आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 199/Mum/2013

(**निर्धारण वर्ष /** Assessment Year : 2009-10)

Elenji Kamalil V. Thomas, 212, Vardhaman Chambers, Sector 17, Vashi, Navi Mumbai – 400 703.	**बनाम**/ v.	JCIT – 22(2), Navi Mumbai.
स्थायी लेखा सं./PAN : AACPE 7339 L		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by	Shri Prakash Pandit
Revenue by :	Shri Sunil Kumar Agarwal

सुनवाई की तारीख **/Date of Hearing : 24-2-2016**

घोषणा की तारीख /**Date of Pronouncement : 18-05-2016**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee , being ITA No. 199/Mum/2013, is directed against the order dated 9-11-2012 passed by learned Commissioner of Income Tax (Appeals)- 33, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the CIT(A) arising from the assessment order dated 28-12-2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act,1961(Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

> "(1) In the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the act of the A. O. of rejecting appellant's claim of Rs. 48,22,390/- being the capital cost of improvement as contemplated by section 43(6)(c)(i)(A) of the Income Tax Act 1961.
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> (2) Reasons given by the CIT(A) for confirming the act of the A. O. of rejecting appellant's claim of Rs. 48,22,390/- being the capital cost of improvement as contemplated by section 43(6)(c)(i)(A) of the Income Tax Act 1961, are wrong insufficient and contrary to the facts and evidence on record.
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> (3) In the facts and circumstances of the case and in law the learned CIT (A) erred in confirming the addition made by the A. O. of Rs. 77,99,056/- by way of alteration and addition to work in progress over that determined by the appellant.
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> (4) Reasons given by the learned CIT(A) for confirming the addition made by the A. O. of Rs. 77,99,056/- by way of alteration and addition to work in progress over that determined by the appellant, are wrong insufficient and contrary to the facts and evidence on record.
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> (5) In the facts and circumstances of the case and in law the learned CIT (A) erred in confirming the act of the A.O. of making addition of Rs. 77,99,056/- to the profit disclosed by the appellant without pointing out defects in the Books Of Accounts.
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> 6) Reasons given by the learned CIT (A) for confirming the act of the A. O. of making addition of Rs. 77,99,056/- to the profit disclosed by the appellant without pointing out defects in the Books Of Accounts, are wrong, insufficient and contrary to the facts and evidence on record."

3. The brief facts of the case are that the assessee is a proprietor of M/s Vicky Electrical Corporation and M/s E.V. Homes. M/s Vicky Electrical Corporation is engaged in the business of contractor and M/s E.V. Homes is engaged in the business of builders and developers.

4. During the course of assessment proceedings u/s. 143(3) read with Section 143(2) of the Act, from the perusal of the audit report, Form No. 3CD , filed with the return of income, it was observed by the learned A.O. that assessee has sold factory premises at Nerul for a consideration of Rs. 1.16 crores. The above factory premises was depreciable asset and the short term capital gain of Rs. 33,14,640/- was reported on the sale of such depreciable asset. The assessee did not offer taxation on the ground that the assessee has acquired three shops for Rs. 53 lacs, so the block of asset did not ceased during the relevant financial year 2008-09. The controversy/dispute in this appeal is with respect to the addition of Rs. 48,22,390/- to the factory building claimed by the assessee before the sale of the factory building as capital cost of improvement being incurred before the sale of this factory premises. The assessee was asked to furnish the details of addition made in factory building, approval taken from local authorities to carry out alteration in the factory building and necessity of investment when the assessee has already taken advance for sale of this factory building.

The assessee submitted in reply that deed of assignment is registered on 4th November, 2008 , but the transaction started on 15th October, 2007 , wherein the parties agreed for the said transfer and first payment was received by the assessee. During the course of mutual understanding and agreement , since the assessee being involved in construction activities was asked by the buyer to make the workshop building usable as per the buyer's requirements. Since the workshop building which was built in the year 2001 was used as factory by the assessee prior to year 2003-04 and since 2004-05, It was not in good condition and was rented out and used as a godown. Thus, in order to make the property saleable and to finalize the deal, the assessee agreed for the repairs and alterations as per the requirement of the buyer. With respect to the query of the A.O. regarding the approval and plan from local authority, it was submitted that since the work carried out is in the nature of

strengthening, alterations and repairs of existing structure , no approval from the local authorities was required. The assessee submitted that the assessee himself is engaged in the construction activities and he has the technical expertise and resources to carry out the work. The assessee has spent Rs. 48,22,390/- towards the above work and necessary copies of the bills with respect to the work done have also been submitted before the A.O.

The A.O. rejected the contentions of the assessee on the grounds that the assessee has not obtained any approval from the local authority for carrying out the alteration and strengthening of existing structure and such a huge amount will not be required to carry out the said work. The constructed area is only 250 sq. meter and compared to the construction expenses of Rs. 48,22,390/-, it could not be possible to do such huge work without obtaining the approval from local authority. Secondly, no written agreement between the assessee and buyer has been furnished to prove that the construction work of Rs. 48,22,390/- was to be done prior to sale of the factory building, hence, it is unlikely that assessee has invested such a huge amount for repair before sale of the building. The MOU dated 17th August, 2007 was entered into between the assessee and the buyer wherein it was agreed to transfer the factory building at a consideration of Rs. 1.16 crores , but there is no mention of expense of Rs. 48,22,390/- towards repairs of the building to be incurred by the assessee was found. The A.O. found that the cost of the building was Rs. 23,96,777/- whereas the repair cost is Rs. 48,22,390/- which is disproportionally very high. In the MOU , it was stated that repair and maintenance to be undertaken to make it usable. The A.O. also held that since the factory building was rented out and 30% deduction was claimed for repair and maintenance from the assessment year 2004-05 onwards, the expenses towards repair and maintenance deemed to have been allowed and it is unlikely that 41.6% of the sale consideration of the land and building will be invested for making the factory building usable before the sale of the

