

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3751/M/2023
Assessment Year: 2018-19**

ITO-22(3)(1), Room No.307, Piramal Chambers, Parel, Mumbai – 400 012	Vs.	M/s. Reliable Builders & Developers, 3 rd Floor, 24, Dheeraj Heritage, S.V. Road Santacruz (W), Mumbai, Maharashtra- 400054 PAN: AAJFR2787G
(Appellant)		(Respondent)

And

**ITA No.4205/M/2023
Assessment Year: 2018-19**

M/s. Reliable Builders & Developers, 3 rd Floor, 24, Dheeraj Heritage, S.V. Road Santacruz (W), Mumbai, Maharashtra- 400054 PAN: AAJFR2787G	Vs.	National E- Assessment Centre, (NaFAC) North Block New Delhi-110001
(Appellant)		(Respondent)

And

**CO No.42/M/2024
(Arising out of ITA No.3751/M/2023)
Assessment Year: 2018-19**

M/s. Reliable Builders & Developers, 3 rd Floor, 24 Dheeraj Apartments, S.V. Road Santacruz (W), Mumbai, Maharashtra- 400054 PAN: AAJFR2787G	Vs.	ITO-22(3)(1), Room No.307, Piramal Chambers, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

Present:

Assessee by : Dr. K. Shivaram, Ld. Sr. Adv/Ld. A.R.
a/w Mr. Shashi Behkal, Ld. A.R.

Revenue by : Smt. Sanyogita Nagpal, Ld. CIT DR.

Date of Hearing : 11. 09 .2024

Date of Pronouncement : 30. 09 .2024

O R D E R**Per : Narender Kumar Choudhry, Judicial Member:**

The Revenue Department has preferred ITA No.3751/M/2023, whereas the Assessee has preferred ITA no. 4205/M/2023 and CO no. 42/M/2024, being aggrieved against the same impugned order dated 31.08.2023 passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year (in short 'AY') 2018-19.

2. For the sake of brevity, first we are inclined to decide the Revenue's Appeal i.e. **ITA No.3751/M/2023**. Relevant facts in brief are that the Assessee, is a partnership firm being engaged in the business of real estate since 2004 and during the AY under consideration had declared its income at a loss of Rs.16,15,58,455/- by filing its return of income on 31.10.2018, which was selected for scrutiny under CASS for certain issues vis-a-vis:

- (1) *Verification of genuineness of expenses*
- (2) *Income from real estate business*
- (3) *Default in TDS and disallowance for such default*
- (4) *Investments/advances/loans*
- (5) *Sales turnover/receipts &*
- (6) *Business expenses*

2.1 Therefore, statutory notices were issued to the Assessee, in response to which the Assessee uploaded its replies with supporting documents, on considering the same, the AO found that the

Assessee during the A.Y. 2018-19 has shown sales/turnover of Rs.39,01,93,560/- as per the details of sales furnished in annexure 'K' but in the ITR has shown sales of Rs. 3,76,74,000/- and therefore there is variation/difference between sales/turnover as per the ITR and GST returns and therefore vide notice dated 10.03.2021 u/s 142(1) of the Act, asked the Assessee to reconcile the difference in sales and also furnish the reasons of variations in sales as per ITR and GST returns.

2.2 As per AO, the Assessee in response though filed its reply on 19.03.2021 but did not file any reply as alleged qua issue under consideration and also failed to furnish any reconciliation as well as any explanation for the difference/variation in sales/turnover shown in ITR and GST Returns and therefore, the AO vide show cause notice dated 09.04.2021 again show-caused the Assessee. In response, the Assessee filed its reply on 15.04.2021 and claimed as under:

"2) Addition on account of difference in sales/turnover as per the ITR and Sales Account/GST Return -

Actually there is no difference in sales. All the amount received on account of booking of flats shown as advance against flat booking in balance sheet. This is not considered as sales of the year in financial accounts. What is shown as sales pertains to only TDR sales.

The Assessing officer has considered the sale of properties during the year is Rs 39,01,93,560/-. In this connection, we would like to state that during the year, there were sales agreements registered with the Sub Registrar, Borivali-5. The construction activity was carried out in this year and completed 1st Slab of said building. The said project is 23 Storeyed Residential Building. Few Clients had made the sales agreement which is provided to your good office as per your requirement and the same is considered as "sales" by assessing officer but the said project is still under construction.

In connection with the above, we would like to state further that during the year, there is only sale of TDR which is considered as sales. In GST Returns, we have shown the turnover

towards advances received from the buyers as sales. The assessee had adopted project completion method, hence the assessee has shown amount invested in the project as work in progress and advances received on account of Flat Booking from the prospective buyers as Advance against sales in current liabilities. Though the advance received from the prospective buyers has been taken as current liabilities, the same is not repayable to the respective creditors and it is shown as Advance Receipt. As per Sales as per GST Laws" any amount received or receivable as per construction schedule will be liable to GST Tax. The Sales comparison of Sales as per ITR with GSTR Return is not tenable. Therefore, We request you not to make any addition relating to undisclosed income/sales and is added to the total income of the assessee and not to initiate penalty proceedings u/s270A of the Income Tax Act, 1961."

3. The AO though considered the aforesaid reply of the Assessee but found the same as not acceptable and ultimately made the addition of Rs.35,25,19,560/- being difference between sales as per ITR and GST returns by holding as under:

"3.2 The reply of the assessee has been considered. The assessee has furnished information of sale of properties in annexure "K" of reply dated 06/03/2021. As per this annexure, details of properties sold during the F.Y. 2018-19 have been furnished alongwith dates of sale agreements executed for transfer of properties and registered with the Sub Registrar, Borivali. Thus the properties stand transferred and sale of properties amounting to Rs.39,01,93,560/- stand finalized. Further, the assessee has shown TDR (transfer of development rights) sales of Rs. Rs.3,76,74,000/- only in the P & L account. Transfer of Development Rights (TDR) means making available certain amount of additional built up area in lieu of the area relinquished, so that purchaser can use extra built up area either himself or transfer it to another in need of the extra built up area for an agreed sum of money. Thus the TDR sales are the sales of additional build up area in lieu of relinquished. The assessee has not declared sales of properties in the P&L account which has been made through sale agreements which have been registered with the Sub Registrar. So, the reply of the assessee is not acceptable on this issue. From the above facts, it is clear that the Assessee has failed to explain difference of Rs.35,25,19,560/- in sales, and therefore the same is treated as undisclosed sales of the Assessee and is added to the total income of the Assessee."

