



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.5052/Mum/2011

(Assessment Year :2006-07)

ITA No.5053/Mum/2011

(Assessment Year :2007-08)

DCIT 15(3)(4) / ITO 15(3)(4) R.No.115, Matru Mandir Tardeo, Mumbai – 400008	Vs.	M/s. Trimurthi Developers 112, Bawa Tower Plot No.78/79, Sector – 17 Vashi, Navi Mumbai – 400 703
PAN/GIR No.		AADFT2589A
Appellant)	..	Respondent)

Revenue by	Shri Saurabh Deshpande
Assessee by	Shri Nilesh Joshi
Date of Hearing	23/02/2018
Date of Pronouncement	16/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are appeals filed by the Revenue against the order of CIT(A) for the assessment year 2006-2007 & 2007-08. In the matter, order passed u/s 143(3) of the I.T. Act.

2. In both these appeals, revenue is aggrieved for deleting addition on account of purchases claimed by the assessee in his Profit & Loss Account.

3. Facts in brief for that assessee is engaged in the business of builder and developer. During the course of assessment proceeding, AO

observed that assessee has shown various expenditure even after occupancy certificate issued by the CIDCO on 18.08.2006. This certificate was issued on the basis of certificate given by the architect vide letter dated 12.08.2005. Ld. AO has mentioned about the completion certificate and written submission of the assessee and thereafter disallowed the purchases shown by assessee after completion certificate.

4. By the impugned order CIT(A) deleted the addition after observing as under:

6. I have circumspected the entire spectrum of facts and circumstances of the case vis-à-vis considered the individual reasoning of the Assessing Officer and corresponding rebuttal of the AR of the appellant. I have also perused the evidence on record and considered the various decisions of the courts relevant over such issue. It is very evident from the facts and the evidences on record that the construction work was not stopped on 12.8.2005 but was continued in the financial year 2005-06 and also in 2006-07. The water connection was taken for the housing project only in November, 2006 and similarly occupation certificate was obtained by the appellant on 28.8.2006 and in subsequent year only the actual possession of the flats has been given to the purchaser. All these basic evidences prove that some of the construction work of the housing project was going on as explained by the appellant during the assessment proceedings and has been reproduced by the Assessing Officer in para 7 of the assessment order. Further, it is seen that Ld. AO has committed gross error in disallowing the expenditure in round figure of Rs.2 crore and has added it as taxable income ignoring the fact that appellant followed percentage completion method and used to offer tax 10% on estimation basis and same has been accepted by the earlier Assessing Officer including present AO therefore, if such expenditure is reduced from the work-in-progress, then consequential profit has to be reduced because same is estimated on work-in-progress shown by the appellant in its books of account. It is seen that AO has accepted the method adopted by the appellant and without reducing the work-in-progress and consequential profit, he has made entire addition contradicting his own approach and confusing himself about the method accepted by him. Due to that. in subsequent year, another Assessing Officer has categorically mentioned about the double jeopardy caused to the appellant in A.Y. 2007-08.

6.1 Further while going through the evidence on record, it comes to the notice that Ld. Assessing Officer has raised objection without properly

appreciating the facts of the case as well as the practical aspects of business of construction of such builder and developer. In para 6 of the assessment order, Ld. AO has accepted the fact that appellant had received occupancy certificate dated 28.8.2006 issued by CIDCO later on, after the receipt of Architect's completion certificate dated 12.8.2005. Here, it is very clear that occupancy certificate was issued in A.Y. 2007-08 relevant to F.Y. 2006-07, which means continuity of work of the housing project was going on even upto 28.8.2006 and the Architect's completion certificate dated 12.8.2005 was, as admitted by the Assessing Officer, in respect of 'structural stability'. The certificate issued by the architect Mr. Satish V. Ahuja itself reveals the fact that even after issue of commencement certificate dated 20.6.2003, there was an amended certificate No. CIDCO/BP/ATPO/951 dated 15.7.2004 and in consequence upon such certificate, housing project was being constructed/developed and while issuing the completion certificate on 12.8.2005, the architect had declared that structural work of the project was executed in accordance with the structural design, drawings and details prepared by the structural engineers under his supervision. This completion certificate referred to by the Ld. AO itself proves the fact that it was issued with regard to structural design, drawing of the project and there was no violation of any terms and conditions of the CIDCO or any other authorities. Further, this certificate itself does not speak of fully finished housing project but of structural design as per the drawing, and lay out approved plan. Obviously, Ld. AO has not examined the details prepared by structural engineers on the basis of which, such completion certificate was given by Mr. Satish V. Ahuja. In fact, there is a vital point regarding various works which are consequential in nature or which are part and parcel of housing project and are normally done after the structural work. The certificate itself speaks of structural stability as admitted by the AO, therefore, merely on the ground of presumption that after such completion certificate, there could not have any work, the stand of the AO cannot be approved. Such reason is not tenable because of the fact that against doubt and presumption of the Assessing Officer, appellant had submitted a letter dated 15.12.2008 clarifying that even after receipt of completion certificate of structural design, there were lots of pending works such as construction of external compound wall, internal tiling and plumbing work, internal flat wiring, some work of fire fight equipment installation, lift installation, development of garden, various house keeping work of open space, upper overhead tank, water proofing of the building etc., which normally takes place after completion of super structure of the building. Due to that occupancy certificate was given by the local authority only on 28.8.2006 i.e. exactly after one year of such issue of completion certificate dated 12.8.2005.