building, that too without any written agreement. The assessee in this regard submitted that the plot was given on rent prior to its sale , the AO observed that then how the construction work has been carried out in the said plot. The A.O. observed that no prudent person will sell a plot of size of 511 sq. meter after making a investment of Rs. 48.22 lakhs for consideration of Rs. 1.16 crores when the price of land are skyrocketing. The A.O. referred to the various expenses incurred by the assessee towards material and labour charges from different parties and observed that there was outstanding payable money to many parties and the amount claimed is not matching with the bills. The parties like Bhumi Enterprises and Payal Enterprises from where the steel has been purchased remain unpaid for more than one year and these suppliers are not regular suppliers of steel and it is unlikely that such suppliers will give credit for more than one year. To verify the genuineness of the suppliers, Inspector from the Department was deputed to serve notice u/s 133(6) of the Act and it was reported by the Inspector that neither M/s Payal Enterprises nor M/s Bhumi Enterprises have ever existed in the given address as stated in the invoice. The assessee was confronted with the findings of the Inspector. The assessee submitted that the payments were made through account payee cheques and the copy of the bank statements were furnished. The submission made by the assessee was not acceptable to the A.O. as various accommodation entry providers are giving bogus bills and receive the payment by cheques and return the money back to the assessee. Thus , it was held by the AO that purchases of steel from M/s Payal Enterprises and M/s Bhumi Enterprises are bogus and are not genuine purchases. The A.O. observed that the amount of purchases from various parties is not matching with the bill amount and the assessee being engaged in the building activities and electrical contractor, managed to get the bills for showing investment in construction. The AO further observed that the cement purchased from Thakkar Popatlalji Velji shown of Rs. 2,85,000/- but the bill amount submitted was Rs. 61,251/-. Similarly, there were other

discrepancies which were noted by the A.O.in the amounts of the bills claimed and the amount as per the bills submitted , as the invoices of lesser amount in aggregate were submitted vis-à-vis the claim of Rs.48,22,390/- of having been spent on the repairs to the factory building . Thus, the A.O. held that the expenses are found to be not genuine and accordingly the claim of additions to the fixed assets of Rs. 48,22,390/- was denied to the assessee, vide assessment orders dated 28.12.2011 passed by the AO u/s. 143(3) of the Act.

4.Aggrieved by the assessment orders dated 28.12.2011 passed by the A.O. u/s. 143(3) of the Act, the assessee filed first appeal before the learned CIT(A).

5. Before the learned CIT(A), the assessee submitted that the A.O. has made the additions to the income of the assessee in the assessment order based upon surmises and conjectures on suspicion and not supported by any evidence. The A.O. has wrongly presumed that major repair requires approval from local authorities. It was submitted that the assessee not only repaired extensively structure of 255 sq. mtr but he also carried out repair to the compound wall and leveling of the said plot. The assessee submitted that the MOU dated 17th August, 2007 is signed by both the parties and the A.O. was wrong in his finding that there was no agreement between the assessee and the buyer. As per clause 2 of the said MOU, it is stated that the assessee will make the said factory building in a fit and proper usable condition to suit the buyer's requirement and hence repairs and modifications to the structure and the flooring etc. to suit buyers requirement was a precondition for the sale. The assessee submitted that the assessee has rightly spent the amount on repairing of the building and rightly claimed the deduction as per section 43(6)(c)(i)(A) of the Act. With respect to the contentions of the A.O. that the plot was given on rent, then how the construction work was carried out in the

plot and no prudent businessman will sell a plot of size 511.50 sq. mtr. after making investment of Rs. 48.22 lakhs for a consideration of Rs. 1.16 crores, the assessee submitted that it is merely a repetition of reason No. 1 & 2 stated above and the assessee has duly replied in the preceding paras. The assessee submitted that the AO was given detail bifurcation of the cost of improvement including the persons who has supplied material and labour to the assessee. The AO issued notices u/s 133(6) of the Act to the parties and in response to the notices u/s 133(6) of the Act, all the parties except one have confirmed that they were supplying building material to the assessee and also confirmed that TDS was duly deducted on amount paid to them from time to time. The assessee submitted that the A.O. was wrong in concluding that all the bills are accommodation bills. The suppliers were regularly supplying building material to the assessee and therefore outstanding as on 31-03-2009 has nothing to do with the goods supplied by them. It was contended by the assessee that because of the said expenditure , the assessee was able to realize a consideration more than the market value of the said factory building and the expenditure was incurred wholly and exclusively in connection with the cost of improvement which was a precondition laid down by the buyer. The assessee submitted that because of the said expenditure, the assessee was able to realize the sum of Rs.49,40,027/- for the factory building as against the cost of the said factory at Rs.25,69,500/- as on 31-03-2002. The assessee has submitted the copies of balance sheet which shows that the land and factory building in the block of their share from the year 2001 onwards , the copy of deed of assignment entered between the assessee and the buyer and a copy of MOU dated 03-09-2007 vide clause No. 2 stipulates that to make the building fit and in proper usable condition , the buyer required repairing and modification before handing over the possession.

The learned CIT(A) after going through the same, rejected the contentions of the assessee and held that the MOU dated 3rd September, 2007 is entered on

one hundred rupee stamp paper and does not talk about any schedule of payment and only says that the entire balance payment will be made within a period of six months from the date of signing of the MOU. The learned CIT(A) noted that deed of assignment dated 20-01-2009 refers to an agreement to lease dated 21st January, 1999, lease deed dated 14th May, 2008 between CIDCO and the assessee, however deed of assignment dated 20-01-2009 does not mention anything about the MOU dated 3rd September, 2007 and does not talk that advance of Rs. 3 lacs was received by the assessee in accordance with the MOU. Rather, the deed of assignment shows the details of particulars of payment of that amount having been received on 15th October, 2007 along with other payments received from 15th December, 2007 to 1st January, 2009 , from time to time , aggregating to Rs. 1.16 crores. The learned CIT(A) refers to clause 9 of the deed of assignment dated 20-01-2009 which reads as under:-

> *"The CIDCO has granted its permission for transferring the demise premises in favour of the assignees vide its letter bearing reference number CIDCO/EMS/EO/2008/6529 31/10/2008."*

