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

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

ITA No.7642/M/2012
Assessment Year: 2009-10

Mr. Shekhar Dadarkar Prop. M/s. S.D. Construction, Geetanjali CHS Ltd., Plot No.11, Shastri Nagar, Goregaon (West), Mumbai – 400 104 **PAN: ADAPD8694G**	Vs.	DCIT 24(3), Bandra Kurla Complex, Bandra (East), Mumbai – 400 050
(Appellant)		(Respondent)

ITA No.819/M/2013
Assessment Year: 2009-10

ACIT-24(3), R.No.701, C-11, 7th Floor, B.K.C., Bandra (East), Mumbai – 51	Vs.	Mr. Shekhar Dadarkar Prop. M/s. S.D. Construction, Geetanjali CHS Ltd., Plot No.11, Off New Link Road, Goregaon (W), Mumbai – 400 104 **PAN: ADAPD8694G**
(Appellant)		(Respondent)

ITA No.1032/M/2017
Assessment Year: 2010-11

ITA No.1033/M/2017
Assessment Year: 2012-13

Mr. Shekhar Dadarkar Prop. M/s. S.D. Construction, Geetanjali CHS Ltd., Plot No.11, Shastri Nagar, Goregaon (West), Mumbai – 400 104 **PAN: ADAPD8694G**	Vs.	ACIT 31(3), Room No.207, 2nd Floor, C-10, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 050
(Appellant)		(Respondent)

ITA No.2411/M/2017
Assessment Year: 2011-12

Mr. Shekhar Dadarkar Prop. M/s. S.D. Construction, Geetanjali CHS Ltd., Plot No.11, Shastri Nagar, Goregaon (West), Mumbai – 400 104 **PAN: ADAPD8694G**	Vs.	DCIT-24(3), 7th Floor, C-11, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
(Appellant)		(Respondent)

ITA No.2412/M/2017
Assessment Year: 2013-14

Mr. Shekhar Dadarkar Prop. M/s. S.D. Construction, Geetanjali CHS Ltd., Plot No.11, Shastri Nagar, Goregaon (West), Mumbai – 400 104 **PAN: ADAPD8694G**	Vs.	ACIT-31(3), Room No.409, C-13, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 050
(Appellant)		(Respondent)

Present for:
Assessee by :None
Revenue by :Shri V. Justin, D.R.

Date of Hearing : 04.04.2018
Date of Pronouncement : 09.04.2018

O R D E R

Per Rajesh Kumar, Accountant Member:

The above titled five appeals by the assessee and one by the Revenue have been preferred against the different orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] for the respective assessment years.

2. At the outset, we would like to mention that at the time of hearing neither assessee nor his authorized representative was present to represent the cases. However, the application seeking adjournment was filed which was rejected for the reasons that the case of the assessee has been adjourned at as many as 10 times from 10.03.14 till today i.e. 04.04.18. In view of the said facts we observe that the assessee is non cooperative in prosecution of his appeals. We are of the view that these appeals should be disposed of on merits after hearing the Ld. D.R. Accordingly, these appeals are being disposed of in the ensuing paras after hearing the Ld. D.R. and considering the merits of the respective cases.

ITA No.7642/M/2012 for A.Y. 2009-10

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

> "1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming
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> 1.1 Invocation of section 40(a)(ia) to transaction entered into with non banking finance companies;
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> 1.2 Addition of Rs.88,85,487/- u/s 40(a)(ia) for non deduction of tax at source.
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> 2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs.7,98,000/- u/s 40A(3) of Income Tax Act, 1961.
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> 3. Appellant craves leave to add, alter and/or modify the grounds of appeal on or before the date of hearing of the appeal."

4. The issue involved in ground No.1 is against the confirmation of addition of Rs.88,85,487/- as made by the AO under section 40(a)(ia) of the Act on account of non deduction of TDS on the payments made to non banking finance companies towards interest on loans.