4. The Ld. Commissioner on appeal, deleted the aforesaid addition of Rs.35,25,19,560/- by holding as under:

“6.1. I have considered the submission of the appellant and the order passed by the Ld. AO. During the assessment proceedings, the assessee was requested to furnish the copies of GST returns & details of sales/turnover. It was noticed by the Ld AO that the assessee had shown sales/turnover of Rs.39,01,93,560/- in the GST return during the A.Y.2018-19 but the assessee has shown sales of Rs. 3,76,74,000/- in the ITR. The appellant submitted that the appellant has offered only proceeds of sale of TDR amounting to Rs 3,76,74,000/- in the return. In GST Returns, the turnover towards advances received from the buyers amounting to Rs 35,25,19,560/- have been declared as sale as per requirement of the GST laws according to which any amount received or receivable as per construction schedule will be liable to GST Tax. For income tax purposes, the assessee had adopted project completion method, hence the assessee has shown amount invested in the project as work in progress and advances received on account of Flat Booking from the prospective buyers as Advance against sales in current liabilities.

6.2. However, the Ld AO took the view that as the sale agreements are executed for transfer of properties and registered with the Sub Registrar, Borivali., therefore, the properties stand transferred and sale of properties amounting to Rs.39,01,93,560/- stand finalized. Accordingly, the difference of Rs.35,25, 19,560/- in sales as per as per ITR & sales as per GST return was treated as undisclosed sales of the assessee and is added to the total income of the assessee.

6.3. The appellant vide submission dated April, 12, 2021 explained that during the year, there were sales agreements registered with the Sub Registrar, Borivali 5. The construction activity was carried out in this year and completed 1st Slab of said building. The said project is 23 Storeyed Residential Building. Few Clients had made the sales agreement and the same is wrongly considered as "sales" by the NeAC but the said project is still under construction. Only around 10 percent of the project is completed by the assessee.

6.4. Further, in GST Returns, the assessee shown the turnover towards advances received from the buyers as sales. The assessee has adopted project completion method, hence the assessee has shown amount invested in the project as work in progress and advances received on account of Flat Booking from the prospective buyers as Advance against sales in current liabilities. Though the advance received from the prospective buyers has been taken as current liabilities, the same is not

repayable to the respective creditors and it is shown as Advance Receipt. As per Section 2 (31) of CGST Act, 2017 "consideration" in relation to the supply of goods includes any amount received or receivable as per construction schedule and the same would be to GST.

6.5. The Assessee is following Project Completion Method, and the said project has commenced on January 07, 2016 (As per VAT records). The Assessee has not reached the minimum threshold to recognize revenue as per the Accounting Standards. The assessee has completed only 10 percent of the project and as per the Indian Accounting Standard 11 on construction contracts, no revenue can be recognized until 25 per cent of the project has been completed. The Hon'ble Jurisdictional High Court in the case of CIT v. Aditya Builders [2015] 378 ITR 75 (Bom)(HC) held that where assessee had adopted project completion method of accounting and had been consistently following it over years, it was not open to revenue to reject such method.

6.6. Further, it is submitted by the appellant that the construction is on hold on account of certain financial difficulty and lull in the business of real estate.

6.7. The Hon'ble High Court of Punjab and Haryana in the case of CIT v. Principal Officer, Hill View Infrastructure (P) Ltd. (2016) 384 ITR 451 (P&H) (HC) held that where assessee company had been consistently following project completion method to compute profits in real estate business, the Assessing Officer could not apply percentage completion method.

*6.8. In the instant case, the appellant is following project completion method, as per accounting standard 11, revenue is required to be recognised only when 25 percent of the project is completed. **Therefore, the addition made on account of variance in Sales as per GST return and ITR return to the tune of Rs.35,25,19,560/- is deleted.** Ground of the appellant is allowed."*

5. The Revenue Department, being aggrieved, has preferred the appeal i.e. **ITA No.3751/M/2023**, which is under consideration, challenging the deletion of the aforesaid addition Rs.35,25,19,560/- by the Ld. Commissioner. The Ld. D.R. has raised various issues inter-alia that there was difference/mismatch in the sales/turnover as per the ITR and GST returns and therefore the AO has correctly made the addition. The difference between ITR & GST returns is

more than 40%, which needs to be verified. Further, the Assessee has also paid brokerage expenses on account of sales, which strengthen the case of the Revenue. Further, may be the Assessee is following the project completion method, however, the Assessee has incurred more than 25% of the project cost and therefore the benefit of project completion method cannot be given to the Assessee. As per the project details submitted by the assessee before the A.O, the estimated project cost was Rs 227 crores and as per its P & L account for the year, its work in progress stood at Rs 87,87,68,238/-. Thus, based on the Assessee's own financials, it had completed 38.71% of its project. Therefore, the Ld. Commissioner has erred in concluding that only 10% of the project was completed.

5.1 The Ld. DR further submitted that sales of certain units of the project were finalized, as in the Assessee's own submission it had submitted that the receipts against such sales were not repayable to the customers. Hence, the Assessee ought to have offered the same as sales executed during the year in the P & L account. Further there are inconsistencies in the method of accounting followed by the Assessee, which claimed to be adopting the project completion method, but in fact had debited commission expenses of Rs 22,65,69,249/- against the sale of flats as revenue expenses. Thus, by not offering the sales as revenue income and yet debiting the commission paid against the sales as revenue expenses, the Assessee has distorted its profits for the year. Further, such accounting was not in consonance with the "project completion method" wherein all the expenses incurred on the project were to be capitalized as work-in-progress.

