1IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3563/DEL/2016
[Assessment Year: 2011-12]

Dy. Commissioner of Income Tax, Central Circle-28, Room No.317, ARA Centre, Jhandewalan, New Delhi-110055	M/s ET Infra Developers Pvt. Ltd. E-9, Panchsheel Park, New Delhi-110017
	PAN-AACCE3646D
Revenue	Assessee

Cross Objection No.277/Del/2016
(Arising out of ITA No.3563/DEL/2016)
[Assessment Year: 2011-12]

M/s ET Infra Developers Pvt. Ltd. E-9, Panchsheel Park, New Delhi-110017	Dy. Commissioner of Income Tax, Central Circle-28, Room No.317, ARA Centre, Jhandewalan, New Delhi-110055
PAN-AACCE3646D	
Assessee	Revenue

Revenue by	Sh. Satpal Gulati CIT-DR
Assessee by	Sh. M.P. Rastogi, Advocate

Date of Hearing	**13.05.2021**
Date of Pronouncement	**28.07.2021**

ORDER

PER R.K. PANDA, AM,

This appeal filed by the Revenue is directed against the order dated 31.03.2016 of the learned CIT(A)-29, New Delhi, relating to Assessment Year 2011-12. The assessee has filed the Cross Objection against the appeal filed by the Revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 30.09.2011, declaring total income of Rs.1,14,447/-. The return was processed on 16.02.2012 at the income of Rs.8,35,940/-. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was initiated in the case of the assessee on 18.10.2011. In response, notice u/s 153A of the Act, the assessee filed the return of income declaring income of Rs.1,14,447/- which is the income declared in the original return of income.

3. During the course of assessment proceedings, the AO noted that M/s ET Developers Pvt. Ltd. is a Private company limited by shares, having its registered office and corporate office at E-9, Panchsheel Park, and controlled by Mr.

Sushant Aggarwal. The company was incorporated on 13.04.2010. The directors of the company are Sh. Sushant Aggarwal, S/o- Sh. Ram Mohan Aggarwal R/o E-9, Panchsheel Park, New Delhi and Sh. Vaibhav Aggarwal S/o- Sh. Sushant Aggarwal R/o E-9, Panchsheel Park, New Delhi. The company has paid up capital of Rs.1,00,000/- as on 31.03.2011.

The shareholders of the company are as under:-

Sh. Sushant Aggarwal, E-9, Panchsheel Park, New Delhi	-	50% i.e. Rs.50,000/-
Sh. Vaibhav Aggarwal E-9, Panchsheel Park, New Delhi	-	50% i.e. Rs.50,000/-

4. The AO observed that the assessee is involved in the business of Real Estate and is constructing a prestigious project at sector-16, Noida in the name of World Trade Tower (WTT). He noted that as per the information available on the website of the company M/s ET Infradevelopers Pvt. Ltd. the launched price for booking of space in the project was @ Rs.9500 per Sq. Ft. However, the booking price of the space shown by the company is between Rs.3850 to Rs.9500/- per Sq. Ft. as per the information available in the seized material, whereas the assessee has shown the rate of booking at

Rs.5000/- per sq. ft. to 6500/- per sq. ft. in most of the cases. Thus, there is a mismatch between the launched price of this space and the booking shown by the assessee company. According to the AO, the assessee has booked the space at much higher rate than that declared in its submission and the payment has been received in cash and outside the books. According to the AO, where the party was not ready to give part payment in cash, full amount has been taken in cheque and the assessee has tried to explain that the space was sold through some third person. He noted the details of some of the Investors alongwith rate and unit no. as per pages no. 1 to 34 of seized document marked as Annexure A-31 party D-7. A perusal of these details shows that the rate of booking as admitted by the investors and taken from the seized material varies from/Rs. 3850 per sq. ft. to Rs.9500 per sq. ft.

4.1. The AO noted that during post search investigation summons were issued by the Investigation Wing to various investors. Some of the investors complied with the summons and filed details according to which:-

i. M/s Prologic First India Pvt Ltd., 578, Second Floor,

Udyog Vihar, Phase-IV, Gurgaon the rate is @9500 per sq. feet for unit no. 407.

ii. United Poly Engg. Pvt Ltd., D-13/3, Okhla Indl. Area, Phase-II, Delhi @ Rs.8000/- per sq. ft.

iii. Roopak Kothari and Others, 129, Sunder Nagar, New Delhi @ Rs.7450/- per sq. ft.

iv. Dashmesh Infra Solutions Pvt Ltd. E-22A, Sector - 8, Noida, U.P. the rate of booking @ Rs.9100/- per sq. feet.

v. Sh. Mangal Dev Unit no. 624 @ Rs.9050 per sq. ft.

vi. M/s Kings Park Resort @ Rs. 9050/- per sq. ft.

vii. Sh. S K Aggarwal Unit no. 1602 @ Rs.8900/-

viii. Sh. Manish Maheshwari Unit no. 1022 @ Rs.7000 per sq. ft.

ix. Virgina Metal Unit no. 1002 @ Rs.7000/- per sq. ft.

4.2. He noted that most of the bookings shown by the assessee is between Rs.5000/- to 6500/- per sq. ft. The average rate of booking is declared @ Rs. 5,929/- per sq. ft. According to the AO, the assessee cannot be believed that most of the spaces were booked @ of 5000 to 6500 per sq. ft and only few units were sold @ 7000 to 9475 per sq. ft. as mentioned in the

submission filed by the assessee. According to the AO, the booking price declared by the assessee is not true as in the same building only a few space were sold at higher rates and most of the space is sold at lower rate. According to the AO, there can be difference of rate on account of location wise or floor wise but that difference can be 5% to 10% only.

4.3. He observed that the official website of M/s Infradevelopers Pvt. Ltd. was scanned during pre-search and post search investigation and it was seen that the assessee has quoted the rate of space @ 9500 per sq. ft. The reply received from various investors during post search investigation shows that in majority of the cases the rate of space is Rs.6000/- per sq. ft. and only a few buyers admitted the higher rate of booking. According to the AO, the buyers, who invested their black money in cash, did not admit as the arrangement of taking part of the consideration in cash is beneficial to both the parties. He, therefore, was of the opinion that the unholy agreement between the buyers and seller cannot be accepted in the light of the fact that in the same project at the same floor there cannot be difference of rate from Rs.3000 to Rs.3500/- per sq. ft.

4.4. In the above background, the AO During the course of assessment proceedings, vide show cause letter dated 03.03.2014, asked the assessee to explain as to why it may not be held that in case of lower rate of booking shown by it than Rs.9500 per sq. ft. the balance amount should not be added to the total income.

4.5. The assessee filed its reply from time to time. It was explained that the total salable area in the proposed commercial centre was 17,38,000 square feet, whereas the booking in the year was only 2,95,000 square feet. Most of the space has been booked for sale @ Rs.6,000/- per square foot, but in certain cases it was varying between Rs.5,500/- to Rs.6,000/- and Rs.6,000/- to Rs.6,500/-. The difference in such rates is on account of area of flat, location of flat and front/back floor on which the flat is located, payment schedule, how much amount is paid up-front, future relationship, share of intermediaries, etc. In some of the cases, the spaces were booked @ Rs.3,850/- per square foot to Rs.4,250/- per square foot, but later on increased to Rs.5,000/- for constructing the building on account of international green building norm. Apart from it, there were few instances where commercial space sold

was for Rs,7,450/-, Rs.9,000/-, Rs.9,500/- and Rs. 10,500/- per square foot. However, basically such flats were booked through one Mr. Naresh Grover of Nagpur having clientele of either NRIs or high status clients. It was explained vide letter dated 13.03.2014 that the flats/spaces booked through Mr. Naresh Grover was with an understanding that over and above the agreed price between the assessee-company and Mr. Naresh Grover, the difference in the amount would be paid to Mr. Naresh Grover. The average of booking was worked out @ Rs.5,929/- per square foot.