Thus , it was observed by the learned CIT(A) that the assessee got the permission from the authorities to assignment of its lease rights only by the letter dated 31st October, 2008 from CIDCO and hence MOU dated 3rd September, 2007 is not reliable as firstly it was entered into even prior to the date of permission granted to the assessee by the CIDCO and then also for the reason that same does not find any mention in the deed of assignment dated 20th January, 2009 , though the other relevant agreement to lease dated 21st January, 1999 and 14th May, 2008 did find mention in the deed of assignment dated 20-01-2009. Hence, the learned CIT(A) held that the MOU dated 3rd September, 2007 is not a genuine document to support the assessee claim that the expenses for repairing work were incurred. It was also observed by the CIT(A) that there was a mismatch in the amount shown by

the assessee that material and labour expenses claimed by the assessee at Rs. 48,22,390/- as against the bill amount as raised by these 15 parties comes to total Rs. 36,83,451/-. With respect to the genuineness of the suppliers, Income Tax Inspector was deputed by serving notice u/s 133(6) of the Act and after verifying, it was reported that the parties M/s Payal Enterprises and M/s Bhumi Enterprises never existed at the given addresses and some other persons were staying for many years. When it was confronted to the assessee, it was stated by the assessee that the payments were made through the banking channel and copy of bank statements were furnished before the A.O. . The CIT(A) , thus, concluded that construction expenses are not genuine. During the appellate proceedings, the assessee has not disputed the finding of the A.O. made by physical and on the spot enquiries conducted in the case . The discrepancies found by the AO were not explained by the assessee rather the assessee accepted that all the parties are supplying material to the assessee and the assessee is also the proprietor of E.V. Homes which is in building business and it is possible that these building material could be for building business of the assessee carried on by E. V. Homes. In view of the above observations, the learned CIT(A) held that the cost of improvement of an amount of Rs. 48,22,390/- claimed by the assessee cannot be taken as addition to the factory building and the claim of the assessee was rejected, vide appellate orders date 09.11.2012

6. Aggrieved by the appellate orders dated 09.11.2012 passed by the learned CIT(A), the assessee filed second appeal before the Tribunal.

7. The learned Counsel for the assessee submitted that the dispute under this appeal is with regard to the cost of improvement of Rs. 48,22,390/- spent by the assessee for major structural repair and modification work in the factory building along with repair to the compound wall and leveling of plot, which factory building was proposed to be sold along with land for Rs. 1.16

crores. The ld. counsel drew our attention to the orders of authorities below and submitted that the assessee has duly submitted all the invoices and details with respect to the construction work carried out by the assessee in the factory building. Even the tax was deducted at source on the amounts paid to the parties who undertook the work wherever applicable as per provisions of Chapter XVII-B of the Act. It was agreed by the assessee with the buyer that the assessee will carry out the repair work to make the property usable and hence the expenses was incurred of which the details are placed in the paper book filed with the Tribunal. He also drew our attention to clauses of the MOU entered into between the assessee and the buyer dated 3rd September, 2007 which is placed on record vide paper book page No. 85-86 and submitted that as per clause -2, the assessee was required to undertake the repair work in the building structure before handing over the possession. The ld counsel drew our attention to the invoices for supply of material and labour charges for construction of factory building being placed in paper book page 92-111. The ld. Counsel submitted that the addition has been made by the learned A.O. based on surmises and conjectures on suspicion while all the cogent material has been brought on record to substantiate that major structural repairs and modification work was carried out by the assessee at the factory building . He also drew our attention to the certificate of Architect dated 10th September, 2007 describing the work to be carried on for the purposes of repairing to avoid collapsing of the building which is placed at paper book page 89. It was submitted that the learned CIT(A) erred in referring to the MOU dated 3rd September, 2007 being not incorporated in the deed of assignment dated 20th January, 2009 , though the other relevant agreement to lease dated 21st January, 1999 and 14th May, 2008 did find mention in the deed of assignment dated 20-01-2009. The ld. Counsel submitted that the payment has been made by account payee cheques to all the suppliers of the material and labour , and where-ever applicable under Chapter XVII-B of the Act, even taxes were deducted at

source and deposited with government treasury .He drew our attention to page 166 of paper book to contend that tax of Rs.31,765/- was deducted at source on labour charges of Rs.15,42,000/- paid for structural repair and modification work carried on by the assessee in the factory building. Further, the ld. Counsel relied upon the submission made before the authorities below which are not repeated for the sake of brevity.

8. The ld. D.R. submitted that the factory area was only around 255 sq. meters and the expenses has been incurred for Rs. 48,22,390/- on repairs which is disproportionately excessive. The building was given on rent since assessment year 2004-05 and it is not possible to carry out extensive repairs on the rented premises. The purchases are bogus from whom the material was supplied. The ld. DR relied upon the orders of the authorities below.

9. In rejoinder the ld counsel for the assessee submitted that the said factory building was not on rent when the major and extensive structural repair and modification work was undertaken by the assessee. It was also submitted that there was no permissions required from CIDCO for carrying out these extensive structural repairs and modification work as it is not a case of construction of new factory building, consequently no permission from CIDCO was taken by the assessee.

10. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee was the owner of the land and factory building at 32-A, Sector-1, Shirwane, Nerul, Navi Mumbai-400 706 with the leasehold rights in plot of size of 511.50 square meters , while the constructed area of the factory building was 255 sq. meters. The assessee has stated to have entered into an MOU dated 3rd September, 2007(stamp paper purchase date 17-08-2007 as the same is referred by this date in the orders of the authorities below) for the sale of the said land and

factory building at Nerul for a total consideration of Rs. 1.16 crores. The said MOU dated 03-09-2007 (stamp paper purchase dated 17-08-2007) is placed by the assessee at page 85-86 of paper book filed with the Tribunal. As per clause 2 of the MOU dated 03-09-2007, the assessee was required to make the said building in a fit and proper usable conditions as the building structure required repairs and modification to suit the requirement of the buyer. The architect certificate dated 10-09-2007 is also placed by the assessee in the paper book page 89 filed with the Tribunal, which detailed in this architect certificate dated 10-09-2007 the extensive repair and modification work required in the factory building to avoid the building from collapsing. The architect has also certified that the beams and columns have developed cracks and water is seeping into the interiors of the building. The architect has also certified that the reinforcements are damaged severely. This architect certificate dated 10-09-2007 and the MOU dated 03-09-2007 are certified by the assessee in the paper book certificate that these documents were duly placed before the learned AO and the learned CIT(A) during the course of relevant proceedings before these authorities. The assessee has incurred these expenses for the extensive structural repairs and modifications in the factory building apart from repairs to the compound wall and leveling of plot, for which the assessee submitted the details/documents including invoices regarding the material cost and labour charges etc. incurred for these extensive structural repairs and modifications towards the factory building apart from repairs to the compound wall and leveling of plot, in terms of the MOU dated 03-09-2007. The payments for this work carried on by the assessee, have been stated to be made through banking channel by account payee cheque's and even the taxes were also stated to be deducted at source on these payments as covered by provisions of Chapter XVII-B of the Act. We have observed that the authorities below have made the addition merely on the basis of surmises and conjectures on suspicion by terming the invoices of material and labour submitted by the assessee as bogus and accommodation

