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

INCOME TAX APPEAL NO.97 OF 2017

The Pr.Commissioner of Income Tax-5 … Appellant

V/s.

M/s Sai Samarth Constructions … Respondent

Mr.Tejveer Singh for the Appellant.

CORAM : AKIL KURESHI AND
SARANG V.KOTWAL, JJ.
DATE : APRIL 8, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following questions are presented for our consideration:-

> "I. Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in holding that the assessee is eligible to claim deduction under Section 80IB(10) on the entire project irrespective of the fact that the project was completed on 30.03.2012 i.e. not before clause (e) and (f) inserted vide Finance Act, 2009?
> II. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in affirming the view of the CIT (A) in allowing pro-rata deduction in respect of eligible units of the housing project, when no such provision for

allowing pro-rata deduction is existing in the Act?”

2. The respondent-assessee is in the business of Housing Development. In the return of income filed for the assessment year 2010-11, the assessee had claimed exemption of the income from such business in terms of Section 80IB of the Income Tax Act, 1961 (“the Act” for short). The Assessing Officer was of the opinion that the assessee had breached certain conditions of the said section and therefore, deduction was denied.

3. The assessee carried the matter in appeal. The CIT (Appeals) allowed the appeal in part. He held that there was breach of conditions of the Section, however, the disallowance can only be proportionate to the units with respect to which such breach was committed.

4. The decision of CIT (Appeals) gave rise to two appeals before the Tribunal. One filed by the assessee and another by the revenue. The Tribunal allowed the assessee's appeal holding that the conditions of which the revenue was alleging breach of,

were inserted in the legislation after the allotments were made. In view of the matter, the Tribunal held that the revenue's appeal against the proportionate disallowance would become infructuous. The Tribunal, therefore, allowed the assessee's appeal and dismissed the revenue's appeal. Against this judgment the revenue had filed the present appeal. Firstly, in our opinion the revenue should have filed two appeals when the Tribunal was deciding two separate appeals before itself, may be by common judgment. Be that as it may, we find that the Tribunal has come to a factual finding that the assessee had already made allotments of certain residential units in favour of the same person/family long before the condition of non-allotment of more than one unit was inserted by the legislature in the said section. That being the position, we do not find that the Tribunal had committed any error in holding that the disallowance cannot be made. Through series of judgments this Court has held that such condition which was inserted by the Parliament with prospective effect cannot be applied to deny the benefit of deduction pointing out that in allotment which was made earlier, there was breach of this condition. Under the circumstances, the question of proportionate disallowance would become irrelevant.

5. In the result, appeal is dismissed.

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

....