IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9586 OF 2019

M/s. Surana Mutha Developers ...Petitioner
Vs.
The Income Tax Officer, Ward-11 (4) and Ors. ...Respondents

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.518 OF 2019

M/s. Surana Mutha Developers ...Appellant
Vs.
The Income Tax Officer, Ward-11 (4) and Ors. ...Respondents

Mr. Mihir Naniwadekar a/w. Mr. Rohan Deshpande, Ms. Farzeen Khambatta i/b Alisha Pinto for Appellant.
Mr. Sham V. Walve for Respondents.

CORAM : K. R. SHRIRAM &
AMIT B. BORKAR, JJ.

DATED : 7 DECEMBER 2021.

<u>P. C.</u> :

Heard counsel.

2. In paragraph No.6 of the order pronounced on 12/3/2018, the Tribunal has recorded as under:

> *"The assessee also placed on record electricity bills in respect of flats in building No.D had been raised in the names of flat owners prior to 31/3/2011. The final completion certificate for building No.D was issued on 15/3/2012 by the local authority. While arguing the said appeal, the learned Authorized Representative for the assessee pointed out that since the plan for building No.D had been sanction on 29/3/2007, the expected date of completion of said building under the provisions of Section 80IB(10) of the Act was 31/3/2012. The assessee thus, pleaded that building Nos.A, B. and C were completed within stipulated time and hence, there was no merit in disallowance of claim of deduction under section 80IB(10) of the Act."*

3. At the same time in paragraph No.14 of the same order the Tribunal records as under:

> *"The Tribunal had also taken note of the fact that the assessee claims that it had transferred the flats up to 31/3/2011 against which the possession certificate was also given. It is not clear how the possession of any portion of building could be handed over before even the building is constructed. Whether it is completed or not let us not go into the same but as per the finding of Tribunal based on various evidences available against the assessee and even looking at the alleged Architect's certificate of completion of building, the Tribunal has held that it was completed only till the plinth level and was still in construction and it was not completed till 31/3/2011"*

4. We find that the Tribunal has not commented on the assessee's argument that electricity bills in respect of flat in Building D had been raised in the name of flat owners prior to 31/3/2011 when the Architect certificate provides that the Building D was completed only till

the plinth level and was still under construction and it was not completed till 31/3/2011.

5. Moreover the Tribunal would have to give a separate finding as to:

(i) Whether Building D was a separate project ?

(ii) When the project was completed ?

(iii) If it was completed only on 15/3/2012, whether petitioner would be entitled to claim deduction under Section 80IB (10) of the Act for the year under consideration ?

6. The matter is remanded to the Tribunal to give specific findings on the four points mentioned above in paragraph Nos.4 and 5. Petition disposed.

7. We clarify that we have not made any observations on the merits of the case. Tribunal to pass such orders based on this order on or before 31/3/2022.

8. In view of the above order, Mr. Naniwadekar seeks leave to

withdraw Income Tax Appeal No.518/2019. Same is dismissed as withdrawn. Refund of Court fees, if any, in accordance with the Rules.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**