R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 774 OF 2016

Pr. Commissioner of Income Tax (Central) .. Appellant

Versus

M/s. Gera Development Pvt Ltd .. Respondent

....

- Mr. Tejveer Singh for the Appellant
- Mr. Mihir Naniwadekar i/by Alisha Pinto for the Respondent

....

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

DATE : DECEMBER 17, 2018.

P.C.:

1. This appeal under Section 260A of the Income Tax Act, 1961 ("**the Act"** for short) challenges the order dated 31.12.2014 passed by the Income Tax Appellate Tribunal, Pune ("**the Tribunal**" for short). This appeal relates to assessment year 2009-10.

2. The Revenue has filed single appeal with regard to the judgment of the Tribunal which has disposed of appeals filed by the respondent - assessee as well as by the Revenue before the Tribunal. Mr. Tejveer Singh, the learned counsel appearing for the Revenue, seeks to restrict this appeal only to the Revenue's appeal before the Tribunal. However, he seeks liberty to file separate appeal along with an appropriate application for condonation of delay with regard to the impugned order disposing of the assessee's appeal. Liberty as prayed for granted.

3. In the above view, the only question urged before us is as follows:

> "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the claim of the deduction u/S. 80IB(10) of the Act ignoring the provisions of Section 80IB(10)(a)(iii) which required production of completion certificate indicating completion of the project?

4. We find that the issue that arises here as is evident from the question is whether the explanation to Section 80IB(1)(a)(iii) of the Act has been satisfied by the respondent - assessee or not. The impugned order of the Tribunal records a finding that in the present facts, the respondent had in respect of the project for which it was granted commencement certificate on 21.11.2005 was completed on 4.12.2007. This is evident by the application for completion certificate along with the Architect's certificate to Pune

Municipal Corporation. However, there has been a delay on the part of Municipal Corporation in issuing the necessary requisite completion certificate. The impugned order dated 31.12.2014 upheld the order dated 31.1.2013 of the Commissioner of Income Tax (Appeals) [CIT(A)] which had on the facts found that the project was completed much before the five years period of completing the project from the date of commencement certificate as provided in Section 80IB(10)(iii) of the Act. It further makes reference to the Development Control Rules of Pune Municipal Corporation wherein it is provided that where the occupancy certificate is not issued within the period of 21 days, then in absence of any objections being notified, it would be deemed to be granted. Further the impugned order has placed reliance upon the order of its co-ordinate bench in the case of Satish Bora and Associates vide ITA No. 713 & 714/PN/2010 dated 7.2.2011 which in identical facts had extended the benefit of Section 80IB(10)(iii) of the Act to the assessee therein. Further reliance was placed upon the decision in the case of CIT Vs. Tarnetar Corporation, (2014) 362 ITR 174 (Guj).

5. Mr. Tejveer Singh, the learned counsel in support of the appeal, pointed out that the appeal bearing Income Tax Appeal No. 362 of 2011 from the order of the Tribunal in Satish Bora (supra) has been admitted by this Court on 1.2.2013. It is further submitted that following the aforesaid order, this Court has entertained further appeals also on this very issue. Therefore, this appeal also requires admission.

6. Mr. Naniwadekar, the learned counsel appearing for the respondent pointed out that the issue raised by the Revenue in this appeal no more *res integra*. This in view of the decision dated 2.2.2015 of the Aurangabad Bench of this Court in the case of **CIT, Aurangabad Vs. Hindustan Samuh Awas Ltd, [2015] 62 taxmann.com 175 (Bombay)** holding on identifal facts that where the builder has completed a housing project within the time provided under Section 80IB(10)(a)(iii) of the Act and had also filed an application seeking completion certificate from the Municipal Corporation in time, then, the said builder - assessee is entitled to the benefit of Section 80IB(10)(a)(iii) of the Act. This notwithstanding the fact that the certificate has not been issued by the municipal corporation before the last date for completion of project. The aforesaid decision in Hindustan Samuh Awas Ltd (supra) of this Court had dismissed the Revenue's appeal at final hearing on the substantial question of law. Moreover, the decision was rendered after the appeal in the case of Satish Bora (supra) was admitted. As the decision in Hindustan Samuh Awas Ltd (supra) concludes the issue raised herein finally, the same is binding upon us. More so in absence of the Revenue being able to show any distinguishing factor in this case which would warrant different view than that taken by this Court in Hindustan Samuh Awas Ltd (supra).

7. Therefore, the question of law as proposed does not give rise to any substantial question. Thus, not entertained.

8. Accordingly, appeal is dismissed.

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