6.2 Further, I find force in the argument Ld. AR that occupancy certificate is also the completion certificate as per the practice and rules of CIDCO and no independent and separate completion certificate is given.

Evidently, even after completion of structural work of the housing project, as mentioned by the architect, such work would have been executed by the appellant which veracity could not be doubted merely on the ground that there was no debit of transport charges or labour charges or for want of material consumption register. Here, it is pertinent to mention that construction of building is not like manufacturing of goods in a factory where there is series of issue of goods for consumption and thereafter mention of finished goods in stock register like RG I. Contrary to such approach of the AO, in the case of builder, there is widely known fact that each and every step of construction is to be supervised by the engineer at site and architect of the project who is responsible for maintenance of structural design as per layout plan approved by the local authority. Due to that, as argued by Ld. AR, all such relevant records are maintained by the architect himself, who use to give all the documents to the local authorities for relevant certificates and permission. On account of such prevailing practice, most of the builders and developers do not maintain any such day to day consumption of material in register form but same is taken care of by the architect in a systematic manner that too phase-wise. Further, I find substance in the arguments that in most of the cases, there is a continuous work even day-night due to that compulsion, these builders and developers do not maintain any such register which can show consumption of material everyday or at every moment.

6.3 Here in the case of the appellant, some other important factors are there. Appellant has appointed various contractors and sub-contractors for getting the work done. For example, Snath Enterprises, Bright Enterprises, Sai Prakash Construction, Sal Aarti Construction, Om Diya Construction, Ratna Engineering Works, S. Nath Enterprises etc. have done work like painting, sliding window, flooring tiles, compound wall, pavement works, POP work, RCC and brick works, boxing brick works and RCC Pillar, shutter, railing doors and other works. Obviously, these contractors are required to maintain such records as wanted by AO. Therefore, the contention of the Ld. AR is found to be convincing one.

6.4 Further, the reasoning given by the Assessing Officer in para 8 of the assessment order does not reveal any sound foundation because of the fact that he himself has admitted the genuineness of purchases of materials from 10.8.2005 to 31.3.2006 totaling to Rs.1,18,64,3091- and merely on the ground that there was no need for purchase of such material because of completion certificate issued by the architect on 12.8.2005, such materials were not utilized, is not tenable argument. Contrary to the presumption of the Assessing Officer, there are so many evidences on record, which prove the genuineness of purchase and utility of the materials so purchased. For example, cement has been purchased from Maheshwari Suppliers on 15.8, 16.8, 17.8, 19.8 and 21.8.2005 for Rs. 10 lath and payment has been made by the appellant through account payee cheque No. 859735 dated 05.8.2005 and cheque No. 859736 dated

