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

INCOME TAX APPEAL NO.484 OF 2017

The Pr. Commissioner of Income Tax - 28 … Appellant

Vs

M/s.Gahlot Construction … Respondent

Mr.N.C. Mohanty for the Appellant

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATED: JULY 22, 2019

P.C.:

1. This Appeal is filed by the Revenue to challenge the judgment of the Tribunal. The following question is presented for our consideration:

a) Whether on the facts and in the circumstances of the case and in Law, the Tribunal was justified in confirming the decision of the CIT(A) to delete the addition of Rs.53 lakhs being the amount computed by adopting partial/percentage completion method, as admitted by the assessee under section 132 (4) of the Income Tax Appeal, 1961 which has binding effect and full evidentiary value?

2. The issue pertains to the Assessment Year 2009-2010. The facts on record would suggest that the assessee, which is a firm engaged in real estate development, was subjected to search action and statement of one of the partners was recorded. It was pointed out out that after 1.4.2004, the assessee had to follow the percentage completion method of accounting as a developer. Thereupon, the partner had agreed to offer an income of Rs.1.60 crores for the said Assessment Year 2009-2010. However, in the return filed by the assessee post-search, no such additional income was offered to tax. Such addition was made by the Assessing Officer and challenged before the CIT (Appeals). The issue eventually reached the Tribunal. The Tribunal by the impugned judgment relied upon its earlier decision in the case of one Bhoomi Construction Projects and deleted the addition.

3. Learned Counsel for the Revenue in addition to arguing the appeal on merits pointed out that the Department had carried the case of Bhoomi Construction Projects before the High Court, however, such appeal was withdrawn on the ground of low tax effect.

4. We are not basing our consideration on the decision in the case of Bhoomi Construction. However, the facts on record would suggest that the assessee was not following the project completion method but percentage completion method for income recognition. The Tribunal in the case of Bhoomi Construction had come to the conclusion that the Assessing Officer had not brought any evidence that by such method, any income chargeable to the estate, the assessee was regularly following the said method for computing.

5. Under the circumstances, the addition made by the Assessing Officer merely on a statement made by one of the partners of the firm recorded under section 132 (4) of the Income Tax Act, 1961 without there being any independent additional evidence, was rightly deleted by the Tribunal. No question of law arises. Appeal is dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**