5. The brief facts are that the AO during the course of assessment proceedings noticed that the assessee has charged a sum of Rs.88,85,487/- as payment of interest to non banking finance companies namely Religare Finvest Ltd., Reliance Capital Ltd., Indiabulls Hsg. Fin. Ltd., Indiabulls Hsg. Loans and Cholamanglam DBS Finance Ltd. which was debited under the head interest charges while no TDS was deducted on these payments. Upon an enquiry from the AO the assessee replied that the provisions of deduction of TDS at source as contained in section 194 of the Act are not applicable as NBFCs are carrying on banking business. The AO was not convinced with the reply of the assessee and added the said sum of Rs.88,85,487/- on account of non deduction of TDS by applying the provision of section 40(a)(ia) of the Act which was also confirmed by the Ld. CIT(A) in the appellate proceedings by holding that the NBFCs are not exempted from the application of provisions of section 193 & 194 of the Act.

6. Having heard the Ld. D.R. and considering the facts on record, we find that the assessee has made payment of Rs.88,85,487/- as per details extracted below which represented the payment of interest to non banking finance companies on which no TDS was deducted by the assessee.

M/s. Religare Finvest Ltd.	:	Rs.11,27,176/-
M/s. Reliance Capital Ltd.	:	Rs.47,12,509/-
M/s. Indiabulls Hsg. Fin. Ltd.	:	Rs. 9,45,794/-
M/s. Indiabulls Hsg. Loan	:	Rs.19,92,710/-
M/s. Cholamandalam DBS Finance Ltd.	:	Rs. 1,07,298/-
		Rs.88,85,487/-
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7. We are in agreement with the conclusion of first appellate authority that the provisions of tax deduction at source are applicable to the interest payments made to NBFCs as these companies are not excluded from the application of provisions of section 193 and 194 of the Act. However, in view of the 2nd proviso to section 40(a)(ia) of the Act, we are of the view that if the payees of the interest i.e. the above stated NBFCs have disclosed the said income in their respective returns of income and paid income tax as per the applicable provision of law then there was no requirement of deduction of tax at source as the payees have paid the tax on the said receipts and the assessee can not be treated as assessee in default. Thus this matter needs further examination and verification at the level of the AO whether the payees have disclosed these payments as receipts in their respective returns of income. Therefore, we, in the interest of justice and fairplay restore the matter back to the file of AO to decide the issue as per the 2nd proviso to section 40(a)(ia) after affording a reasonable opportunity of being heard to the assessee. Needless to say that if the payees have shown the said receipts of income then these payments should be allowed to the assessee. The ground No.1 of the appeal of the assessee is allowed for statistical purposes.

8. The second issue raised by the assessee is as regards confirmation of addition of Rs.7,98,000/- by CIT(A) as made by the AO u/s 40A(3) of the Income Tax Act on account of cash payments exceeding Rs. 20,000/-.

9. The facts in brief are that the assessee purchased river sand and water by making cash payments to the tune of Rs.7,98,000/-. According to the AO the said payments are not admissible as allowable expenses u/s 40A(3) of the Act and while rejecting the contentions of the assessee that as per rule 6DD(f) the said payments by way of cash are exempted as these expenses were incurred for purchase of products manufactured or processed without the aid of power in a cottage industry and thus added the same to the income of the assessee.

10. In the appellate proceedings, the Ld. CIT(A) also found that the purchase of sand/water is not exempt as that is not covered under the products manufactured or processed without the aid of power in a cottage industry and consequently confirmed the addition.

11. Having heard the Ld. D.R. and perusing the materials on record, we find that the cash payment to the tune of Rs.7,98,000/- was made for purchase of river sand and water which was claimed to be exempt under rule 6DD(f) of the Rules on the ground that the same are the products manufactured or processed without the aid of power in a cottage industry. According to the Ld. CIT(A) the same is not covered in that category. The Ld. CIT(A) also referred to the definition of cottage industry which is not available in the Income Tax Rules and finally dismissed the appeal of the assessee. Having examined the issue in depth and after looking to the facts and circumstances and nature of

purchases, we are of the view that assessee should be given one more opportunity to bring out and forth circumstances necessitating the cash payments for the purchase of sand/water and the issue should be decided denovo. Accordingly, we set aside the issue to the file of the AO with a direction to decide the matter as per the facts and law after affording a reasonable opportunity of being heard to the assessee. Ground No.2 is allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.819/M/2013 for A.Y. 2009-10(Revenue's appeal)

