IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri S. Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.409/Mum/2017

(Assessment Year: 2009-10)

M/s Siroya Developers 101, Kingston Towers, GD Ambekar Marg, Parel Tank Road, Parel – East, Mumbai – 400 033	Vs.	ITO-17(3)(3)[Previously assessed with ACIT-31(3)], Mumbai

PAN – AANFS1544G

(Appellant) **(Respondent)**

Appellant by: Shri B.V Jhaveri, A.R
Respondent by: Shri. Avaneesh Tiwari, D.R

Date of Hearing : 07.08.2020
Date of Pronouncement: 10.09.2020

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax(Appeals)-28, Mumbai, dated 22.11.2016 for A.Y.2009-10, which in turn arises from the assessment order passed by the A.O u/s 143(3) r.w.s 263 of the Income-tax

Act, 1961 (for short "Act"), dated 30.03.2015. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in assessing the appellant ant an income of Rs. 2,05,29,283/-.

2). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in assessing item of income which are not part of the order u/s 263 of the Act. The CIT(A) cannot make an addition on the points on which were not directed in the order passed by the Commissioner of Income-tax u/s 263 of the Act.

3). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in treating amount of Rs. 2,01,22,773/- recovered from Omega Investment and Properties Pvt. Ltd. as a income from Other Sources instead of reducing from the cost of construction of the project. The CIT(A) wrongly confirmed the said amount as "Income from other sources".

4). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not considering the matching concept of accounting thereby reducing the amount received from the expenditure incurred. The appellant submits that the expenditure incurred for which amount received from Omega Investment and Properties Pvt. Ltd. has to be adjusted against each other since the expenses as well as amount received from the Omega Investment and Properties Pvt. Ltd. were for project.

5). Without prejudice to above, the CIT(A) ought to have allowed necessary effect by way of adjustment in closing stock.

6). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not allowing deduction u/s 80IB(10) on the said income of Rs. 2,01,22,733/-.

7). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming treatment of Interest received from a partner of Rs. 53,73,413/- as "Income from Other Sources" instead of a part of the receipt under the head "Profits & Gains from Business".

8). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not allowing set off of the expenditure incurred in respect of interest paid against the interest income from the partner.

9). The appellant submits that the ld. CIT(A) ought to have taken both these items of Interest paid and Interest income under the head "Profits & Gains from business".

10). Without prejudice to above, the CIT(A) ought to have given necessary effect by way of adjustment in closing stock.

11). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not allowing deduction u/s 80IB(10) on income of Rs. 53,73,413/-.

12). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not considering the estimated expenses to be incurred for the valuation of the closing stock and thereby wrongly made an addition of Rs. 13,26,523/- in the valuation of the closing stock. The appellant submit that it has correctly worked out closing stock and which has been consistently adopted and accepted.

13). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming valuation of closing stock as on 31st March, 2009 as arrived at by the Assessing Officer. The appellant submits that if the estimated expenditure is not part of the closing stock then the total accumulated value of the estimated expenditure is to be reduced and in the fact the closing stock will accordingly be at much lower figure.

14). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not considering the estimated expense which were part of the Opening Stock.

15). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in disturbing valuation without basis.

16). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the estimated profit of Rs. 1,05,32,819/- on account of sale of certain flats, which were sold in earlier year and the income of the same was correctly declared and shown & accepted by the department u/s 143(3) of the Act in that year.

The appellant submits that income has correctly been shown in earlier year and has been assailed by the assessing officer after due scrutiny. The CIT(A) erred in not deciding the issue on merit and instead sending back the issue which has already been decided by the A.O.

17). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the estimation of profit which is an arbitrary and without any basis and on surmise and conjectures.

18). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the cost of the flats which were wrongly arrived at by the A.O.

19). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in totally contrary to what has been held by the CIT(A) while valuing the closing stock as on 31/03/2009 for the purpose of addition of the closing stock. The learned CIT(A) himself has taken two total opposite views for the purpose of valuation of stock and for the purpose of working out profitability on sale of flats.

20). On the facts and the circumstances of the case and in law, the learned CIT(A) ought to have allowed deduction u/s 80IB(10) on the total income assessed.

21). On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the interest u/s 234A, 234B & 234C of the Act, though the order is in respect of and

pursuant to direction u/s 263 of the Act. The appellant denies its liability to chargeability of such interest.

22). The appellant craves leave to add, amend, modify, substitute and/or cancel any of the ground of appeal."

2. Briefly stated, the assessee firm which is a builder and a developer had filed its return of income for A.Y 2009-10 on 04/11/2010, declaring its total income at Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment, and the A.O, after inter alia making an addition of deemed dividend u/s 2(22)(e) of Rs. 63,78,083/- and disallowing the assessee's claim for deduction u/s 80IB(10), vide its order passed u/s 143(3), dated 19/12/2011 assessed its income at Rs. 1,50,48,020/-. On appeal, the CIT(A) vacated the addition made by the A.O u/s 2(22)(e) of the Act, but confirmed the disallowance of the assessee's claim for deduction u/s 80IB(10) of the Act. On further appeal the Tribunal upheld the order of the CIT(A).

3. The Commissioner of Income-tax-24, Mumbai (hereinafter referred to as "CIT") called for the records of the assessee and revised the assessment order vide his order passed u/s 263 of the Act, dated 28/03/2014. The A.O giving effect to the order of the CIT, therein passed an order u/s 143(3) r.w.s 263, dated 30.03.2015, wherein he made additions/disallowances aggregating to Rs. 3,73,55,528/- on five issues, viz. (i). treatment of reimbursement of expenses recovered from M/s Omega Investment and Properties Pvt. Ltd. (as were reduced by the assessee from the cost of construction), as income of the assessee from other sources : Rs. 2,01,11,773/-; (ii). treatment of the interest received from one of the partners of the firm (on capital overdrawn) as income from other sources : Rs. 53,73,413/-; (iii). addition to the value of the 'closing stock' : Rs. 13,26,523/-; and (iv). assessing of the sale consideration of the flats in the

year under consideration, as against A.Y 2008-09, as claimed by the assessee : Rs. 1,05,32,819.

