

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
**ITA No.5462/M/2016 (AY 2009-2010)**

Galaxy Premises Private Limited (Now Merged with Palava Dwellers Private Limited),412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AACCG4239L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5463/M/2016 (AY 2009-2010)**  
**ITA No.5464/M/2016 (AY 2008-2009)**

Lodha Finstock Private Limited, 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AABCL3094R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5465/M/2016 (AY 2007-2008)**

Lodha Estate India Limited, 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AAACL1723E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5467/M/2016 (AY 2007-2008)**

Adinath Builders Private Limited, 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort,Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
---	--------------	--

स्थायी लेखा सं./PAN : AAFCA9028E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5468/M/2016 (AY 2009-2010)**

Shantinath Designer Construction Private Limited, (Now Merged with Ajitnath Hi- Tech Builders Private Limited) 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort,Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AAKCS4534N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5469/M/2016 (AY 2009-2010)**

Naminath Builders and Farms Private Limited, (Now Merged with Ajitnath Hi- Tech Builders Private Limited) 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort,Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AACCN4452A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5470/M/2016 (AY 2009-2010)**

Sahajanand Hi-Tech Constructions Private Limited, (Now Merged with Palava Dwellers Private Limited), 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort,Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
---	--------------	--

स्थायी लेखा सं./PAN : AAACP1936F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**ITA No.5471/M/2016 (AY 2008-2009)**

Dharmanath Buildtech and Farms Private Limited, (Now merged with Lodha Construction Private Limited) 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Circle-7(3), R.No. 655, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AACCD6799C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri Vijay Mehta
प्रत्यर्थी की ओर से/ Revenue by :	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 25.04.2017

घोषणा की तारीख /Date of Pronouncement : 25.04.2017

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

There are nine appeals, filed by various assessees, under consideration for the AYs 2007-08; 2008-09 and 2009-2010. Bringing our attention to the grounds of these appeals, Sri Vijay Mehta, Ld AR for the submitted that the issues raised in the grounds are identical and therefore, these appeals can be clubbed and adjudicated in this composite order.

2. Narrating the back ground facts of these appeals, Ld AR submitted that these assesses relate to the Lodha group of cases. There was search and seizure operation on the said ground and the said group preferred and filed an application before the Incoem Tax Settlement Commission (ITSC). All these nine assesses also filed the application

before the ITSC offering meagre income on account of brokerage etc. However, the Hon'ble ITSC rejected these nine applications for not meeting the requirements of the provisions of section 245C r.w.s 245A(b) of the Act. Hon'ble ITSC held that in all these cases, there is no pendency of any proceedings in said cases and the "case" as defined in section 245A(b) and 245C of the Act. The "*case*" means any proceedings for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before the AO on the date on which an application u/ss (1) of section 245C is made." Thus, these applications abated before the ITSC.

3. During the assessment proceedings in these cases, in response to the AO's proposal to make addition of the income - brokerage etc, assessees submitted that no addition can be made merely because of the income disclosed in the said Application before the ITSC. According to the assesses, AO must have an independent incriminating material or evidences in his possession before any addition on that account is made in support of earning of such income by the assessee. Bringing our attention to the assessment order, Ld Counsel for the assessees submitted that the AO does not possess any documentary evidence in support of the additions made in these nine assessees. Therefore, Ld AR prays for the deletion of the additions in all these cases.

4. Bringing our attention to the Gujrath High Court Judgement in the case of Maruthi Fabrics 47 TAXMAN.COM 298, Ld AR submitted that the honble High Court analysed the provisions of section 32L of the Central Excise Act and brought analogy of the same with the provisions of section 245 HA(5) of the Income tax Act 61 and mentioned that the provisions are applicable to the facts of the present case under the I T Act provisions. Therefore, it is the case of the assessee's Counsel, all these nine appeals are required to be allowed in favour of the assessee as covered cases by the said Honble HC of Gujarath.

5. On the contrary, Ld DR for the SMC Bench relied heavily on the orders of the AO and the CIT (A). Without conceding on the absence of any incriminating or evidences in support of the said additions of income in all these assessments, Ld DR submitted that the said assessees made a statement on oath and duly verified the same in the VERIFICATION column of the Application before ITSC. According to Ld DR, these assessees cannot be permitted to retract the said statements. In fact, AO mistakenly referred to certain Affidavits which were never in existence. Actually, AO mistook the statement in verification for the Affidavits. Ld DR also submitted that the said Gujarat High Court judgment (supra) is delivered in the context of the Central Excise provisions and therefore, the same is inapplicable to the proceedings under I T provisions.

6. Replying to the same, Ld AR for the assessee brought my attention to the said provisions of section 32L of Central Excise Act and the section 245HA(5) of the I T Act and demonstrated that the language is *para materia* and therefore the ratio of the said judgment applies to the present cases under the I T Act provisions.

7. On hearing both the parties with reference all the nine appeals, I find the core facts are identical but for the figures involved are different. The provisions of section 32L of Central Excise Act are *para materia* with the provisions of section 245HA of the Income tax Act. Therefore, the ratio of the judgment (supra) is applicable to the nine appeals under consideration.

"245HA...

*(5) For the purposes of section (2), the assessing officer, or as the case may be, other income tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the result of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as such material, information, inquiry and evidence had been produced before the Assessing Officer or other income tax authority or held or recorded by him in the course of the proceedings before him. "*

8. The above provisions of sub-section (5) are found to be *para materia* with the provisions of section 32L of The Central Excise Act. CIT (A) extracted the said provisions in his order. There is no dispute on the fact of abetment of the Applications before the ITSC in all these nine cases. Further, there is no dispute on the absence of

any additional information or evidence supporting the addition of income offered by the assessee in the said Applications by nine assessees before the ITSC. Considering the same, I am of the view that the orders of the AO and CIT (A) are required to be reversed. Consequently, all the additions of income made by the AOs merely relying on the assessee's disclosures in the Application before the ITSC stand deleted. Accordingly, the grounds of appeals in all these nine appeals of the Lodha group are allowed.

9. In the result, the appeals of the nine assessee are allowed.

Order pronounced in the open court on 25<sup>th</sup> April, 2017.

Sd/-

**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 25.04.2017  
व.नि.स./ OKK, Sr. PS

**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**