5.2 Further the Ld. Commissioner reliance on the judgment in the case of Aditya Builders (supra) was misplaced, as the judgment had

been rendered only in the context of “whether the CIT had correctly assumed jurisdiction u/s 263 of the Act”. The Hon’ble High Court had held that by not showing that the project completion method followed by the Assessee had caused prejudice to the interest of the revenue and also being a debatable issue, the CIT's assumption of jurisdiction u/s 263 of the Act was not valid. Thus, the facts being different from the appeal at hand, the Ld. Commissioner observation that Revenue cannot reject the method adopted by the Assessee was improper.

5.3 The Ld. DR further submitted that Ld. Commissioner reading of the Ind AS-11 is also erroneous, as nowhere the said accounting standard lays down that revenue ought to be recognized in construction contracts only, when stage of 25% is completed. Further, the said AS lays down that stage of completion may be determined by the proportion that contract costs incurred for work performed to date bearing to the estimated total contract costs, which in the current case is 38.71%.

5.4 The Ld. D.R. further submitted that the Assessee has duly executed the sale deeds and sold the flats in its project and therefore the amount realized by the Assessee is liable to be declared as sales in profit & loss account and taxed accordingly.

5.5 The Ld. DR at last submitted that in view of the above facts, it is submitted that the impugned order of the CIT(A) in the aforesaid appeal is perverse and therefore in the interest of justice, the same may be set aside.

6. On the contrary, the Ld. Sr. Advocate Dr. K. Shivaram has vehemently submitted that the Assessee is following “project completion method” consistently and therefore in view of the

various judgments passed by the Hon'ble Higher Courts including by Jurisdictional High Court in the case of Commissioner of Income Tax vs. Aditya Builders 378 ITR 65 (Bombay), it is not open to the Revenue to reject the method followed by the Assessee consistently.

6.1 The Ld. Sr. Counsel further submitted that even assuming a percentage completion method is to be applied, even then also the Assessee does not reach the minimum threshold for revenue recognition as per INDAS-11 read with Guidance note on accounting for real estate transactions, which prescribes that at least 25% of the saleable project area is secured by contracts or agreements with buyers and at least 10% of the contract consideration as per the agreements of sale or any other legal enforceable documents, are realized at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms, as defined in the payment contracts.

6.2 The Ld. Counsel further submitted the Assessee was/is supposed to construct total three wings i.e. A, B & C each consisting four podiums and 19 upper floors and each floor of each wing has four flats. Therefore, the Assessee was/is supposed to construct saleable building consisting of 228 flats. The Assessee during the assessment year under consideration completed "1st " Slab of said building and has entered into with agreements to sell of 24 flats only, which goes to show that the Assessee has entered into 10.5% of the salable building/project, which strengthen the case of the Assessee, as per Guidelines Notes issued by the body of accountants i.e. ICAI.

6.3 Further, until and unless, the expenditure incurred on construction and development cost is more than 25% of the

construction and development cost, a reasonable level of development is not achieved. The project has been commenced on January 7, 2016 and thereafter the Assessee has faced the financial difficulties and consequently the Bank of Baroda vide letter dated 03.06.2019 from which the Assessee has availed finance, treated the loans availed as "NPS" and due to the financial crunches and other impediments, the construction was on hold during the assessment year under consideration and still the project is at standstill. From the certificate of an architect i.e. Arch View Associates dated 13.06.2023, it is clear that up to 31.03.2023, the construction work has been completed upto 17.50% only on site as per the approved plan. Hence it is clear that the Assessee has not achieved the threshold limit.

6.4 With regard to the difference between the ITR & GST returns, the Ld. Counsel has demonstrated that in the GST returns, the Assessee was supposed to show the aggregate turnover i.e. the aggregate value of all taxable supplies. Further, in GST Act, the consideration has been defined as "**any payment made or to be made**" whether in money or otherwise in respect of **or** in response to **or** the inducement of the supply of goods or services or both. As per GST compliance, as the Assessee was supposed to disclose total turnover towards advances received from the buyers as sales in GST Returns and sale of TDR in ITR and therefore it has duly shown the same in respective returns. However, as the Assessee had adopted the project completion method, hence has shown advances received on account of booking of flats from the respective buyers, as advances against sales in the current liability. Though the advances received from the prospective buyers have been taken as current liability, however, the same were not repayable to the respective creditors and therefore the advances received were shown as advance receipt.

6.5 Further, the figure of Rs.35,25,19,560/- is the difference between the total Agreement value and ITR turnover, whereas total value of the agreements during the assessment year under consideration was Rs.39,01,93,560/-. ITR turnover is on account of the sale of TDR i.e. Rs.3,76,74,000/- as per the audited financials and therefore the difference between the total agreement value and ITR turnover and shown in the GST returns, are not comparable, as the Assessee has not recognized any revenue from the sale of flats.

6.6 The Ld. Sr. Counsel further, by producing the sample agreements to sell, submitted that the Assessee with various buyers has executed agreements to sell but not the sale deeds and as per the agreements to sell, though the entire consideration has been fixed, however, most of the respective buyers were/are supposed to pay the consideration fixed, in installments and therefore consideration fixed cannot be considered, as sales in its P & L account.

7. We have heard the parties and perused the material available on record including the sample agreements to sell, Guidance notes on accounting for real estate transaction, relevant section of Central Goods and Services Tax 2017 (in short "CGST Act"), copy of GST returns, relevant judgments etc.

7.1 The Ld. D.R. mainly raised the issue which relates to the differences between the sales turnover shown in the GST return and ITR and adopting of project completion method by the Assessee.

7.2 We observe that the AO with regard to the difference in sales/turnover as per the ITR and sales account/GST returns, show caused the Assessee to reconcile the variation and explain the

reasons of variation, by issuing show cause notice dated 09.04.2021 and observing as under.