4.6. The assessee-company filed confirmation of account of Mr. Naresh Grover for Financial Years 2010-11 and 2011-12, copy of letter dated 28th June 2012 to Mr. Naresh Grover, copies of sample letter of exchange between Mr. Naresh Grover and the assessee and ledger account of Mr. Naresh Grover evidencing crediting his account of differential amount.

4.7. So far as the website is concerned, it was submitted during the course of assessment proceedings that such website is not owned by it and does not belong to it but it was hosted by one property dealer Mr. Sanjay Singh. In relation thereto, the

assessee filed letters dated 23rd March 2014 and 28th March 2015 and along with the letters, an affidavit of Mr. Sanjay Singh, Prop, of M/s Real Anchors was also filed. In the affidavit, Mr. Sanjay Singh stated that he got the website developed on his own for the promotion of his business.

4.8. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs.54,80,94,533/- on the ground that the assessee company failed to explain the seized documents with supporting evidence. The evidence filed by the assessee according to the AO cannot be relied upon since the affidavit of Mr. Sanjay Singh was not notarized and filed at the very fag end of the year when assessment is going to be barred by time. According to the AO, no broker will develop and upload the website without the knowledge and consent of the developer. Further it was unauthenticated as to why any broker will spend the money for the website when he has not earned any commission from the assessee. Further, the assessee has not filed any income tax particulars of M/s Real Anchors or of Sh. Sanjay Singh Prop. of M/s Real Anchors. The assessee has not filed any FIR with

Ciber Crime Cell of police if the website was developed and uploaded without the permission of the assessee. He, therefore, held that the assessee company has received payment from buyers in cash where the desired cheque amount was not offered by the buyers. He took the rate of the booking offered by the assessee at Rs.9500/-. According to the AO, the rates quoted by a developer is always subject matter of negotiation and is common trade practice of developers that 10% to 15% discount is passed on to the brokers and to the customers in case of direct booking. Therefore, after allowing discount of 15%, the AO adopted the booking rate at Rs.8075 per sq. ft. Since, the assessee has booked total area 255398/- sq. ft. for the total sale consideration at Rs.1,51,42,44,317/- during the year, therefore, the AO by adopting total sale consideration @8075 per sq. ft. Determined the total sale at Rs.2,06,23,38,850/-. The AO accordingly made addition of Rs.54,80,94,533/- to the total income of the assessee being the difference between the sales so determined and sale declared by the assessee.

4.9. The AO further noted that during the post search investigation, Director of the company Sh. Sushant Aggarwal

filed the bank statement of M/s ET Infra developers Pvt Ltd, maintained with the HDFC Bank at S-355, Panchsheel Park, New Delhi as current account no. 02482320001955. On perusal of this bank statement the AO noted that the assessee has made huge payments to various parties for the period between 18.05.2010 to 04.10.2011. The assessee did not explain the nature of transaction in his response to summons u/s 131 of the Income Tax Act, 1961 issued by the Director of Income Tax, (lnv.)(OSD), Unit-1, New Delhi. The assessee did not file the address of the following parties to whom huge payments were made.

1.	R. K. Basin	Rs. 20.00.000/- dated 09.06.2010 A.Y. 2011-12
II.	Rajesh Khetan	Rs. 30,00,000/- dated 29.09.2010 A.Y. 2011-12
III.	MPOS Infrastructure	Rs. 7,99,215/- dated 16.10.2010 A.Y. 2011-12
IV.	Sachin Kashvao	Rs. 24,00,000/- dated 25.10.2010 A.Y. 2011-12
V.	Abhishek Rajgar	Rs. 25,00,000/- dated 07.02.2011 A.Y. 2011-12
VI.	New Height Realtors	Rs. 1,05,00,000/-dated 04.04.2011 A.Y. 2012-
VII.	Rakshak Kapoor	Rs. 30.00.000/- .dated 19.05.2011 A.Y. 2012-13
	Total	Rs. 2,41,99,215/-

4.10. The AO asked the assessee vide show cause letter dated 03.03.2014 to furnish the latest address of the above parties with whom the assessee company has transactions.

4.11. Although, the assessee filed the details, however, the AO did not accept the submission made by the assessee in

absence of filing of the complete address of some of the parties for making independent enquiry regarding the transactions the assessee company had with these parties. According to him, the details filed by the assessee are not authentic as in most of the cases only photocopy of documentation i.e. only the confirmations were filed. The assessee has not filed the documents in support of transactions and also the identity of the persons. The assessee could not establish the identity of the persons and genuineness of the transactions. The AO, therefore, calculated the interest @ 8% on the total advance of Rs.1,06,99,215/- pertaining A.Y. 2011-12 which comes to Rs.8,55,937/-. Accordingly he added the same to the total income of the assessee.

4.12. Similarly, during the course of assessment proceedings, the AO noted that at the time of search in the office of M/s ET Infradevelopers Pvt. Ltd. Page-1 of annexure A-28 of Party D-7 was found. Sh. Sushant Aggarwal in his statement recorded u/s 132(4) and u/s 131(1A) of the Act was purely evasive in his reply regarding unaccounted cash transaction found during the course of search. He, therefore, asked the assessee during the course of assessment

proceedings, to produce the books of accounts for verification along with the seized material. Since, the assessee could not explain the entry of Rs.1,90,00,000/- appearing against Shri Neeraj Arora, the AO made addition of the same to the total income of the assessee.

4.13. Similarly, in absence of production of Mr. Iqbal against whom an amount of Rs.11,21,286/- was credited for site work done, the AO made addition of the same to the total income as unexplained income. Thus, the AO determined the total income of the assessee at Rs.56,99,07,696/-.

5. In appeal, the learned CIT(A), deleted an amount of Rs.54,74,44,533/- out of the addition of Rs.54,80,94,533/- made by the AO on account of unexplained receipt of advance against booking of space in World Trade Tower by observing as under:-

> 6. I *have gone through the above submissions of the appellant and have considered the facts and evidences on record. Alongwith the submissions, the appellant has also provided copy of ledger accounts, other correspondence and material etc. submitted before AO during assessment proceedings.*
>
> 6.1 *The addition has been made on the basis that as mentioned in a website, alleged to be for the appellant's project at Noida (WTT), the rate for booking/sale has been quoted at Rs.9,500/-per sq. ft. whereas the booking disclosed by the appellant at much lower amount. During search, various documents found and seized and it was observed by*

the AO that different rates have been quoted/booked for the same area and the same project varying from Rs.5,000/- to Rs.9,000/-. The AO was not satisfied with the reply of the appellant. During post search proceedings, the reply of the director of the company was also not found convincing and the AO concluded that appellant has received the differential amount between actual receipt and worked out receipt on the basis of advertisement in website as reduced to Rs.8,075/-, in cash, as unexplained income. Accordingly, for the total booked area of 2,55,398 sq. ft., the difference worked out at Rs.54,80,94,533/- and added to the total income of the appellant as unexplained income received in cash.

