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

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.69/M/2013
Assessment Year: 2009-10

ITA No.3103/M/2015
Assessment Year: 2010-11

DCIT-22(2)/Asst. Commissioner of Income Tax- 27(3), 4th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai – 400 703	Vs.	M/s. Sky Star, Skyline Oasis, Premier Road, Near Vidyavihar Station, Ghatkopar (W), Mumbai – 400 086 **PAN: ABCFS0618M**
(Appellant)		(Respondent)

ITA No.7741/M/2012
Assessment Year: 2009-10

M/s. Sky Star, Skyline Oasis, Premier Road, Near Vidyavihar Station, Ghatkopar (W), Mumbai – 400 086 **PAN: ABCFS0618M**	Vs.	DCIT-22(2), Mumbai
(Appellant)		(Respondent)

ITA No.2416/M/2015
Assessment Year: 2010-11

M/s. Skyline Prashasti, (Formerly known as M/s. Sky Star) Skyline Oasis, Premier Road, Near Vidyavihar Station, Ghatkopar (W), Mumbai – 400 086 **PAN: ABCFS0618M**	Vs.	ITO-22(2)(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by	: Shri Anuj Kisnadwala, A.R.
Revenue by	: Shri Aarju Garodia, D.R
Date of Hearing	: 20.12.2018
Date of Pronouncement	: 27.03.2018

O R D E R

Per Rajesh Kumar, Accountant Member:

The above titled appeals two by the Revenue and two by the assessee have been preferred against the order dated 27.02.2015 & 31.10.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2009-10 and 2010-11.

ITA No.7741/M/2012 for A.Y. 2009-10 (Assessee's appeal)

2. The grounds raised by the assessee are as under:

"1. On the facts and circumstances of the case, the learned CIT (A) erred in affirming the decision of Assessing Officer for disallowing proportionate interest expenditure and municipal taxes of Rs.2,04,11,342/- and Rs.11,60,281/- which is in proportion to the non let out area, while calculating 'income form House property.

2. On the facts and circumstances of the case, the learned CIT (A) erred in enhancing the Assessed Income by directing the AO to assess 'Income from Service Charges' of Rs.95,85,405/- under the head 'Income from House Property' instead of 'Business Income' and thereby disallowing business expenditure and loss under Business Head claimed at Rs.2,09,41,853/-.

3. On the facts and circumstances of the case, the learned CIT (A) erred in affirming the decision of the Assessing Officer for disallowing proportionate expenditure of Rs.2,65,79,851/- which is in proportion to the non let out area, while calculating 'Business Income'.

4. On the facts and circumstances of the case, the learned CIT (A) erred in affirming the decision of Assessing Officer for assessing interest income of Rs.11,60,457/- separately under the head "Income from other sources" instead of netting with interest payable as done by your appellant.

5. On the facts and circumstances of the case, the learned CIT (A) erred in affirming the decision of the Assessing Officer for disallowing Rs.14, 45,965/- u/s 43B.

6. The appellant craves leave to add to, alter, to delete from or substantiate the above ground of appeal."

3. The issue raised in ground No.1 is against the confirmation of disallowance by Ld. CIT(A) in respect of proportionate interest expenditure of Rs.2,04,11,342/- and proportionate municipal taxes of Rs.11,60,281/- as made by the AO in proportion to the total constructed area vis a vis non let out area while calculating income from house property.