13. The various grounds raised by the Revenue are as under:

> "1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting disallowance of expenditure of Rs.1,39,300/- made by the Assessing officer on account of refundable deposit to BMC and MHADA ignoring the fact that the expenditure is of capital nature;
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> 2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in accepting the loss incurred by proprietary concern namely, S.D. Hospitality (Restaurant) by ignoring the fact that assessee does not maintain consumption register and has shown different ratio of consumption for different restaurants;
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> 3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.20,65,289/- made by the Assessing officer on account of non-genuine purchase and by admitting additional evidence in the form of ledger accounts of purchase parties, confirmation letter and copies of bank statement in contravention of Rule 46A despite several opportunities given by the Assessing officer during assessment proceedings;
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> 4. On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in deleting the addition of Rs.8,52,725/- made by the Assessing officer on account of various expenses incurred in cash when the assessee failed to furnish supporting evidences to prove genuineness of expenses and their relation with the business.

The appellant prays that the order of the CIT(A) on the grounds be set aside and matter may be decided according to law. The appellant craves leave to amend or alter any ground or add new ground which may be necessary."

14. The issue raised in ground No.1 is against the deletion of addition of Rs.1,39,300/- by Ld. CIT(A) as made by the AO on account of refundable deposit to BMC and MHADA.

15. The facts in brief are that on the examination of details furnished by the assessee the AO observed that the assessee has paid Rs.12,25,600/- to BMC on 18.07.08 and Rs.14,38,641/- to MHADA on 19.06.08 which were inclusive of deposits of Rs.89,300/- and Rs. 50,000/- respectively. Accordingly, the AO issued show cause notice vide order sheet entry dated 23.11.11 as to why the deposit should not be disallowed to the tune of Rs.1,39,300/- which remained unresponded by the assessee.

16. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

> "4.3 I have carefully considered the above submissions of the appellant. The above deposits have been given to BMC to ensure that the basement of the building is not used for illegal purpose or for storage of hazardous chemicals. Part of the deposit has also taken by BMC for removal of debris. These deposits are never returned by the BMC and hence consistently the appellant had been claiming the deposits as revenue expenditure. The appellant had not brought any instance of the deposits paid in the previous year's being received back from BMC. It is the submission of the appellant that in case if the same is received in future the same shall be assessed to tax. I find that no disallowance was made on this account in the earlier years and the claim was consistently accepted by the AO and hence he cannot ignore the principle of consistency. Since the above deposits were paid wholly and exclusively for the purpose of the business and they are not capital expenditure, I direct the AO to allow the same u/s.37(i) of the Income Tax Act. In view of this, the addition made by the AO is deleted and claim of the appellant is allowed. This ground of appeal is allowed."

17. After hearing the Ld. D.R. and perusing the relevant materials on record, we find that the Ld. CIT(A) has examined the issue at great length and reached a conclusion that the said deposits were given wholly and exclusively for the purpose of business of the assessee and are not capital of nature and covered under the provision of section 37(1) of the Income Tax Act. Having perused and examined the materials on record, we are in complete agreement with the Ld. CIT(A) that the said finances/deposits are wholly and exclusively for the purpose of business and are admissible. Therefore, we are inclined to affirm the order of Ld. CIT(A) on this issue and the ground raised by the Revenue is dismissed.

18. The issue raised in ground No.2 is against the accepting the loss incurred by proprietary concern namely, S.D. Hospitality (Restaurant) by ignoring the fact that assessee does not maintain consumption register and has shown different ratio of consumption of materials for different restaurants.