"Total sale of properties during the year is Rs.39,01,93,560/- as per the information provided by you whereas Sales/turnover as per the ITR is shown at Rs. 3,76,74,000/-. Please reconcile the variation and explain the reasons of variation".

7.3 The Assessee in response to the aforesaid show cause notice, made following submissions:

"2) Addition on account of difference in sales/turnover as per the ITR and Sales Account/GST Return –

Actually, there is no difference in sales. All the amount received on account of booking of flats shown as advance against flat booking in balance sheet. This is not considered as sales of the year in financial accounts. What is shown as sales pertains to only TDR sales.

The Assessing officer has considered the sale of properties during the year is Rs 39,01,93,560/-. In this connection, we would like to state that during the year, there were sales agreements registered with the Sub Registrar, Borivali 5. The construction activity was carried out in this year and completed 1" Slab of said building. The said project is 23 Storeyed Residential Building. Few Clients had made the sales agreement which is provided to your good office as per your requirement and the same is considered as "sales" by assessing officer but the said project is still under construction.

In connection with the above, we would like to state further that during the year, there is only sale of TDR which is considered as sales. In GST Returns, we have shown the turnover towards advances received from the buyers as sales. The assessee had adopted project completion method; hence the assessee has shown amount invested in the project as work in progress and advances received on account of Flat Booking from the prospective buyers as Advance against sales in current liabilities. Though the advance received from the prospective buyers has been taken as current liabilities, the same is not repayable to the respective creditors and it is shown as Advance Receipt. As per Sales as per GST Laws" any amount received or receivable as per construction schedule will be liable to GST Tax. The Sales comparison of Sales as per ITR with GSTR Return is not

tenable. Therefore, we request you not to make any addition relating to undisclosed income/sales”.

7.4 The AO though considered the reply of the Assessee, however, found the same as not acceptable, and ultimately made the addition of Rs.35,25,19,560/- and added the same in the income of the Assessee, by holding as under:

“That as per Annexure-A of reply dated 06.03.2021, the details of property sold during the F.Y. 2018-19 have been furnished along with dates of sale agreements executed for transfer of properties and registered with the Sub Registrar, Borivali. Thus, the properties stand transferred and sale of properties amounting to Rs.39,01,93,560/- stands finalized. Further, the Assessee has shown TDR (Transfer of Development Rights) sales of Rs.3,76,74,000/- only in the P & L Account. TDR means making available certain amount of additional built-up area in lieu of area relinquished so that purchaser can use extra built-up area either himself or transfer to another in need of the extra built-up area for an agreed sum of money. Thus, the TDR sales or the sales of additional built-up area in lieu of relinquishment the Assessee has not declared sales of properties in the P&L Account, which has been made through sales agreement which have been registered with the Sub Registrar, so the reply of the Assessee is not acceptable on this issue. From the above facts, it is clear that the Assessee has failed to explain difference of Rs.35,25,19,560/- in sales, and therefore the same is treated as undisclosed sales of the Assessee and is added to the total income of the Assessee.”

7.5 The Assessee before the Ld. Commissioner, as well as before us, demonstrated that it is consistently following the project completion method, since the beginning of the project under consideration, which has been commenced on January 7th, 2016 (as per VAT records) and even the Assessee during the assessment year under consideration has not reached the minimum threshold to recognize revenue, as per the accounting standard, as the Assessee has completed only 10% of the saleable project and therefore as per Indian Accounting Standard-11 and percentage completion method, in the construction contracts, no revenue can be recognized until 25% of the project has been completed. The

Assessee further explained that the project carried out by the Assessee is of 23 storied residential building having 228 flats in total. The Assessee during the assessment year under consideration has entered into with agreements to sell of 24 flats only, registered with the Sub Registrar, Borivali-5. In the sample Agreements to sell, though total consideration amount has been fixed, however, small percentage of the consideration amount as shown, has actually been received and remaining amount has shown "to be payable in installments" and therefore the Assessee has shown the amount received as earnest money/advances, as advance in the P&L Account as liabilities but not as sales during the assessment year under consideration and therefore as per project completion method, the Assessee is supposed to disclose the sales after completion of the project but not earlier. Accordingly, the Assessee has shown the amount invested in the project as "work in progress" and advances received on account of booking of flats from the prospective buyers, as advance against sales in "current liabilities". As the Assessee has consistently been following the project completion method, hence such method as approved by the Ld. Commissioner may be upheld.

7.6 On the contrary, the Ld. D.R. has raised the issue, as the Assessee has estimated the project cost at Rs.227 crores, however, as per its P&L Account for the year, its work in progress stood at Rs.87,87,68,238/- thus based on the Assessee's own financials, it has completed 38.7% of the project. Therefore, the contention of the Assessee and the conclusion drawn by the Ld. CIT(A) that only 10% of the project has been completed is devoid of merits. Further, the Ld. D.R. also raised the issue that reading of INDAS-11 by the Ld. Commissioner is also erroneous, as nowhere the said accounting standard laid down that Revenue ought to be recognized in construction contracts only, when a stage of 25% is completed.

Further, the said AS laid down that stage of completion may be determined by the proportion that contract's cost incurred for work performed to the date, bearing to the estimated total construction cost which remains at 38.71%, hence the AO has rightly applied the percentage completion method, which requires to be upheld and restored.

