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

INCOME TAX APPEAL NO. 1861 OF 2014

The Commissioner of Income Tax,
(Central)-1 .. Appellant
v/s.
M/s. Indu Oil & Soap Co. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Jitendra Jain a/w Mr. Jas Sanghvi i/b PDS Legal for the respondent

CORAM : S.V. GANGAPURWALA &
G.S. KULKARNI, J.J.
DATED : 8th JUNE, 2017

P.C.

1. The present appeal is filed against the order of the Tribunal confirming the order of the CIT(A) in respect of the Assessment Year 2009-10.

2. The Revenue has filed the present appeal purportedly agitating the following questions as substantial questions of law :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in deleting the addition of Rs.3,53,34,185/- u/s 80IB(10) of the Act, 1961, ignoring the basic fact of clause (b) to section 80IB(10), which stipulates that the project has to be on a plot of land

having minimum area of 1 acre and leaves no scope for an interpretation that there can be a number of projects on the same land?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in accepting the finding of the learned CIT(A) holding that the residential housing project executed by the assessee firm got completed within stipulated time ignoring the fact that out going commercial project on the same plot of land is nothing but the extension part of assessee firm and hence, the case of the assessee company clearly falls within the sub-clause (ii) to clause (e) of Section 80IB(10) of the Act?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in deleting the addition of Rs.3,53,34,185/- representing deduction claimed u/s 80IB(10), relying upon the decision in case of Commissioner of Income Tax Vs. Vandana Properties, 353 ITR 36 (Bom) and M/s. Brahma Associates, ignoring the fact that the decision relied on in the case of M/s. Brahma Associates and M/s. Vandana Properties is not accepted by the Department and SLP has been preferred ?

2. Mr. Suresh Kumar, learned Counsel for the appellant contends that the Tribunal has passed its judgment relying upon the

judgments in the case of *Commissioner of Income Tax Vs. Brahma Associates, (2011) 333 ITR 289* and *Commissioner of Income Tax Vs. Vandana Properties, (2012) 19 Taxmann.com 316 (Bom)*. The said judgment is not accepted by the Department and has been assailed further. The learned Counsel for the appellant further submits that the finding of the Tribunal and of the CIT(A) holding that the residential housing project executed by the assessee firm got completed within stipulated period, is erroneous. It has ignored the fact about outgoing commercial projects on the same plot of land. The same would be extension of the project of the assessee firm. The case of the assessee squarely falls within the ambit and purview of Sub-clause (ii) to clause (a) of Section 80IB(10) of the Income Tax Act. The learned Counsel further submits that the Tribunal ignored the basic fact as required under clause (b) to Section 80IB(10) of the Act, which stipulates that the project has to be on a plot of land having minimum land of area having 1 acre and leaves no scope for interpretation that there can be a number of projects on the same land.

3. The learned Counsel further states that the respondent

assessee sold the TDR for commercial activity. In view of that the respondent assessee was not entitled for the deduction under Section 80IB(10) of the Act.

4. The learned Counsel for the respondent supports the order and further submits that the judgment of this Court in case of *Vandana Properties* (supra) has been upheld by the Apex Court and the SLP filed by the Revenue has been dismissed. The learned Counsel for the respondent further relied upon the judgment of the Apex Court in the case of ***Commissioner of Income Tax Vs. Sarkar Builders, reported in (2015) 7 SCC 579***. The learned Counsel further submits that the Commencement Certificate was given to the respondent assessee on 7th September, 2004 and the project was completed within the stipulated period. The amount in question is pertaining to the said housing project. Even in respect of the Assessment Year 2008-09, the Assessing Officer has accepted the contention of the respondent.

5. We have considered the submissions canvassed by the learned Counsel for the respective parties. It appears from the record that the Commencement Certificate has been given to the respondent

assessee on 7th September, 2004 for residential project. The project was completed in Financial Year 2007-08 and received full occupancy on 2nd December, 2008 from the local Authority. The assessee had from the sale of flats declared profit of Rs. 15,47,18,442/- for Assessment Year 2008-09 and the same has been assessed by the Assessing Officer and the necessary benefit has been given to the assessee. In the year under consideration, the profit declared is 3,53,34,185/- from the sale of the said housing project. It has been observed that the conditions laid down under Section 80IB(10) of the Act has been complied with. It is observed that the Commencement Certificate was given before 31st March, 2005 i.e. prior to the amendment. The judgment in the case of Vandana Properties referred to supra, would be relevant. The present case also would be covered by the judgment of the Apex Court in the case of *Sarkar Builders (supra)*.

6. In view of the above, no substantial question of law arises as such. The appeal is dismissed. No costs.

(G.S. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**