6.2 *It has been observed that this is the first year of the operation of company as it is incorporated on 13.04.2010, as mentioned in the assessment order. The search action took place on 18.10.2011, and no cash, valuables or any kind of unexplained investment appear to have been found for the year under consideration. During post search proceedings, all the buyers from whom the enquiries were made have confirmed to have given the amount as duly recorded in the books of the appellant. The contention of AO stating that the buyers did not admit to have made such payment in cash as it is beneficial to both the parties has no basis.*

6.3. Regarding veracity of rate quoted in the alleged website of appellant, it is stated by the appellant that the same was made by one Mr. Sanjay Singh, which was not in the knowledge of appellant and therefore cannot be considered as actual price of business and no additions can be made on this ground. I have considered the matter and it is found that the amount mentioned in the said website @9,500 per sq ft. is for the project of the appellant. However, it is not mentioned in the website that whether it is for carpet area, built-up area or super built-up area. The amenities, facilities, quality of construction, special locational benefits and other value added facilities has not been mentioned in the said website. Nothing has been mentioned about the responsible person for contact or any address, as per the snapshot shown in the assessment order. Therefore, whether it is launched by appellant or by Mr. Sanjay Singh will not make any difference as any rate quoted in general, cannot be made any basis for addition, on presumption basis, especially when all such actual receipts have been duly accounted for in the books of the appellant, not doubted by the AO. The post search enquiry also reveals that no "on money" has been paid by such investors. It is only academic to say 'that these affidavit are notarized' or not website actually hosted by Mr. Sanjay Singh, or by appellant, who has made the payments- for website, why Mr. Sanjay Singh has made such website. It is also pertinent to mention

that no prudent businessman will quote very high price, having element of so called "on money" and put it on the public domain. The submissions by the appellant that quoting higher rate will have the element for negotiation while finalizing the deal has force and accordingly the rate quoted in the website are not sacrosanct that it cannot be reduced further. In real estate business, the scope of negotiation is always there and the same is based not only on the capacity of buyer, time schedule for payment but also the prime location, pressing need of the buyer etc. Even presuming that this website is made within the knowledge of appellant, even though it cannot be made the basis of addition as actual transactions for each unit is available and the same has to be taken into consideration. The rates mentioned in the website are indicative and on higher side for the purpose of advertisement so that the same can be negotiated to the satisfaction of both the parties, which is usual practice of business.

6.4. The AO has pointed out that appellant has booked the property at different rates for the same project, for the different clients. Therefore, based on the details seized during the course of search and after examination it was concluded that the booking price declared by the appellant is not true, as there cannot be huge difference for the same building. Further, looking to the confirmation given by various parties, where the transactions are in the range of Rs.7,000/- to Rs.9,500/- per sq. ft., it is considered by the AO that for all sales/booking, the appellant has taken the money in cash, over and above the price mentioned in the books. It seems that while making addition, the AO has based the rates as advertised in the website as well as the documents found during search and post search verifications. In this regard, it is observed that there is no cash or any other unexplained investment etc. found during search to corroborate that such payment has been received by the appellant. Further, for difference in rate of booking/sale between different buyers are explained by the appellant, stating that such high rate of transactions shown in the books are done through a broker Mr. Naresh Grover. The appellant has paid substantial brokerage to Mr. Grover towards booking for such high rate, which is also duly accounted for. In some of the cases the booking was cancelled, hence no brokerage paid. Therefore, the contention of appellant that the difference in rate is due to the booking through broker and the ultimate value of sale has been derived by the appellant within the range of Rs.5,000 to Rs.7,000 sq. ft. has force in it. It is further stated that this rate is also more than the prevailing circle rate and all the transactions are executed above the circle rate and there is no suppression in the sales price and thereby no element of cash

in the sales. As far as the seized documents are concerned, nothing has been mentioned to conclude that any "on money" has been received. Further, no corroborative evidence either at the time of search or later on was brought on record to show that the cash has been transacted. The seized documents have been duly explained by the appellant and the same cannot be made basis for addition in the hands of appellant considering that appellant has received "on money" from all the investors.

6.5. As discussed, post search enquiry does not reveal any "on money" received by the appellant from their customer as they have denied of having made such payments even though in some cases the booking has been made for Rs.7,000/- per sq. ft. It is also accepted by the AO in the assessment order that most of the booking shown by the appellant is between Rs.5,000 to Rs.6,500/- per sq. ft. and average rate of booking is declared @Rs.5,929/- per sq. ft. A perusal of the seized document reveals that rate of booking as admitted by investors varying from Rs.3,850/-per sq. ft. to Rs.9,500/- per sq. ft. Post search enquiry also confirmed the same and no corroborative evidence found to substantiate that appellant has taken such amount in cash towards such booking/sales. The addition has been made on presumption, conjecture and surmises, without any clinching evidence. It is also observed that no action has been taken in the hands of the buyers/investors, who has alleged to have paid unaccounted cash towards such "on money".

6.6. During the course of search the soft data in excel format found and seized from the premises of the appellant which has indicated various transactions. From such data it is seen by the AO that an amount of Rs.6,50,000/- has been mentioned as "cash from Anil Vijlani is yet to come" and amount of Rs.40 lacs has been received from Mr. Manoj Prabhakar in cash, out of the total amount received at Rs.1 crore. In the post search enquiry, the director of the appellant could not explain the same and only stated that these entries are made by accountant and also not provided that which accountant has made such entry. During appellate proceedings, it was contended by the appellant that there is nothing incriminating about the soft data and it is the details of cheques received, cheque due and total sale value of the flat for various parties. Regarding Manoj Prt phakar, Rs.40 lacs were received through 4 cheques of Rs.10 lacs each, duly recorded in the books and with respect to Mr. Anil Vijlani, it is mentioned as there is no dues, hence does not call for any addition.

6.7. In this regard, the contention of appellant is not found acceptable fully because as per the said document, it is clearly mentioned as Rs.6,50,000/- in cash against the name of Mr. Vijlani and the contents of documents are not explained in full and liable for addition in the hands of appellant. With respect to the issue of Rs.40 lacs from Mr. Manoj Prabhakar, it is observed from the documents that nothing has been mentioned about the cash and the payments have been received through cheques as mentioned by the appellant, therefore no interference is required to be made. It is to be pointed out that the addition has been made considering the total sales/booking done by the appellant and applying rate as mentioned by the AO and therefore no separate addition has been made by the AO in this regard.

6.8. Therefore, looking to the facts and circumstances of this case and in law, it is found that this is the first year of the operation of the company, no corroborative evidence found during search to substantiate that "on money" has been received, no unexplained cash, jewellery or other investments found for the year under consideration, nothing has been brought on record to show that appellant is generating unexplained income and all the buyers have confirmed the payments, which is duly accounted for in the books of accounts of appellant, the appellant has duly justified the reason for difference in booking rate between various buyers and the rate quoted in the website has no credence to substantiate that prices cannot be lower than the amount quoted and this is irrespective of the fact that who has launched this website and the addition has been made on presumptions, conjectures and surmises, without any clinching evidence and deserves to be deleted.

6.9 However, as discussed in earlier paragraphs the cash related to Mr. Anil Vijlani amounting to Rs.6,50,000/- is treated as income of the appellant, and sustained accordingly. The appellant gets a relief of (Rs.54,80,94,533/- - Rs.6,50,000/-) Rs.54,74,44,533/-. This ground of appeal is partly allowed."

6. Similarly, he deleted the addition of Rs.8,55,937/- on account of notional interest income by observing as under:-

8. I *have gone through the above submissions of the*

appellant and have considered the facts and evidences on record.

8.1. The addition has been made considering that the advances given by the appellant are not related to its business and interest attributable to such advances has been disallowed at a notional rate of interest @8% per annum. The appellant has duly provided the details to show that these advances are given in due course of business as per its requirement and expediency of business. It is also stated that no interest expenditure has been incurred towards the payment of any unsecured loans. The only interest payment has been made towards the acquisition of land and paid to the Noida authorities, as per the terms and -onditions. The same has also been capitalized towards work in progress. The AO has doubted the genuineness and identity of the persons to whom the advance has been given. In this regard it can be stated that it is not a case of unexplained credit and the payments have been made through account payee cheques and shown as debtors and receivable by the appellant. As mentioned by appellant, most of the advances have been received back, subsequently.