7.7 On being asked specifically qua alleged estimated total construction cost at 38.71% as claimed by the Ld. DR, the Assessee by demonstrating following breakup:

1.	<i>Land cost</i>	:	94,52,000/-
2.	<i>Statutory</i>	:	8,11,65,409/-
3.	<i>Cost of saleable area</i>	:	6,96,65,791/-
4.	<i>Cost of rehabilitation building</i>	:	71,84,85,038/-
	<i>(including Rs. 11,69,61,500/- paid qua Tenant compensation)</i>		
	Total	:	87,87,68,238

tried to justified the amount shown in work in progress. The Ld. Counsel further submitted that the Assessee placed the separate purchase orders for the SRA building and saleable building. May be total amount shown as WIP is 38.71% as claimed by the Ld. DR, however it is a fact that major part of the rehabilitation building was supposed to give free of cost to previous dwellers. Even otherwise in SRA project, the builder is not allowed to construct any saleable area, without constructing and handing over rehabilitation building to the previous dwellers. Therefore, the amount of Rs.71,84,85,038/- spent on rehabilitation building/SRA cannot be construed as part of saleable area for the purpose of determining the percentage completion method. Thus, excluding the amount spent on rehabilitation building, it is clear that the construction cost has not achieved prescribed limit i.e. 25%.

8. On the rival contentions raised by the parties, question emerge "***whether the Assessee is entitled to follow the project completion method as per its own choice or not***"?

8.1 The Hon'ble Apex Court in the case of CIT vs. Hyundai Heavy Industries Co. Ltd. (2007) 161 taxman 191/291 ITR 482 has recognized the "project completion method" and "percentage completion method" as the recognized methods of accounting. The Hon'ble Apex Court further held that the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard no. 7. Under the project completion method, the revenue is not recognized until the project is completed and cost is accumulated during the course of the project and results are determined only when the contract is completed. This method leads to objective assessment of the result of the contract.

8.2 The Hon'ble Kolkata High Court in the case of Principal Commissioner of Income Tax vs. Salarpuria Simplex Dwelling LLP. (Cal) (2003) 455 ITR 712 has also considered the method of accounting i.e. completion method as followed by the Assessee in the present case and by taking into account that as per section 145 of the Act, it is not open to an AO to reject the accounts of an Assessee, unless he comes to a determination that notified accounting standards have not been regularly followed by the Assessee. The Hon'ble High Court further affirmed the finding of the tribunal that as per Accounting Standard-7 (AS-7) issued by the Institute of Chartered Accountants of India, the Assessee can follow either the project completion method or the percentage completion method and therefore the AO is not empowered to adopt the percentage completion method for one year on selective basis as it

will distort the computation of the true profits and gains of the business.

8.3 The Hon'ble Apex Court in the case of CIT vs. Bilahari Investment Pvt. Ltd. (2008) 168 taxman 95/299 ITR 1 (SC) as well, also elaborated the completed contract method by observing as under:

“Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such method. Similarly, the percentage of completion method is another such method.

Under the completed contract method, the revenue is not recognized until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract.

On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under this method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.

The above indicates the difference between the completed contract method and the percentage of completion method.”

8.4 Even in the case of Aditya Builders vs. Commissioner of Income Tax (Admin) (2013) 25 ITR (T) 77, the Jurisdictional High Court after perusing the legal propositions, arrived at a specific finding that Revenue cannot throw a method of accounting on the Assessee though that method is superior and therefore substitution of method of accounting is not allowed, unless loss of revenue is made out of the project of the Assessee.

8.5 On the aforesaid analyzations, it is clear that the Assessee is entitled to adopt either of the two methods as prescribed by the ICAI and AS-7. Further in the absence of any provision or restriction under the provisions of Act, the Assessee cannot be asked to follow particular accounting method for project. It is also not the prerogative of the AO to apply the percentage completion method, instead of project completion method of accounting, which has regularly and consistently been followed by the Assessee, as observed by the Hon'ble Apex Court and High Courts.

8.6 On the aforesaid analyzations, we answer the question posed as under:

"The Assessee is at liberty to follow a particular accounting method for project as per its choice and if the Assessee is following the particular project method, which is otherwise not in derogation of any provisions or restrictions provided under the provisions of the Act, then the AO is not empowered to reject the project method, which has consistently been followed by the Assessee and to adopt a different method, as done by the AO in this case".

8.7 Coming to the instant case, admittedly, as the Assessee is consistently following the project completion method, and therefore there was no logic or plausible reason to discard the accounting method being continuously followed by the Assessee, hence the action of AO in rejecting the project completion method followed by the Assessee and applying "percentage completion method" is unsustainable and contentions raised by the Ld. DR in support of decision of AO qua this aspect, are untenable and hence the same are rejected and 'project completion method' approved by the Ld. Commissioner is sustained.

9. Coming to other contentions raised by the Ld. DR, to the effects that as per project details submitted by the Assessee before the AO, the estimated project cost was Rs.227 crores, however, in its P & L Account for the year under consideration, the work in

progress stood at Rs.87,87,68,238/-, therefore on the basis of the Assessee's own financials, the Assessee has completed 38.71% of its project and thus the Ld. Commissioner had erred in concluding that only 10% of the project was completed. The Ld. Commissioner was also erroneous in reading the INDAS-11 as in the INDAS-11 nowhere the said accounting standard lays down that the Revenue ought to be recognized in construction contracts only, when stage of 25% is completed. Further, the said AS lays down that completion may be determined by the proportion that contract cost incurred for work performed to the date bearing to the estimated total construction cost, which in the current case is 38.71%.

10. We observe that admittedly the Assessee was/is supposed to construct 23 story building (228 flats in total) and has completed the construction only and upto 1st slab of the 23-story building and thereafter the construction was stopped or remained on hold and as per admitted position, the project/construction is at standstill due financial crunches and legal impediments. From the certificate of architect i.e. Arch View Associates dated 13.06.2023, it is clear that up to 31.03.2023, the construction work has been completed up to 17.50% only on the site, as per the approved plan. Even the Assessee during the year under consideration has entered into with the agreements to sell of 24 flats only, as against 228 flats projected. Admittedly as per Guidance Note on Accounting for Real Estate Transactions (for entities to whom INDAS is applicable) for following the application of percentage completion method, the following parameters are prescribed which reads as under:

“Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable)”

(The following is the text of the Guidance Note on Accounting for Real Estate Transactions, issued by the

*Council of the Institute of Chartered Accountants of India
for entities to whom Ind AS is applicable.)*

1. Objective and Scope

Objective

1.1

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1.3 The Guidance Note primarily provides guidance on application of percentage of completion method *where it is appropriate to apply this method as explained in subsequent paragraphs as such transactions and activities of real estate have the same economic substance as construction contracts. For this purpose, the Guidance Note draws upon the principles enunciated in Ind AS 11, Construction Contracts. In respect of transactions of real estate which are in substance similar to delivery of goods principles enunciated in Ind AS 18, Revenue, are applied.*

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5. Application of **Percentage Completion Method**

5.1 *The percentage completion method should be applied in the accounting of all real estate transactions/activities in the situations described in paragraph 3.3 above, i.e., where the economic substance is similar to construction contracts. Some further indicators of such transactions/activities are:*

(a) The duration of such projects is beyond 12 months and the project commencement date and project completion date fall into different accounting periods.