4. The facts in brief are that during the course of assessment proceedings the AO observed from the examination of profit & loss account and the computation of income of the assessee that assessee received income from M/s. Vodafone Essar Ltd. and M/s. Indus Tower Ltd by way rental for the premises let out to these companies. While computing income from house property, the assessee has reduced from the net annual value an amount of Rs.2,44,30,092/- on loan taken for the construction of the property being interest payments comprising of Rs.1,41,61,312/- as post construction period interest and Rs.1,02,68,780/- as pre-construction period interest. The AO observed that up to the year end i.e. 31.03.09 the assessee has constructed only 6^{th} floor out of total 8 floors thus constructing total area of 3,15,000 sq. ft. Out of this, 40,000 sq. ft. has been leased out to M/s. Vodafone Essar Ltd. and 11,819 sq. ft. to M/s. Indus Tower Ltd. The AO observed that

the assessee has only let out only 16.45% of the total constructed area during the year whereas while computing the income from house property deduction was claimed in respect of interest which related to the entire project completed till the year end. Accordingly, a show cause notice was issued to the assessee as to why the claim of the assessee as regards interest loan should not be restricted proportionately to the area let out during the year. The assessee replied the show cause notice by submitting that the interest paid qua the said property was eligible to be claimed under section 24 of the Act while computing the income from house property and also expenses under section 37 of the Act while computing the income from the business or profession. The assessee also relied on the decision of Hon'ble Supreme Court and Hon'ble Gujarat High Court in the case of Sarabhai Management Corporation Ltd. vs. CIT reported in 192 ITR 151 (SC) and [1976] 102 ITR 25 (Guj). However, the reply of the assessee did not find favour with the AO and he accordingly allowed only the interest and MC taxes in proportion to the area let out thereby disallowing proportionate interest expenditure of Rs.2,04,11,342/- and municipal taxes of Rs.11,60,281/-.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after considering the submissions as filed by the assessee by observing and holding as under:

> "5.2 I have gone through the same it is a reading of submission made by appellant as reproduced above makes it clear that the appellant has not denied the fact about total constructed area, let out portion of constructed area, interest debited comprising of pre-construction interest of Rs.1,02,68,780/- and post-construction interest of Rs.1,41,61,312/-. Appellant

> has also not denied that municipal taxes pertain to entire house property where as the letout area is only 16.45% of the same. In view of this where facts are not denied and expenses have to be allowed as per the provision of Sec.24 of the Act dealing with the income from HP and in agreement with the A.O appellant that expenses allowable as per the provisions only can be allowed. The AO has discussed the decision cited by the appellant as is evident from para 3.2 of the assessment order and has found that they deal with issue of commencement of business whereas here it is a case of income from House Property. In view of this the expenses allowed proportionately and there by disallowing expenses incurred on non let out properties, the action of AO is upheld. Ground No.5 is dismissed."

6. The Ld. A.R. vehemently submitted before the Bench that the order of the Ld. CIT(A) is bad in law to the extent that the actual expenditure incurred on for the construction of the property was restricted only to the extent of area let out during the year and also the same treatment was meted out to municipal taxes which resulted in the disallowance of Rs.2,04,11,342/- on account of interest expenditure and Rs.11,60,281/- on account of municipal taxes. The Ld. Counsel submitted that even if the income of the construction portion which is not let out during the year the assessee is entitled to vacancy allowance and the MC taxes is allowable. Similarly, the Ld. A.R. submitted that the interest on the loan borrowed for the purpose of construction has to be allowed under section 24 o the Act. The Ld. A.R. submitted that from A.Y. 2014-15 almost entire constructed area was let out by the assessee which proved the intention of the assessee that the area was constructed only with the intent to lease out the same. The Ld. A.R. reiterated his argument that even if the notional rent is offered as income, the assessee would be entitled to vacancy allowance as per section 23 of the Act. Similarly, the Ld. Counsel submitted that as per proviso to

section 23 the municipal taxes are allowed as deduction on payment basis and similarly the provisions of section 24 of the Act and also as per 2nd proviso and explanation to section 24 provides for deduction qua interest expenditure on borrowed capital used for the purpose of construction of the property the income of which the assessable under the head income from property.

7. The Ld. D.R., on the other hand, relied heavily on the order of authorities below. The Ld. D.R. contended that the assessee has let out a part of the total constructed area and therefore has to be allowed only that part of the expenditure incurred on interest and MC taxes which is attributable to the let out property and not the area which could not be let out during the year and thus the Ld. D.R. prayed that the order of the Ld. CIT(A) be affirmed.