05.8.2005 of Rs. 5 lakh each. There was a running account of Maheshwari Suppliers who had supplied cement to the site of the appellant. Maheshwari Suppliers is the authorized cement dealer of ACC, files regular return of income with ACIT Panvel Circle, Panvel having P.A. No. ADGPM7692H. There is a delivery challan of cement having mention of delivery at site. Further, it is not out of place to mention that MIs. Maheshwari Suppliers being proprietary concern of Harish Maneklal Mal showing net return of income of Rs.51,19,407/- hence it cannot be presumed that there is an arrangement of bill. Further, it can be seen from the bills of VSK Steel, Proprietor, Mr. Tushar A. Ruparel that there is a credit purchase right from 08.4.2005 to 08.3.2006 and appellant has made payment on various dates subsequently in F.Y. 2006-07. All the payments are made through account payee cheque as reflected in Parsik Janata Sahakari Bank Ltd. Mr. Tushar A. Ruparcl is a regular assessee having P.A. No. ABTPR2422D. Similarly, the bills and evidence related to MIs. Polycab Wires Pvt. Ltd. having PA No. AAACP6474E reveals the purchases right from 30.8.2005 to 17.11.2005 and appellant has paid through cheque No. 885968 dated 06.10.2005. cheque No. 906976 dated 17.01.2006 and cheque No. 906977 dated 17.01.2006. Further, it is noted that MIs. S. Nath Enterprises has done painting work on contract basis and has raised regular bills and while making payment to this party there is a TDS of Rs.7341- and 1428/-. It is also relevant to mention that MIs. S. Nath Enterprises, Proprietor Mr. T.K. Shinde has not only done the painting work of the appellant but has also done such work for other builders and developers viz. Sneha Land Developers, Labh Construction, Sai Kripa Developers. Further it is worthwhile to mention that MIs. S. Nath Enterprises has shown net profit of Rs. 2,38,268/- on painting work of Rs. 9,54,599/- which is 24.96%. As such, it cannot be presumed that MIs. Snath Enterprises is only 'entry provider' and not the actual contractor.

6.5 Similarly, the arguments appear in para 9 of the assessment order is not convincing one that appellant should have produced photo copy of evidences of reaching of materials along with consumption register or labour register because of the reason that the appellant has given civil work to S. Nath Enterprises, Bright Enterprises, Mohanlal Suttar, Sai Prakash Construction, Shree Ganesh Traders, Sal Aarti Construction, Om Diya Construction, Ratna Engg. Works and Ld. AO has recognized the existence of such parties as has been mentioned in para 10 of the assessment order. It means the fact of sub-contract and civil works done through these parties are established, hence, in case of any doubt, it was the responsibility of the AO to call for necessary evidences from these sub-contractors and examine them with reference to his requirement. But, as evident from the finding of the AO, instead of doing all these basic work, he has merely referred to various transactions and entries overburdening description without pointing out any substantial facts, which can prove that in reality, there was no work after 12.8.2005.

6.6 Further, it is not understood as to why AO disbelieves the various electrical expenditure and hardware expenditure amounting to Rs.39,87,896/- whereas all the expenditure are relevant and genuine one because as per the certificate of Architect, there was various works like fixation of MS Grills, MS balcony railing, aluminium window. Rolling shutters, MS collapsible gates, CP filling for bathroom and toilets, Further, I find substantial merit in the argument of Ld. AR, Mr. Nilesh Joshi that the appellant's architect, Mr. Satish V. Ahuja has clarified that after submission of completion certificate dated 12.8.2005, there was a visit of Additional Town Planning Officer and according to the instruction of the Officer of the area, appellant was to complete various works and only after doing all the necessary works, a revised application for issue of occupancy certificate was submitted on 27.6.2006 i.e. after A.Y. 2006-07 and due to this revised application, ATPO/CIDCO had issued occupancy certificate only on 28.8.2006. This argument and reliable evidence cannot be ignored or discarded merely on the basis of want of any site register without establishing that 100% was completed on or before 12.8.2005.

6.7 Further, I find good merit in the argument of the AR that after submission of structural stability certificate, appellant was to do various works like brick works, plastering of the walls, waterproofing of the terrace, PCC/checkered paving at floor, armoured cabining, meter installation, copper wiring, construction of society office building, security cabin, MS main gate. All these works were completed after visit of Asstt. Town Planning Officer. Further, the contention of the appellant cannot be ignored that after visit of ATPG various works like crack filling, re-plastering, chemical polymer treatment to the external wall surface at several places of leakages were also done. Similarly, the repeated external painting and internal painting is also done because of rain moisturing and defective painting by the labourers at will always invite complaints of such defects which would hamper the reputation of the appellant. Further. I find merit in the argument that RCC consultants Mr. A.G, Gokhale and Associates categorically certified that the housing project under consideration had consumed steel to The extent of 250 metric ton and cement near about 9000 bags for RCC items. Ld. AO had not gone deeply into such facts nor had pointed out any technical aspect which could prove non-use of such steel and cement. Therefore, merely on the basis of presumption and general argument, specific claim of the appellant supported with evidence, cannot be brushed aside. Argument that why payment of M/s, Opal ceramic, M/s. V.S.K Steel and Apple India Marketing Co. was remained whereas there was a instant payment to M/s. Maheshwari Suppliers, it is worthwhile to mention that Maheshwari Suppliers as contended by the AR is a dealer /stockiest of ACC who use to enforce immediate advance payments and due to that compulsion, cheques are issued. Even post dated cheques are also delivered so that the good quality of cement freshly manufactured can be obtained by the developers.