entries. No cogent incriminating material has been brought on record by the authorities below to prove that assessee has made bogus purchases except inspector report which is not sufficient to fasten the liability to tax on the assessee. The inspector report has merely submitted that two of the vendors from whom steel was bought by the assessee namely Payal Enterprsies and Bhumi Enterprises were found not existing at the addresses given in their invoices. The inspector report is placed at page 112 of paper book. We have seen from the invoices placed in the paper book that both these vendors namely Payal Enterprsies and Bhumi Enterprises are registered with VAT authorities and they have also charged Maharashtra VAT on the invoices issued to the assessee . Revenue has made no further enquiries with the VAT department or with the bankers of these two vendors as the payment were all made through account payee cheques . No further enquiry was conducted by the Revenue to bring on record cogent incriminating material to disprove and demolish the contentions of the assessee. The assessee in all dealt with fifteen parties as per details vide page 90 of paper book filed by the assessee with the Tribunal. Only enquiries were made through inspector with respect to four parties out of these fifteen parties , of which two were found non-existent at the given addresses. The enquiries with respect to the rest of the eleven suppliers were not even made by issuing notices u/s 133(6) of the Act. These material and labour suppliers, fifteen in number were not summoned u/s 131 of the Act, nor their statement were recorded. The information was not called by the Revenue from the buyer of the land and factory building by issuing summons/notices u/s 131/133(6) of the Act to verify the authenticity of the claim of the assesseee having undertaken extensive structural repairs and modification work to the factory building prior to its sale, nor the statement of the buyer of the afore-stated property was recorded. No technical expert such as DVO was appointed by the Revenue to enquire about the extensive structural repairs and modification claimed to be carried on by the assessee to disprove and demolish the contentions of the assessee . No enquiry was

even made with the office of the municipal authorities to ascertain the status of construction and structural repairs and modification of the factory building , if any carried on by the assessee in the impugned assessment year to disprove the contentions of the assessee. The case of the Revenue is based on the non-existence of two parties at the given addresses vide inspector report, which is not sufficient enough to come to the conclusion that the entire theory of extensive structural repair and modification of the factory building as brought out by the assessee is a farce , in-fact the reliance by the Revenue on the inspector report without conducting further probe to conclusively disprove and demolish the contentions of the assessee, has led the revenue conclusions fall into the realm of conjectures and surmises on suspicion which is not permissible. Suspicion howsoever strong cannot take the place of the proof is a settled proposition of law. Thus, in nut-shell, no proper and adequate enquiry has been conducted by the Revenue to rebut , disprove and demolish the contentions of the assessee as no cogent incriminating material has been brought on record by the Revenue against the assessee. The ground which has been taken by the ld. CIT(A) to reject the contention of the assessee such as MOU dated 3rd September, 2007 is entered on one hundred rupee stamp paper and it does not talk about any schedule of payment and only says that the entire balance payment will be made within a period of six months from the date of signing of the MOU are irrelevant de-hors fastening of the liability to tax on the assessee . Similarly to contend that the said MOU did not find mention in the deed of assignment dated 20-01-2009 and is merely an after-thought is based on surmises and conjectures on suspicion , while the MOU did talk of payment of Rs. 3 lacs vide cheque dated 15-10-2007 which find mention in the deed of assignment dated 20-01-2009 . To contend that the MOU dated 03-09-2007 has preceded the permissions received by the assessee from CIDCO on 31/10/2008 is again of no-use to the Revenue as it is very probable that the tax-payer will first enter into a binding agreement with a serious buyer of the property who has also

advanced some amount of money and then approach the CIDCO for seeking permission to sell the property. No cogent incriminating material has been brought on record by the authorities below to demolish the MOU dated 03-09-2007 as an after-thought but rather the same is based on conjectures and surmises based on suspicion which is not permissible under the Act. The CIT(A) again enter into realm of conjectures and surmises based on suspicion by contending that the material and labour charges must have been used in building business of the other proprietary concern of the assessee namely E. V. Homes , while the invoices speak voluminously of the name of the concern of the assessee M/s Vicky Electrical Corporation as the vendee in the said invoices , which concern of the assessee namely, M/s Vicky Electrical Corporation owned the land and factory building and these invoices also reflected the address of the 32-A, Sector-1, Shirwane, Nerul of the said land and factory building for dispatch of material and rendering of labour services. The payments for these invoices are stated to be made by account payee cheques and tax was also deducted at source on these invoices where-ever applicable as per provisions of Chapter XVII-B of the Act. These cogent material brought on record by the assessee backed with the chain of events starting from signing of MOU dated 03-09-2007 and ending with deed of assignment dated 20-01-2009 , which comprised agreement to sell land and factory building for Rs.1.16 crores vide MOU dated 03-09-2007 with conditions agreed by the assessee to make the factory building fit and usable as the building required extensive structural repairing and modification to suit the buyers requirement, architect certificate dated 10-09-2007 pointing out deficiencies in the factory building structure to avoid the collapsing of building, invoices for material and labour expenses incurred by the assessee towards extensive repairs and modification to the factory building during the period April – November 2008 , payments of these invoices by account payee cheque's, deduction of tax at source on these payments where-ever applicable under Chapter XVII-B of the Act, permission vide approval dated 31-10-2008