19. The facts in brief are that the S.D. Hospitality (Restaurant) is a proprietary concern of assessee which is engaged in operation of three restaurants. The AO during the course of assessment proceedings called upon the assessee to furnish the details of consumption of various materials as per the stock records/register maintained. However, it was found that assessee has not maintained any records of consumption of raw materials and finally the AO reworked the loss by working out the consumption at 35% of the turnover at

Rs.34,25,574/- as against 65,04,598/- claimed by the assessee and thus added Rs.30,79,024/- to the income of the assessee on account of differential loss.

20. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

> "5.3 I have carefully considered the submissions made by the appellant and the impugned assessment order on this issue. The appellant is running 3 restaurants viz. Paratha and More at Chembur and White and Zing Café at Goregaon. The Restaurant 'Paratha and More' was set up by the appellant in the F.Y.2005-06 which provides various types of parathas to the customers. Since Indian cuisine is served in this restaurant the business is popular and it got reasonably established and hence the material consumption is also reasonable.
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> 5.3.1. The Restaurants White and Zing Cafes were serving continental food and it did not appeal to the local customers and the appellant was struggling to achieve the break even because of higher material consumption. The Assessing Officer had failed to appreciate that consumption of material depends upon the recipe and the kind of cuisine. He has also not brought any material on record to show that the average 35% of the material consumption would be same to all kinds of cuisines. As far as 'Parathas and More' is concerned, the appellant had shown the material consumption as 36.52% which is comparable to the average consumption in the industry. The nature of material consumed is different in continental cuisines and hence the normal average of 35% cannot be applicable to this special kind of cuisines. The appellant had also furnished the consumption in the F.Y.2010-11 and 2011-12 for both the cuisines. As far as Parathas & More is concerned, the average material consumption is 40.64% and 38.47% whereas with regard to the continental food, the percentage of consumption was 100.48% and 80%. Parathas being popular, the turnover was also more. This clearly shows that the appellant is struggling to achieve the break even in respect of the restaurants White and Zing Cafe.
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> 5.3.2. One of the reasons attributed by the appellant was that the employees food cost has not been segregated from the total consumption and the same is debited to the purchase of food items. It was also submitted that the appellant did not maintain separate account towards employee meat consumption. As mentioned above, parathas being popular, the sales turnover was also high i.e. Rs.1.66 crores and Rs.1.81 crores respectively for F.Y.2010-11 and 2011- 12, where as the sales turnover of the other restaurant at Goregaon is Rs.65.45 lacs & 64.54 lacs respectively for the same period. From this it is clear that both White and Zing Café are not a high end Restaurants which are having teething trouble which the AO fails to understand.
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> 5.3.3. The appellant is liable to VAT under Sates Tax Law. The appellant had been

> regularly assessed to sales tax and no discrepancy in sales was noticed or pointed out by the Sales Tax Authorities. The Assessing Officer had not brought any material on record to show that the sale made to the sister concerns is fictitious. The Assessing Officer had not noticed any discrepancy with regard to the correctness and completeness of the account maintained by the appellant. Further the Assessing Officer had relied on the statement of the Accountant who is not an expert in the hotel industry particularly with regard to the consumption of raw material. In the statement recorded by the Assessing Officer, in answer to Q.No.11 Shri Vijay Mondkar has stated that "it appears the consumption ratio is high as compared to the normal standard. However. I am unable to acknowledge this question. My primary job is just to account for the sales and purchase transactions". The above clearly reveals that the accountant do not posses any knowledge in the hotel industry and the consumption ratio. In view of the above, the action of the Assessing Officer in rejecting the account invoking the provisions of section 145(3) cannot be accepted. As brought out in the submissions, the entire purchases were well documented with purchase invoices and the entire payments were made only way of cash and hence genuineness of the expenditure incurred and the material consumed cannot be doubted. In view of the above, the addition made is hereby deleted. This ground of appeal is allowed."

21. We have heard the Ld. D.R. and perused the relevant material on record. The ld DR contended that the assessee has not maintained the stock records as consumption of materials in the restaurants and it was not possible for the AO calculate the income correctly and the ld CIT(A) has erred in not affirming the AOs reworking of loss which should be reversed. Perusal of assessment order reveals that AO has not pointed out any specific defect in the consumption but made a general observation that in absence of consumption records , the consumption can not be relied. The issue has been examined in depth by the Ld. CIT(A) and recorded a conclusion that entire purchases were vouched and therefore, the consumption of materials cannot be doubted and thus allowed the appeal. Since there is no infirmity in the order of the Ld. CIT(A), the same is hereby affirmed on this issue by dismissing the ground raised by the Revenue.