(b) Most features of the project are common to construction contracts, viz., land development, structural engineering, architectural design, construction, etc.

(c) While individual units of the project are contracted to be delivered to different buyers these are interdependent upon or interrelated to completion of a number of common activities and/or provision of common amenities.

(d) The construction or development activities form a significant proportion of the project activity.

5.2 *This method is applied when the outcome of a real estate project can be estimated reliably and when all the following conditions are satisfied:*

(a) total project revenues can be estimated reliably;

(b) it is probable that the economic benefits associated with the project will flow to the entity;

(c) the project costs to complete the project and the stage of project completion at the reporting date can be measured reliably; and

(d) the project costs attributable to the project can be clearly identified and measured reliably so that actual project costs incurred can be compared with prior estimates.

When the outcome of a project can be estimated reliably, project revenues and project costs associated with the project should be recognised as revenue and expenses respectively applying the percentage of completion method in the manner detailed in paragraphs 5.3 to 5.8 below.

5.3 *Further to the conditions in paragraph 5.2 there is a rebuttable presumption that the outcome of a real estate project can be estimated reliably and that revenue should be recognised under the percentage completion method only when the events in (a) to (d) below are completed.*

(a) All critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable:

(i) *Environmental and other clearances.*

(ii) *Approval of plans, designs, etc.*

(iii) *Title to land or other rights to development/ construction.*

(iv) *Change in land use.*

(b) When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25% of the construction and development costs as defined in paragraph 2.2 (c) read with paragraphs 2.3 to 2.5.

(c) At least 25% of the saleable project area is secured by contracts or agreements with buyers.

(d) At least 10% of the contract consideration as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts. To illustrate If there are 10 Agreements of sale and 10% of gross amount is realised in case of 8 agreements, revenue can be recognised with respect to these 8 agreements only.

5.4 When the outcome of a real estate project can be estimated reliably and the conditions stipulated in paragraphs 5.2 and 5.3 are satisfied, project revenue and project costs associated with the real estate project should be recognized as revenue and expenses by reference to the stage of completion of the project activity at the reporting date. For computation of revenue the stage of completion is arrived at with reference to the entire project costs incurred including land costs, borrowing costs and

construction and development costs as defined in paragraph 2.2. Whilst the method of determination of stage of completion with reference to project costs incurred is the preferred method, this Guidance Note does not prohibit other methods of determination of stage of completion, e.g., surveys of work done, technical estimation, etc. However, computation of revenue with reference to other methods of determination of stage of completion should not, in any case, exceed the revenue computed with reference to the 'project costs incurred method. Illustration appended to this Guidance Note clarifies the method of computation of revenue.

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{Highlighted by us for better understanding and ready reference}

10.1 Though the Assessee is not supposed to follow the “**percentage completion method**” as held by us above, even otherwise, if we still consider the parameters laid down for application of percentage completion method, as appears in para 5.3 of Guidance Note on Accounting for Real Estate Transactions, the revenue can be recognized under the percentage completion method only, when the parameters **a** to **d** as reproduced above, are achieved, which goes to show that at **atleast 25% of the saleable project area is to be secured by contracts or agreements with buyers** (as mandated in clause “5[3] c”). Here in the instant case, the admittedly Assessee out of 228 flats, has entered into agreements to sell of 24 flats only, which is admittedly 10.5 % only. The Assessee has also been able to demonstrate that though the project of Assessee consists of 23 storey residential building which is saleable, however, during the assessment year under consideration it has completed 1st slab only and thereafter the project was/is on hold owing to certain legal impediments and financial difficulties, as appears from the letter of the bank (supra) whereby the Bank has declared the loan availed by the Assessee as NPA and therefore the Assessee during the assessment year under

consideration, has completed 10% of the project/saleable building only and few clients have made agreements to sell but not the sale deeds and therefore, the parameters/conditions as prescribed for application of "percentage completion method" though not admitted but even otherwise has not being achieved.

On the aforesaid analyzations, we are of the considered view that even otherwise for the sake of argument though submitted but not admitted by the Assessee, still the Assessee has not achieved the minimum threshold to declare the revenues received and therefore contentions raised by the Ld. DR that the Assessee has completed 38.71% of its project and therefore the Assessee would have recognized the revenue under the percentage completion method and/or thus the Ld. Commissioner had erred in concluding that only 10% of the project has been completed, are also untenable, hence rejected.

11. Coming to next issue raised by the Ld. DR, which pertains to making payments qua Commission/Brokerage Expenses. The Ld. DR claimed that because the Assessee has paid the brokerage commissions and therefore, it should have recognized the revenue received. We observe the AO vide notice dated 09-04-2021 also proposed the addition of Rs. 22,65,69,249/- on this count and in response to that, the Assessee by filing its reply dated 12th April 2021 has claimed that it had appointed Indiabulls Distribution Services Limited (IDSL) as a "Marketing Agent on Commission Basis" during the AY under consideration, to act on behalf of the Assessee. The IDSL had a monopoly to sell flats to the various customers, as it appears from the copy of Agreement with IDSL. Whatever the commission paid to IDSL was, as per the Agreement and not on the basis of sales of TDR during the year. The Assessee also provided the copy of Ledger Account and details/invoices of commission paid through NEFT/Cheque/RTGS.

