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

INCOME TAX APPEAL(IT) NO. 49 OF 2024

Pr Commissioner Of Income Tax Central 2 ...Appellant
Versus
AHCL PEL ...Respondent

Mr. N.C. Ranganayakulu, for Appellant.

Mr. Madhur Agarwal i/b Mr. Rajesh Poojari Mini and Confreres, for Respondent.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 24 September 2025

P.C.:-

1. Heard Mr. Ranganayakulu, learned counsel for the appellant and Mr. Madhur Agarwal appears with Mr. Rajesh Poojari, for the respondent.

2. Mr. Ranganayakulu proposes the following questions, which according to him, are substantial questions of law:

> *"A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in finding no infirmity in the decision of the CTTA) in directing the Assessing Officer to allow the deduction u/s 80IB, without appreciating the fact that assessee has not fulfilled the conditions prescribed under the said section in as much as certain units exceed the prescribed ceiling on the built up area, and also without appreciating the fact that the assessee is not eligible for deduction u/s 80IB of the Act based on the seized material unearthed during the course*

of the search action and the same was corroborated by the statements recorded on oath u/s 131 of the Act of the parties concerned during the course of search operation?

B. Whether on the facts and in the circumstance of the case and in law, the huge difference in sale price of similar flats located in the same building as much as Rs. 34,926/- per sq. ft. sold to Ara Corporate Consultants Pvt. Ltd. and Rs. 35,618/- per sq. ft. sold to Annapanna Software Memorial Building as against Rs. 62,893/- per sq. ft. sold to Trap Consultants P. Ltd., is a colorable device adopted by the assessee to evade the tax.

C. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in deleting the addition on account of differential sale prices as undisclosed income without appreciating the fact that the assessee has registered the sale deed for 3 flats of the same project on same day but having substantial difference in sale price without properly explaining the difference in such sale price."

3. Insofar as the first question is concerned, the CIT (Appeal) and the ITAT have recorded concurrent findings of fact that the assessee had complied with the conditions prescribed for claiming a deduction under Section 80IB(10) of the Income Tax Act. There is a categorical finding that the approved construction plan shows the built-up area of each residential unit is less than 1000 square feet. Accordingly, this question is more concerned with a factual dispute and raises no question of law, much less any substantial question of law.

4. Regarding the other questions, we note that they are similar and relate to the issue of three comparable flats on the same floor being sold at different rates. Mr. Ranganayakulu stated that two of the flats were sold at Rs. 34,926 and Rs. 35,618 per sq. ft. However, the third flat on the same floor was sold for Rs. 62,893 per sq. m. He argued that this clearly indicates some cash transaction in the two flats sold at significantly lower rates. He contended that this was merely a colourable device adopted by the assessee to evade tax. Accordingly, he submitted that the two substantial questions of law as proposed in the appeal memo should be considered for the admission of this appeal.

5. Mr Agarwal submitted that the CIT (Appeals) had not entirely accepted the revenue's case but granted only a 20% premium for the flat which had access to the terrace. He submitted that the ITAT, being the final authority, has held that the third flat, which was sold at the rate of Rs. 62,890, had an attached terrace valued at Rs. 318 square feet. (approx.). He submitted that this is a factual finding that has not been seriously disputed. He submitted that in such circumstances, the sale of the third flats for a substantially higher rate cannot lead to any inference of a cash transaction. In any event, he submitted that such a factual determination gives rise to no question of law.

6. We have considered the rival contentions and are satisfied that even questions two and three do not raise any substantial questions of law. Even the CIT (Appeals) accepts the position that the third flats had direct access to a terrace measuring 318 sq. ft. The ITAT confirms this factual position. The disagreement about whether the proper rate should be Rs . 52,386/- per sq. mtr or Rs. 62,893/- per sq. mtr cannot give rise to a question of law and/or a substantial question of law.

7. Admittedly, the rates at which flats have been sold are higher than the rates prescribed by the stamp authorities. Therefore, if a flat with direct access to a terrace measuring 318 sq. ft. is sold at a higher rate, we cannot, in the absence of further evidence, infer that any cash transaction was involved in the sale of the other two flats at a lower rate. In any event, we cannot conclude that there is any perversity in the ITAT's finding to warrant interference within our limited jurisdiction under Section 260A of the IT Act.

8. Accordingly, for all the above reasons, we find that this appeal raises no substantial questions of law. Therefore, we dismiss this appeal without any cost order.

(Advait M. Sethna, J) **(M.S. Sonak, J.)**