8.2 Since, no interest expenditure incurred by the appellant towards such money advanced and also looking to the fact that these advances are given in due course of business as duly explained by the appellant and reproduced earlier, the addition on this ground is not tenable and deserves to be deleted. The appellant gets a relief of Rs.8,55,937/-. This ground of appeal is allowed.

7. The learned CIT(A) also deleted the addition of Rs. 1,90,00,000/- made by the AO on account of unaccounted cash transaction by holding as under:-

10. I have gone through the above submissions of the appellant and have considered the facts and evidences on record.

10.1 *The addition has been made on the basis of seized documents where 6 entries are made. The AO has considered the explanation of the appellant with regard to five entries and no addition is made. However in the case of Neeraj Arora, Rs.1,90,00,000/- was mentioned in the said seized document whereas the appellant contended that this is actually Rs.19,00,000/- and inadvertently one extra zero*

has been mentioned against the name of Mr. Neeraj Arora. The appellant provided the affidavit of Mr. Neeraj Arora and also contended that Rs.19 lacs has been paid by Sh. Neeraj Arora on 19.06.2010. He has made a booking for a flat of 2364 sq. ft @ Rs.5,500/- per sq. ft. with a total consideration of Rs.1,30,02,000/-. Part payments made at Rs.51 lacs on 14.06.2010 and Rs.19 lacs on 19.06.2010. Subsequently, the booking was cancelled and the amount refunded to Sh. Neeraj Arora.

10.2 *During search, nothing has been found to substantiate that there is a cash receipt from Mr. Neeraj Arora for such amount, except the said seized document. As mentioned, Rs. 1,90,00,000/- was recorded as one zero has been added inadvertently. The appellant has demonstrated that the transaction of Rs.19 lacs are duly accounted for in the books of appellant. The booking for flat was cancelled and the amount received was refunded. There cannot be any cause or reason to make such payments in cash, especially when the booking has been cancelled. No buyer would make such cash payment, in advance for a deal which was not fully confirmed and cancelled later on. The buyer has also provided an affidavit that he has not paid such amount in cash. Though the affidavit has been doubted by the AO, however the fact remains that nothing has been brought on record as evidence to substantiate that such cash payment has been received by the appellant. Further, the AO has accepted the other entries recorded in the seized document.*

10.3 Therefore, in view of the facts and circumstances of the case, where it is not substantiated by any corroborative evidence to prove that such cash has been received by the appellant and the theory of receipt of such cash is not based on any cogent reasoning, the booking has been cancelled subsequently, the amount of Rs.19 lacs has been duly reflected in the books of the appellant and other submissions made by the appellant and relying upon the judgments, it is held that the figure Rs. 1,90,00,000/- is an error and without any basis and therefore the same cannot be added to the income of the appellant and directed to be deleted. Here it is to be mentioned that the AO has made a total addition of Rs.1,90,00,000/-, whereas out of that, Rs.19 lacs have been duly shown as recorded in the books and therefore the actual addition should have been Rs.1,71,00,000/-. However, the addition made in the assessment order is directed to be deleted and appellant gets a relief of Rs.1,90,00,000/-. This ground of appeal is allowed."

8. So far as the addition of Rs.11,21,286/- on account of unexplained transaction with Mr. Iqbal is concerned, he sustained an amount of Rs.3,54,974/- and deleted the balance amount by observing as under:-

> *"12. I have gone through the above submission of the appellant and have considered the facts and evidences on record.*
>
> *13. It is observed from the ledger account of Mr. Iqbal that the total amount shown as credit for the year under consideration at Rs.11,21,286/-. Out of the same, credit balance of Rs.5,84,Oil/- has been shown as carried over and during the year a total amount of Rs.5,37,275/- has been paid. The payments have been made in cash as well as through cheque. The total payments made through cheque is (Rs.1,16,841/ + Rs.2,92,922/-) Rs.4,09,769/-. No bills produced by the appellant nor anything substantiated to show any work done by Mr. Iqbal in this regard. As per the form 16A provided for the period under consideration, the payment to Mr. Iqbal has been shown at Rs.7,66,312/-, on which the tax has been deducted at source. All TDS has been made on 31.03.2011, though credited on various dates. Therefore, in the background of these facts as the appellant has not been able to substantiate and established the payments so made to Mr. Iqbal, the claim of appellant cannot be considered fully. Since tax has been deducted at source and payments have been made through cheques, in part, therefore the amount is allowed to the extent of Rs.7,66,312/- only, which relates to the TDS and the balance addition of Rs.3,54,974/- is sustained. Further the appellant required to deduct tax source, in view of provisions of section 194C of the Act, on full amount of Rs.11,21,286/-. However, the tax has been deducted only on payments of Rs.7,66,312/-. Thus, the balance amount of Rs.3,54,974/- is not an allowable expenditure in view of provisions of section 40(a)(ia) of the Act. Therefore, the same is accordingly sustained. This ground of appeal is partly allowed."*

9. Against such relief granted by the learned CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.54,74,44,533/$_T$, made by the AO on account of unexplained receipt of advance against booking of space in World trade Tower, without appreciating the detailed reasons given in the assessment order and entirely on the basis of the submission of the assessee.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.54,74,44,533/-, made by the AO on account of unexplained receipt of advance against booking of space in World Trade Tower, by holding that rate quoted in the website has no credence without appreciating the fact that the rates quoted on the official websites of the real estate companies are always authentic as no company will quote higher rates in the website which may dissuade the potential buyers.*

3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.54,74,44,533/-, made by the AO on account of unexplained receipt of advance against booking of space in World Trade Tower, by holding that the above addition is based on presumptions, conjectures and surmises without appreciating the detailed findings given by the AO wherein it has been clearly mentioned that evidences were found regarding receipt of "on money" by the assessee.*

4. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.8,55,937/-, made by the AO on account of notional interest income calculated @8% on an amount of Rs.1,06,99,215/-, on the ground that these advances were given in due course of business without appreciating the fact that no such evidence was submitted by the assessee before the AO.*

5. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting*

the addition of Rs.1,90,00,000/-, made by the AO as unaccounted cash receipt u/s 68, by accepting the contention of the assessee that an extra zero was added without appreciating the fact the figure of Rs.1,90,00,000/- was clearly mentioned in the seized document and onus was on the assessee to disprove it which the assessee failed to discharge.

8. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in allowing relief of Rs.7,66,312/-, out of addition of Rs. 11,21,286/- made by the AO as unexplained credit as the creditor failed to appear before the AO in response to the summon u/s 131, without appreciating the fact that the onus was on the assessee to establish the identity and creditworthiness of creditor and genuineness of transaction which the assessee failed to discharge either during the assessment proceeding or during the appellate proceeding.*

10. The assessee has also filed cross objection challenging the addition sustained by the learned CIT(A) being addition of Rs.6,50,000/- out of total addition of Rs.54,80,94,533/- and Rs.3,54,974/- out of Rs.11,21,286/- by raising the following grounds:-

i. *That on the facts & circumstances of the case and in law the order passed by CIT(A) is contrary to the facts & bad in law.*

ii. *That on the facts & circumstances of the case and in law the CIT(A) was not justified in upholding addition of Rs.6,50,000/- allegedly pertaining to cash received from Mr. Vijlani, out of total addition of Rs.54,80,94,533/- without any evidence only on surmises & conjectures.*

iii. *That on the facts & circumstances of the case and in law the CIT(A) was not justified in upholding addition of Rs.3,54,974/- out of payment of Rs.11,21,286/- made to contractor Mr. Iqbal on the ground that no TDS was*

deducted on this amount ignoring the fact that appellant has not claimed any expenditure in respect of the said amount.