Therefore, after revealing material facts of the case, the finding of the AO in para 10 is also not tenable.

6.8 As evident from the above that observation of the Assessing Officer in subsequent para 11 is contradictory one because, at one hand, Ld. AO has admitted the utility of some of the goods so purchased and on other hand he denies some of purchases on the presumption that all the construction work was completed prior to 31.3.2005 and only painting work was done later on, as painting bill was dated 02.4.2005. It appears that Ld. Assessing Officer has ignored the fact that other works were also done outside housing project tike construction of wall, construction of society office and other varieties of works. Further there is visible evidence of development of open land and landscaping which has been ignored by the Assessing Officer while evaluating the evidences on record.

6.9 Order of the Assessing Officer is full of contradiction because in para 11 he has mentioned "external compound wall is also complete as no bill towards it has been shown during the year" whereas as per the written submission of the appellant dated 15.12.2008. there was a construction of external compound wall in subsequent period after certificate dated 12.8.2005 and for construction of such wall there cannot be any bill and vouchers as expected by the Assessing Officer. When no bill was there as presumed by the Assessing Officer, then how external compound wall was presumed to be completed before the F.Y. 2005-06. The mention of the AO itself is contradictive one. Further, I find no merit in the argument of the AO as there was no bill for waterproofing work because such work is not independent but is a part and parcel of the civil work related to the construction of the housing project. It is also pertinent to mention that such work is done by the sub-contractor through its competent and skilled persons and professional hence, there is no propriety to ask for bill of waterproofing from the appellant. Similarly, peat control treatment is also done by the professional engaged by the sub-contractors and not by the appellant. Obviously, such works are integrated part of the civil work for which no independent bill can be there and as same is not a purchase of goods or related to a single work. Apparently, such work is not independent but a pan and parcel of the construction process therefore it is very apparent that Ld. AO has unnecessarily expected of such bill, which is not required to maintain by such appellant, who has given its civil construction work to be done by the sub-contractors.

6.10 The observation of the AO in para 12 that for most of the purchases items like cement, steel, electrical hardware, ceramics, plumping materials, no transportation charge has been shown by the appellant, is illogical apprehension because utility of these materials have been explained properly by the Ld. AR as pointed out earlier.

6.11 Further, it is noticed that Ld. AO himself has confused about the facts of the case because in para 12 he mentions about no transport charge, but in para 10(x) he admits the fact that appellant had also not shown any transport charge in respect of purchases from 1.4.2005 to 09.8.2005 for purchase of Rs.96,355676/-. It is seen that in earlier year also appellant has not claimed any transportation charge because of the fact that as per terms and conditions, supplier has to supply such raw-materials/goods under reference at the site of the appellant. When AO himself has noted that in first period i.e, from 1.4.2005 to 09.8.2005, there was no transport charge hence there is no propriety to expect any such bill of transport for subsequent period i.e. 10.8.2005 to 31.3.2006. This proves that Ld. AO has not properly understood the facts of the case nor has verified the earlier records of the appellant.

6.12 The observation of the Ld. AO in par 13 is also full of ambiguity as he has generated the ratio of consumption without properly appreciating the practical construction process of such project. Obviously, Ld. AO has misunderstood the construction ratio and mis-calculated the phase-wise construction process because construction work is shown in systematic and phase-wise manner i.e. slab-wise and accordingly, architect used to issue certificate of completion of certain portion of the project. Such ratio and calculation can only be done with reference to the phase-wise construction. Ld. AO has not done so. Ld. AO has calculated the ratio on the basis of bill of Sai Aarti Construction with reference to whole of the project ignoring the fact that appellant has given only contract for RCC work to be done by M/s. Sai Aarti Construction, which means other RCC construction work has been done by other sub-contractors and due to this verifiable facts, calculation and reference made by the AO in par 13 becomes infructuous, meaningless and illogical. Due to this mistake, AO has wrongly presumed that there is much more consumption of steel and cement than required for such project. The bill dated 02.02.2004 referred by AO itself revealed the following facts:

Sr. No.	Desc.	%
1.	Completion of Pinth	15
2.	Completion of 1 st slab	15
3.	Completion of 2 nd slab	5
4.	Completion of 3 rd slab	5
5.	Completion of 4 th slab (part)	2.5
6.	Completion of U.G. Tank	2
	Total	44.5%

1,51,00,000 x 44.5% = Rs.67,19,500
 Retention 3% = Rs.2,01,585
 Rs.65,17,915

Deduction:

Steel till date 1,10,162 x Rs.18 = 19,82,916/-
 Cement till date 9616 bags x Rs.135 = 12,98,160/-
 Total = 32,81,076/-

Total work done	Rs.65,17,915 – Rs.322,81,076 = Rs.32,86,839.00
Supply payment	Rs.05,95,580.54
Received amount	Rs.20,00,000.00
Balance	Rs.06,41,258.46

6.13 As evident from the above that sub-contractor M/s Sai Aarti Construction has only done RCC works and there is a visible evidence of supply of material by the appellant due to that he has reduced an amount of Rs.5,95,580/- from the running bill amount of Rs.32,36,839/-. Obviously, on wrong presumption and factually incorrect reference, Ld. AO has reached to the wrong conclusion that there are various discrepancies in the accounts of the appellant and there is lack of proper evidence of construction of materials and due to that he has invoked the provisions of law u/s 145(3) and thereafter has disallowed an amount of Rs.2 crore in lumpsum and on ad-hoc basis out of total purchase of goods of Rs.2,14,99,422/-, The lack of proper appreciation of full facts of the case by the Assessing Officer is also visible in para 15 of the assessment order because after making addition of Rs.65,59,425/-, he has rectified the apparent mistake after receipt of application from the appellant, means AO has not assimilated and evaluated all the facts properly due to that such apparent mistake was committed. Where Assessing Officer considers the material placed before him by an assessee as not reliable, he cannot proceed to make an arbitrary assessment. If the Assessing Officer thinks that the profits shown by the assessee are not acceptable, it is for the taxing authorities to prove that the assessee had made more profits. Then, the Assessing Officer has to relate his estimate to some evidence or material on record vide *State of Orissa vs. Maharajah Shri B.P. Singh Deo (1970) 76ITR 690 (SC)*; *Raghubar Mandal Harihar Mandal vs. State of Bihar (1957) 8 STC 770 (SC)*; *R.B. J. Naidu vs. CIT (1956) 29 ITR 194 (Nag)*; *Dturajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC)*; *Simijmal Champalal vs. CIT (1967) 66 ITR 396 (Pat)*; *Omar Salay Mohamed Sail vs. CIT (1959) 37 ITR 151 (SC)*; *International Forest Co. vs. CIT (1975) 101 ITR 721 (J & K)*, An assessment based on mere conjecture, surmise or suspicion or irrelevant and inadmissible evidence and material is invalid and unsustainable in law vide

Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC);

Dhakeslnvari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC); *Lalchand Bhagar Ambica Ram vs. CIT (1959) 37 ITR 2S8 (SC)*; *Umarchand Shah Bros. vs. CIT (1959) 37 ITR 271 (SC)*;

Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (5C).

6.14 In making an assessment u/s. 143(3), the Assessing Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s. 143(3), as has been held in *Dhakeshwari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775, 782 (SC)*, *Raj Mohanaha vs. CIT (1964) 52 ITR 231(Assam)*. Also see *CTT vs. Gokaldas*

Hukumchand (1943) 11 ITR 462,469 (Bom), Ram Datta Sita Ram of Basti, in re, {1947) 15 ITR 61, 85 (All), Narayan Chandra Baidya vs. CTT (1951) 20 TTR 287, 292 (Cal), Gopi Nath Agarwala vs. CTT (1955) 28 ITR 75 3, 762 (All).

6,15 In view of the above discussion and various references of the facts, I reach to the conclusion that Ld, AO has wrongly invoked provision of law u/s. 145(3) whereas the evidence referred to by the AR of the appellant proves the claim of the appellant and also argument advanced by him is having support of various decisions of Hon'ble High Courts and Supreme Courts as mentioned herein above, therefore, such lump sum and adhoc disallowance of genuine expenditure of Rs.2 crore is directed to be deleted from the assessment.