from the CIDCO to sell the said land and building, receipt of payment from the same buyer starting from 15-10-2007 and ending on 01-01-2009 in all aggregating to Rs.1.16 crores as agreed in the MOU dated 03-09-2007 and finally execution of deed of assignment in favour of the same buyer vide deed dated 20-01-2009, which completes full chain of event of the transaction for sale of land and factory building for which necessary structural repairs and modifications were done by the assessee as contended, on the touch stone of preponderance of probabilities which cannot be simply brushed aside or demolished by the Revenue based on conjectures and surmises on suspicion , except through cogent incriminating material which revenue has failed to bring on record in the instant case. In our considered view, the assessee has duly discharged his burden cast under the Act and now it was for the Revenue to have brought on record cogent incriminating material and evidences to rebut and demolish the contentions of the assessee conclusively on the touchstone of preponderance of probabilities which the revenue could not do except by bringing on record inspector report that two of the parties are not existing on the addresses given on the invoices which is not sufficient enough to fasten the liability on the assessee as it does not prove that these purchases were bogus and are accommodation entries as set out above by Revenue . Even for the sake of argument it is assumed that the assessee has not obtained the approval from CIDCO for doing this major and extensive structural repair and modification work to the factory Building, this technical breach will not in itself disentitle the assessee from claiming the same under the Act as cost of improvement and more-so it is a case of major and extensive structural repair and modification to the existing factory building and not a case of construction of altogether new factory building. Hence, in our considered view, the additions of Rs. 48,22,390/- by disallowing the same as cost of improvement to the factory building cannot be sustained and we order deletion of the addition made by the A.O. and as sustained by the CIT(A). However, from the perusal of the invoices submitted by the assessee

in the paper book filed with the Tribunal which are placed at paper book page 92-111, we have observed that the same totaled to Rs 38,18,517/-(excluding one invoice which is placed twice at page 100 and101 being Ritesh Transport of Rs.92,192/- bearing number 385 dated 31/05/2008)) against the expenses of Rs.48,22,390/- claimed by the assessee, to that extent , we are directing the AO to undertake limited verification before allowing the claim of the assessee after satisfying that complete invoices of Rs.48,22,390/-backed with account payee cheque payments as claimed by the assessee are on record with the Revenue duly reconciled to protect the interest of Revenue. We direct accordingly.

11. With respect to the second issue, on perusal of the details filed by the assessee, the A.O. observed that the Project Carmel at Kamothe is completed during the previous year 2008-09 relevant to the assessment year 2009-10. The occupancy certificate of the said project issued by the CIDCO was obtained on 30th March, 2009. The assessee has already taken booking advance from the buyers and agreement to sale was also executed still no sale booked for many buyers by the assessee . The assessee has booked sale of Rs. 1,98,47,560/- in the Project Carmel and advance against the booking of Rs. 2,55,68,200/- was shown in the balance sheet as at 31-03-2009. The details of booking advance have been given in the assessment order page No. 12. With respect to the reasons of not booking sales when the project is completed and the entire sale consideration received by the assessee, the assessee submitted that the assessee has received the occupation certificate from CIDCO of the Project Caramel on 30-03-2009 and the building is completed but for certain practical purposes, the building construction need not be 100% complete at the time of the receipt of the occupation certificate. The assessee submitted that there could be certain items which would be incomplete and unfinished at the time of receipt of completion certificate , the builder may not be in a position to give the possession to all the buyers. The

assessee submitted that he follows a method of offering profits on estimation basis for ongoing projects based on percentage completed till the end of the financial year which has been followed consistently. In case of completed projects, the sales is offered as and when full consideration is received and the possession is handed over to the buyers . During the financial year 2008-09, in the case of the Project Carmel ,the assessee offered sales of those flats from whom the assessee has received the consideration, the finishing of the flat was complete in all respect and the possession was handed over to the buyers. In the case of balance units, the booking amount was received in the financial year 2008-09 but the finishing work was not complete by the end of the year on 31-03-2009 and the possession was not given, the sales is booked in the subsequent financial year i.e. 2009-10. The assessee submitted the sales account before the A.O. . The assessee submitted that the assessee is following percentage completion method for offering profits on the said project during the construction stage . In immediately succeeding year, the balance units were sold and been offered for taxation, which indicated that the booking of sales is revenue neutral in nature and no attempt is made by the assessee to avoid or prolong the tax liability. Without prejudice , it was submitted that if the AO intends to book the sales of units for which the assessee received the booking advances, in the financial year 2008-09 itself, the benefit should be allowed for the legitimate expenses incurred and claimed by the assessee on the units in the financial year 2009-10, against the profits on the sale of said units for which the working of such proportionate cost incurred in the subsequent year was submitted to the A.O. by the assessee.

The A.O. rejected the contentions of the assessee by holding that the occupancy certificate was obtained by the assessee of the Project Carmel on 30th March, 2009 and then how the possession has been given to the buyers whose sale has been booked and how he booked sale for some of the buyers

and not booked sale for some of the buyers is not clear. The AO observed that the project is complete and price almost equal to the sale consideration has been received and since the assessee is following percentage completion method, the profit are to be brought to tax as the project is completed before the end of the previous year relevant to the assessment year and the chargeability to tax cannot be postponed to when the full consideration is received and possession is handed over as now there is no risk of loss in future for the assessee. The A.O. held that as per the guidance note on recognition of revenue by the real estate developers issued by ICAI, the revenue should be recognized when (i) the seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with the ownership (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the real estate and it is not unreasonable to expect ultimate collection. The AO held that , in the instant case, the assessee has received almost the entire consideration and the buyer has the legal right to sell or transfers his interest in the property and no significant uncertainty remains in realizing the sale consideration for revenue recognition, hence, all the conditions for revenue recognition are satisfied and the profits should be taxed in this year only and by not booking sales the assessee is deferring his tax liability. As per the AO , the possession given to the customers is not the criteria for recognizing income by the builder following percentage completion method. The AO held that the contention of the assessee that the cost incurred in the subsequent year in the case of Carmel Project should be allowed in this financial year is not acceptable according to the mercantile system of accounting. The cost will be allowed in the financial year in which it is incurred. Thus, the A.O. made the addition of Rs. 77,99,056/- towards profits with respect to the flats for which sale was not booked except flat no 7 where the sale consideration received was less

than 80% and added the same to the income of the assessee, vide assessment orders dated 28.12.2011 passed u/s 143(3) of the Act.

12.Aggrieved by the assessment orders dated 28.12.2011 passed by the A.O. u/s. 143(3) of the Act, the assessee filed first appeal before the ld. CIT(A).