11. Ground of appeal nos. 1, 2 and 3 filed by the Revenue and ground of appeal no. 2 of the Cross objection filed by the assessee relate to the part relief granted by the learned CIT(A) in deleting the addition of Rs.54,74,44,533/- out of addition of Rs. 54,80,94,533/- made by the Assessing Officer on account of unexplained receipt of advance against booking of space in World Trade Tower.

12. The learned DR submitted that the learned CIT(A) was not justified in deleing the huge addition made by the Assessing Officer. Referring to para 4.1 of the assessment order, he submitted that the AO noted that the launch price for booking space in the project was Rs. 9500/- per sq. ft. as per website of M/s ET- Infra Developers Pvt. Ltd. Referring to para 4.2 and page 3 of the assessment order, he drew the attention of the Bench to page nos. 1 to 34 of A-31 party D-7, which was relied by the Assessing Officer and the Assessing Officer has noted that the rate of booking varied from Rs.3850 to Rs.9500/- per sq. ft. Referring to para 4.2 of the assessment order, he submitted that the Assessing Officer has noted that

one of the customers has admitted that the booking rate was Rs.9500/- per sq. ft. He submitted that the excel data seized from the office of the assessee company also revealed the fact of the receipt of unaccounted cash as advance against booking of space to various investors. Referring to page 5 of the assessment order, the ld. DR drew the attention of the Bench to Q.12 put to Mr. Sushant Agrawala regarding cash receipt of Rs.86,70,816/- against booking of Unit 617-618 as per page No.10 of Annexure A-24 found and seized from C-1, Sector-16, Noida. He submitted that although the same was confronted to the Director of the assessee company Mr. Sushant Aggarwal, however, he evaded in his reply by stating that the same is not in his handwriting and this page do not belong to him or his staff or management. He submitted that since the assessee has booked the flats in the range of Rs.5000/- to Rs.6500/- per sq. ft. whereas some of the units were sold @ Rs.7000/- to 9475/- per sq. ft. and since Shri Sushant Aggarwal, Director of the assessee company was evasive in his reply, therefore, the Assessing Officer in the instant case is fully justified in adopting the rate @ 8075/- per sq. ft. of the total area of 255398 sq. ft. After considering the amount already declared

by the assessee on account of such booking of space in World Trade Tower, the AO made the addition of Rs.54,80,94,533/- which is fully justified. He submitted that the learned CIT(A) without any cogent reason has deleted the addition. He submitted that the assessee has not taken any legal action against the person who has created the website and was running such website. He accordingly submitted that the order of the learned CIT(A) be reversed and that of the Assessing Officer be restored.

13. The learned counsel for the assessee, on the other hand, heavily relied on the order of the learned CIT(A) to the extent, he has granted relief. Referring to page 69 to 83 of the volume-1 of the paper book, he submitted that seized paper was explained before the AO vide letter dated 13th March, 2013 and the booking amount is duly credited in the books of account and the AO has not doubted about that. Referring to page 88 of the paper book of Volume-1, he submitted that the Annexure-A.31/D-7 page 1 to 34 placed at page 5 to 38 of volume-2 of the paper book contains all the details of booking, rate of booking and amount received at the time of booking including reconciliation. Referring to pages 21 to 30 of volume-

1 of the paper book, he submitted that the annexed paper seized was explained before the learned CIT(A). Referring to page 111 of volume-1 of the paper book, he submitted that the booking amount as per seized material is less than the booking amount shown in the books of account. So far as the, website is concerned, the learned counsel for the assessee drew the attention of the Bench to page 47 to 54 of paper book Volume I and submitted that vide letter dated 25.03.2014 addressed to the Assessing Officer, the issue was explained along with affidavit of Mr. Sanjay Singh. The same was also explained to CIT(A) as per page 13 to 19 of paper book Volume-I.

14. The learned counsel for the assessee submitted that the company was incorporated in 13.03.2010 and therefore this is the first year of the assessee company. He submitted that at the time of booking, the assessee had collected the funds and paid to the Noida Authority. He submitted that it is the discretion of the assessee to book the flat at lesser price and the Department cannot force the assessee to sell at a particular rate. He submitted that the Revenue cannot compel the assessee to sell the goods at particular price. For the above proposition, he relied on the following decisions:-

1. CIT v. Raman & Co. (1968) 67 ITR 11 (SC)

2. Commissioner of Income-tax v. Calcutta Discount Company Ltd. [1973] 91 ITR 8 (SC)

3. Sri Ramalinga Choodambikai Mills Ltd. v. Commissioner of Income-tax [1955] 28 ITR 952 (Mad)

4. S. Sivan Pillai vs Commissioner Of Income-Tax (1958) 34 ITR 328 (Mad)

14.1 As far as page 10 of Annexure A-24/D-7 is concerned, the ld. Counsel for the assessee submitted that the assessee has explained that it reveals the area of flat and unit Nos.617 and 618. Unit No. 617 was sold to Mr Sudhir Goel on 17* November 2010 and unit No. 618 was sold to M/s Kapish Printpack Pvt. Ltd. on 2nd December 2012 and in fact there are two individual transactions of sale of two different units to two different independent parties. Referring to copies of account of Mr. Sudhir Goel and M/s Kapish Printpack Pvt. Ltd. placed at pages 79 to 82 of the paper book, Volume-I, the ld. Counsel for the assessee submitted that from Mr. Sudhir Goel, the assessee had received Rs. 10,00,000/- on 17th November 2010, whereas from M/s Kapish Printpack the amount of Rs. 10,00,000/- was

received on 2nd February 2012. He submitted that in the said paper, the figure of Rs.86,71,816/- is there against which cash is mentioned but no inference of cash receipt can be drawn. This figure indicated to be a strike price offered by Sudhir Goel for sale of unit measuring 1734.1632 sq ft. and if we divide the figure of amount by area, it would work out Rs.5,000/- per square foot which was not accepted by the assessee and ultimately sold at the rate of Rs.6,000/- per square feet.

15. He submitted that during the course of search on 18.10.2011, no cash, valuables or any kind of unexplained investment was found. He submitted that if the version of the Assessing Officer is accepted that the assessee has earned so much income, then at least some cash, valuables or other investment would have been found during the course of search, whereas, in the instant case, no such cash, valuables or any kind of investment was found.

15.1. So far as the allegation of the Assessing Officer that the buyers did not admit to have made such payment in cash as it is beneficial to both the parties is concerned, he submitted that it has no basis and the entire addition made by the

Assessing Officer was merely on the basis of presumption and surmises. He submitted that all the persons who have booked the space in the property have confirmed that they have booked at the price at which the same has been recorded in the books of accounts. He submitted that the AO in the instant case has not brought any cogent evidence on record or corroborative material to prove that the assessee has received any 'on money' from the customers/clients who booked space in the proposed building over and above the price shown in the books of account except the price quoted in the website. Relying on various decisions, he submitted that the addition made by the Assessing Officer in the instant case is not justified since the assessee can always sell its property at a lower price than the advertised price and there is no evidence whatsoever that the assessee has received any on money.

