

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 1271 OF 2017

Pr. Commissioner of Income Tax-18 .. Appellant

Versus

Rattanchand Rikhabdas Jain Chemical Works .. Respondent

- Mr. Sham Walve a/w. Mr.Pritish Chatterji for Appellant.
.....
.....

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : MARCH 3, 2020.

P.C. :

1. Heard Mr. Sham Walve, learned standing counsel, revenue for the appellant.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (for short "the Act") against the order dated 03.11.2016 passed by the Income Tax Appellate Tribunal, "D" Bench, Mumbai (for short "Tribunal") in Income Tax Appeal No. 1532/Mum/2014 for the Assessment Year 2011-12.

3. The appeal has been preferred projecting the following questions as substantial questions of law :

1. Whether on the facts and in the circumstances of the case and in law, Tribunal erred in overlooking the categorical finding of the CIT(A) that the assessee had been unable to produce the completion / occupation certificate evidencing the completion of the project till 31.03.2013, and in admitting fresh evidence produced before it for the first time, without recording its satisfaction, in violation of Rule 29 of the ITAT Rules, 1963 ?

2. Whether on the facts and in the circumstances of the case and in law, Tribunal erred in law by not setting aside the assessment to the file of the Assessing Officer for examination of additional evidence produced by the assessee before the Tribunal ?

4. Basic objections of Mr.Walve, learned standing counsel is that Tribunal did not follow the procedure laid down in Rules 29 and 30 of the Income Tax (Appellate Tribunal) Rules, 1963 vide accepting additional evidence adduced by the respondent-assessee. He has also referred to the provisions contained in Section 143(2) of the Act to contend that if at all Tribunal desired to have the additional evidence, respondent-assessee ought to have been relegated to the forum of the Assessing Officer. That having not been done, the same has vitiated the impugned order giving rise to the two aforesaid substantial questions of law.

5. To appreciate the contention of Mr.Walve, let us briefly advert to the orders passed by the authorities below.

6. Respondent-assessee is a partnership firm engaged in the business of "developers and builders". In the assessment proceeding for the assessment year under consideration, assessee filed e-return of income declaring total income at Nil following claims of deduction under Section 80IB of the Act for an amount of Rs.7,06,04,247.00. During the assessment proceeding, Assessing Officer queried about the completion certificate of the buildings in question. Respondent-assessee stated before the Assessing Officer that the completion certificate was under process though the building project was completed. By the assessment order dated 14.03.2013, Assessing Officer did not allow the claim of the assessee for deduction under Section 80IB of the Act which was thereafter added to the income of the assessee and treated as its income.

7. Aggrieved by the aforesaid decision of the Assessing Officer, respondent-assessee preferred appeal before the Commissioner of Income Tax (Appeals)-25, Mumbai, also referred to as the first appellate authority hereinafter. In the appellate proceedings too, the first appellate authority noted that respondent-assessee did not produce the completion / occupation certificate within the stipulated time limit i.e. on or before 31.03.2013. Before the appellate authority also, the said

certificate was not produced. Accordingly, by the appellate order dated 01.01.2014, the first appellate authority held that the respondent-assessee was not entitled to get deduction under Section 80B(10) of the Act.

8. Respondent-assessee thereafter preferred further appeal before the Tribunal. Tribunal noted that respondent-assessee had furnished the commencement certificate issued by the Bombay Municipal Corporation dated 10.09.2007 and, occupation certificate issued by the Municipal Corporation of Greater Mumbai dated 26.02.2013, besides other documents which clearly shows that there were approvals which cover full occupation / permission for all the blocks of the building project. In view of the above facts, Tribunal vide the order dated 03.11.2016, accepted the contention of the respondent-assessee that the building was completed on 31.03.2013 and occupation in respect of all the blocks of the project were obtained within the stipulated time limit on 31.03.2013. There being no violation of any of the conditions mentioned in Section 80B(10) of the Act, the above claim of the respondent-assessee was allowed by the Tribunal.

9. In so far contention of Mr.Walve is concerned, we feel that the same is more on form rather than on substance. Even during the assessment proceeding, respondent-assessee had asserted that the completion certificate to be issued by the Municipal

Corporation was under process but the project was completed. It has to be noted that the certificate was issued by another authority i.e. Municipal Corporation over which the respondent-assessee had no control. When the completion / occupation certificate was handed over to the respondent-assessee, the same was produced before the Tribunal. We see no harm in the Tribunal taking cognizance of this certificate. In so far reference to Rules 29 and 30 of the Income Tax (Appellate Tribunal) Rules, 1963 is concerned, it is trite that rules and procedures are the handmaid of justice which are required to be applied to advance the cause of justice and not to frustrate the same.

10. Be that as it may, the conclusion reached by the Tribunal that the building was completed within the stipulated time on 31.03.2013 is a finding of fact. Revenue has not questioned that this finding is incorrect or has not questioned the veracity of the completion / occupation certificate produced before the Tribunal. If that be so than it is merely an objection on procedure. In the light of the above, we are of the view that no question of law, much-less any substantial question of law, arises from the order of the Tribunal.

11. The appeal is devoid of merit and is accordingly dismissed. No cost.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]