We observe that the aforesaid reply/claim of the Assessee has duly been considered by the AO and accepting the same as correct, admittedly no addition on this count was made by the AO.

Even otherwise in view of judgment in the case of Commissioner of Income Tax, Delhi Vs. DLF Universal Ltd. {378 ITR 197 (Delhi)} by the Hon'ble High Court of Delhi, the expenses incurred on brokerage and commission in terms of agreement entered into with IDSL, are allowable in full in the year, in which the same were incurred. In our view, just on the reason that the Assessee has paid the commission and brokerage amount during the year under consideration, the percentage completion method cannot be applied. On the aforesaid analyzations, the present contention raised by the Id. DR is also not tenable.

12. Coming to the second aspect of the case i.e. differences between sales shown in the GST return and Income Tax Return. As we have observed above, that the Assessee has offered only proceeds of sale of TDR amounting to Rs.3,76,74,000/- in the return of income, however, in the GST returns had shown the turnover made towards advances received from the buyers to the tune of Rs.35,25,19,560/. Mandate of CGST Act is that the Assessee is supposed to declare any amount received or receivable, as per the construction schedule and accordingly liable to pay the tax as per CGS Tax Act. We are in concurrence with the contention of the Ld. Sr. Counsel that different statutes such as GST Act and the Income Tax Act as applicable to the instant case, are having their own parameters and cannot be equated with each other. As in the CGST Act, the consideration which is received or receivable is supposed to be disclosed, as it appears from the definition and therefore in compliance to the terms of GST Act, the Assessee has shown the amount received or receivable and paid the relevant

taxes as per CGST Act accordingly. Whereas for the income tax purposes, as the Assessee has been consistently following the project completion method and therefore treated the consideration received on account of flats sold, as advances as current liabilities, but not as sales/turnover. Hence, in our considered view, the difference between the turnover shown in GST Return and ITR has been properly reconciled by the Assessee before the authorities below, as well as before us and therefore addition made by the AO on this aspect, at all is not sustainable and therefore has rightly been deleted by the Id. Commissioner.

12.1 Consequently, on the analyzations made above, the decision of the Ld. Commissioner in deleting the addition under consideration is sustained and the **appeal i.e. ITA No.3751/M/2023** filed by the Revenue Department is dismissed.

13. Coming to the **CO No.42/M/2024** filed by the Assessee, we observe that the Assessee is aggrieved with the following disallowances: **First** disallowance of architect and professional fee to the tune of **Rs.1,25,67,743/-**; **Second** disallowance u/s 14(a)(ia) of the Act to the tune of **Rs.5,27,107/-**.

14. We are inclined to adjudicate the CO of the Assessee issue-wise. Coming to the first disallowance/**issue No.1**, which pertains to disallowance of architect and professional fee to the tune of **Rs.1,25,67,743/-**, we observe that the Assessee had claimed an amount of **Rs.1,25,67,743/-** in its profit & loss account on account of architect professional fee, but during the assessment proceedings, in spite of sending notice dated 15.12.2020, the Assessee did not furnish any information. However thereafter in compliance to various notices/reminders, the Assessee uploaded its reply on 05.03.2021 and furnished the copy of the ledger account of

the architect and professional fee only, but not the complete information qua accounts on this issue. Therefore the AO by considering the reply of the Assessee has observed *“that the Assessee has not furnished copies of bills/vouchers of payment and ledger accounts of the parties, details of the genuineness of the transactions as well as PAN details and addresses of many parties as wrong and has also not furnished any details qua TDS deducted”*, and ultimately disallowed the deduction claimed to the tune of Rs.1,25,67,743/- on account of architect and professional fees and added the same in the income of the Assessee.

14.1 The Assessee being aggrieved also challenged the aforesaid addition of Rs.1,25,67,743/- before the Ld. Commissioner and filed its submissions. The Ld. Commissioner though considered the submission of the Assessee, however by observing *“that the Assessee has not furnished correct PANs of the parties, copies of invoices of architect and professional fees, details of work done by these parties as stated in its reply and also the details of TDS deducted on payment on account of architect and professional fees, thus the Assessee has failed to prove the genuineness of parties and transactions”*, ultimately affirmed the action of the AO in disallowing the amount of Rs.1,25,67,743/- debited in the profit & loss account.

14.2 The Assessee, at the outset, honestly submitted that it had wrongly furnished the PAN details of the Assessee company instead of Mr. Rajesh Manaldar Panchal (Architect) and therefore the Assessee subsequently vide submissions dated 12.04.2021 filed before the AO, had rectified its mistake and discharged its onus of proof by providing all possible details pertaining to the transactions carried out with the architects i.e. PANs, address, ledger account and TDS deducted etc.. The Assessee further submitted that before the Ld. Commissioner as well, the Assessee vide submissions dated 12.06.2022 and 14.06.2022, has submitted the details of several parties, however, the same remained unverified. The Assessee for

the proper and just decision of the case is filing sample invoices of parties to whom architect and professional fees were paid, hence the same may be considered.

14.3 On the contrary, the Ld. D.R. refuted the claim of the Assessee by submitting that the Assessee has submitted additional evidences vide letter dated June 6, 2024 and pleaded for its admission. In this context, it is stated that ample opportunities had been provided by the A.O during the assessment proceedings to submit supporting evidences for proving the genuineness of the said expenses. However, the Assessee failed to submit the requisite documents. Further, even during the appellate proceedings, the Assessee failed to submit the necessary evidences in support of its grounds of appeal. Even otherwise, no reasonable cause has been established by the Assessee to explain as to why the said evidences could not be submitted before the lower authorities. Hence, the admission of additional evidences is vehemently objected. Furthermore, even on merits of the evidence submitted, it is seen that the Assessee has only produced sample bills of the work done by the architects and other professionals for the Assessee. Thus, the additional evidence fails to fulfill the conditions laid down u/s 37(1) of the Act, for allowing deduction of the expenses.