8. We have heard both the parties and perused carefully the relevant material on record as placed before us. The undisputed facts of the case are that the assessee is engaged in the business of construction of properties for the purpose of letting out. Till the year end 31.03.08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3,15,000 sq. ft. till the year end. Whereas the area let out during the year was only to 2 parties namely M/s. Vodafone Essar Ltd. approximately 40,000 sq. ft. and M/s. Indus Tower Ltd. of 11,819 sq. ft. thus aggregating to 51,819 sq. ft. which worked out to 16.45% of the total area constructed. We find merit in the argument of

the Ld. A.R. that even if the notional rent in respect of the area which is not let out during the year is taken , the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal taxes under the head income from house property on payment basis. Similarly, provisions of section 24 ,2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section. After carefully going through the facts of the case and arguments of both the parties, we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year. The intention of the assessee is very clear that the property was constructed for the purpose of letting out and in the subsequent year the entire property was let out. The ground no 1 raised by the assessee is allowed and AO id directed accordingly.

9. The issue raised in ground No.2 is against the enhancing of assessed income by Ld. CIT(A) by directing the AO to assess the income from service charges of Rs.95,85,405/- under the head income from house property as against the business income offered by the assessee and also directing to disallow the business expenditure and loss under the head business o Rs.2,09,41,853/-.

10. The facts of the case are that the Ld. CIT(A) during the

course of appellate proceedings observed that the assessee has shown loss in the profit and loss account at Rs.2,09,41,853/- and finally the loss was assessed by the AO at Rs.3,70,699/-. The Ld. CIT(A) noted that the AO has assessed the business income on one hand whereas on the other hand computed the profits from construction activity at 8% of the total work in progress. The Ld. CIT(A) observed that the assessee has created an asset and has capitalized the entire work in progress and thus there was no commercial activity of construction and ultimately deleted the estimation of income @ 8% on the ground that assessee has not constructed the building for the purpose of selling but for the purpose of renting out. Simultaneously, the Ld. CIT(A) called upon the assessee to justify the treatment of service charges for amenities fee as income from the business and accordingly issued a show cause notice as to why the same should not be treated as income from house property for the reasons that the amenities are indispensable to the letting out of the proeprty. Accordingly, the Ld. CIT(A) issued a show cause notice to the assessee to justify the claim of business loss of Rs.2,09,41,853/- which was assessed by the AO at Rs.3,70,699/- as the assessee was not carrying on any business activity and therefore, cannot have any business loss and why the same should not be treated as zero. Show cause notice was replied by the assessee vide letter dated 28.10.2000 wherein it was submitted that service charges of Rs.95,85,405/- has been shown as business income and whatever the expenses have been incurred by the assessee in connection with providing the services and running and maintenance of business were claimed and debited to the profit & loss account and hence this has resulted in a loss of Rs.2,09,41,853/-. The loss has been explained by the assessee as incurred on account of incurring of expenses on day today basis as only part of building at approximately 16.45% was let out and the assessee has to maintain the entire building resulting into loss under the head business. The said contention of the assessee did not find favour with the Ld. CIT(A) and the Ld. CIT(A) enhanced the assessment of the assessee by observing and holding as under:

> "6.1 I have also gone through agreement dated 30th of December 2008 called 'Amenities Agreement' entered by the appellant with the same party that is Indus Towers Ltd. This agreement says that for the office number 304 only as per the requirement of client certain amenities for more beneficial and convenient use of the said premise the appellant, called the service provided here will give certain amenities. The list of amenities surprisingly are listed in annexure B which are adverbatum the same as given below-
>
> 1. IG **set** for common areas
> 2. A space for one DG sets – stackable
> 3. Furnished violets and total floor finish
> 4. Common area tiling and finishing
> 5. Landscape garden area
> 6. Fitness area - charge able
> 7. Cafe area – chargeable
> 8. Grand entrance lobby
> 9. Beautification of the the ferry of the premises
> 10. A space for signage is as per our drawings.
>
> This agreement is also accompanied by a annexure C which says 'computation of monthly rent payable under amenities agreement ' and then in a table it shows the amount of rent starting from 11.1.2008 210/31/2011 an amount Rs.5,17,081/- followed by a rent of Rs.5,94,643/- for the period from 11/1/2011 to 10/31/2014 and so on Delhi 10/31/2023.
>
> 6.2 Thus it is clear from the reading of these two agreements entered by the appellant with the same party that amenities are the same and covered by a lease deed and again in Amenities agreement and the word used is rent only for both the agreements. As mentioned above by the amenities agreement to further services

or amenities have been provided. It is a different matter that these amenities are in fact such indispensable things without which the premise cannot he rented out. Even if it is accepted that same requires some services for which manpower is acquired, it is noteworthy that in the lease deed only appellant has charged for maintenance as well as the upkeep of the building at the rate of Rs.2/- per square foot per month in clause 2.3 under article 2 of the said lease deed. In view of this the it is seen that the appellant is taking contradictory stand where on one hand he says that he is only creating an asset and hence all the expenses incurred for the construction of the said building are capitalised as capital work in progress and then on the other hand once part of the asset owned by them which came into existence and let out to on the rent, the appellant are trying to bifurcate the rent for the same facilities which are in the nature of maintenance and upkeep of the building by entering into a separate agreement and showing it as business receipt.

6.4 Thus in the given set of facts available in the case of appellant where he is constructing a building as an asset only and thus are owner of the building the income from letting out the building is in the nature of house property income. As discussed above since the amenities in the lease deed and again in the Amenities agreement are one and the same for which monthly rent is being charged by the appellant and for which appellant entered into a different agreement, the nature of amount being received by no stretch of imagination can be business receipt, as claimed by the appellant. In the decision cited in [2010] 5 taxmann.com 39 (Hyd. - ITAT) also it was decided by a honourable tribunals that when assessee exploits a property to derive rental income it has to be held that income realized by him by way of rental income from a building with other asset attached to the building, is to be assessed as 'income from house property' only. In 2010-TIOL-266-ITAT-HYD, in the case of Shri G RAGHURAM, ITA No.69/Hyd/2010 it was decided that same has to be taxed under the head house property income The head notes of the case are reproduced as under:-

"Assessee is the owner of certain land and devolved the same to a developer for developing superstructure on it - Assessee rented out the superstructure to M/s Satyam Computers by virtue of two agreements one is for renting premises and the other is for providing amenities like DG sets, Transformers and furniture and fixture. Assessee offered the rental income for taxation under the head "income from house property" and offered the receipts of amenities after deducting interest paid on loan taken for the modification of the superstructure as per the requirement of the tenant, and depreciation, under the head "business income" 40 took the view that though there were two agreements yet the income from amenities should be assessed under head "income from house property". Beside this the 40 also took the view that there is transfer in this case, as per the provisions of section 2(47) and capital gain is chargeable and for that purpose the market value, superstructure is to be taken as sale consideration - CIT(A) directed the 40 to tax the income from the amenities under the head income from other sources and also allowed depreciation and other expenses - for the purpose of capital gain the CIT(A) directed the AO to consider the market value of land, as on the date of transfer, as sale consideration-Matter went to the Tribunal .

After hearing both the parties the Bench has held that, ++ Keeping in view the nature of activities of the tenant, the amenities are provided by the assessee to exploit the property in most profitable manner. In the present case, the assessee made separate lease agreements as per tax planning whereas the lease from the lessees point of view is only for the property as a whole. This is evident from the facts that (a) the TDS certificates clearly show that the entire payments made by Satyam Computers is towards rent - a simple composite payment done every month (b) the assesee in spite of repeated requests, could not furnish details of the assets on which lease receipts was being shown and depreciation was being claimed.