16. The learned counsel for the assessee submitted that the assessee is a real estate developer and as per AS-9 issued by ICAI, income has to be recognised on the basis of percentage completion method. He submitted that as per such guidance note unless and until the assessee completes at least 25% of the salable area or had received 10% of the total realisable

value, income cannot be considered to have accrued. He submitted that since the assessee in the instant year has booked less than 25% area and has not realised 10% of the project cost, therefore, no income has accrued to the assessee during this year and therefore, the Assessing Officer could not have assessed the whole amount as taxable during this year. He also relied on the following decisions:-

i. Umacharan Shaw & Bros. Vs CIT reported in (1959) 37 ITR 271 (SC)
ii. CIT vs A. Raman & Compnay 1968 AIR 49, 1969 SCR(1) 10(SC)
iii. CIT vs Shoorji Vallabhdas and Co. (1962) 46 ITR 144 (SC)
iv. CIT vs Calcutta Discount Co. Ltd. 1974 AIR 1358, 1973 SCR(3) 952 (SC)
v. Godhra Electricity Co. Ltd. vs CIT (1997) 225 ITR 746/139(SC)
vi. Central Bureau of Investigation vs V.C. Shukla &b Ors. (1998) 3 SCC 410 (SC)
vii. A.S. Sivan Pillai vs CIT (1958) 34 ITR 328 (Mad.)
viii. ITO vs W.D.Estate (P.) Ltd. (1993) 45 ITD 473(Mum. Trib.)
ix. ACIT vs Sat Pal Pandit & Co. (1998) 66 ITD 12 (Asr. Trib.)

17. So far as the amount of Rs.6,50,000/- sustained by the learned CIT(A) is concerned, the learned counsel for the assessee submitted that the amount of Rs.6,50,000/- has not

been received by the assessee since the seized document mentions that the cash from Shri Anil Vijlani is yet to come. Since, the amount has not been received by the assessee during the year, therefore, the learned CIT(A) was not justified in sustaining the addition of Rs.6,50,000/-. He accordingly submitted that the addition sustained by the learned CIT(A) also be deleted.

18. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.54,80,94,533/- to the total income of the assessee on the ground that the assessee has shown the rate of booking in the range of Rs.5000/- per sq. ft. to 6500/- per sq. ft whereas, the website of the assessee quoted the rate @9,500/- sq. ft. According to the Assessing Officer, during the course of search, documents found and seized show that different rates have been quoted/booked for the same area and the same project varying from Rs.5,000/- to Rs.9,000/-. He, therefore, adopted the average rate @ Rs.8075/- on the total area of 255398 sq. ft.

and considered the total sale consideration of Rs.2,06,23,38,850/-. After giving credit to the sale already declared by assessee, the AO made addition of Rs.54,80,94,533/- being the difference. We find the learned CIT(A) deleted the addition basically on the following grounds:-

(i) The year under appeal is the first year of operation of the company as it is incorporated on 13th April 2010.

(ii) In the search account, which took place on 18th October 2011, no cash, valuables or any kind of unexplained investment appear to have been found for the year under consideration.

(iii) During the course of post search proceedings, all the buyers from whom the enquiries were made have confirmed to have given the amount as duly recorded in the books of the appellant.

(iv) The contention of the AO stating that the buyers did not admit to have made such payment in cash as it is beneficial to both the parties have no basis.

(v) As far as the veracity of rate quoted in the alleged website of the appellant, the appellant denied to have owned the same and was not in the knowledge of the appellant. In the website, the rate has been given at Rs.9,500/- per square foot for that project of the appellant. However, it is not mentioned in the website that whether it is for the carpet area, built-up area or super built-up area. The amenities include quality of construction, special locational benefits and other value added facilities have not been mentioned in the website.

(vi) Nothing has been mentioned about the responsible person for contract or any address as per the snapshot shown in the assessment order. Therefore, whether it is launched by the appellant or by Mr. Sanjay Singh will not make any difference as any rate quoted in general cannot be made the basis for addition on presumption basis, more particularly when all such actual receipts have been duly accounted for in the books of the appellant nor douted by the AO.

(vii) Post such enquiry reveals that no "on money" has been paid by such investors. Therefore, it is only academic to say that the affidavit of Mr. Sanjay Singh is notarized or not, website actually hosted by Mr. Sanjay Singh or the appellant who has made payment for website etc. The quotation for higher rate in the website will have the element of negotiation while finalizing the deal and accordingly the rates quoted in the website are not sacrosanct.

(viii) In the real estate business, the scope of negotiation is always there and the same is based not only on the capacity of buyer, time schedule for payment but also the prime location, present need of the buyer etc.

(ix) The rates mentioned in the website are only indicating and are on higher side for the purpose of advertisement so that the same can be negotiated to the satisfaction of both the parties and is an usual practice in the business of real estate.

(x) During the course of search, no cash or any other unexplained investment etc. has been found to corroborate that any on money has been received by the appellant. The difference in rate of booking/sale between different buyers has been explained by the appellant, particularly that such high rate of transaction shown in the books is done through a broker Mr. Naresh Grover and the differential amount between the booking made by Mr. Naresh Grover and the actual price fixed between the assessee and Mr. Naresh Grover has been actually paid and accounted for in the books of account. In some cases of Mr. Naresh Grover, the high rate booked was cancelled and no brokerage was paid to Mr. Naresh Grover. Accordingly, the actual price derived by the appellant is within the range of Rs.5,000/- to Rs.7,000/- per square foot which is also more than the prevailing circle rate and all the transactions have been made above the circle rates.

(xi) As far as seized documents are concerned, it cannot be concluded that any "on money" has been received by the assessee coupled with the fact that no corroborative evidence either at the time of search or later on was brought on record to show that the cash has been transacted.

(xii) *No action has been taken by the AO/Department in hands of the buyers/investors who allege to have paid unaccounted cash towards "on money".*

18.1. We do not find any infirmity in the order of the learned CIT(A) on this issue of deleting the addition made by the Assessing Officer. It is an admitted fact that this is the first year of the operation of the company and during the course of search no cogent or corroborative evidence was found to substantiate the receipt of "on money" from any of the buyers. Further, no cash, jewellery or other valuables or investment was found. We, therefore, find force in the argument of the learned counsel for the assessee that had such huge amount been received at the time of booking of flats in cash as alleged by the Assessing Officer, then some short of unaccounted cash, jewellery or other valuables or investment would have been found whereas nothing of that short has been found.

19. So far as the website is concerned, quoting the rates @ 9,500/- per sq. ft. per se in our opinion cannot be sacrosanct in absence of any other corroborative or cogent evidence found during the course of search. The buyers to whom the space has been sold have confirmed the rate as declared by the assessee in its books of accounts. Merely saying that it suits the buyers as they have invested their black money in cash and it is beneficial to both the parties, in our opinion, is not sufficient to

fasten such huge liability in the hands of the assessee by merely stating that there is unholy agreement between the buyer and the seller. The various instances given by the Assessing Officer at para 4.2 of the assessment order, wherein, he issued summons to nine parties and these rates are already recorded in the books of account and there is no discrepancy. We find merit in the arguments of the learned counsel for the assessee that the Revenue cannot force the assessee to sell its space at a particular rate and the department cannot dictate terms to the assessee to sell at a particular rate. The whole addition made by the Assessing Officer in the instant case, in our opinion is purely based on presumptions and surmises and not based on any cogent or corroborative evidence. Since, the buyers to whom the space have been sold have admitted to have purchased at the price shown by the assessee in the books of account and since no addition has been made in the hands of those buyers and the basis of entire addition is on account of the price quoted in website, therefore, we find force in the arguments of the learned counsel for the assessee that such addition made by the AO merely on presumptions and surmises is not sustainable. We find the website does not give

the rate as to whether it is carpet area or built up area or super built up area or the amenities, the quality of construction, special locational benefits and other value added facilities, etc. Nothing has been mentioned about the responsible person for contact or any address, as per the snapshot shown in the assessment order. Even the post search enquiry also does not reveal any "on money" paid by any of the investor.