4. Aggrieved, the assessee assailed the aforesaid additions /disallowances before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee upheld the impugned additions made by the A.O.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements pressed into service by them. We shall first take up the grievance of the assessee that the lower authorities had erred in assessing the interest received by the assessee firm on the capital overdrawn by one of its partner viz. Shri. Shrenik Siroya, as its income under the head "Other sources". For a fair appreciation of the issue under consideration we shall briefly cull out the facts therein relevant. During the year under consideration the assessee firm had received/paid interest from/to its partners, as under:

Name of Partner	Interest Paid/received	Amount
Shri. N.K Bhandari	Interest paid	Rs. 12,54,813/-(dr)
Shri. Shrenik Siroya	Interest received	Rs. 53,73,413/-(cr)
	Net Interest (received)	Rs. 41,18,600/-(cr)

After netting the interest received/paid, the assessee firm reduced the net balance amount of interest received of Rs. 41,18,600/-(cr) from the total interest of Rs. 2,32,99,308/-(dr) that was paid by it on the interest bearing funds borrowed from third parties. However, the A.O was not persuaded to subscribe to the aforesaid claim of netting of the interest received/paid by the assessee firm from/to its partners, and adjusting of the net balance of

interest received against the interest paid on borrowed funds. Observing, that the capital overdrawn by the partner was a personal transaction and not in the nature of a business transaction the interest of Rs. 53,73,413/- that was received on the capital overdrawn by the partner, viz. Shri. Shrenik Siroya, was assessed by the A.O as the income of the assessee firm from "Other sources". On appeal, the CIT(A) confirmed the view taken by the A.O in context of the aforesaid issue under consideration.

6. Aggrieved, the assessee firm has assailed before us the order of the CIT(A) to the extent he had concurred with the view taken by the A.O, and observed, that the interest of Rs. 53,73,413/- received on the capital overdrawn by the partner, viz. Shri. Shrenik Siroya was rightly assessed as income of the assessee firm from "Other sources". We have given a thoughtful consideration to the issue under consideration. As observed by us hereinabove, the controversy herein involved lies in a narrow compass i.e whether or not netting of the interest received by the assessee firm on the capital overdrawn by its partner was to be allowed against the interest paid to the other partner, followed by adjustment of the net balance amount of interest received against the interest paid by the assessee firm on third party borrowed funds. We find that the issue in context of Sec. 40(b) of the Act had been considered by the CBDT Instruction No. 882[33-D(XXV-24) of 1965], dated 25.09.1975, as under :

> **"Interest charged to a partner on debit balance as well as allowed on credit balance—Whether gross of net interest to be added back**
>
> **25/09/1975**
>
> BUSINESS EXPENDITURE
>
> SECTION 40(b),
>
> The Board have been advised that while there is an express provision in s. 40(b) which expressly prohibits the deduction from the firm's income of any payment by way of interest made to a partner, there is no provision in the Act which provides for

> adjustment of the interest paid by the partner to the firm. In view thereof the gross amount of interest paid to the partner will have to be added back to the income of the firm. The earlier clarification issued in the Circular No. 33D(XXV-24) of 1965 (F. No. 9/55/64-IT(A-I) dt. 8th Nov., 1965, to the effect that where the firm pays interest as well as receives interest from the same partner, only the net interest can be said to have been received or paid by the firm and only such net interest should be taken into consideration, is not in accordance with the provisions of the Act.
>
> The above instructions will apply to all pending assessments. Completed assessments need not be disturbed."

As such, to the extent Sec. 40(b) was concerned, we find that as per the CBDT Instruction No. 882[33-D(XXV-24) of 1965], dated 25.09.1975, even in a case where the firm pays interest as well as receives interest from the same partner, the interest paid alone has to be taken into consideration for the purpose of disallowance under the said statutory provision. But then, the issue before us is that as to under what head of income the interest received by the assessee firm on the capital overdrawn by a partner is to be assessed. We are of the considered view that as the interest bearing borrowed funds of the assessee firm were channelized for overdrawing of capital by the partner, viz. Shri. Shrenik Siroya, which admittedly as observed by the A.O was for non-business purposes, therefore, the correlating interest expenditure pertaining to the amount of capital overdrawn has to be disallowed u/s 36(1)(iii) of the Act. As for the rate of interest received by the assessee firm from its partner, which is found to be in excess as in comparison to the rate on which the funds were raised/borrowed by the firm from third parties, the same only to the said extent is liable to be assessed as the income of the assessee firm from "Other sources". In sum and substance, the interest expenditure correlating to the interest paid by the assessee firm on the funds borrowed is to be disallowed u/s 36(1)(iii), to the extent, the same were advanced to the partner, viz. Shrenik Siroya by way of overdrawing of his capital, and it is only the excess interest so received by the firm from him, if any, which would be assessed under the head "Other sources". Accordingly, we modify

the order of the CIT(A) in terms of our aforesaid observations. The **Grounds of appeal Nos. 7 to 9** are partly allowed.

7. We shall now advert to the grievance of the assessee that the lower authorities had erred in not considering the estimated expenses (to be incurred upto the completion of the project), as was considered by the assessee for valuing the closing stock, and thus, had wrongly made/sustained an addition of Rs. 13,26,523/- on the said count. For a fair appreciation of the issue under consideration we shall briefly cull out the facts leading to the controversy therein involved. As per the stock valuation carried out on 31.03.2009, we find, that the assessee had on an adhoc basis included the amount of estimated expenses of Rs. 2 crore (to be incurred upto the completion of the project), for the purpose of arriving at the cost per square meter. Applying the said cost per square meter, the assesee worked out the value of the closing stock, from which it had reduced the aforesaid amount of estimated expenses of Rs. 2 crore. On the basis of its aforesaid calculations, the value of the closing stock was worked out by the assessee at Rs. 21,24,09,160/-. For the sake of clarity, the valuation of the closing stock as was carried out by the assessee on 31.03.2009 is reproduced as under:

"Stock Valuation as on 31/03/2009

AREA CALCULATION

SIROYA'S SHARE IN AREA

Opening Balance (31/03/2009)	: 3142.13 Sq. Mts
Stock Acquired from Omega not recorded last year	: 107.47 Sq. Mts

VALUATION OF CLOSING STOCK	AMOUNT
PROJECT COST	
Opening Stock (01.04.2008)	: Rs. 13,55,42,560.30
Add: Expense during the year	: Rs. 9,33,35.961.58
Add: Provision for expenses to be incurred in next year.	: Rs. 2,00,00,000.00
Total Cost	: Rs. 24,88,78,521.88

COST PER SQ. MTR.	Total Cost	: Rs. 24,88,78,521.88
	Total Area (Sq. Mtr)	: 3,249.60 Sq. Mtr
	Cost per Sq. Mtr.	:Rs. 76,587.43

Sold Area	: 215.04 Sq. Mtr
Unsold Area	: 3034.56 Sq. Mtr
Valuation of Stock	: Rs. 23,24,09,160/-
Less: Estimated Expenses	: Rs. 2,00,00,000/-
Closing Stock	: Rs. 21,24,09,160/- "

On being called upon to justify the aforesaid valuation of closing stock, it was the claim of the assesee before the lower authorities that it had correctly worked out the same, i.e as per the method of valuation that was consistently followed by it and accepted by the revenue in the preceding years. It was submitted by the assessee that the valuation of stock at cost included estimated expenses (to be incurred upto the completion of the project). Further, it was submitted by the assessee that the estimated expenses were neither debited by it in its profit & loss account nor any provision was made as regards the same. Apart from that, it was averred by the assessee that in case the closing stock was to be valued after excluding the estimated expenses then the same principle ought to be applied for valuing the 'Opening stock, as otherwise, the profits would not reveal the correct picture. However, the A.O did not find favour with the aforesaid claim of the assessee. It was observed by the A.O that as the opening stock was actually the closing stock of the previous year, therefore, if the assessee's claim for recasting of the opening stock was accepted, then the same would lead to a chain reaction of revaluing the closing stock of different assessment years. In support of his aforesaid observation the A.O relied on the judgment of the Hon'ble High Court of Kerala in the case of CIT Vs. Travancore Cochin Chemicals Ltd. (2000) 243 ITR 284 (Ker). Observing, that the opening stock was not the subject matter of the year under consideration as its value was determined on the basis of valuation of closing

stock of the previous assessment year, the A.O revalued the closing stock for the year under consideration, as under:

Closing Stock as on 31.03.2009 including estimated expenses	Rs. 21,24,09,160/-
Closing Stock as on 31.03.2009 including estimated expenses	Rs. 21,37,35,683/-
Addition on account of revaluation of closing stock.	Rs. 13,26,523/-

Accordingly, the A.O made an addition of Rs. 13,26,523/- towards undervaluation of closing stock.

8. On appeal, the CIT(A) did not find favour with the contentions advanced by the assessee and upheld the addition made by the A.O towards suppression in the valuation of stock.

9. Aggrieved, the assessee has assailed the sustaining of the aforesaid addition of undervaluation of closing stock by the CIT(A). We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements pressed into service by them. As observed by us hereinabove, the assessee for the purpose of valuation of its unsold area of 3034.56 Sq. mtr of land had after including on an adhoc basis the estimated expenses of Rs. 2 crore (to be incurred upto the completion of project), therein worked out the cost per square meter at Rs. 76,587.43. Adopting the said rate, the closing stock was initially valued by the assessee at Rs. 23,24,09,160/- [3034.56 Sq. mtr. X Rs. 76,587.43]. But then, the assessee reduced the aforesaid estimated expenses of Rs. 2 crores from the aforesaid value of closing stock, and by so doing, scaled down its value to Rs. 21,24,09,160/-. In the course of the assessment proceeding the A.O rejected the inclusion of the estimated expense (to be incurred upto the completion of project) for the purpose of valuing the closing stock, and thus,

spreading the cost of Rs. 22,88,78,521.88 over the total area of 3249.60 Sq. mtr worked out the rate per square meter at Rs. 70,432.83. Accordingly, by applying the aforesaid rate of Rs. 70,432.83 per Sq. mtr to the unsold area of 3034.56 Sq. mtr the A.O worked out the value of the closing stock at Rs. 21,37,32,649/- Observing, that the value of closing stock of Rs. 21,37,32,649/- that was worked out as hereinabove (by excluding the estimated expenses) was higher than the value of closing stock shown by the assessee at Rs. 21,24,09,160/- (by including the estimated expenses), the A.O made an addition of the differential amount of Rs. 13,26,523/- in the hands of the assessee.

10. We have given a thoughtful consideration to the aforesaid issue under consideration, and find, that the very basis adopted by the assessee for valuing the closing stock (i.e unsold land) was totally fallacious. In fact, the assessee by including on an adhoc basis an amount of estimated expenses (to be incurred upto the completion of project), had by so doing clearly suppressed the value of its closing stock. Including of the estimated expenses (on an adhoc basis) for working out the cost per square meter of the total area (i.e including area sold during the year), and thereafter excluding the entire amount of such estimated expenses from the value of the closing stock clearly reveals suppression of its actual value. As a matter of fact, neither any basis as regards adoption of the amount of the estimated expenses or the working of the value of closing stock (by including estimated expenses) is discernible from the records, nor anything has been submitted before us in support thereof by the ld. A.R in the course of the assessment proceedings. In fact, the only contention of the ld. A.R before the lower authorities as well as before us was that the assessee had consistently been following this method for valuing its closing stock. As observed by us hereinabove, the aforesaid novel method of valuation of closing stock not being a recognized method, and all the more being shorn of any basis,

cannot be subscribed on our part. In our considered view, as the aforesaid method of valuation of closing stock (including estimated expenses) beyond any doubt gives a distorted picture of the profits of the assessee for the year under consideration, therefore, we find no infirmity in the view taken by the lower authorities who had rightly rejected the same. In fact, we endorse the view taken by the lower authorities that in order to deduce the true profits of the assessee for the year under consideration the closing stock was to be valued at cost (i.e after excluding estimated costs). As regards the claim of the ld. A.R that the assessee was consistently following the aforesaid method for valuation of closing stock, the same we are afraid does not find favour with us. As observed by the **Hon'ble Supreme Court** in the case of **CIT Vs. British Paints Ltd. (1991) 188 ITR 44 (SC)**, in a case where an assessee was not following the correct system of accounting and the valuation of the stock-in-trade was likely to result in a distorted picture of the true state of business for the purpose of computing the chargeable income, there even if the assessee had adopted a regular system of accounting, it was the duty of the A.O u/s 145 of the Act, to consider whether the correct profits and gains of the assessee could be deduced from the accounts so maintained. It was observed by the Hon'ble Apex Court that if the A.O was of the opinion that the correct profits could not be deduced from the accounts, he was obliged to have recourse to the proviso to Sec. 145 of the Act. At this stage, we draw support from the judgment of the **Hon'ble Supreme Court** in the case of **Sanjeev Woolen Mills Vs. CIT (2005) 279 ITR 434 (SC).** In the said case as the profits shown by the assessee were only notional and could not be said to be its correct income chargeable to tax, the Hon'ble Apex Court had concluded that the A.O was justified in rejecting the accounts maintained by the assessee for valuation of closing stock. Accordingly, in the backdrop of our aforesaid observations we uphold the rejection of the method of valuation of closing stock by the

assessee (i.e inclusion of estimated expenses), and the revaluation of the same by the A.O. At the same time, we cannot remain oblivious of the fact that valuation of unsold stock at the close of the accounting period is a necessary part of the process of determining the trading results of that period and cannot be regarded as a source of profit. In fact, as observed by the **Hon'ble Supreme Court** in the case of **CIT Vs. Dynavision Ltd. (2012) 348 ITR 380 (SC)**, the true purpose of crediting the value of unsold stock is to balance the cost of the goods entered on the other side of the account at the time of the purchase, so that, on cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions in which actual sales in the course of the year has taken place, and thereby showing the profit or loss actually realized on the year's trading. As such, the entry for stock which appears in the trading account is intended to cancel the charge for the goods bought or available with the assessee as opening stock during the year, which having remained unsold would thus represent the cost of such goods. Accordingly, in our considered view, once the method that was consistently adopted by the assessee for valuation of stock is rejected and the same is substituted by another method by the A.O, therein, in order to deduce the true profits for the year under consideration such an exercise cannot be confined to the valuation of the closing stock alone and has to be extended to the valuation of the opening stock. Our aforesaid view is fortified by the order passed in the case of **CIT Vs. Ahmedabad New Cotton Mills Co. Ltd. (1930) 4 ITC 245, 246 (PC)**. Also, reliance is placed on the judgment of the **Hon'ble High Court of Calcutta** in the case of **CIT Vs. Bengal Jute Mills Co. Ltd. (1992) 107 CTR 34 (Cal)** and that of the **Hon'ble High Court of Madhya Pradesh** in the case of **Radheysham Aggarwal & Co. Vs. CIT (1994) 119 CTR 263 (MP)**. We thus in terms of our aforesaid observations restore the issue to the file of the A.O with a direction that the valuation of the

opening stock may also be carried out as per the method substituted by the A.O for valuing the closing stock. Accordingly, the issue is 'set aside' to the file of the A.O for giving effect to our aforesaid observations. The **Grounds of appeal No. 12 to 15** are partly allowed for statistical purposes in terms of our aforesaid observations.

11. We shall now advert to the claim of the assessee that the CIT(A) had erred in confirming the estimated profit of Rs. 1,05,32,819/- on account of sale of certain flats, which were sold in earlier year and the income of the same was correctly declared and shown & accepted by the department u/s 143(3) of the Act in that year. Succinctly stated, the A.O in the course of the assessment proceedings observed, that the assessee had offered income from sale of Flat Nos. 2203 and 2204 in A.Y 2008-09, during which year it had claimed deduction u/s 80IB(10) of the Act. However, on a perusal of the respective 'agreements to sell', dated 23.05.2008 of the aforesaid properties, it was observed by the A.O that the income arising therefrom should have been offered for tax in the period relevant to A.Y 2009-10. On further verification, it was gathered by the A.O that there were certain other flats whose 'agreements to sell' were though executed in A.Y 2009-10, but the income arising from sale of the same was offered in A.Y 2008-09, as under:

Flat No.	Name	Date of allotment	Date of agreement	Date of possession	Total consideration
903	Manish & Shialesh Chopra	27.01.2004	24.02.2009	01.04.2010	Rs. 37,50,000/-
904	Jayesh & Shialesh Chopra	27.01.2004	24.02.2009	01.04.2010	Rs. 37,50,000/-
1803	Shialesh & Sangeeta Chopra	27.01.2004	24.02.2009	01.04.2010	Rs. 37,50,000/-
1804	Rajesh & Shialesh Chopra	26.02.2004	24.02.2009	01.04.2010	Rs. 37,50,000/-
2005	Kirti Chauvan &	31.01.2003	02.09.2008	01.04.2010	Rs. 29,16,700/-

	Vela Chauvan				
2006	Bela Chauvan & Kirti Chauvan	07.06.2004	02.09.2008	01.04.2010	Rs. 29,16,700/-
2203	Asha Pranjpee	12.05.2007	02.05.2008	01.04.2010	Rs. 97,50,000/-
2204	Usha N Deo	25.06.2007	02.05.2008	01.04.2010	Rs. 97,50,000/-

On a perusal of the aforesaid details, it was observed by the A.O that the income from sale of the aforesaid respective flats pertained to the period relevant to A.Y 2009-10. On being confronted with the aforesaid fact, it was the claim of the assessee that as upto A.Y 2008-09 it had received the full sale consideration pursuant to allotment of the aforesaid flats whose construction was completed, and the revenue was certain beyond reasonable doubt, therefore, the income from sale of the said flats was recognised in A.Y 2008-09. As such, it was the claim of the assessee that it was consistently recognizing its revenue from sale of flats as per Accounting Standard-9 (AS-9) issued by ICAI, i.e when consideration against sale of flats was substantially received, construction upto a particular floor was completed and revenue there from could reasonably be determined. However, it was observed by the A.O that the assesee's architect, viz. V.S Vaidya & Co. had acknowledged the completion of construction upto 23rd floor vide his letter dated 28.08.2008, which pertained to A.Y 2009-10 and not A.Y 2008-09. Further, it was noticed by the A.O that the aforesaid purchasers had already paid substantial amount of sale consideration which was being shown as advance against flats in the books of the assessee, as under:

Flat No.	Name of purchase	Sale Consideration	Date of payments	Date of sale	A.Y (during which sale was offered)
903	Manish & Shialesh Chopra	Rs. 37,50,000/-	27.01.2004	24.02.2009	A.Y 2008-09
904	Jayesh & Shialesh	Rs. 37,50,000/-	27.01.2004	24.02.2009	A.Y 2008-09

	Chopra				
1803	Shialesh & Sangeeta Chopra	Rs. 37,50,000/-	27.01.2004	24.02.2009	A.Y 2008-09
1804	Rajesh & Shialesh Chopra	Rs. 37,50,000/-	26.02.2004	24.02.2009	A.Y 2008-09
2005	Kirti Chauvan & Vela Chauvan	Rs. 29,16,700/-	31.10.2003 07.06.2004	02.09.2008	A.Y 2008-09
2006	Bela Chauvan & Kirti Chauvan	Rs. 29,16,700/-	31.10.2003 07.06.2004	02.09.2008	A.Y 2008-09
2203	Asha Pranjpee	Rs. 97,50,000/-	12.05.2007 26.07.2007 27.02.2008 26.04.2008 15.09.2008 30.01.2009	02.05.2008	A.Y 2008-09
2204	Usha N Deo	Rs. 97,50,000/-	25.06.2007 26.07.2007 17.10.2007 22.10.2007 20.12.2007 27.02.2008	02.05.2008	A.Y 2008

As per the aforesaid details, it was observed by the A.O that though the complete payments in respect of Flat Nos. 903, 904, 1803 and 1804 were made on 27.01.2004 and 26.02.2004, and sale agreements were made on 24.02.2009, but sales were offered during A.Y 2008-09, despite the fact that the construction was not completed upto 28.08.2008 (as per the letter of the architect). Also, similar was the position as regards Flat Nos. 2005 & 2006. Insofar Flat Nos. 2203 was concerned, it was observed by the A.O that the assessee was yet to receive an amount of Rs. 24,62,500/- from the buyer, viz. Smt. Asha Paranjpee on the date on which sale agreement was made. In the backdrop of the aforesaid facts, it was observed by the A.O that the assessee had not followed any consistent method of revenue recognition. In

fact, it was observed by him that as the assessee was claiming deduction u/s 80IB of the Act for A.Y 2008-09, therefore, it had intentionally inflated the sale receipts for A.Y 2008-09. Observing, that as per the 'agreement to sell' the sale of the aforesaid flats pertained to A.Y 2009-10, the A.O holding a conviction that the income of Rs. 1,05,32,819/- relatable to such sale transactions was liable to be assessed in the hands of the assessee in the year in question i.e A.Y 2009-10, therein added the same to its returned income. On appeal, the CIT(A) upheld the aforesaid addition made by the A.O.

12. Aggrieved, the assessee has assailed the assessing of the aforesaid sale transactions in the year in question, which therein had resulted to a consequential addition of Rs. 1,05,32,819/-. It was submitted by the ld. A.R that the assessee by way of a consistent practice was recognizing the revenue from sale of flats as per Accounting Standard-9 (AS-9) issued by the ICAI, i.e when consideration against sale of flats was substantially received, construction upto a particular floor was completed, and revenue there from could reasonably be determined. It was further submitted by the ld. A.R that the said method of accounting was accepted by the department in the preceding and also the succeeding years. Our attention was drawn by the ld. A.R to the computation of income, and also the profit & loss a/c of the assessee firm for A.Y 2008-09, Page 139-142 of APB. It was further submitted by the ld. A.R that as the sale consideration of the 8 flats in question was substantially received by the assessee in the period relevant to A.Y 2008-09, therefore, the assessee as per its consistent method of accounting had accounted for the same as a part of its sales for the said year. The ld. A.R took us through a 'Chart', Page 149 of APB, wherein the complete details of the sale transactions (including the impugned 8 sale transactions) aggregating to Rs. 26,03,30,190/- were reflected in A.Y 2008-09. On the basis of the aforesaid details, it was submitted by the ld. A.R that

irrespective of the date of execution of the 'agreement to sell' the assessee had accounted for the sale transactions in the year in which consideration against sale of flats was substantially received, construction upto a particular floor was completed, and revenue there from could reasonably be determined. It was further submitted by the ld. A.R that the aforesaid sale transactions were duly accepted by the A.O in his assessment framed u/s 143(3), dated 21.12.2010 for A.Y 2008-09. Per contra, the ld. D.R relied on the orders of the lower authorities.

13. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them in order to support their respective submissions. Admittedly, the 'agreements to sell' for the aforesaid flats were executed in the period relevant to the year in question i.e A.Y 2009-10. However, the assessee had accounted for the aforesaid sale transactions in the immediately preceding year i.e A.Y 2008-09. As observed by us hereinabove, it is the claim of the assessee that it had by way of a consistent practice recognized the revenue from sale of flats as per Accounting Standard-9 (AS-9) issued by ICAI, i.e when consideration against sale of flats was substantially received, construction upto a particular floor was completed, and revenue there from could reasonably be determined. However, we find that the aforesaid claim of the assessee militates against the facts borne from the record. On a perusal of the records, we find, that substantial part/total amount of the sale consideration in respect of 6 flats (out of the aforesaid 8 flats) was received by the assessee way back in F.Y 2003-04. Apart from that, we find, that the assessee's architect viz. V.S Vaidya & Co. had acknowledged the completion of construction upto 23rd floor only, vide his letter dated 28.08.2008, which pertained to A.Y 2009-10 and not A.Y 2008-09. In other words, the construction upto the 23rd floor was completed only as on 23.08.2008. AS

regards the claim of the assessee that it had recognized the revenue from sale of flats as per the Accounting Standard-9 (AS-9) issued by ICAI, weare unable t o persuade ourselves to subscribe to the same. As per the Guidance Note on Recognition of Revenue by Real Estate Developers i.e GN(A)(Issued in the year 2006), for recognition of revenue in case of real estate sales, it is necessary that all the conditions specified in paragraphs 10 and 11 of Accounting Standard (AS) 9 are satisfied as under :

> "10. Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.
>
> 11. In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:
>
> (i). the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and
>
> (ii). no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods."

Now, in the case before us the assessee had executed the respective agreement's to sell for the aforesaid properties under consideration during the year under consideration viz. A.Y 2009-10. In fact, as observed by us hereinabove, the construction of the property upto 23rd floor in itself was completed on 23.08.2008, which pertains to the period relevant to the year in question i.e A.Y 2009-10. In the backdrop of the aforesaid facts, we are unable to comprehend as to on what basis the sale transactions of the aforesaid 8 properties had been accounted for by the assessee in A.Y 2008-09. As observed by us hereinabove, as the assessee had in the period relevant to A.Y 2009-10 transferred the property in question and also all significant risks and rewards of ownership as regards the same to the

respective buyers, and had retained no effective control of the said properties to a degree usually associated with ownership, therefore, the revenue from sale of the said properties, as per AS-9, was to be recognized during the year under consideration i.e A.Y 2009-10. Apart from that, we find that the assessee in the immediately succeeding year i.e A.Y 2010-11, had accounted for the sale on the basis of the date of the 'agreement to sell', Page 188 of APB. As such, even the claim of the assessee as regards consistency in the method of accounting for the sale transactions fails. Be that as it may, in the backdrop of our aforesaid observations, now when the 'agreements to sell' were executed during the year under consideration, viz. A.Y 2009-10, and the construction of the said properties was also completed during the year in question, we therefore concur with the view taken by the lower authorities that the revenue from sale of the said properties was to be recognised in A.Y 2009-10 and could not have been accounted for in A.Y 2008-09. At the same time, we may herein observe that pursuant to the shifting of the aforesaid income from A.Y 2008-09 to A.Y 2009-10, the credit for the tax deposited by the assessee corresponding to the income pertaining to the aforesaid sale transactions that were accounted for by it in A.Y 2008-09 is required to be given to it during the year under consideration i.e A.Y 2009-10. The **Ground of appeal No. 16 to 19** are dismissed in terms of our aforesaid observations.

14. We shall now take up the claim of the assessee that the CIT(A) had erred in concurring with the A.O and treating the amount of Rs. 2,01,22,773/- recovered by the assessee from M/s Omega Investment and Properties Pvt. Ltd. as its income from "Other Sources" instead of reducing the same from the cost of construction of the project. Briefly stated, the assessee firm (hereinafter referred to as a "Sub-developer") had entered into a sub-development agreement, dated 19.03.2003 with M/s Omega Investment and Properties Pvt. Ltd. (hereinafter referred to as "Developer")

for re-development of a Slum-Rehabilitation project known as "Kingston Tower", Parel, Mumbai, Page 16 -57 of APB. On a perusal of the details, it was observed by the A.O that the assessee during the year was in receipt of an amount of Rs. 2,01,22,773/- that was credited against the labour expenses incurred and booked by it under the head "Labour account for buildings". On being called upon to explain the nature of the aforesaid transaction, it was submitted by the assessee that the developer, viz M/s Omega Investment and Properties Pvt. Ltd. had got a plan approved for constructing nine buildings, out of which eight buildings of different heights were to be constructed for rehabilitation of the tenants/occupants of the property being developed, and one tower consisting of Ground + 24 storeys was to be constructed as the sale building. As on the date of execution of the sub-development agreement, dated 19.03.2003, the developer had completed the construction of two buildings and had commenced the construction of the third building for rehabilitation of the tenants/occupants. As per the sub-development agreement the developer for the purpose of expertise, knowledge, experience and financial assistance for completing the construction of the sale building had entered into an agreement with the assessee firm, as also for completion of the entire remaining incomplete works in respect of the buildings under construction and to be constructed hereinafter for rehousing of all the aforesaid tenants and occupants of the said property. In consideration of the developers granting the development rights in respect of the aforesaid properties, the assessee firm at the cost of the developer was obligated to construct the tenants/occupants buildings, and also complete the incomplete construction work. As per the sub-development agreement, the assessee as a sub-developer, at their own cost, was to construct a "Tower building" of approximately 1,10,000 sq. ft of F.S.I or any additional area as approved by the SRA, i.e as per the potential of the sale plot Nos. 183 and 185 with all car parking, common open spaces etc.,

as per the sanctioned plan as may be amended from time to time. All cost of future development in excess of 1,10,000 sq. ft. of saleable area (or as approved by SRA) was to be shared between the developer and the assessee equally. On a similar footing the area in excess of the saleable area of 1,10,000 sq. ft. was to be shared between the developer and the assessee equally. Further, as per Clause 5 of the sub-development agreement, dated 19.03.2003, the assessee, at the cost of the developer and in their account was to continue the remaining construction work of the tenant building, shops etc. alongwith the required infrastructural facilities to be provided to all the tenants and occupants of the said property. Accordingly, the expenditure required to be incurred for completion of the said construction work alongwith the infrastructural facilities was in the first instance to be paid by the assessee, and the said amount was thereafter to be reimbursed by the developer, including expenses of drainage, sewerage, electrical lines, costs of lift and costs of 5 ft pavement around the buildings at the mutually agreed rate of Rs. 570/- per sq. ft. of the built-up area, with such escalation as may be mutually agreed amongst them. As such, the amount of expenditure incurred by the assessee was to be reimbursed to it by the developer without interest out of the 50% share of the developer in the sale proceeds.

15. In the backdrop of its aforesaid terms of agreement, it was the claim of the assessee before the lower authorities that it had incurred the aggregate amount of expenditure of Rs. 2,01,22,773/- for construction and completion of the tenants/occupants building during the year ended 31.03.2009. Out of the aforesaid amount of Rs. 2,01,22,773/-, it was submitted by the assessee that the same comprised of an amount of Rs. 1,98,41,458/- towards labour charges for extra FSI and other small amounts on account of petty expense viz. sale of material, and also other such expenses incurred on behalf of the developer. It was submitted by the

assessee that as the expenditure that was incurred by it towards construction and completion of the tenants/occupants building was thereafter reimbursed by the developer, viz. M/s Omega Investments & Properties Pvt. Ltd., therefore, the same was credited to the 'Labour account for buildings a/c' wherein the expenses incurred on behalf of he developer were booked. As such, it was the claim of the assessee that after crediting the labour expenses of Rs. 2,01,22,773/- that was reimbursed by M/s Omega Investments & Properties Pvt. Ltd., as against the labour charges of Rs. 2,85,12,352/- that was debited under the head 'labour charges expenses a/c', the net balance amount of labour expenditure of Rs. 83,89,579/- was claimed as an expenditure by the assessee firm. However, in the course of the assessment proceedings the assessee despite specific directions failed to furnish the requisite details that were called for by the A.O i.e proof of the payments made, expenses incurred for sale of material, job work, extra FSI, and details of income offered against the said expenses. Instead, the assessee vide its reply filed with the A.O copy of account of M/s Omega Investment & Properties Ltd., and submitted, that it had debited labour charges aggregating to Rs. 1,98,41,458/- and other miscellaneous expenses of Rs. 2,81,315/- during the year under consideration. Once again, it was the claim of the assessee that as per the sub-development agreement, dated 19.03.2003, it was agreed that the cost of construction of buildings for rehabilitation of tenants/occupants would be borne by the developer, while for the cost of construction of sale building viz. Kingston Tower was to be borne by the assessee firm, and cost incurred for extra FSI was to be shared equally. But then, it was observed by the A.O that the assessee despite specific directions had failed to furnish the requisite details as were called for (i.e mode of payment, sales relatable to the expenses, supporting vouchers for labour charges) with respect to labour charges for extra FSI, sale of material and job work. Apart from that, the assessee on being called upon to

produce the clause in the sub-development agreement which would substantiate its claim that cost incurred for extra FSI was to be shared equally, therein stated that the same was orally agreed upon. Further, as observed by the A.O, the assessee also could not substantiate as to how the impugned amount of reimbursement of labour charges of Rs. 1,98,41,458/- was determined. Also, no details were furnished by the assessee as regards the constructed area with respect to extra FSI, in respect of which cost was to be shared with the developer. In the backdrop of the aforesaid facts the A.O did not find favour with the claim of the assessee that the amount of Rs. 2,01,22,773/-received from the developer, viz. M/s Omega Investment & Properties Ltd. was towards reimbursement of expenses, and thus assessed the said amount as the income of the assessee from "Other sources". On appeal, the CIT(A) concurred with the addition made by the A.O and upheld the addition.

16. Aggrieved, the assessee has contested before us the aforesaid addition sustained by the CIT(A). We have heard the authorised representatives for both the parties in context of the issue under consideration, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had received an amount aggregating to Rs. 2,01,22,773/- from the developer, viz. M/s Omega Investment & Properties Ltd, which were claimed to be towards reimbursement of labour charges aggregating to Rs. 1,98,41,458/- and other such miscellaneous expense of Rs. 2,81,315/-, that in the first instance were incurred by the assessee on behalf of the developer. As observed by us hereinabove, the assessee had executed a sub-development agreement, dated 19.03.2003 with M/s Omega Investment and Properties Pvt. Ltd. for re-development of a Slum-Rehabilitation project at Parel, Mumbai. On a perusal of the sub-development agreement, we find, that the developer, viz M/s Omega Investment and Properties Pvt. Ltd. had got a

plan approved for constructing nine buildings, out of which eight buildings of different heights were to be constructed for rehabilitation of the tenants /occupants of the property being developed, and one tower consisting of Ground + 24 storeys was to be constructed as the sale building. As on the date of execution of the sub-development agreement, dated 19.03.2003, the developer had completed the construction of two buildings and had commenced the construction of the third building for rehabilitation of the tenants/occupants. As per the terms of the agreement, the assessee firm in consideration of the developers granting the development rights in respect of the aforesaid properties, was obligated to construct at the cost of the developer the tenants/occupants buildings, and also complete the incomplete construction work. Further, the assessee firm at their own cost was to construct the sale building, viz. "Kingston Tower" of approximately 1,10,000 sq. ft of F.S.I or any additional area as approved by the SRA, i.e as per the potential of the sale plot Nos. 183 and 185 with all car parking, common open spaces etc. All cost of future development in excess of 1,10,000 sq. ft. of saleable area (or as approved by SRA) was to be shared between the developer and the assessee equally. On a similar footing the area in excess of the saleable area of 1,10,000 sq. ft. was to be shared between the developer and the assessee equally. At this stage, we find that the aforesaid facts are duly substantiated by the terms and conditions provided for in the sub-development agreement, dated 19.03.2003. On a perusal of the various clauses of the sub-development agreement, we find that is therein clearly provided at Clause 3 viz. (a). that the sub-developers (i.e assessee firm) at the cost of the developers and in account of the Developers, shall construct the tenants/occupants buildings as also complete the incomplete construction work thereof as recited above; and; (b). the sub-developers shall, at their own cost, construct the Tower building of approximately 1,10,000 sq. ft of FSI or additional area as specified by SRA

as per the potential of the sale plot nos. 183 and 185 with all car parking, common spaces etc. as per the present sanctioned plan and also as per the amended plan/s which may hereafter be sanctioned from time to time in respect of the said Tower building and with such additional and increased FSI available thereon with the specifications and amenities therein as mentioned in the Annexure "D" thereto; and (c) All cost of further development in excess of 1,10,000 sq. ft of saleable area or as approved by SRA (which can be less or more than 1,10,000 sq. ft of saleable area) as per the potential of the said Plots No. 183 and 185 including costs of constructions, purchase of TDR FSI, charges of the Architects, costs of construction of additional tenements for the Tenants/occupants beyond 260 tenements or as may be stipulated by SRA, as also fees and professional charges of the Architects/R.C.C consultants and all other persons whose services would be engaged for the construction project as also all further expenses shall be shared between the Developers and the Sub-developers equally. Similarly the premises of the said excess saleable area over and above saleable area of 1,10,000 sq. ft or as approved by SRA (which can be less than 1,10,000 sq. ft of saleable area) as per the potential of the said Plot Nos. 183 and 185 was also to be shared between the Developers and Sub-developers equally. Further, as per Clause 5 of the sub-development agreement, it is provided that the sub-developer at the cost of the developer and in the account of the developer continue the remaining construction work of the tenants buildings, shops etc. alongwith the required infrastructural facilities to be provided to all the tenants and occupants of the said property. It is therein clearly provided that the expenditure required to be incurred for completion of the said construction work alongwith infrastructural facilities shall, in the first instance be paid by the sub-developers. The developers shall reimburse the said expenditure including expenses of drainage, sewerage, electrical lines, costs of lift and cost of 5 ft

pavement around the buildings to the sub-developers at the mutually agreed rate of Rs. 570/- per sq. foot of built up area with such escalation therein as may hereafter be mutually agreed between the parties hereto. As therein provided, the amount spent by the sub-developers shall be reimbursed by the developers to the sub-developers without interest from out of 50% share of the developers of the sale proceeds to be received by the developers and out of the developers 50% premise building. On a perusal of the agreement, we find similar clauses viz. clause 6, clause 7, clause 8, clause 14, clause 16 etc., which clearly provide that the assessee was obligated to construct at the cost of the developer the tenants/occupants buildings, and also complete the incomplete construction work. Also, all cost of future development in excess of 1,10,000 sq. ft. of saleable area (or as approved by SRA) was to be shared between the developer and the assessee equally. In the backdrop of the aforesaid facts, we are unable to persuade ourselves to accept the summarily rejection of the assessee's claim that the amount of Rs. 2,01,22,773/- received by it from the developer, viz. M/s Omega Investment & Properties Ltd was towards reimbursement of labour charges aggregating to Rs. 1,98,41,458/- and other such miscellaneous expense of Rs. 2,81,315/- that were incurred on behalf of the developer. In fact, we find substantial force in the claim of the assessee that the aforesaid amount so received from the developer, viz. M/s Omega Investment & Properties Ltd. was towards reimbursement of the expenses which were incurred by the assessee for and on its behalf. Although the assessee had failed to substantiate its aforesaid claim by placing on record the requisite documents/information as was called for by the A.O, but then, in the backdrop of the aforesaid factual matrix the rejection of the claim of the assessee that the receipts being in the nature of reimbursement of expenses were rightly reduced from the amount of labour expenses debited in the profit & loss a/c, does not inspire much of confidence. As a matter of fact,

the veracity of the aforesaid claim of the assessee finds support from the view taken by the A.O in the case of the assessee for A.Y 2012-13. As pointed out by the assessee, in A.Y 2012-13 the account of the developer, viz. M/s Omega Investment & Properties Ltd. was debited by a sum of Rs. 1,14,82,082/- pursuant to the resolution of the disputes between the assesee firm and the developer regarding labour charges and FSI debited in the earlier years. Accordingly, the labour account for building was credited and the account of the developer, viz. M/s Omega Investment & Properties Ltd. was debited by the aforesaid amount in the books of the assessee. As such, it is the claim of the assessee that the cost of goods sold for A.Y 2012-13 was computed under identical facts by crediting an amount of Rs. 1,14,82,082/- to its 'Labour A/c for building', and debiting the account of the developer, viz. M/s Omega Investment & Properties Ltd., which was accepted by the department while framing the assessment for the said year. On the basis of our aforesaid observations, we are of the considered view that as the matter had neither been properly looked into by the loer authorities, nor the assessee had been able to substantiate its claim on the basis of irrefutable documentary evidence, therefore, the same in our considered view in all fairness requires to be revisited by the A.O for fresh adjudication. Before parting, we may herein observe that the A.O while readjudicating the aforesaid issue may inter alia seek necessary verifications from the developer., viz. M/s Omega Investment & Properties Ltd. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its aforesaid claim on the basis of fresh documentary evidence. The **Grounds of appeal Nos. 3 to 6** are allowed for statistical purposes in terms of our aforesaid observations.

17. We shall now advert to the claim of the assessee that the lower authorities were in error in not allowing deduction u/s 80IB(10) on the total

income assessed. As such, it is the claim of the assessee that the additions made by the A.O qualified for deduction u/s 80IB(10) of the Act. We have given a thoughtful consideration and find no merit in the aforesaid claim of the assessee. Claim for deduction under Sec. 80IB is based on satisfaction of a set of conditions and legal requirements as specified in the Act. One of the important requirement is verification and authentication of the said claim for deduction by the auditor in the statutory 'Form 10CCB'. As the said mandatory requirement would not be satisfied by the assessee insofar additions have been made in its hands in the course of the assessment proceedings, we therefore are of the considered view that the CIT(A) had rightly rejected the said claim of the assessee. The **Grounds of appeal Nos. 6, 11 & 20** are dismissed.

18. The **Grounds of appeal Nos. 1 & 22** being general are dismissed as not pressed.

19. The **Ground of appeal No. 2** as per the concession of the ld. A.R is dismissed as not pressed.

20. The assessee has assailed the levy of interest u/sss. 234A, 234B and 234C, pursuant to the assessment framed in its hands u/s 143(3) r.w.s 263. As the levy of interest u/sss. 234A, 234B and 234C is mandatory as per the judgment of the Hon'ble Supreme Court in the case of CIT Vs. M.H Ghaswala (2001) 252 ITR 1 (SC), therefore, we do not find any merit in the aforesaid claim of the assessee. The A.O is directed to calculate the interest under the aforesaid statutory provisions while giving appeal effect to our order. The **Ground of appeal No. 21** is dismissed.

21. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-	Sd/-
(S. Rifaur Rahman)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 10.09.2020
P.S Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai.**