22. The third ground raised by the Revenue is against the deletion of Rs.20,65,289/- on account of bogus and non genuine purchases by Ld. CIT(A) as made by the AO by admitting additional evidences in the form of ledger accounts of purchase parties, confirmation letters and copies of bank statements thereby violating Rule 46A.

23. The brief facts are that the assessee has made total purchases to the tune of Rs.5,34,77,339/- in the proprietary concern namely, S.D. Hospitality (Restaurant). During the assessment proceedings AO, in order to verify the genuineness of the purchases, issued notice under section 136(6) of the Act to the suppliers. However, in respect of three parties from whom the assessee has made purchases of Rs.20,65,289/- the notices were received back unserved. Finally, the AO after confronting the assessee with the same added the same to the income of the assessee when the assessee failed to produce the necessary details qua the said purchases and parties.

24. In the appellate proceedings, the Ld. CIT(A) deleted the entire addition when the assessee filed the necessary evidences as regards these three parties such as details of PAN, ledger accounts, bank statements etc. and the payments details by way of cheques and after considering the facts that all these parties were having VAT and GST numbers and thus justified the deletion the addition.

25. Having heard the Ld. D.R. and perusing the materials on record, we find that the addition was deleted by the Ld. CIT(A) after verifying the evidences filed by the assessee which were not filed before the AO despite sufficient opportunities being given to the assessee. The Revenue has also challenged that this has caused a contravention of rule 46 and AO has not been afforded opportunity to examine these documents as furnished by the assessee. Under these circumstances, we are of the view that the CIT(A) clearly erred in not confronting the evidences to the AO and therefore of the view that AO should be given an opportunity to examine these records and documents as filed before the Ld. CIT(A). Accordingly the issue is restored to the file of the AO with the direction to decide the issue after affording a reasonable opportunity to the assessee as per facts and law.This ground of Revenue is allowed for statistical purpose.

26. The issue raised in ground No.4 is against the deletion of Rs.8,52,725/- by Ld. CIT(A) as made by the AO on adhoc basis in respect of various expenses incurred in cash when the assessee failed to produce the necessary supporting evidences. During the assessment proceedings, the AO noticed that assessee has not maintained the bills and vouchers of expenses incurred in cash as regards miscellaneous expenses, telephone expenses, advertisement, sale promotion expenses and travelling expenses and thus disallowed 20% of the miscellaneous expenses, telephone expenses, advertisement and sale promotion expenses and

15% of travelling expenses and staff welfare expenses which worked out to Rs.8,52,725/-in aggregate.

27. In the appellate proceedings, the Ld. CIT(A) deleted the addition by observing and holding as under:

> "72 I have carefully considered the submissions made by the appellant. During the course of assessment proceedings, the details such as copies of bills raised, the bank statement evidencing the payment in cheque were submitted in respect of travelling and telephone expenses and similarly with regard to the advertisement and sales promotion, the bills and vouchers were furnished before the Assessing Officer for his verification. Copies of the invoices for sales promotion and advertisement along with details of payment by way of cheque were produced before the Assessing Officer. Since the Assessing Officer did not bring any material on record to show that there was some expenditure incurred for non business purpose and he further failed to bring on record the element of personal use in respect of telephone and travelling expenses, **the adhoc disallowances made by the Assessing Officer on all the heads of expenditure is hereby deleted. These grounds of appeal are allowed."**

28. After hearing the Ld. D.R. and perusing the relevant material on record as placed before us, we find that the disallowances to the tune Rs.8,52,725/- on account of various expenses were made purely on adhoc basis without pointing out any specific defect in the books of accounts except the general observation that there were no bills and vouchers for some expenses. We find that a general observation made by the AO that cash bills in respect of various expenses were not produced by the assessee is not sufficient to justify the adhoc disallowance. Under these circumstances, we are of the view that the order of Ld. CIT(A) is correct on this issue as no disallowance can be made on adhoc basis without pointing out specific defect and deficiency in the records maintained by the assessee. Accordingly, we dismiss the ground raised by the Revenue by affirming the order of Ld. CIT(A) on this issue.

29. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

ITA No.1032/M/2017 for A.Y. 2010-11(Assessee)

30 The issue raised in ground Nos.1 & 2 is identical to one as decided by us in ground Nos.1 & 2 in ITA No.7642/M/2012 for A.Y. 2009-10. Therefore, our decision in the said appeal would ,mutatis mutandis, apply to this ground as well. Accordingly, the issue is set aside to the file of the AO. Ground Nos.1 & 2 are allowed for statistical purposes.

31. The issue raised in ground No.3 is against the confirmation of Rs.18,00,000/- paid to Prabodhan Goregaon, a Public Charitable Trust registered u/s 12A of the Act under an agreement entered into between the assessee and the said trust without deduction of tax at source as disallowed by the AO u/s 40(a)(ia) of the Act.

32. The brief facts of the case are that in the assessment proceedings the AO noticed that assessee has debited Rs.18,00,000/- as care taking charges in his business M/s. S.D. Hospitality which were paid to Prabodhan Goregaon, a Public Charitable Trust registered with the Charity Commissioner and the Director of Income Tax (Exemption) u/s 12AA and 80G. It was submitted before the AO that the said payment was made under an agreement which provided for subletting of area in Ozone Club House for running the ancillary activities on care taker basis to the assessee.

However, no TDS was deducted under section 194I of the Act as the payment was made to a trust which is registered under section 12AA of the Act. The assessee submitted before the AO that since the trust was registered under section 12A of the Act, the provisions of section 194I were not applicable in view of circular No.4 dated 16.07.02 by Board. However, the AO was not satisfied with the contentions of the assessee and added the same to the income of the assessee.

33. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by holding that the said payment is covered by the provisions of section 194I of the Act and the provisions of section 40(a)(ia) of the Act were rightly invoked by the AO.

34. After hearing the Ld. D.R. and perusing the relevant materials on record, we certainly agree with the conclusion drawn by the Ld. CIT(A) that provisions of section 194I were applicable to any payment made by the assessee to a charitable trust even if the said trust is registered under section 12A and 80G of the Act and also that the circular No.4 dated 16.07.02 is not applicable to the present case and applicable only to those entities which was unconditionally and unequivocally mentioned in the said circular under section 10 of the Act. However, in view of the 2nd proviso to section 40(a)(ia) of the Act , we are of the view that if the trust has shown the receipts in its income and dealt with this income as per the provision, then the assessee can not be treated as assessee in default as regards non deduction at source are reached and the payment has to be allowed to the assessee

but the same requires verification at the end of AO. Accordingly, we restore the issue to the file of the AO with a direction to see whether the case is covered under 2nd proviso to section 40(a)(ia) of the Act and decide the issue as per law and fact. The ground by the assessee is allowed for statistical purpose.

35. Accordingly, appeal of the assessee is allowed for statistical purposes.

ITA No.2411/M/2017 for A.Y. 2011-12(Assessee)

36. The issue raised in ground Nos.1 & 2 is identical to one as decided by us in ITA No.7642/M/2012 for A.Y. 2009-10 in ground No.1. Therefore, our findings in ground No.1 in ITA No.7642/M/2012 would ,mutatis mutandis, apply to this ground as well. Accordingly, the issue is restored to the file of the AO and appeal is allowed for statistical purposes.The appeal is allowed for statistical purpose.

ITA No.1033/M/2017 for A.Y. 2012-13(Assessee)

37. The issue raised in ground Nos.1 & 2 is identical to one as decided by us in ground No.1 in ITA No.7642/M/2012 for A.Y. 2009-10 and therefore, our findings in ground No.1 in ITA No.7642/M/2012 would, mutatis mutandis, apply to this ground of the present appeal also. Accordingly, the issue is restored to the file of the AO. The ground Nos.1 & 2 are allowed for statistical purposes.