20. So far as page No.10 of Annexure A-24 found and seized from C-1, Sector 16, Noida having cash receipt of Rs.86,70,816/- for booking of Unit No.617 and 618 is concerned, we find the assessee has already demonstrated that these are two independent units sold to two different persons and in fact the assessee has sold the above two flats @ Rs.6000/- per sq. ft. Whereas the average price of the two flats comes to Rs. 5000/- per sq. ft. We, therefore, find merit in the argument of the ld. Counsel for the assessee that the same cannot be the basis for making huge addition by adopting the rate of Rs.8,075/- per sq. ft.

21. We also find force in the argument of the learned counsel for the assessee that as per the guidance note issued by the ICAI in AS-9, income has to be shown on percentage completion method if the assessee company has sold at least 25% of the total salable area or had received 10% of the total realisable value of the project. Since, the Assessing Officer in the instant case has himself noticed that the assessee has booked less than 25% of the area during the year (booking of 295000 sq. ft. out of 17,38,000 sq. ft.) and has not realised 10% of the project cost, therefore, he is not justified in assuming that the whole amount is taxable in the year under consideration. Since, there is no iota of evidence that the assessee has received any extra money over and above the booking rate shown by the assessee in the books of account and the entire addition in our opinion is based on surmises, conjectures and presumption, therefore, in view of the above discussion and in view of the detailed reasoning given by the learned CIT(A) on this issue, we do not find any infirmity in his order deleting the addition of Rs.54,74,44,533/-. Accordingly the order of the learned CIT(A) on this issue is upheld and the grounds raised by the Revenue are dismissed.

22. So far as the addition sustained by the learned CIT(A) amounting to Rs.6,50,000/- as per ground no. 2 of the Cross objection is concerned, we find the learned CIT(A) has given a finding that as per seized documents in the excel form found and seized from the premises of the assessee against the amount of Rs.6,50,000/-, it is mentioned that "cash from Anil Vijlani is yet to come". From, the very beginning, the assessee was stating before the AO that it has not received any cash from Mr. Vijlani and whatever amount is received from him is by cheque only. Further, the AO has never confronted Mr. Vijlani nor any addition has been made in his hands for giving such unexplained cash to the assessee. Therefore, once, it is mentioned that Rs.6,50,000/- is yet to come from Shri Anil Vijlani, no addition in our opinion is called for. We, therefore, find merit in the arguments of the learned counsel for the assessee that the learned CIT(A) is not justified in sustaining the addition to the tune of Rs.6,50,000/-. Accordingly, the same is directed to be deleted. The ground raised by the assessee in the cross objection is accordingly allowed.

23. Grounds of appeal no.4 raised by the revenue relates to the order of the learned CIT(A) in deleting the addition of Rs.8,55,937/- on account of notional interest.

24. The learned DR heavily relied on the order of the AO.

25. The learned counsel for the assessee on the other hand, while supporting the order of the learned CIT(A) on this issue submitted that these advances are given during the course of business and therefore, there is no question of earning of any notional interest.

25.1 Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Shoorji Vallabh Das & Co. reported in 46 ITR 144 (SC), he submitted that the Hon'ble Supreme Court has held that under the Income Tax Act, the real income only has to be assessed to tax and not the hypothetical income even though an entry has been made in the books of account.

25.2 Referring to the decision of the Hon'ble Guwahati High Court in the case of Highway Construction Co. Pvt. Ltd. vs CIT reported in 199 ITR 702 (Guwahati), he submitted that the Hon'ble High Court has held in the said decision that no

notional income in the form of interest can be assessed to tax because charging of interest from any party is the discretion of the assessee and the Act cannot compel an assessee to charge the interest. However, where the assessee has utilized the interest bearing borrowed funds in making interest free advances, not meant for business purposes, the proportionate interest in terms of Section 36(1)(iii) of the Act may be disallowed.

25.3 He submitted that in the instant case, the advances has been made for the purpose of business, therefore, the question of charging notional interest does not arise at all. Further, there is no interest bearing borrowed funds which have been advanced to these persons. The interest accounted in the books of account represents the interest paid to Noida Authorities against allotment of land on instalment basis and not on borrowed funds. He accordingly submitted that the order of the learned CIT(A) be upheld and the ground raised by the Revenue be dismissed.

26. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the

assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.8,55,937/- being notional interest @ 8% on amount of Rs.1,06,99,215/- advanced to various parties. We find the learned CIT(A) deleted the addition made by the AO, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT(A) on this issue. Admittedly, no borrowed funds have been utilized for giving advances to various parties as alleged by the AO in the assessment order, since no interest has been debited in the Profit & Loss Account on account of borrowed funds and whatever interest has been charged in the Profit & Loss Account represents the interest paid to Noida Authorities against allotment of land on which payments have been made on instalment basis and not on borrowed funds. Further, the assessee has proved before the learned CIT(A) by filing various details to show that these advances were given during the course of business as per its requirement and expediency of business. Further, the learned CIT(A) has given a finding that most of the advances have been received back subsequently. Since, the assessee in the instant case has

advanced the amount to various parties during the course of its business activity and no borrowed funds have been utilized for making such advances, therefore, charging of notional interest on such advances, in our opinion is not justified.

26.1 The Hon'ble Supreme Court in the case of CIT vs Shoorji Vallabh Das & Co. (Supra) has held that under the Income Tax Act, the real income has to be assessed to tax and not the hypothetical income even though an entry has been made in the books of account. We find the Hon'ble Guwahati High Court in the case of Highway Construction Co. Pvt. Ltd. vs CIT (supra) has held that no notional income in the form of interest can be assessed to tax because charging of interest from any party is the discretion of the assessee and the Act cannot compel an assessee to charge the interest especially when no borrowed funds have been utilized for making interest free advances. Since, in the instant case, the assessee has substantiated with evidences to the satisfaction of the learned CIT(A) as well as before us that such advances have been made for the purpose of business and no interest bearing funds have been utilized, therefore, we do not find any infirmity in the order of the learned CIT(A) on this issue. Accordingly, the ground raised by

the Revenue on this issue is dismissed.

27. Ground of appeal no.5 filed by the Revenue relates to the order of the learned CIT(A) in deleting the addition of Rs.1,90,00,000/- made by the Assessing Officer as unaccounted cash receipt u/s 68 of the Act.

28. The learned DR while supporting the order of the Assessing Officer submitted that the addition was made by the Assessing Officer on the basis of a lose paper marked as page 1 of Annexure D-28/D-7, wherein the names of some parties are mentioned therein and against all such parties, numerical figures are also stated. Since, the assessee could not explain the amount mentioned in the said seized lose paper against Mr. Neeraj Arora, therefore, the Assessing Officer made the addition. He submitted that the learned CIT(A) without considering the factual position has deleted the addition which is not justified. He accordingly submitted that the order of the learned CIT(A) be reversed and that of the Assessing Officer be restored.

29. The learned Counsel for the assessee on the other hand, while supporting the order of the learned CIT(A)

submitted that the addition has been made on the basis of seized lose papers marked as page-1 of Annexure D-28/D-7 copy of which is placed at page 2 to 3 of the paper book Volume-II. Referring to the said paper book, he submitted that addition has been made on the basis of seized documents where six entries are made. The AO has considered the explanation of the assessee with regard to five entries for which no addition has been made. However, in respect of one of the entries in the name of Neeraj Arora for Rs.1,90,00,000/-, the Assessing Officer made the addition.

