

## **Bombay High Court allows deduction u/s 80IB(10) on issuance of completion certificate**

### **The Principal Commissioner of Income Tax-17 Versus M/s. Vardhan Builders (ITA 1244/2016 and 83/2018)**

#### **Facts:**

1. The assessee or respondent is an undertaking that has developed a residential project in Andheri, Mumbai. It claims a deduction in terms of Section 80IB(10), which was refused by the Assessing Officer on the ground that some of the flats constructed in Tower "A" of its housing project exceeded the area of 1000 sq. ft. as envisaged under the Section. The conclusion was reached by the assessing officer based on the survey report, which was conducted in 2011.
2. The appellant is claiming deduction on the basis of the approved plans of BMC, occupancy certificate issued by BMC, possession letters and agreements for sale of flats entered into with the individual buyers. As per the approved plans of BMC all the flats in 'A' wing of the building are having built up area of less than 1000 sq.ft.
3. The Tribunal proceeded to hold that there was no allegation by the survey team during the earlier survey conducted in the year 2006 that the assessee was not raising the construction as per the approved plan. It was also held that if there was any modification effected to a residential unit completed and in regard to which a completion certificate had been issued by the competent authority, the assessee could not be held responsible.

#### **Hon Bombay HC held as below:**

1. In the present case, the revenue has failed to establish that fact. Not only this even the completion certificate could not have been issued by the

competent authority, as rightly held by the Tribunal, if there was any violation of the approved plans by the municipal authorities.

2. Be that as it may, we cannot persuade to take a view different from the one which has been taken by the Tribunal, which is an essential finding of fact. For the aforementioned reasons, no substantial question of law arises. The Appeal is dismissed.