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

INCOME TAX APPEAL NO.655 OF 2017

The Pr. Commissioner of Income Tax-2, Thane... Appellant
V/s.
M/s. Sadhana Builders Pvt. Ltd. ... Respondent

Mr.Tejveer Singh Mastan Singh for the Appellant.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 06, 2019.

P.C.:-

1. This appeal is filed by the revenue against the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). Following question is presented for our consideration:-

> "Whether on the facts and circumstances of the case and in law, the ITAT has erred in holding that the project was complete on or before 31.03.2009 when occupation certificate was accorded only in respect of 9206.30 Sq.Mtr. against sanction of 11960.15 Sq. Mtr.?"

2. Respondent-assessee is a private limited company.

Assessee had filed a return of income for the assessment year 2009-10 claiming deduction of income arising out of the development of a housing project in terms of Section 80IB(10) of the Income Tax Act, 1961. The Assessing Officer was of the opinion that the assessee had not fulfilled the essential requirements of completion of housing project before 31st March, 2009, which was the last date prescribed as per the statute. He therefore disallowed the claim. CIT (Appeals) in detailed consideration held that the assessee had complied all the necessary conditions including completion of the housing project before the due date. Following portion of the order of the CIT(Appeals) may be noted:-

> "The housing project of the appellant company 'Dhaval Hills' comprised of buildings A,B,C,D,E & F. The buildings C,D,E & F were to be handed over to the land owners and the buildings C & D were handed over to the landlords in the year 2006 and the buildings E & F remained to be handed over. The other two buildings A & B were the housing project of the appellant company on which it has claimed deduction u/s. 80IB(10). From the details filed, it can be observed that the completion certificate was granted by the Thane Municipal Corporation to all the completed buildings as per the details given below, for which there is no dispute :-

Building	Area	Date of grant of Occupation certificate
Bldg.C Bldg.D	209.77 sq. mtrs 103.53 sq.mtrs	03/05/2006 (buildings meant for 03/05/2006 landlord)
Bldg. A	4,932.51 sq.mtrs	13/06/2007
Bldg. B	6,346.62 sq.mtrs	01/12/2008
Total Area	11,592.43 sq.mtrs	

4.4. It can be seen from the above table that the buildings A & B in respect of which the appellant has claimed deduction u/s. 80IB(10), are complete in all respects and the occupation certificate granted by the local authority to these buildings before the due date of completion, which in the instant case was 31/03/2009. The AO found the appellant is not eligible for deduction only due to the reason that it had not completed two other buildings of the same project i.e. buildings E & F, which were to be handed over to the landlord and were not the part of the housing project on which the appellant is not even claiming the deduction u/s 80IB(10). The Appellant constructed the above buildings A & B on 11,279.13 sq.mtrs. of piece of land which is a part of large housing project comprising of total built up area of 11,960.15 sq. mtrs. The portion of the appellant in this entire project was limited to two buildings only i.e. buildings A & B and these buildings were complete in all respect including grant of the occupation certificate during the period under consideration.

> 4.5. It is an admitted fact that the buildings on which the appellant has claimed deduction u/s 80IB(10) are fully complete by the appellant company before the due date stipulated by the provisions of section 80IB(10) and last occupation certificate granted by the local authority in respect of these buildings on 01/12/2008 as mentioned in the chart above. The objection of the AO is that since the appellant has not completed buildings E & F, meant to be handed over to the landlords and are part of the same project, so it does not constitute the completion of the housing project.
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> 4.6 In my opinion, the AO has not appreciated the facts of the case in right perspective. The buildings of the housing project belonging to the appellant company i.e. buildings A & B are already complete in all respects and the possession handed over to the purchasers during the period under consideration. These buildings A & B are housing projects in itself on standalone basis, fulfilling the required conditions as per section 80IB(10) and the local authority has granted these building the occupation certificate on 13/06/2007 and on 01/12/2008 which are all well before the stipulated date of completion i.e. 31/03/2009."

3. The CIT (Appeals) having granted the relief to the assessee, the revenue carried the matter in appeal before the Tribunal. The Tribunal by the impugned judgment dismissed the revenue's appeal upon which the present appeal have been filed. The record of the case would

show that CIT (Appeals) and Tribunal concurrently came to the conclusion that the assessee had proposed the housing project comparison of buildings A,B,C,D,E and F. Out of a total area of 11960.15 sq. meters to be constructed as per the building construction permission, the assessee had completed construction of 11,592.43 sq.meters. Necessary completion certificates from the local authority were also issued from time to time and last such certificate was issued on 1st December, 2008. Thus, the construction was completed and duly certified by the local authority before 31st March, 2009.

4. The record further shows that the buildings E and F were not to be constructed and the land was to be handed over to the landlord on account of further developments and dispute. This was the only remaining portion of the construction out of the originally sanctioned plan. The assessee had claimed deduction in respect of the income arising out of sale of construction only for which completion certificates were issued. That being the position, we do not find any error in view of

the Tribunal granting deduction under Section 80IB(10) of the Act. No question of law arises. Income Tax Appeal is dismissed.

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

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