15. Having heard the parties and perused the material available on record qua issue in hand and given thoughtful consideration to the rival claims of the parties, we observe as it appears from record that the Assessee before the AO admitted its mistakes with regard to PAN which was given by its new staff member, who was under the impression that the Assessee's PAN was to be mentioned. However, correct statement showing correct PAN, Address and amount paid to Architect and Professional Fees and Ledger Accounts as well as few invoices of Architect and

Professional Fees, were provided in support of instant issue. Somehow, the same remained to be considered. At this juncture, we are inclined not to go into the controversy whether the Assessee had submitted the relevant documents qua issue in hand and/or the submissions, as claimed before us. It is admitted fact that the assessment proceedings were carried out during the covid-19 period, when the entire Nation was on hold and therefore the reasonable cause for not submitting the relevant documents before the AO cannot be ruled out and thus, we are inclined not to take any adverse view. As the Assessee has rectified its mistake by filing appropriate document and/or willing to rectify its mistake, therefore in our considered view, the real adjudication of the issue under consideration would take place. Hence, for the substantial justice and proper decision of the issue under consideration, we are inclined to remand the instant issue to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity to the assessee to substantiate its claim by producing relevant documents and reply/clarification, requires if any, by the AO.

16. Coming to the 2nd issue/addition, which pertains to the addition of **Rs.5,27,107/-** being 30% of Rs.17,57,023/- (transportation charges paid) made u/s 40(a)(ia) of the Act, on account of disallowance qua transportation charges paid to the transporters. It appears from the Assessment order that the Assessee vide notice dated 15.12.2020 was asked to furnish the details of payment made and TDS deducted on account of payment made for loading and transportation charges. In response, the Assessee filed its reply, wherein the details were furnished qua TDS deducted and paid, along with challans on expenses-wise. The AO though partly allowed the claim of the Assessee, however, on the ground *“that the Assessee had not deducted TDS on the payment made to the transporters but claimed that the transporters are assessed u/s 43AE of the Act but has not filed any documentary evidence to show*

that transporters are filing ITRs u/s 43AE of the Act or not”, ultimately made the addition of **Rs. 5,27,107/-** being 30% of Rs.17,57,023/-, on account of payment made exceeding Rs.30,000/- to 8 transporters.

16.1 The Assessee, being aggrieved, though challenged this addition before the Ld. Commissioner and claimed that the Assessee has not deducted the TDS on the payment made to the transporter as the transporters are assessed u/s 43AE of the Act, however has not filed any documentary evidence with regard to filing of ITRs u/s 43AE of the Act by the transporters and their PANs and thus the identity of the transporters have not been confirmed as alleged, which resulted into affirmation of aforesaid addition by the Ld. Commissioner.

16.2 The Assessee being aggrieved also challenged this addition under consideration before us and by filing additional evidence, which pertains to 4 transporters, such as acknowledgments by the transporters qua receipt of payments made by the Assessee, has submitted that the amounts paid by the Assessee have already been offered for taxation purpose by the Transporters. Further, the additional evidence is having direct bearing on the issue involved; therefore, the same may be admitted. Even otherwise, rests of the contractors have also already shown the amount received from the Assessee, in their returns of income and therefore for just decision of the case and substantial justice, the AO may be directed to verify said facts and recompute the tax liability accordingly.

16.3 On the contrary, Ld. DR in respect of payments to eight transporters, has submitted that the disallowance u/s 40(a)(ia) of the Act, was made by the AO, due to failure of the Assessee to provide documentary evidence that the said transporters were assessed to tax u/s 44AE of the Act. On perusal of the additional evidence, it is seen that the Assessee has provided certificates of

only 4, out of 8 transporters, and that too nowhere in the certificates, it is mentioned that the entities are filing their ITRs u/s 44AE of the Act.

17. We have heard the parties on the issue under consideration and given thoughtful considerations to the evidence filed by the Assessee and the peculiar facts and circumstances of the case. As observed above by us that admittedly the assessment proceedings were carried out during the covid-19 period, when the entire Nation was on hold and therefore the reasonable cause for not submitting the relevant documents before the AO cannot be ruled out and thus, we are inclined not to take the adverse view. In our considered view, the documents submitted by the Assessee qua transporters appear to be essential and important for adjudication of the issue involved. And the amount involved qua four transporters out of above eight is substantive and therefore the Assessee by filling the relevant documents qua such 04 transporters, justified its claim as bonafide and reasonable. It is the mandate of the Law that the income tax is chargeable or payable on the Real income but not otherwise, thus, considering the facts in totality, we deem it appropriate to remand the instant issue under consideration as well, to the file of the AO with a direction to decide afresh the instant issue by verifying the details furnished by the Assessee, as well as by summoning the remaining transporters if requires, for proper and just adjudication of the issue involved. Thus, the AO in the terms stated above, is directed to decide the instant issue afresh, accordingly.

18. Consequently, the **CO No.42/M/2024** filed by the Assessee, stands allowed for statistical purposes.

19. Coming to the appeal **i.e. ITA No. 4205/M/2023** filed by the Assessee, we observe that the Assessee may be inadvertently annexed the grounds of appeal raised in other appeal, which are at all not connected with this case and therefore does not require any adjudication. Even otherwise grievances raised by the Assessee in the grounds raised in CO, have already been addressed by us by allowing the CO filed by the Assessee for statistical purposes and therefore on this aspect, the appeal filed by the Assessee is also liable to be dismissed being infructuous. Consequently, the appeal filed by the Assessee is dismissed in limine and being infructuous as well.

20. In the result, the appeal **ITA No.3751/M/2023** filed by the Revenue Department is dismissed, whereas CO no. **42/M/2024** filed by the Assessee is allowed for statistical purposes and **ITA No.4205/M/2023** filed by the Assessee is dismissed in limine and also being infructuous.

Order pronounced in the open court on 30.09.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.