38. The issue raised in ground No.3 is identical to issue in ground No.3 in ITA No.1032/M/2017 for A.Y. 2010-11 and therefore, our findings on the said issue would, mutatis mutandis, apply to ground No.3 as well. Accordingly, the issue is set aside to the file of AO.

39. The issue raised in ground No.4 is against the confirmation of addition of Rs.11,98,862/- by Ld. CIT(A) towards deemed ALV of vacant flats which are lying in the stock in trade of the assessee's books of accounts. The facts in brief are that the assessee has some unsold flats in the project as on 31.03.12 as per details given in para 6 of the assessment order. Accordingly, a show cause notice was issued to the assessee as to why the deemed rent should not be assessed qua these unsold flats which was replied by the assessee vide written submission dated 20.03.15 by submitting that these unsold flats were not let out during the year and therefore, no question of estimating deemed rental income under the head income from house property. The AO rejected the contentions of the assessee as not tenable and estimated the deemed rent at Rs.17,12,660/- by relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Housing Finance & Leasing Co. Ltd. (2013) 29 taxmann.com 303 (Delhi) and added the same to the income of the assessee after allowing standard deduction at 30%.

40. In the appellate proceedings, the order of the AO was affirmed by the Ld. CIT(A) by holding that the decision in Ansal Housing Finance & Leasing Co. Ltd. (supra) is directly

applicable to the facts of the case and also noted that assessee has not challenged the computation of ALV by the AO and finally the issue was affirmed.

41. Having heard the Ld. D.R. and perusing the relevant materials on record, we find that the issue is squarely covered in favour of the Revenue by the decision of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) wherein it has been held that even in the case of unsold flats held in stock in trade the income has to be assessed by way of deemed rent. Accordingly, order passed by the Ld. CIT(A) is correct and is as per law and the same is affirmed by dismissing the ground raised by the assessee.

42. The appeal of the assessee is partly allowed for statistical purposes.

ITA No.2412/M/2017 for A.Y. 2013-14(Assessee)

43. The issue raised in ground Nos.1 & 2 are identical to one as decided by us in ground No.1 in ITA No.7642/M/2012 for A.Y. 2009-10 and therefore, our findings in ground No.1 in ITA No.7642/M/2012 would mutatis mutandis apply to ground Nos.1 & 2 of the present appeal also. Accordingly, the issue is restored to the file of the AO. The ground Nos.1 & 2 are allowed for statistical purposes.

44. The issue raised in ground No.3 is identical to one as decided by us in ground No.3 in ITA No.1032/M/2017 for A.Y. 2010-11 and our findings in ground No.3 in ITA No.1032/M/2017 for A.Y. 2010-11 would mutatis mutandis

apply to this ground as well. Accordingly, the issue is restored to the file of the AO and is allowed for statistical purposes.

45. The issue raised in ground No.4 is identical to one as decided by us in ground No.4 in ITA No.1033/M/2017 for A.Y. 2012-13 and our decision in ground No.4 in ITA No.1033/M/2017 for A.Y. 2012-13 would mutatis mutandis apply to this ground as well. Accordingly, the order of the Ld. CIT(A) is confirmed on this issue and ground raised by the assessee is dismissed.

46. The appeal of the assessee is partly allowed for statistical purposes.

47. In the result, appeals of assessee in ITA No.7642/M/2012, ITA No.1032/M/2017 and ITA No.2411/M/2017 are allowed and ITA No.1033/M/2017 & 2412/M/2017 are partly allowed for statistical purposes whereas the appeal by the revenue in ITA No.819/M/2013 is partly allowed for statistical purpose.

Order pronounced in the open court on 09.04.2018.

Sd/- **(Mahavir Singh)** **JUDICIAL MEMBER**	**Sd/-** **(Rajesh Kumar)** **ACCOUNTANT MEMBER**

Mumbai, Dated: 09.04.2018.

* 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.