13. Before the ld. CIT(A), the assessee submitted that the assessee is in the business of developers and contractors at Navi Mumbai under the name and style of E.V.Homes. The accounting method followed by the assessee for ascertaining profits is based on the percentage completion method. The assessee submitted that he is keeping separate records for each project. The Revenue has accepted in the past the said percentage completion method followed by the assessee while framing assessments u/s 143(3) of the Act . The Revenue has in the instant assessment year accepted the Book results in respect of other projects except the project known as 'Carmel Project' which the assessee was constructing on the plot of land bearing no 12 , Sector-6, Kamothe , Raigad District , Maharashtra. The plot was purchased by the assessee in the assessment year 2006-07 and construction on the said plot started in the assessment year 2007-08 ,which was completed in the assessment year 2010-11. The CIDCO has given occupation certificate with respect to 'Project Carmel' on 30-03-2009 to the assessee, though the construction of the remaining flats continued and building was completed in the assessment year 2010-11. The assessee submitted that building occupation certificate is a mere formality in order to get the water connection, electric connection, drainage connection etc.. The assessee submitted that detailed cost of the material and construction expenses were duly given to show that the construction of the building continued till the assessment year 2010-11. The assessee submitted the details of profit shown in the return of income filed with the Revenue since inception of the Project Carmel till the assessment year 2011-12, which is reproduced hereunder:

A.Y.	Closing WIP	Sale	Book Profit
2007-08	46,94,166.00	--	--
2008-09	1,33,28,780.00	--	11,35,720.00
2009-10	2,59,86,410.00	1,98,47,560.00	57,78,545.00
2010-11	--	4,27,34,291.00	1,35,68,710.00
2011-12	--	--	--

The assessee submitted that the assessee constructed 27 flats in Project Carmel and the assessee is following percentage completion method and the profit is duly disclosed to the Revenue from year to year. The assessee also submitted that with respect to flat no 101,203,501 and 601 were on the verge of cancellation and were in-fact cancelled. With respect to flat no 501 and 601, the advances were received and the AO wanted to treat the same as sales. The occupation certificate was though received on 30/03/2009 , the water , electricity, drainage connections etc were obtained by the assessee only after 31/03/2009. The total consideration realized for 27 flats was Rs.6.95 crores, of which only Rs. 2.03 crores was realized during the relevant previous year and the balance consideration were received as under:-

Financial Year 2006-07 Rs.32.82 lacs
Financial Year 2007-08 Rs.221.60 lacs
Financial Year 2009-10 Rs. 204.45 lacs
Financial Year 2010-11 Rs.32.62 lacs

The assessee submitted that the assessee is rightly following the percentage completion method and the same is required to be accepted. But the AO relying on the judgment of Champion Construction (1983) 5 ITD 495(Bom. Trib.) held that if the project is complete, then there is no reason for not recognizing the advances received as sale and accordingly the AO added sum

of Rs. 77,99,076/- as an income in the current year and reduced the WIP by Rs.1,75,29,144/-.

The assessee submitted that the assessee is recognizing the revenue as per AS-9 that is percentage completion method of recognizing the revenue, cost and profits from the transaction activities of real estate. The revenue is recognized by applying percentage completion method on the basis of methodology explained in AS-7. The completion of the revenue recognition process is identified after taking into consideration the following conditions:

(a) The seller has transferred to the buyer all the significant risk and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with the ownership.

(b) The seller has effectively handed over possession of the real estate unit to the buyer forming the part of the transaction

(c) No significant uncertainty exist regarding the amount of consideration that will be derived from real estate sale, and

(d) It is not unreasonable to expect ultimate collection of revenue from the buyer.

The said method also recognizes following indicator of such transactions and activities:-

(i) The revenue is recognized based on the stage of completion reached

(ii) The cost incurred in reaching the stage of completion is matched or compared with the revenue.

(iii) Reporting of the result which can be attributed to the proportion of the work completed.

(iv) Based on the principle of prudence the revenue is recognized on realization

(v) The stage of completion is measured in an appropriate manner. No weightage is given to a single factor, instead of all the relevant factors are considered.

(vi) While recognizing the profit under this method and appropriate allowance for future unforeseeable factors which may affect the ultimate quantum of profit is generally made.

The assessee submitted that the assessee is following the said accounting standard AS-9 and is disclosing the profits on percentage completion method in the past as well as in the future. The assessee submitted that he has already booked profit of Rs. 11,35,720/- from Project Carmel during the assessment year 2008-09 when there were no sales and the remaining profit is booked in assessment years 2009-10 and 2010-11 and it was not necessary for the A.O. to make changes in the profit disclosed by the assessee and make the addition of Rs. 77,99,076/- as was done vide assessment orders dated 28.12.2011 passed u/s 143(3) of the Act. It was submitted that as per section 145 of the Act income under the head profits and gains of business or profession has to be computed in accordance with the method of accounting regularly followed by the assessee and it can only be disturbed where the method of accounting followed is such that in the opinion of A.O. the income cannot be properly deduced there from, the A.O. can compute the income in such a manner as he may determine. The assessee is following AS-9 from the first year of his business. This method has been consistently followed and now the said method cannot be rejected without pointing out that the said method is not giving true income of the assessee. Without prejudice to the above, the assessee submitted that the A.O. has made addition by treating the advances received as sales on the ground that the builder has received the occupation certificate on 30-03-2009 i.e. during the year under appeal, But as per the assessee, the percentage completion as contemplated by AS-9 and AS-7, no weightage should be given to a single

factor such as receipt of occupation certificate for computing profit but one has to consider all the relevant factors. The assessee submitted that he has disclosed profit of this Project Carmel from year to year and the assessee disclosed sales of remaining flat in the assessment year 2010-11 on five counts such as (i) as out of the total consideration 1/3rd of the consideration was received after 31st of March 2009, (ii) there were cancellation of booking for four flats which include two flats which the A. O. has considered as sales (iii) possession to each flat holder was given in the assessment year 2010-11 and the assessment year 2011-12, (iv) the assessee booked all the remaining sales in the assessment year 2010-11 though sale consideration of the two flats which were cancelled was received in the assessment year 2011-12, (v) the assessee spent further amount of Rs. 31,79,171.00 during the accounting year ended 31st March 2010 i.e. the assessment year. 2010-11. Thus, the assessee submitted that assessee is following approved method of accounting which reflects true and correct profit, therefore, as a rule of consistency the same method may be accepted. The book results have not been rejected by the A.O.. Thus the assessee prayed that the addition of Rs. 77,99,056 is required to be deleted. In support, the assessee relied upon the decision of ITAT , Mumbai Bench in the case of Awadhesh Builders v. ITO, (2010) 37 SOT 122(Mum.) and ITAT , Ahmadabad Benches in ACIT v. National Builders, (2012) 137 ITD 277(Ahd. Trib.). The assessee also relied on the decision of Hon'ble Supreme Court in the case of CIT v. Realest Builders & Services Ltd.(2008)307 ITR 202(SC) , wherein the Hon'ble Supreme Court held that in the absence of any specific finding to demonstrate that there is an underestimation of income, the presumption would be that the entire exercise is a revenue natural. The assessee also relied upon the decision of Hon'ble Gujarat High Court in the case of CIT v. Advance Construction Co. Pvt. Ltd.,(2005)275 ITR 30(Guj.) whereby Hon'ble Gujarat High Court held that position of the law is further settled that regular method adopted by the tax-payer cannot be rejected merely because it gives benefit to the assessee in

certain years. The assessee also relied upon the decision of ITAT, Mumbai Benches in the case of ACIT v. Dharti Estate, (2011)129 ITD 1(Mum)(TM).