++ (c) the agreement for providing Interiors was done with SDE engineers which is the same entity with whom the assesee had entered into for development property, i.e., the property developer was providing the interiors - this proves the point that the amenities which are being stated as leased out separately are in fact nothing separate but are part of the property, integral to make the property viable for being used as a commercial building;

++ (d) The building itself is the amenity being provided here and that is why the agreement for lease of amenities prescribes the lease amount in terms of sq.ft - Rs.15 per sq.ft. per month, which is the same rate at which the property lease was also agreed upon. Without these amenities, the bare building is of no use, which is a common feature in any property;

++ the assessee made two agreements, one for letout of the property and another for providing amenities and there is a doubt in the mind of the assessing officer regarding the correctness of the income declared by the assessee as 'income from house property' and income from business. He has treated the entire income i.e. as 'income from house property'. Admittedly, the authorities have the freedom to go beyond the documents to find out the real intention of the parties. In this case, though there is two agreements the real intention of the parties is different from what appears ex facie. Since there is a doubt, the assessing officer is justified in going beyond the documents to find out real intention of the parties by ignoring the apparent. In this circumstance, the assessing officer has to remove the facade to expose the real intention of the parties cleverly cloaked and the actual agreement cannot be given effect to.

++ the assessing officer came to the correct conclusion that real rental value was bifurcated into two separate income viz., one is rental income of house property and another is hire charges of the equipment. Further, in the case of letting of the machinery, plant or furniture, Sec 56(2) (iii) of the Act is applicable, but only letting of building with certain amenities, this provision is not applicable and in that event, the income from letting out was chargeable under the head 'income from house property'. The hire charges said to have been collected for the purpose of providing amenities and the rent for the building would not come under the purview of Sec .k(2)(iii) of the Act. The word 'plant' cannot be liberally construed so as to include a1ttems. It is not possible to give such a wide construction as suggested by the learned counsel for the assessee;

6.5 In view of this, I am neither in agreement with the AO that income from business can be assessed nor with the appellant that income from business should have been reflected. It is for the reason that income from business the sections governing the same being section28 onwards of the act are not applicable where appellant is not in business where the intention is to make profit from the activity. For creating an asset though it has been shown in form of profit & loss account it is basically the expenses and receipts of rent when the activity is not itself business activity the applicability of the sec governing business income which in this case is sec 37 of the act does not arise. In view of this the AO's action of allowing expenses related to non let out portion is upheld for the reason that there is no income from business and hence there cannot be a loss. In view of this the net loss reflected at Rs.2,09,41,853/- and assessed at Rs.3,70,699/- is taken at zero as mentioned above already. The A 0 is directed to compute the entire rental income under the head house property income by taking the rental income figure Rs.1,14,28,595/- along with Rs.95,85,405/- as the rent and to give deduction as per provisions of section 24 of the act only which are already considered by A.0 in computation under the head 'Income from House Property'. There is an enhancement in House Property of the appellant by the amount of Rs95,85,405/-. Accordingly ground number 6 is dismissed."

11. The Ld. A.R. submitted before us that the act of the Ld. CIT(A) in treating the loss from business as shown by the assessee at Rs.2,09,41,853/- at nil and treating the income on account of service charges of Rs.95,85,405/- as income from the house property was not correct and against the law. The Ld. A.R. submitted that the assessee entered into two separate agreements one as regards the leasing out of premises and second in respect of various amenities to be provided by the assessee to the tenants. The lease rent was offered to tax under the income from house property whereas the service charges received for the amenities provided were offered to tax as business income. However, the Ld. CIT(A), after perusing the agreement with M/s. Indus Tower Ltd. which contains the details of amenities to be provided to the tenant in the annexure B which comprised of DG set for common areas, space for one DG sets – stackable, finished toilets and total floor finish, common area tilling and finishing, landscape garden area, fitness area-chargeable, cafeteria-chargeable, grand entrance lobby, beautification of periphery of the premises and space for signage as per drawings. The Ld. CIT(A) observed that the amenities were indispensable to the letting out of the premises and accordingly treated the

