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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 711/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX- 8,..... Appellant
Through Ms. Vibhooti Malhotra, Senior Standing counsel, Mr.A. Tiwari & Mr. Siddharth Manocha, Advocates

Versus

M/S. SG ESTATE LTD. ..... Respondent
Through None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **02.08.2019**

CM Appl. No. 34617/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions

ITA No. 711/2019

2. The Revenue is in appeal against the order dated 7th January, 2019 passed by the ITAT in ITA No. 5368/Del/2015 for the Assessment Year 2012-2013.

3. The Revenue is aggrieved by the ITAT confirming the order of the Commissioner of Income Tax (Appeal) which has reduced the disallowance of the benefit under Section 80 IB on proportionate basis on the following reasoning:

> "We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has constructed two housing projects which are eligible for deduction u/s 80 IB of the income tax act. In the 'Impression Vasundhara' project there were 122 residential unit out of which 50 units has the built up area exceeding

> 1000 ft. Further, in the project "Impressions 58" has 154 residential units out of which 26 units exceeds the built up area of 1000 ft. Therefore the learned assessing officer was of the view that assessee is not eligible for deduction u/s 80IB of the Income tax act. Hence, disallowance of INR 19887408 was made. The learned CIT(A) allowed the claim of the assessee following the decision of the coordinate bench in assessee's own case for assessment year 2009 - 10, which has also been upheld by the Hon'ble Delhi High Court in ITA number 478/2015 dated 29/07/2015. The Hon'ble High Court has held that the provision is capable of being construed in a manner that is beneficial to the assessee by allowing the deduction on 'pro rata' basis to the number of residential units that have complied with the requirement of section 80 IB of the maximum built up area. In view of this, we do not find any infirmity in the order of the learned CIT(A) and direct the learned assessing officer to allow the claim of the assessee on 'pro rata' basis as directed by the Hon'ble Delhi High Court in assessee's own case for earlier years. Accordingly, the ground No. 1 of the appeal of the revenue is dismissed."

4. The Court is not informed of the Revenue having challenged the decision of this Court in the Assessee's own case for AY 2009-2010 referred to hereinbefore. In any event the Court finds the factual position in the present AY is not very different from that in the earlier AY. The Court held a similar view in ***Principal Commissioner of Income Tax vs. Omaxe Build Home Private Limited (2016) 76 Taxmann.com 104 (Del).***

5. For all of the aforementioned reasons, no substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 02, 2019/mw