The ld. CIT(A) rejected the contention of the assessee whereby he held that the assessee has given a list of buyers from where it is clear that the agreement has also been registered of sales made to those buyers by the assessee , against which the assessee has received substantial portion of the consideration also. In each case the advance received is higher than the purchase price itself. Occupancy Certificate has also been obtained before the end of the previous year on 30-03-2009. Now there is no significant risk or uncertainity on the assessee about the realization of the income and the buyer has also got legal right to sell or transfer the said properties, hence, the A.O. has rightly taxed the said income. The ld CIT(A) observed that on the one hand the assessee has stated that they are following percentage completion method of accounting as per AS-7 which is an approved method and on the other hand the assessee is stating that they are following AS-9 method, which is also an approved method for builders. The occupation Certificate was obtained by the assessee on 30-03-2009. The occupation Certificate was given on the basis of assessee's architect certificate wherein it was certified that work is completed and building is ready for possession. The building was inspected by the local authorities. The assessee is giving contradictory statement that the occupation Certificate is merely a formality for getting water connection, electrical connection etc.. The assessee is following percentage completion method which is an approved method but the assessee having received the occupation Certificate on 30-03-2009 and then also the assessee is contending that the project is not complete and the assessee is contradicting himself. The methodology adopted by the assessee is to recognize the revenue as and when he wants to and as and when he chooses to do so is not supported by AS-7 or AS-9 method of accounting . It is also not supported by a mercantile method of accounting. With respect to the

two flats cancelled included in the sale receipt by the AO, the CIT(A) held that when the flats were sold by the assessee , agreements were registered and the amount were realized , it amounts to sale by the assessee and when later on flats were cancelled , the cancelled flats will come back to the stock and further sale will be considered in the year in which they are resold and hence the CIT(A) agreed with the contentions of the AO in recognizing sale of the flats which were subsequently cancelled by the buyers. With respect to the contention of the assessee that in case same is accounted as revenue in the assessment year 2009-10, then the expenses incurred in subsequent years should be allowed, the ld. CIT(A) rejected the contention of the assessee as the projects have been completed and all the flats are sold ,revenue recognized, there is nothing left to allow as expenses pertaining to the same project in the subsequent year. , vide orders dated 09-11-2012.

14. Aggrieved by the orders dated 09-11-2012 of the ld. CIT(A), the assessee is in second appeal before the Tribunal.

15. The ld. Counsel for the assessee submitted that the asessee is following percentage completion method by following Accounting standard 7 and 9 prescribed by the ICAI. It is submitted that the A.O. has made addition of Rs. 77,99,056/- but the corresponding benefit has not been given in the WIP. The same is added again in the subsequent year i.e. assessment year 2010-11 income which has led to double taxation of the same income which is not permissible . He drew our attention to the assessment order u/s 143(3) of the Act for the assessment year 2010-11 whereby the accounting method adopted by the assessee has been accepted by the Revenue and no addition has been made on this count. The ld. Counsel for the assessee submitted that the booking of sales is revenue neutral whereby no loss or prejudice has occurred to the Revenue as there is no tax loss to the Revenue as the taxes have been paid in the immediately succeeding assessment year and there is

no intention to avoid or postpone the tax liability. The assessee submitted that he constructed 27 flats in this project Carmel and the entire profit earned from this project with respect to all 27 flats so constructed has been offered for taxation in the assessment year 2008-09, 2009-10 and 2010-11 by following percentage completion method basis of accounting which is in compliance with Accounting Standards AS-7 and AS-9. He drew our attention to page 57 and 164 of paper book which is audited Profit and Loss Account of E. V. Homes(proprietary concern of the assessee) for the financial year 2008-09 to contend that Rs.57,78,545/- has been offered to tax by the assessee as gross profit from this Project Carmel for the previous year ended 31-03-2009 corresponding to the assessment year 2009-10. Similarly , he drew our attention to page 20 of paper book which is audited Profit and Loss Account of E. V. Homes (proprietary concern of the assessee) for the financial year 2007-08 to contend that Rs.11,35,720/- has been offered to tax by the assessee as gross profit from this Project Carmel for the previous year ended 31-03-2008 corresponding to the assessment year 2008-09. Similarly , he drew our attention to page 165 of the paper book which is Profit and Loss Account of E. V. Homes (proprietary concern of the assessee) for the financial year 2009-10 to contend that Rs.1,35,68,710/- has been offered to tax by the assessee as gross profit from this Project Carmel for the previous year ended 31-03-2010 corresponding to the assessment year 2010-11. The ld. counsel submitted that the assessment for the assessment year 2010-11 has also been framed u/s 143(3) of the Act whereby Revenue accepted the method of accounting being percentage completion method adopted by the assessee and the assessment order is placed at paper book,page 82-84 . The ld. Counsel relied upon the decision of Hon'ble Supreme Court in the case of CIT v. Realest Builders and Services Ltd. [2008] 307 ITR 202 (SC) ,wherein the Hon'ble Supreme Court held that in the absence of any specific finding to demonstrate that there is an underestimation of income, the presumption would be that the entire exercise is a revenue neutral. The ld. Counsel for the

assessee submitted that if the entire income from this Project Carmel is to be treated as income of this year and brought to tax, the benefit of cost which is incurred subsequently in the succeeding year with respect to this Project Carmel should be allowed while computing the income of the assessee for the impugned assessment year. It is submitted that Income is taxed twice with this additions so made by the AO and sustained by the CIT(A), once in the impugned assessment year and again in the succeeding assessment year 2010-11 which is not permissible under the Act , as the assessee of his own volition has offered for tax the entire income in three assessment years i.e. 2008-09,2009-10 and 2010-11 based on percentage completion method with respect to all 27 flats so constructed and with the additions of Rs.77,99,076/- as made by the AO and confirmed by the CIT(A) to the income of the assessee in the instant assessment year as the profit from Project Carmel has led to the double taxation of the same income which is not permissible under the Act.