5. Similar addition was made by the AO in the A.Y.2007-08 which were not deleted by CIT(A) after having the following observation:-

*3.3 I have considered the finding of the Assessing Officer with reference to the earlier finding in the A.Y. 2006-07 and also carefully considered the rival submission of the appellant. I find that present AO, while passing the order of A.Y. 2007-08, has confused himself about the consequential effect of addition made by the then Assessing Officer because he has merely presumed that there was fictitious expenditure of Rs. 2 crore but has not taken care of the various evidences on record that after submitting structural stability certificate to the local authority, the appellant has to do various works in subsequent period. It can be seen from the on record, as it has been conveniently ignored by the Ld. Assessing Officer, that sanctioned letter for water connection of housing **project** under reference was issued only on 11.11.2006 which means work was not stopped on 12.8.2005 as has been presumed by the then Assessing Officer. Further, occupation certificate was obtained after 28.8.2006 from the CIDCO suggest that which means housing project was not fully completed on or before 12.8.2005. The factual aspect of the issue has **been** examined in detail and has been elaborately discussed in appeal order No. CIT(A)-26/IT-77/DCIT 15(3)708-09 dated 25.4.2011. In that **order, it has been found** out that there was no sort of fictitious purchase and the then Ld. Assessing Officer had reached to the wrong conclusion presuming that there should have not been any further work of various types of construction after 12.8.2005. It is worthwhile to reiterate that when **appellant adopts percentage completion method and offers tax from year to year and same has been accepted by all the Assessing Officers without questioning the veracity of method and offering of tax right from the beginning of the project**, there is no propriety or valid reason whatsoever to make any such addition disallowing the genuine*

expenditure presuming that there could not have been further construction or finishing work in such housing project.

3.3.1 Present AO has also very vaguely mentioned in para 9 that appellant had not given proper explanation in respect of purchase of Rs. 4,91,757-. It can be seen from the finding of the AO that he had admitted the work like use of polished porcelain tiles and imported vitrified tiles and further there is no basis to disbelieve expenditure incurred for laying of cables and providing water pumps. The present AO has accepted the veracity of such claim and as regards rest of the expenditure of Rs. 4,08,178/-, he has mentioned only about general explanation ignoring the details of purchases whereas primary duty of the Assessing Officer is to scrutinize the details and verify them with reference to corresponding bills and vouchers. Apparently, Ld. AO has not brought on record as to how the expenses claimed to be of Rs. 4,67,078/- is not in respect of civil construction or for finishing of housing project. The details of expenditure reveals as under :-

Sr. No	Particulars	Amount
1	JKV Engineering Works	
a)	14.04.2006 Cable	2,964
b)	14.04.2006 Three Phase for sum- bersible pump	6,525
2	JK Engineering Co	
a)	06.06.06 DOL Starter	7,975
b)	06.06.06 Cable jointing Kit	5,00
c)	08.07.06 Dry run starter and water level sencer	8,663
d)	12.07.06 Three Phase for sum- bersible pump	18,683
3	City Electric & Hardware	
a)	29.07.06 Fodroc Hydro Proof	5,960
4	Jyoti Enterprises	
a)	01.08.06 Aromor cable	4,743
5	Nitco Tiles Ltd.	
a)	27.5.06 Polished porcelain tiles, Imported vitrified tiles	4,08,178
6	Shree Ganesh Traders	
a)	31.07.06 PVCsuperpipe	480
	PVC cupling	73
	Solution	87
	Elbow PVC	353
	PVC Pipe	520
	Clipe	216
	Screw	60
b)	31.07.06 White cement	1,098
	Total	4,67,078

It is worthwhile to mention that the above information was given to the Assessing Officer during the course of assessment proceedings, who has mentioned only 2nd para of the explanation of the appellant in para 9 of the assessment order. Obviously, AO has wrongly disallowed this expenditure on the presumption that h civil construction work was not done in the month of May 2006 or onwards

