto for the appellant.

Mr. Atul K. Jasani for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- MARCH 27, 2017

P.C. :-

1. We have heard both sides. We have perused the order passed by the tribunal dated 31st July, 2013 for the assessment year 2008-09. The only dispute before the tribunal was whether the assessee-respondent before us can claim deduction under section 80IB(10) of the Income Tax Act, 1961. The facts have been examined in great details in paras 2 and 3.

2. The assessee relied upon two orders of the tribunal, which were passed in this very assessee's case for assessment years 2004-05 and 2005-06. That order was followed for allowing the claim of the very assessee for the assessment year 2006-07. The order dated 4th June, 2010, in Income Tax Appeal

No.3358/MUM/2009 was relied upon by the assessee. The tribunal found that the facts and circumstances as appearing from the record for the earlier assessment years are identical to the year under appeal. The tribunal found that on facts, no distinction can be made and therefore, the assessee's request to apply the earlier orders of the tribunal for deciding the very issue and for the assessment year in question deserves to be accepted. The tribunal has accordingly accepted the assessee's request and allowed the appeal. In these circumstances, we find that if the revenue has not brought any appeals for prior assessment years and on facts the situation is identical for the assessment year under consideration, then, there is absolutely no justification for terming the proposed questions as substantial questions of law. The matter is resting essentially on facts. There is no merit in this appeal and it is dismissed. There would be no order as to costs.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**