16. The ld. D.R. submitted that the assessee is following percentage completion method of accounting and the project is complete by the end of the relevant previous year corresponding to the assessment year 2009-10 under appeal as the occupation certificate of the Project Carmel was received from the CIDCO by the assessee on 30-03-2009, almost entire consideration has been received from the buyers and there is no risk and uncertainity with the assessee about realization of the remaining proceeds, the buyers have got right to sell and transfer their interest in the flats and hence revenue should be recognized in this assessment year as was done by the AO and sustained by the CIT(A). He further relied upon the orders of authorities below.

17. We have considered the rival contentions and also perused the material on record including case laws relied upon . We have observed that the assessee has constructed 27 flats in the Project known as 'Project Carmel'

which the assessee was constructing on the plot of land bearing no 12 , Sector-6, Kamothe , Raigad District , Maharashtra. The plot was purchased by the assessee in the assessment year 2006-07 and construction on the said plot started in the assessment year 2007-08 and stated to be completed in the financial year 2009-10. The assessee is following percentage completion method of accounting for accounting revenue as stipulated vide accounting standards AS -7 and AS-9 prescribed by ICAI. The assesseee has stated to have disclosed the profit from this Project Carmel with respect to all 27 flats so constructed over the three years i.e. financial year 2007-08, 2008-09 and 2009-10 by following percentage completion method of accounting. The entire profit with respect to all 27 flats so constructed is stated by the assessee to have been duly offered for taxation with respect to Project Carmel and due taxes being paid to the Revenue by following percentage completion method of accounting . The assessee has received the occupation certificate on 30-03-2009 from CIDCO which is placed at paper book page 118-119. The assessee has deferred the sale to the assessment year 2010-11 with respect to 13 flats on the ground that construction and finishing work was not completed till 31st March, 2009 with respect to these 13 flats and the possession was also given with respect to these 13 flats in the financial year 2009-10 and 2010-111, although almost entire sales consideration has been received till 31-03-2009 with respect to these flats barring one flat where very little amount vis-à-vis total consideration has been received . The assessee has stated to have incurred expenses of Rs.31,79,171/- in the financial year 2009-10 towards these 13 flats as these flats were not finished by the end of the relevant previous year i.e. 2008-09 and details furnished to the Revenue during the assessment proceedings. The assessee has submitted that merely by receiving occupation certificate on 30/03/2009 , does not by itself mean that the project is complete as there are several other work which are done post receipt of this occupancy certificate dated 30-03-2009, such as applying for electrical connection, water connection, drainage connection etc and also

finishing work is to be done in these flats to complete construction of these flats, as also there are other relevant factors to be kept in mind to book revenue as per percentage completion method apart from the occupancy certificate. Thus, the assessee had submitted that he acted bonafidely and voluntarily offered to tax the entire income of the Project Carmel with respect to all 27 flats so constructed spread in three financial years namely 2007-08, 2008-09 and 2009-10 and paid due taxes to the Revenue in these three year of his own volition by following percentage completion method as the project is completed in the financial year 2009-10 and not in the financial year 2008-09 as contended by the Revenue when the occupation certificate was received. The possession with respect to those flats which were not completed by the end of the previous year ended 31-03-2009 were given in the financial year 2009-10 and 2010-11, while the project was completed in financial year 2009-10. The assessee has placed possession letter's bearing dates of 2009-10 and 2010-11 in the paper book page 120-140 . The assessee stated to have acted with a bona-fide belief that the income has to be offered to tax based on percentage completion method based on the stages of completion of the project and the receipt of the occupancy certificate is one of the relevant factors to be taken into account for determining the completion of the project but it is not the only or the sole relevant and conclusive factor for determining the completion of the project for booking revenue under the percentage completion method. It is stated that there were other works such as finishing work which were required to complete the project which was done in the financial year 2009-10 and the assessee has stated to have incurred Rs.31,79,171/- in the succeeding financial year 2008-09 to complete this Project Carmel , while the Revenue is considering the receipt of occupancy certificate on 30-03-2009 as conclusive to book the entire profit to tax backed with the plea that almost entire consideration is received by the assessee from the flat buyers. The same method of accounting being percentage completion method as followed by the assessee is stated to be consistently

followed by the assessee and accepted by the Revenue in the past as well in the succeeding assessment years and even the assessments were framed u/s. 143(3) of the Act for the assessment year 2010-11 accepting the method of accounting followed by the assessee, which has not been disturbed by the Revenue in assessment year 2010-11.The said assessment order dated 01/03/2013 passed by the AO u/s 143(3) of the Act is placed in paper book page 82-84. We have observed that the Revenue has not rejected the books of accounts . Thus, keeping in view the peculiar facts and circumstances of the case and in the interest of substantial justice, we are setting aside this matter to the file of the A.O. with a direction to verify the contentions of the assessee that the entire profit from this Project Carmel with respect to all 27 flats so constructed is duly offered for taxation by the assessee albeit in the assessment year 2008-09,2009-10 and 2010-11. In case the contention of the assessee is found to be correct that the entire profit of this Project Carmel with respect to all 27 flats so constructed is duly offered for taxation in these three years and the entire due taxes thereon are paid to the Revenue, then the addition so made of Rs.77,99,076/- by the Revenue in the impugned assessment year by the AO and as confirmed by the CIT(A) will stand deleted as in our considered view, then no prejudice is said to be caused to the Revenue as revenue impact is tax neutral and the Revenue would have got all its due taxes on this Project Carmel albeit in three assessment year i.e. 2008-09,2009-10 and 2010-11. Our view is consistent with the decision of Hon'ble Supreme Court in the case of CIT v. Realest Builders and Services Limited(supra). We order accordingly.

18. In the result, the appeal filed by the assessee in ITA N0. 199/Mum/2013 for the assessment year 2009-10 is partly allowed for statistical purposes.

Order pronounced in the open court on 18th May , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांकः 18-05-2016 को की गई ।

Sd/-	sd/-
(SAKTIJIT DEY)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **18-05-2016**

I

व.नि.स./ R.K., Ex. 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)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "E" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**