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

INCOME TAX APPEAL NO.1106 OF 2015

The Commissioner of Income Tax-5
Pune .. Appellant

v/s.

M/s. DBS Developers Developers,
Promoters & Builders, Pune .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 28th FEBRUARY, 2018.

P.C.

1. Heard. This appeal relates to Assessment Year 2008-09.

2. Mr. Suresh Kumar, learned Counsel for the Revenue urges only the following questions of law for our consideration :-

(i) Whether on the facts and circumstances of the case, the Tribunal was justified in not rejecting the assessee's claim of deduction u/s 80IB(10) of the I.T. Act, 1961 when the commercial area of the project exceeded the restriction resulting into clear violation of clause (d) of Sec. 80IB(10) of the I.T. Act, 1961, for the A.Y. under consideration ?

(ii) Whether on the facts and circumstances of the case, the Tribunal did not err in holding that the amended provisions u/s 80IB(10)(d) would not be applicable w.e.f. 01.04.2005 as the plan was approved by Municipal Authorities and construction was commenced prior to such date?

3. Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that the issue raised herein stands concluded against the Revenue and in favour of the respondent assessee by the decision of this Court in ***Commissioner of Income Tax Vs. Happy Homes Enterprise, 372 ITR 1 (Bom)*** and of the Apex Court in ***Commissioner of Income Tax Vs. Sarkar Builders, 375 ITR 392 (SC)***.

4. In the above view, the questions as proposed by the Revenue do not give rise to any substantial questions of law. Thus, not entertained.

5. Accordingly, the Appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**