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

INCOME TAX APPEAL NO. 1574 OF 2014
WITH
INCOME TAX APPEAL NOS. 1864/2014, 1867/2014,
49/2015 AND 54/2015

Commissioner of Income Tax,
Central-1, Mumbai .. Appellant

v/s.

M/s. ACME Combines .. Respondent

Mr. P.C. Chhotaray for the appellant
Mr. Jitendra Jain a/w Mr. Jas Sanghavi i/b PDS Legal for the respondent

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

DATED : 14th MARCH, 2017.

P.C.

1. These Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 2nd January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order is in respect of Assessment Years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. Thus, these five appeals.

2. The Revenue urges the following identical question of law for our consideration :-

Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the claim of the assessee for deduction under Section 80IB(10) of the Act when the requisite conditions as stipulated in clauses (b) and (c) of this section were not satisfied?

3. The question as proposed subsumes within it two issues as under:-

(i) Does the respondent assessee satisfy the condition (b) of Section 80IB(10) of the Act which requires the project claiming the deduction to be on size of a plot of land which has a minimum area of one acre; and

(ii) Does respondent assessee satisfy condition (c) of Section 80IB of the Act which requires the project claiming deduction must have residential units in it, not in excess of minimum built-up area of 1000 sq.ft.

4. We shall deal with the proposed question issue-wise viz. satisfaction of clause (b) of Section 80IB(10) of the Act as issue no.(i) and the satisfaction of clause (c) of Section 80IB(10) of the Act as issue no.(ii).

5. ***Regarding issue no.(i) :-***

(a) These proceedings have emanated from orders passed under Section 153A of the Act after search and seizure operation. The impugned order records the fact that identical issue arose in the regular assessment proceedings in which orders were passed under Section 143(3) of the Act. It further records no new facts were found in respect of this issue in search operation.

(b) From an order passed by the Tribunal emanating from regular assessment proceedings, the Revenue had preferred an appeal to this Court being Income Tax Appeal (L) Nos.1452 of 2010 and 1453 of 2010. On 1st March, 2011, this Court dismissed the Revenue's above appeals as the Revenue conceded that the issues raised herein namely non-satisfaction of condition (b) of Section provided in Section 80IB(10)(b) of the Act stood satisfied and concluded against the Revenue by the decision of this Court in ***Commissioner of Income Tax Vs. Bramha Associates, 333 ITR 289***.

(c) Therefore, it was urged on behalf of the respondent assessee that the question arising in respect of issue no.(i) now stands concluded by the decision of this Court in Income Tax Appeal (L) No.1452 of 2010 and 1453 of 2010 dated 1st March, 2011(surpa).

(d) In fact, in these very proceedings before the CIT(A), the Assessing Officer had filed a remand report wherein he has stated that the issue raised in respect of the condition (b) in Section 80IB(10) of the Act stands concluded against the Revenue by order in Income Tax

Appeal (L) No.1452 of 2010 and 1453 of 2010 dated 1st March, 2011 (supra). However, the remand report does indicate that the Revenue has not accepted the decision of this Court and an SLP has been filed before the Supreme Court.

(e) The respondent assessee thereafter pointed out that the appeal filed by the Revenue from the order dated 1st March, 2011 in Income Tax Appeal (L) Nos.1452 of 2010 and 1453 of 2010 (supra) being SLP (C) No. 27273 and 28170 of 2011 have also been disposed of along with other matters including the Revenue's appeal in Bramha Associates (supra), reported as Commissioner of Income Tax Vs. Veena Developers, 277 CTR 297 (SC) dated 30th April, 2015 in favour of the respondent assessee. The distinction now sought to be raised by the Revenue was not upheld by the Apex Court which decided the issue in favour of the respondent assessee.

(f) In view of the above facts, we were not inclined to admit the appeal on the above issue. However, inspite of the above, Mr. Chhotaray, the learned Counsel for the Revenue insists on arguing the matter and states that the decision of the co-ordinate bench of this Court in respondent assessee's own case i.e. Income Tax Appeal (L) No.1452 of 2010 and 1453 of 2010 dated 1st March, 2011 (supra) will not apply to the present facts as according to him that decision is incorrect. In support, he invited our attention to the synopsis filed by the Revenue in its SLP to the Apex Court being SLP (C) No.28170 of 2011 to insist that the decision of Bramha Associates (supra) does not apply to the present facts. When we pointed out to him the Apex Court decision in Veena Developers (supra) which also disposed of the Revenue's appeal in the respondent's case, he submits that the same is also incorrectly decided.

(g) We find counsel's submissions unwarranted. It is not even the Revenue's case before us that an application for recall of orders passed by the Apex Court in the respondent assessee's case has been made and if so, its result. We would have expected Counsel to be mindful of the law of precedents while making submissions. We believe if the above were kept in mind, the Counsel would not have persisted (even after we pointed out to him the law of precedents) almost for an hour trying to convince us to disregard the orders of co-ordinate bench and the Apex Court and consider the issues afresh. We would expect a fairer approach from the State. We would expect the Counsel to appreciate the value of time in the context of the large number of pending matters and not take up time on covered issues.

(h) We find that the issue at (i), raised herein i.e. condition (b) of Section 80IB(10) of the Act is satisfied and concluded against the

Revenue and thus, it does not give rise to any substantial question of law. Thus, not entertained.

6. ***Regarding issue no.(ii) :-***

(a) So far as the second issue is concerned viz. satisfaction of clause (c) of Section 80IB(10) of the Act viz. size of the residential flat being less than 1000 sq.ft. has been found to be satisfied by the impugned order of the Tribunal while dismissing the Revenue's appeal. This by recording a finding of fact that even if two flats were combined into one flat, the facts on record reveals that the total combined area in no case exceeds 1000 sq.ft.

(b) In fact, the CIT(A) in its order dated 26th March, 2012 records the fact that the respondent assessee had furnished details of the built-up area of the combined flats evidencing that the total area even on the flats being combined was less than 1000 sq.ft. as required under clause (c) of Section 80IB(10) of the Act. The Assessing Officer filed a remand report and did not dispute the fact that the two flats when combined were not in excess of 1000 sq.ft.

(c) In the above view, both the CIT(A) as well as the Tribunal have on facts concluded the issue in favour of the respondent assessee. This concurrent finding of fact is duly supported by the remand report of the Assessing Officer accepting the fact that even when flats are joined, the combined area is less than 1000 sq.ft.. The Revenue has not shown the concurrent finding of fact leading to satisfaction of clause (c) of Section 80IB(10) of the Act to be perverse in any manner.

(d) Therefore, the proposed issue no.(ii) does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, the question as proposed is not entertained as it does not give rise to any substantial question of law.

8. All five appeals dismissed. No order as to costs.

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