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

INCOME TAX APPEAL NO. 1755 OF 2017

Principal Commissioner of Income Tax-2,
Thane (W) 400 604 ... Appellant.

V/s.

M/s. Sadhana Builders Pvt. Ltd., ...Respondent.

Mr. Tejveer Singh, Advocate for the Appellant.

CORAM : UJJAL BHUYAN AND
MILIND N. JADHAV,JJ.

DATE : JANUARY 22, 2020.

PC :

1 Heard Mr. Tejveer Singh, learned standing counsel Revenue for the Appellant.

2 This Appeal has been preferred under section 260A of the Income Tax Act, 1961 (Act) by the Revenue against the order dated 15.12.2016 passed by the Income Tax Appellate Tribunal, Mumbai Bench "A", Mumbai (Tribunal) in Income Tax Appeal No. 2099/Mum/2015 for the assessment year 2010-11.

3 Appeal has been preferred, projecting the following as substantial question of law :

> Whether on the facts and in the 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. ?

4 Mr. Singh, learned standing counsel fairly submits that this issue has been gone into by this court in case of the same assessee for the assessment year 2009-2010 in Income Tax Appeal No. 655 of 2017 filed by the Revenue, answering the same in favour of the assessee and against the Revenue vide the order dated 06.06.2019.

5 Relevant portion of the order dated 06.06.2019 passed in the said Income Tax Appeal No. 655 of 2017 is extracted hereunder :

> “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 11,592.43sq.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."

6 Following the same, we are also of the view that there is no error or infirmity in the conclusion reached by the Tribunal in confirming the order passed by the first Appellate Authority. No substantial question of law arises out of the order passed by the Tribunal.

7 Consequently, this Income Tax Appeal is dismissed. No cost.

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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