6. Against the above orders of CIT(A), Revenue is in further appeal before us.

7. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that assessee is engaged in the business of builder and Developer. During the years under consideration, assessee has incurred various expenditures with reference to its project. AO disallowed expenditure so incurred on the plea that assessee has given certificate of Architect vide letter dated 12/08/2005 with regard to completion of the project. However, we found that CIDCO had issued occupancy certificate on 18/08/2006, and that the various expenditures so incurred were necessarily required for the purpose of project. The CIT(A) has dealt with each and every objection of the AO and after giving detailed finding held that against the doubt and presumption of the Assessing Officer, assessee had submitted a letter dated 15.12.2008 clarifying that even after receipt of completion certificate of structural design, there were lots of pending works such as construction of external compound wall, internal tiling and plumbing work, internal flat wiring, some work of fire fight equipment installation, lift installation, development of garden, various house keeping work of open

space, upper overhead tank, water proofing of the building etc., which normally takes place after completion of super structure of the building. Due to that occupancy certificate was given by the local authority only on 28.8.2006 i.e. exactly after one year of such issue of completion certificate dated 12.8.2005.

8. The CIT(A) also observed that occupancy certificate is also the completion certificate as per the practice and rules of CIDCO and no independent and separate completion certificate is given. Evidently, even after completion of structural work of the housing project, as mentioned by the architect, such work would have been executed by the assessee which veracity could not be doubted merely on the ground that there was no debit of transport charges or labour charges or for want of material consumption register.

9. The CIT(A) further observed that the AO himself has admitted the genuineness of purchases of materials from 10.8.2005 to 31.3.2006 totaling to Rs.1,18,64,309/- and merely on the ground that there was no need for purchase of such material because of completion certificate issued by the architect on 12.8.2005, such materials were not utilized, is not tenable argument. Contrary to the presumption of the Assessing Officer, there are so many evidences on record, which prove the genuineness of purchase and utility of the materials so purchased.

10. The CIT(A) further recorded a finding to the effect that the cement has been purchased from Maheshwari Suppliers on 15.8, 16.8, 17.8, 19.8 and 21.8.2005 for Rs. 10 lath and payment has been made by the assessee

through account payee cheque No. 859735 dated 05.8.2005 and cheque No. 859736 dated 05.8.2005 of Rs. 5 lakh each. There was a running account of Maheshwari Suppliers who had supplied cement to the site of the assessee. Maheshwari Suppliers is the authorized cement dealer of ACC, files regular return of income with ACIT Panvel Circle, Panvel having P.A. No. ADGPM7692H. There is a delivery challan of cement having mention of delivery at site. Further, it is not out of place to mention that M/s. Maheshwari Suppliers being proprietary concern of Harish Maneklal Mal showing net return of income of Rs.51,19,407/- hence it cannot be presumed that there is an arrangement of bill. Further, it can be seen from the bills of VSK Steel, Proprietor, Mr. Tushar A. Ruparel that there is a credit purchase right from 08.4.2005 to 08.3.2006 and assessee has made payment on various dates subsequently in F.Y. 2006-07. All the payments are made through account payee cheque as reflected in Parsik Janata Sahakari Bank Ltd. Mr. Tushar A. Ruparel is a regular assessee having P.A. No. ABTPR2422D. Similarly, the bills and evidence related to M/s. Polycab Wires Pvt. Ltd. having PA No. AAACP6474E reveals the purchases right from 30.8.2005 to 17.11.2005 and assessee has paid through cheque No. 885968 dated 06.10.2005. cheque No. 906976 dated 17.01.2006 and cheque No. 906977 dated 17.01.206. Further, it is noted that M/s. S. Nath Enterprises has done painting work on contract basis and has raised regular bills and while making payment to this party there is a TDS of Rs.7341- and 1428/- highlighting other work done by the assessee. CIT(A) allowed the finding to the effect that M/s. S. Nath

Enterprises, Proprietor Mr. T.K. Shinde has not only done the painting work of the assessee but has also done such work for other builders and developers viz. Sneha Land Developers, Labh Construction, Sai Kripa Developers. Further it is worthwhile to mention that M/s. S. Nath Enterprises has shown net profit of Rs. 2,38,268/- on painting work of Rs. 9,54,599/- which is 24.96%.

11. Even with regard to the expenditure incurred on electrical work and hardware work amounting to Rs.39,87,896/-, the CIT(A) observed that all these expenditure are relevant and genuine one because as per the certificate of Architect there was various works like fixation of MS Grills, MS balcony railing, aluminium window, Rolling shutters, MS collapsible gates, CP filling for bathroom and toilets.

