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

INCOME TAX APPEAL NO. 1522 OF 2014

The Commissioner of Income Tax-15 .. Appellant
v/s.
M/s. Poonam Gruh Nirman .. Respondent

Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the appellant
Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
PRAKASH D. NAIK, J.J.

DATED : 17th FEBRUARY, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue has urged the following substantial question 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 allowing the deduction u/s 80IB(10) to the assessee without considering Clause (d) of 80IB(10), which would apply w.e.f. 01.04.2005 especially when the provision is clear and there is no ambiguity in the*

language?

3. The undisputed position is that the project on which the respondent assessee was claiming the benefit under Section 80IB(10) of the Act was approved prior to 1st April, 2005 i.e. on 19th July, 2003. The impugned order of the Tribunal dismissed the Revenue's appeal before it by following the decision of this Court in ***Commissioner of Income Tax Vs. Brahma Associates, 333 ITR 289*** and also *inter alia* placing reliance upon the decision of its co-ordinate bench in ***Happy Home Enterprise (ITA No.6265/Mum/08 rendered on 3rd June, 2011)*** to hold that the benefit of Section 80IB(10) of the Act would be available to the respondent assessee as the amendment to Section 80IB(10) of the Act by Finance Act, 2005 was only w.e.f. 1st April, 2005.

4. Mr. Malhotra, learned Counsel for the Revenue very fairly states that the issue as urged by the Revenue before us stands concluded by the decision of this Court in ***Commissioner of Income Tax Vs. Happy Home Enterprises, 372 ITR 01*** (on appeal from order of Tribunal) (supra) and of the Apex Court in ***Commissioner of Income Tax Vs. Sarkar Builders, 375 ITR 392*** against the Revenue and in favour of the respondent assessee.

5. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. The appeal is dismissed. No order as to costs.

(PRAKASH D. NAIK, J.) **(M.S. SANKLECHA, J.)**