R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

INCOME TAX APPEAL NO. 793 OF 2016

Pr. Commissioner of Income Tax – 6 .. Appellant

Versus

Kewal Real Estate Pvt Ltd .. Respodent

....

- Mr. Suresh Kumar for the Appellant

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 10, 2018.

P.C.:

1. The Revenue has challenged the judgment of the Income Tax Appellate Tribunal ("**Tribunal"** for short) dated 21.9.2015. Following questions were urged before us:-

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the assessee satisfied all the conditions stipulated in the provisions of Section 80IB(10) of the Income Tax Act, 1961 and therefore, would be eligible to claim deduction?
>
> (ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing deduction u/S. 80IB(10) ignoring the fact that, the assessee has not completed the project due to failure attributable to assessee itself within stipulated time prescribed u/S. 80IB(10) of the Income Tax Act, 1961?

2. The issues pertain to the assessment year 2008-09. Respondent - assessee is a Private Limited Company and engaged in the business of real estate development. In relation to residential units constructed by the assessee, it had claimed deduction under Section 80IB(10) of the Income Tax Act, 1961 ("**the Act**" for short). Assessing Officer denied the benefit on the premise that the housing project was not completed within the time permitted. The CIT(A) allowed the assessee's appeal upon which the Revenue filed appeal before the Tribunal. The Tribunal, by the impugned judgment, dismissed the Revenue's appeal and confirmed the decision of the CIT(A). The Tribunal made the following observations:-

> 9. It is evident from documents that originally the assessee sought approval of buildings A6 and A7, subsequently renamed as A1 and A2 on 2.2.2005. It was after the time lag of 18 months that the approval of other six residential buildings was obtained by the assessee on 8.9.2006 from PMC, while seeking initial approval there was no mention of other buildings. The observation of the Assessing Officer that the subsequent approval by PMC is not fresh approval but revised approval in our opinion does not carry weight. The building plan has been revised for buildings A1 and A2 only. As regards other buildings i.e A3 to A8 is

> concerned the building plan was approved for the first time.
>
> It is not disputed by the Revenue that buildings A1 and A2 in Phase-I were complete and occupation certificate was granted by the PMC in respect of said buildings on 5.9.2008. In so far as the buildings A3 to A8 in Phase-II are concerned, the completion certificate in respect of all the flats comprising in said buildings were granted by PMC up to March 2011, whereas, the last date for obtaining completion certificate was 31.03.2012. Thus, the assessee had obtained completion certificate well within the time frame mentioned in the provisions of Section 80IB(10) of the Act in respect of all the buildings in Phase-I and Phase-II."

From the above portion of the judgment of the Tribunal, it can be seen that the assessee had established on record that the buildings referred to as Complex A1 and A2 were part of separate project for which a separate approval was granted by the Municipal Corporation. Likewise, with respect to buildings Complex A3 to A8, building permission was granted by the Municipal Corporation separately. It was, in this background, that the CIT(A) and the Tribunal accepted two different dates of completion taking into account the respective dates of approval of the housing project. The entire issue is one of the facts. No question of law arises.

The Income Tax Appeal is dismissed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**