12. A finding has also been recorded by CIT(A) to the effect that after submission of completion certificate dated 12.8.2005, there was a visit of Additional Town Planning Officer and according to the instruction of the Officer of the area, assessee was to complete various works and only after doing all the necessary works, a revised application for issue of occupancy certificate was submitted on 27.6.2006 i.e. after A.Y. 2006-07 and due to this revised application, ATPO/CIDCO had issued occupancy certificate only on 28.8.2006 in terms of documents placed on record vis-à-vis finding of CIT(A). We also observed that after submission of structural stability certificate, assessee was to do various works like brick works, plastering of the walls, waterproofing of the terrace, PCC/checkered paving at floor, armoured cabining, meter installation,

copper wiring, construction of society office building, security cabin, MS main gate. All these works were completed after visit of Asstt. Town Planning Officer.

13. We also found that RCC consultants Mr. A.G, Gokhale and Associates categorically certified that the housing project under consideration had consumed steel to The extent of 250 metric ton and cement near about 9000 bags for RCC items. Ld. AO had not gone deeply into such facts nor had pointed out any technical aspect which could prove non-use of such steel and cement. Therefore, merely on the basis of presumption and general argument, specific claim of the assessee supported with evidence, cannot be brushed aside.

14. We also observed that other works were also done outside housing project tike construction of wall, construction of society office and other varieties of works. Further there is visible evidence of development of open land and landscaping which has been ignored by the Assessing Officer while evaluating the evidences on record.

15. With regard to the water proofing work, we found that it was not an independent work but was a part and parcel of the civil work related to construction of housing project. Such work is done by the sub-contractor through its competent and skilled persons and professional hence, there is no propriety to ask for bill of waterproofing from the assessee. Similarly, peat control treatment is also done by the professional engaged by the sub-contractors and not by the assessee. Obviously, such works are

integrated part of the civil work for which no independent bill can be there and as same is not a purchase of goods or related to a single work.

16. We also observed that a clear finding has been recorded by CIT(A) with regard to wrong invocation of provisions of Section 145(2). The CIT(A) also observed that if the Assessing Officer thinks that the profits shown by the assessee are not acceptable, it is for the taxing authorities to prove that the assessee had made more profits. Then, the Assessing Officer has to relate his estimate to some evidence or material on record as and held in the case of *State of Orissa vs. Maharajah Shri B.P. Singh Deo* (1970) 76ITR 690 (SC); *Raghubar Mandal Harihar Mandal vs. State of Bihar* (1957) 8 STC 770 (SC); *R.B. J. Naidu vs. CIT* (1956) 29 ITR 194 (Nag); *Dturajlal Girdharilal vs. CIT* (1954) 26 ITR 736 (SC); *Simijmal Champalal vs. CIT* (1967) 66 ITR 396 (Pat); *Omar Salay Mohamed Sail vs. CIT* (1959) 37 ITR 151 (SC); *International Forest Co. vs. CIT* (1975) 101 ITR 721 (J & K).

17. In support of the proposition that an assessment based on mere conjecture, surmise or suspicion or irrelevant and inadmissible evidence and material is invalid and unsustainable in law, the CIT(A) relied on following judicial pronouncements.

Dhirajlal Girdharial vs. CIT (1954) 26 ITR 736 (SC);
Dhakeslnvari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC); *Lalchand Bhagar Ambica Ram vs. CIT* (1959) 37 ITR 258 (SC); *Umarchand Shah Bros. vs. CIT* (1959) 37 ITR 271 (SC);
Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (5C).

18. The detailed finding so recorded by CIT(A) at para 6 have not been controverted by learned DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the order of CIT(A) for allowing the legitimate expenditure incurred for the purpose of construction of building.

19. Similarly, detailed finding has been given by CIT(A) in the A.Y.2007-08 with regard to the expenditure genuinely incurred by the assessee which required to be deducted while computing net profit being earned from the business. The detailed finding do recorded by CIT(A) in both the years under consideration are as per material on record and which has not been controverted by learned DR by bringing any positive material on record. Accordingly we confirm the action of CIT(A).

10. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on this 16/04/2018

Sd/-
(AMARJIT SINGH)
JUDICIALMEMBER
Mumbai; Dated 16/04/2018
Rahul Sr.PS / Karuna Sr.P.S.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापितप्रति //True Copy//

(Asstt.Registrar)
ITAT, Mumbai