30. He submitted that during the course of assessment proceedings, it was explained vide letter dated 25.03.2014 copy of which is placed at page 42 of the paper book Volume-1, that the said party had given an amount of Rs.19,00,000/- to the assessee which was subsequently repaid. However, inadvertently and by mistake, the recording clerk noted the amount at Rs.1,90,00,000/- by adding an extra zero. He submitted that to substantiate the same, the assessee filed an affidavit of Mr. Neeraj Arora and his account details. It was explained before the Assessing Officer that Mr. Neeraj Arora had made a booking for a space of 2364 sq. ft. @ Rs.5500 per

sq. ft. for a total consideration of Rs.1,30,02,000/- and made a part payment of Rs.51,00,000/- on 14.06.2019 and Rs.19,00,000/- on 19.06.2019. Later on the booking was cancelled and the amount was refunded to him which was explained vide letter dated 10.11.2014. He submitted that it is strange that a person who made a booking for a flat worth of Rs.1,30,02,000/- and had already made payment by cheque of Rs.70,00,000/- would further pay an amount of Rs.1,90,00,000/- in cash. He submitted that it is not out of place to mention here that the closing credit balance payable to Mr. Neeraj Arora as on 31.03.2011 is in fact Rs.19,00,000/- as per the ledger account of the assessee. He submitted that it was a human mistake jotted down in figure in front of Mr. Neeraj Arora at Rs.1,90,00,000/- instead of Rs.19,00,000/-.

31. He submitted that the Assessing Officer except the jotting on the papers, has not brought any material on record to prove the entry of Rs.1,90,00,000/- in the name of Mr. Neeraj Arora or Mr. Neeraj Arora had actually spent an amount of Rs.1,90,00,000/-. Referring to the decision of Hon'ble Supreme Court in the case of CBI vs V.C. Shukla in [1998] 3 SCC 410(SC), he submitted that the Hon'ble Supreme Court in the

said decision has held that the entries in a loose paper cannot be relied upon in the absence of corroborative evidence brought on record. He submitted that the Assessing Officer in the instant case has not brought any cogent or corroborative material on record to substantiate the same whereas on the contrary it is clear from the account of Mr. Neeraj Arora as well as his affidavit that the actual amount of entry is Rs.19,00,000/- only. He submitted that the learned CIT(A) has correctly noticed such mistake and after examination of the same has deleted the addition. He accordingly submitted that the order of the learned CIT(A) be upheld and the ground raised by the Revenue should be dismissed.

32. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case on the basis of loose paper marked as page 1 of Annexure D-28/D-7 made addition of Rs.1,90,00,000/- which was appearing against the name of Mr. Neeraj Arora. In the said page, there were six entries out of which the Assessing Officer accepted the 5 entries

and the addition was made only in respect of one of entry in the name of Mr. Neeraj Arora for Rs.1,90,00,000/-. We find the assessee during the course of assessment proceedings, vide letter dated 25.03.2014, (copy of which is placed at page 42 of the paper book Volume-1) had explained before the Assessing Officer that the said party had given an amount of Rs.19,00,000/- to the assessee which was subsequently paid and by mistake an amount of Rs.1,90,00,000/- was mentioned by adding an extra zero by the recording clerk. We find the assessee has also filed an affidavit of Mr. Neeraj Arora alongwith his confirmation copy. It was also explained before the Assessing Officer that Mr. Neeraj Arora had made a booking of space of 2364 sq. ft. @ Rs.5,500/- per sq. ft. for a total consideration of Rs.1,30,02,000/- and made a part payment of Rs.51,00,000/- on 14.06.2019 and Rs.19,00,000/- on 19.06.2019. Since, the booking was cancelled; the amount was refunded to Mr. Arora. We find during the course of search nothing was found to substantiate that there is any cash receipt from Mr. Neeraj Arora for such amount except the said seize document. The buyer has confirmed that he has not paid any amount in cash to the assessee. No addition has been

made in the hands of the Mr. Neeraj Arora for such huge cash payment by him to the assessee. Although, the Assessing Officer has doubted the evidence but nothing has been brought on record as evidence to substantiate that such cash payment has been received by the assessee.

32.1 We find the Hon'ble Supreme Court in the case of CBI vs V.C. Shukla (supra) has held that the entries in a loose paper cannot be relied upon in the absence of corroborative evidence brought on record. Since, the Assessing Officer in the instant case has not brought anything on record to substantiate that Mr. Neeraj Arora has in fact paid cash of Rs.1,90,00,000/- to the assessee, therefore, in absence of any other material brought by the Revenue and considering the fact that the Assessing Officer has accepted other five entries in the said seized documents, therefore, we do not find any infirmity in the detailed reasoning given by the learned CIT(A) in his order on this issue. Accordingly, the same is upheld and the ground raised by the Revenue on this issue is dismissed.

33. Ground of appeal no. 6 by the Revenue and ground no. 3 of the Cross Objection filed by the assessee relate to the part relief granted by the learned CIT(A) in deleting

Rs.7,66,312/- out of addition of Rs.11,21,286/- made by the Assessing Officer as unexplained credit.

34. The learned DR submitted that during the year under consideration, the assessee had made payment of Rs.11,21,286/- to one petty contractor Mr. Iqbal for the site work done. Since, there was no compliance to the notice dated 19.02.2014 issued by the AO u/s 131 of the Act by by Mr. Iqbal, the Assessing Officer made addition of Rs.11,21,286/- being the amount paid to him. He submitted that the learned CIT(A) without any valid reason has deleted the same which is not proper. He accordingly, submitted that the order of the learned CIT(A) be reversed and that of the Assessing Officer be restored.

35. The learned counsel for the assessee, on the other hand, while supporting the order of the learned CIT(A) submitted that the assessee had deducted TDS on the amount of Rs.7,66,312/- for which the learned CIT(A) has given relief of Rs.7,66,312/- out of addition of Rs.11,21,286/-.

36. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the

assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.11,21,286/-, since, the assessee failed to produce Mr. Iqbal to whom payment of Rs.11,21,286/- has been made and Mr. Iqwal did not respond to the summons issued u/s 131 of the Income Tax Act, 1961. We find the learned CIT(A) deleted an amount of Rs.7,66,312/- on the ground that the assessee has made payment through cheque of Rs.5,37,275/- during the year and an amount of Rs.5,84,011/- has been carried over. Further, as per the form 16A provided for the period under consideration an amount of Rs.7,66,312/- has been shown on which TDS has been deducted. All TDS has been made on 31.03.2011 and therefore, he allowed the amount of Rs.7,66,312/- only on which the assessee has deducted TDS. We do not find any infirmity in the order of the learned CIT(A) in allowing relief to the tune of Rs.7,66,312/- out of addition of Rs.11,21,286/- made by the Assessing Officer. Admittedly, the assessee has deducted TDS on amount of Rs.7,66,312/- as per Form 16A issued to Mr. Iqbal. Further, payment to the tune of Rs.5,37,275/- had been paid by cheque and an amount of Rs.5,84,011/- has been carried over to next year. Therefore, we

find the order of the learned CIT(A) is reasonable on this issue since he has given relief only to extent of the amount on which the assessee has deducted TDS as per Form 16A issued to the said contractor. Since, the assessee has not deducted TDS on the remaining amount of Rs.3,54,974/-, the learned CIT(A) has rightly sustained the amount. We, therefore, uphold the order of the learned CIT(A) on this issue. Ground raised by the Revenue and ground raised by the assessee in the cross objection on this issue are accordingly dismissed.

37. Ground no.7 and 8 by Revenue being general in nature.

38. In the result, appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is partly allowed.

Order was pronounced in the open court on 28/07/2021.

Sd/- Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 28/07/2021.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi