

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
and Kavitha Rajagopal (Judicial Member)]**

ITA No. 5063/Mum/2019  
Assessment year: 2014-15

**Dy. Commissioner of Income Tax  
Central Circle-1(2), Mumbai**

.....Appellant

*Vs*

**M/s. Lakepoint Builders Pvt. Ltd.**  
*514, Dalamal Chambers,  
211, F.P.J. Marg, Nariman Point,  
Mumbai-400 021 [PAN : AABCL 1370 J]*

.....Respondent

**Appearances by**

**Mehul Jain** *for the appellant*  
**Nishma Nathwani** *for the respondent*

Date of concluding the hearing : January 31, 2022  
Date of pronouncement : January 31, 2022

**ORAL ORDER**

(Dictated in the open court)

**Per Pramod Kumar, VP:**

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 13.05.2019 passed by the learned CIT(A)-47, Mumbai in the matter of assessment u/s.153C r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2014-15.
2. Grievance raised by the Assessing Officer is as follows:
  1. Whether on the circumstances and facts of the case, the learned CIT(A) was right in deleting disallowance made by the A.O. with regard to the business expenditure of Rs.4,68,54,126/- debited to Profit & Loss account and to carry forward the same to the construction Work-in-progress relying on the decision M/s. Hiranandani Palace Garden Pvt. Ltd. even though the Department has filed appeal u/s.260A of the Act in the case before High Court on the issue vide ITAXL/1257/2016 dated 14.09.2016 – Rs.1,44,77,925/-.
3. When this appeal called out for hearing, Ms. Nishma Nathwani, learned counsel appearing for the assessee prayed for a short adjournment. However, upon a perusal of the

grounds of appeal and having regard to the fact that the issue in appeal is a narrow point of law, we are inclined to reject the request and proceed to decide the matter on merits.

4. It was noted, and pointed out to the learned Departmental Representative, that the short grievance raised by the Assessing Officer implicitly suggests that considering the fact that the decision of the Tribunal was challenged by the Income Tax Department in Hon'ble High Court, the learned Commissioner (Appeal) ought not to have followed the same. Upon pointing out this, the learned Departmental Representative simply relied upon the grounds of appeal and left the matter to us. The learned Departmental Representative also invited our attention to paragraph 5 of the assessment order, wherein facts of the case and the reasoning adopted by the Assessing Officer has been elaborated upon.

5. As even a casual look at the order of the learned CIT(A) shows, that the learned Commissioner (Appeal) has merely relied upon the decision of a co-ordinate bench in the case of *Hiranandani Palace Garden Ltd. vs. ACIT* (ITA No. 4579/Mum/2013, order dated 30.12.2015). There is no dispute that the said co-ordinate bench decision covers the issue in favour of the assessee. The grievance of the Assessing Officer is confined to the fact that because this order was challenged before the Hon'ble Jurisdictional High Court, the learned Commissioner (Appeal) ought not to have followed the same. This grievance is clearly ill-conceived. It is only elementary that the mere fact that a judicial decision is challenged before a higher judicial forum, it does not curtail, dilute or otherwise narrow down its binding effect in nature. A decision of the co-ordinate bench, admittedly direct on the issue in appeal, thus binds us. We see no reasons to deviate from the stand of the co-ordinate bench. We, therefore, reject the grievance of the Assessing Officer and uphold the order of the Id. CIT(A) on this point.

6. In the result, the appeal is dismissed. Order dictated and pronounced in the open court itself, i.e., on 31<sup>st</sup> day of January, 2022.

**Sd/-**  
**Kavitha Rajagopal**  
(Judicial Member)

**Sd/-**  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 31<sup>st</sup> day of January, 2022**  
*Roshani, Sr. PS*

*Copies to:*

<i>(1)</i>	<i>The Applicant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

*By order*

*Assistant Registrar/Sr. PS*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*