service charges as charges under the head income from house property. The Ld. A.R. submitted that for all the years right from 2010-11 to 2014-15 the services have been treated under the head business income and accepted by the department till AY 2012-13 and pending for remaining two years. The Ld. A.R. submitted that following the principle of consistency the same should be accepted in the current year also as the assessee is having separate agreement for the amenities and it is only inadvertent mentioning of amenities in one of the agreements. The Ld. CIT(A) reached a conclusion which is contrary to the subsequent years. The Ld. A.R. relied in the case of CIT vs. Kargil India Ltd. in IA No.1 of 2016 dated 28.11.16. Finally, the Ld. A.R. submitted that in view of the accepted position by the Revenue in the subsequent years even in the assessment proceeding concluded under section 143(3) of the Act from A.Y. 2010-11 to 2012-13 the same should be accepted in the current year also and the order of Ld. CIT(A) enhancing the income and rejecting the claim of the assessee qua business expenses should be reversed.

12. The Ld. D.R., on the other hand, relied heavily on the order of Ld. CIT(A) by submitting that it is only for the purpose of tax avoidance, the assessee has entered into separate lease/license agreement and amenities agreement and shown the income from lease and license under the income from house property whereas the service charges were shown under the head business income in order to claim the

business expenses in relation to the entire property of the assessee which was not even let out during the year. The Ld. D.R. submitted that in view of these facts the order of the Ld. CIT(A) deserved to be affirmed.

13. Having heard the rival submissions of both the parties and perusing the material on record, we find that in this case the assessee has entered into separate agreements one for lease of premises and second for providing various amenities for which service charges were charged by the assessee and the same was not treated as part of the house property income and as such shown under the head income from the business. The assessee also claimed expenses incurred on the maintenance of the entire property which is not even let out during the year resulting into the loss from the business at Rs.2,09,41,853/-. It is worth noting that the same service charges received in the subsequent years under the same and similar agreements was shown as income from business right from 2010-11 to 2014-15 and accepted in the scrutiny assessment which was finalized from 2010-11 to 2012-13 and pending for disposal for the A.Y. 2013-14 and 2014-15. In our opinion, the assessee has charged separately for providing various amenities to the tenants which has rightly been shown under the head income from business and rightly claimed the various expenses incurred by the assessee which has resulted into a loss of Rs.2,09,41,853/-. Once it is proved that the business of the assessee is to construct , complete and let out the properties , then the expenses have to be allowed to the

assessee. Under these circumstances, we are not in a position to sustain the order passed by the Ld. CIT(A) which is not correct, in view of the underlying facts. Accordingly, we set aside the order of the Ld. CIT(A) and direct the AO to treat the income from service charges as income from business income and allow the claim of the expenses as claimed by the assessee. Accordingly, this ground is allowed.

14. The issue raised in ground No.3 is against the confirmation of proportionate disallowance of expenditure of Rs.2,65,79,851/- as made by the AO in relation to the area not let out during the year while computing the business income. The facts in brief are that the AO observed during the assessment proceedings that out of total area constructed up to the year and only 51819 sq. ft. which works out to 16.45% was let out till the year end. However, the entire expenses of phase 1 of Sky Line Icon building (completed on 30.11.08) from December to March were claimed by the assessee under the head income from business on the plea that once the constructed space is available for use and is not under work in progress, the expenses incurred on in maintaining the space is allowable as business expenditure and accordingly the AO disallowed the 83.55% of such expenses thereto reducing the loss from the business. In the appellate proceedings, the Ld. CIT(A) did not deal with these issue raised by the assessee. The Ld. A.R. submitted that when the assessee has already commenced its business, the imposition of condition by the AO to the proportionate allowance is wrong and against the

established principle of business norms. The Ld. A.R. submitted that once the business has commenced the expenses have to be allowed fully and not in parts. The Ld. A.R. prayed that the disallowance as worked out by the AO on the basis of area not let out i.e. 83.55% should be deleted.

