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

INCOME TAX APPEAL NO.1833 OF 2016

The Pr Commissioner of Income TAx-3,
Pune .... Appellant

versus

Cosmopolis Construction ... Respondent

…....

- Mr.Tejveer Singh, Advocate for Appellant.
- Mr.Rohan Deshpande a/w Ms.Alisha Pinto i/b. Mihir Naniwadekar, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 25th MARCH, 2019.

P.C. :

1. This Appeal is filed by the revenue to challenge the judgment passed by the Income Tax Appellate Tribunal. Following questions were presented for our consideration at the time of argument.

"(a) On the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in allowing the assessee's claim of deduction u/s 80IB(10) of the IT Act of Rs.4,81,97,731/- for the A.Y. 2009-10, when the project “Park Island” was initially sanctioned by the Local Authority on 03/06/1997 which is prior to 1998 when deduction u/s 80IB(10) is allowable to projects commenced on or after 1st October 1998.

(b) Alternately, the Hon'ble ITAT has erred in allowed the assessee's claim of deduction u/s 80IB(10) of the Act without appreciating the fact that the entire project was not completed on or before 31/03/2008.

(c) On the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in allowing deduction u/s 80IB(10) of the IT Act on proportionate basis in respect of building completed during the A.Y. 2009-10.

2. Respondent-Assessee was engaged in housing development business. For the assessment year 2009-2010 assessee had claimed deduction under section 80IB(10) of the Income Tax Act (for short ‘the Act’); in relation to the income

arising out of such business. The revenue objects to this claim mainly on the following grounds;

(i) that the development permission was granted to the assessee by the local authority prior to 01/10/1998.

(ii) that in any case the deduction could not have been claimed for project A, ignoring fact that project B was not completed within a statutory period.

3. Having heard the learned Counsel for the parties and having perused documents on record, we notice that the CIT Appeals and the tribunal while granting benefit of the deduction to the assessee had come to the conclusion that the first order dated 03/06/1997 for sanctioning the building plans was a conditional one. The land was covered under the provisions of the Urban Land Ceiling (& Regulation) Act, 1976 and the sanction of the ULC authority was obtained only on 22/11/1998. Tribunal was of the opinion that the building plan

cannot be stated to have been sanctioned prior to 1998. Second issue was on completion of construction within time. Objection of the revenue was that projects A and B were composite and since construction of project B was not completed, no deduction can be guaranteed. The tribunal however held that both the projects were separate. Project A was completed in time.

4. We are broadly in agreement with the view of tribunal. It may be a fact that the plan for building construction was sanctioned on 03/06/1997. However, no such development could be under taken without the sanction of the ULC authority. Such sanction for building development was thus conditional on the ULC Authority granting the necessary sanction which happened only after 1998.

5. The revenue is not correct insofar as the completion of the construction of the project A and B is concerned. Firstly, the two projects were independent and separate as held by the tribunal. Secondly, the project A itself fulfilled all the necessary

requirements of the deduction such as the building the area being not less than one acre and each unit not exceeding built up area of 1500 sq.ft. In fact the building construction permissions were also separately granted for both the projects. ULC sanction in relation to project B was obtained on 19/11/2006 for which the Municipal Corporation authorities granted building permission.

6. Under such circumstances, we do not find any error in view of the tribunal. No question of law arises. Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**