15. The Ld. D.R., on the other hand, relied on the order of AO on this issue and submitted that since the assessee has not let out the premises fully during the year therefore, the proportionate disallowance was very much correct as per the accepted business principles.

16. Having heard both the parties and perused the material on record, we find that the AO has disallowed proportionate expenses equal to 83.55% which represented the area not let out during the year thereby disallowing Rs.2,65,79,851/- being expenses from December 2008 to March 2009 in respect of Sky Line Icon building which was completed on 30.11.08. We find that the building has been completed and available for use in the business and once it is proved that the assessee has commenced its business, the proportionate disallowance on the basis of area not let out during the year is not correct. In view of the same, we are inclined to direct the AO to delete the disallowance of Rs.2,65,79,851/-. The ground raised by the assessee is allowed.

17. Ground Nos.4 & 5 are not pressed and therefore dismissed as not pressed.

ITA No.69/M/2013 (Revenue's appeal)

18. The only issue raised by the Revenue in various grounds of appeal is against the deletion of Rs.1,87,01,268/- by Ld. CIT(A) as estimated by the AO as business income at 8% of the work in progress.

19. At the outset, the Ld. A.R. brought to the notice of the Bench that the issue raised by the Revenue in the present appeal is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.2124/M/2011 for A.Y. 2007-08 and others vide order dated 31.07.12 and ITA No.6580/M/2007 for A.Y. 2003-04 vide order dated 11.05.16.

20. The Ld. D.R. fairly agreed to the contention of the Ld. A.R. that issue is covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case.

21. Having heard rival contentions of both the parties and perused the material on record and after carefully perusing decisions of the co-ordinate bench of the Tribunal, we observe that the identical issue has been decided by the co-ordinate bench of the Tribunal in the earlier years in favour of the assessee. The Ld. CIT(A) also allowed the appeal of the assessee by holding that the assessee was not holding the work in progress as stock in trade but as capital work in progress and accepted the contention of the assessee that assessee has no profit on the said construction which can be

estimated by applying the percentage completion method. We, therefore, following the decision of the co-ordinate benches of the Tribunal and maintaining the consistency therewith, uphold the order of the Ld. CIT(A) and dismiss the appeal of the Revenue.

ITA No.2416/M/2015 (Assessee's appeal)

22. At the outset, the Ld. Counsel for the assessee submitted that ground Nos.1 to 3 are not pressed. Accordingly, ground Nos.1 to 3 are dismissed as not pressed.

23. The issue raised in ground No.4 is against affirming the action of the AO in disallowing proportionate interest expenditure and municipal taxes to the area not let out by the assessee out of the total constructed area while calculating the income from house property. Since we have already decided the identical issue in favour of the assessee in ITA No.7741/M/2012 in ground No.1, therefore, our finding on the said ground would, mutatis mutandis, would apply to this ground as well. Accordingly, the issue is decided in favour of the assessee.

24. The issue raised in ground No.5 is identical to one as decided by us in ground No.3 of ITA No.7741/M/2012 and therefore our finding on the said ground would, mutatis mutandis, would apply to this ground as well. Accordingly, this ground is also allowed.

ITA No.3103/M/2015 (Revenue's appeal)

25. The identical issue has been decided by us in ITA No.69/M/2013 against the Revenue and in favour of the assessee. Therefore, following the same ratio, we dismiss the appeal filed by the Revenue by upholding the order of the Ld. CIT(A) on this issue as the issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case in the earlier years.

26. In the result, assessee's appeals are allowed and the Revenue's appeals are dismissed.

Order pronounced in the open court on 27.03.2018.

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 27.03.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.