

**IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI**

**BEFORE SHRIR. C. SHRMA, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 2184/Mum/2015(AY 2007-08)

Bombay Forgings Ltd. Groma House, C-Wing, 6 th floor, Sector-19, Vashi, Navi Mumbai-400 705	बनाम/ Vs.	DCIT 14(1)(2) Mumbai. Pin:-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACB2097B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No. 59/Mum/2017 (AY 2007-08)

DCIT 14(1)(2) Mumbai. Pin:-	बनाम/ Vs.	Bombay Forgings Ltd. Groma House, C-Wing, 6 th floor, Sector-19, Vashi, Navi Mumbai-400 705
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अपीलार्थीकीओरसे/ Appellant by	:	Ms. ArjuGarodia, DR
प्रत्यर्थीकीओरसे/ Respondentby	:	Dr. K. Shivram / Ms. NeelamJadhav

सुनवाईकीतारीख/ Date of Hearing	:	12/01/2017
घोषणाकीतारीख / Date of Pronouncement	:	21/03/2018

आदेश / ORDER

Per Shri Sandeep Goasain, Judicial Member:

The present appeal as well as Cross Objection filed by the assessee as well as revenue are against the order of Ld. CIT(A)-22, Mumbai dated 20.01.15 for AY 2007-08.

2. Since all the issues involved in this appeal/cross objection is common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Firstly, we have decided to take up appeal filed by the assessee bearing ITA No. 2184/Mum/2015 for AY 2007-08.

4. At the very outset, the Ld. AR appearing on behalf of the assessee filed an application for raising additional ground of cross objection vide letter dated 16th Dec, 2016 and the same is reproduced below: -

“5. Without prejudice to the above, the possession of the property is still with the Appellant, the consideration of

Rs.3,00,00,000/- is neither accrued nor received till the date by the Appellant hence the Addition confirmed by the CIT(A) on national basis may be deleted,

6. Without prejudice to the above, as per the order of the BIFR. capital gain is not chargeable under section 45(2) of the Income tax Act. 1961 in respect of capital gain arises out of conversion of as assets in to stock in trade., in respect to sale of property% hence, the Addition confirmed by the CIT(A) may be deleted.

7. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.

Vide application dated 16th Dec 2016, assessee seeks admission of appeal on the ground mentioned in the application.

5. On the other hand, the Ld. DR refuted the claim of the assessee and submitted that no such ground was raised by the assessee before Ld. CIT(A).

6. We have heard the Counsels for both the parties on this application and after perusal of the contents of application dated 16th Dec 2016, we find that the ground raised by way of additional ground of appeal by the assessee is purely legal question of law. Apart from above, it was also submitted that the facts relevant for arguing the additional grounds are already in record and therefore, entertaining these additional grounds will not require investigation into any new or fresh facts.

7. Therefore, while keeping in view the principles laid down by the Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd. v. CIT 229 ITR 383 (SC)**, **Jute Corporation of India Vs. CIT 187 ITR 688 (SC)**, **Ahemdabad Electrical Vrs. CIT 199 ITR 351**, wherein it has been held that the legal grounds, which goes to the roots of the case can be raised and allowed at any stage of proceedings. Therefore, keeping in view the above principles in mind, we allow the assessee to raise the

additional grounds of appeal. Hence, the application dated 16th Dec 2018 is allowed and the additional grounds raised by the assessee are **admitted**.

ITA No. 2184/Mum/2015 for AY 2007-08.

8. First of all we take up appeal in ITA No. 2184/Mum/2015 for AY 2007-08 filed by the assessee. The grounds of appeal are as under:-

GROUND OF APPEAL

1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs,3,00,00,000/- being balance sale consideration not received by the appellant till date without proper verification of facts.

2. The learned Commissioner of Income Tax (Appeals) has failed to understand that due to non-fulfillment of certain conditions in pursuant to the order of the Honorable Bombay High Court dated 13.03.2006 i.e. execution

of deed of assignment as let down in Clause No.6 of Supplementary MOU the appellant received only Rs. 19,00,00,000/- as against Rs.22,00,00,000/- as mentioned in the agreement.

3. The appellant obtained the consent / undertaking dated 12.04.2007 from the developers to treat the same amount as non refundable after 31 .03.2007 and has accordingly treated the same as income Ibr the year ended 31.03.2007.

4. The learned Commissioner of Income Tax (Appeals) was not justified in confirming the disallowances of Rs.50.84,000/- being deferred revenue expenditure claimed by the appellant without giving any cogent reasons.

5. The appellant craves leave to add, to alter or amend the above grounds of appeal.

9. The brief facts of the case are that the assessee is a deemed Public Limited Company engaged in the business of Manufacturing of Forgings used in Automobile Industry. The return of income was filed on 27.10.2007 declaring total income at 'NIL' and paid taxes of Rs. 232,351/-. The original assessment U/s.143(3) was completed on 29.12.2009 allowing the assessee's claim in respect of long term capital gain and deferred revenue expenditure.

Later on, the original assessment was set aside vide order U/s.263 passed on 17.01.2012 thereby directing the Assessing Officer to frame the assessment, *de novo*. Consequent upon the order passed by Ld. CIT(A) u/s 263 of the I.T. Act, the AO passed fresh assessment order on 31.10.13 thereby assessing the total income at Rs. 4,86,28,090/-.

Aggrieved by the order of AO, the assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the assessee has preferred the present appeal by raising the above grounds.

Ground No. 1 to 3.

10. These grounds raised by the assessee are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in confirming the additions of Rs. 3 crore being balance sale consideration not received by the assessee, therefore we thought it fit to dispose of the same through this common order.

11. Ld. AR appearing on behalf of the assessee reiterated the same arguments which were raised before Ld. CIT(A). The arguments raised before Ld. CIT(A) are mentioned in para no. 4.2 of the order of Ld. CIT(A), which are reproduced below:-

4.2 The appellant's submissions are as under:

As per the clause No.2 of the said MOU the appellant was to fulfill the various conditions laid down in this clause.

The appellant was not able to fulfill the conditions as per the Clause No-2 of the said MOU

dated 10.09.2004, accordingly the appellant entered into supplement MOU dated 06.10.2005 with MIs. Ivory Property Trust.

As per the Supplementary MOU the developer has agreed to take assignment of the appellant Right, Title, Interest and Possession of Leasehold land irrespective of the fact that the appellant was unable to purchase the reversionary right of the plot and also unable to settle the litigation of MOU.

The developer has agreed to take the assignment and conveyance of the said property from the appellant subject to the litigation.

The developer paid a total sum of Rs. 19 Crores to the appellant and the same was duly disclosed in the account of the appellant for the year ended 31.03.2006.

In pursuant to the order of the Honorable Bombay High Court dated 13.03.2006 the appellant was unable to execute the Deed of Assignment as provided in Clause No.6 of the supplementary MOU and therefore the balance consideration of Rs.3 Crores was remained to be received from the developer.

The appellant obtained the consent/ undertaking dated 12.04.2007 from the developer to treat the said

amount as non refundable after 31.03.2007 and has accordingly treated the same as income for the year ended 31.03.2007

The opinion of Justice Y. V. Chandrachud Former Chief Justice of India and also from M/s. V. Shankar Aiyer & Company Chartered Accountant who were of the opinion that sum of Rs.19 Crores has to be regarded as income of the appellant. Both the opinions were also filed with the Assessing Officer.

Justice Y. V. Chandrachud Former Chief Justice of India has relied on the judgement of Honorable Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia V/s. CIT (2003) reported in 260 ITR 49 (Born).

Till today the appellant has not received the balance consideration of Rs.3 Crores in this case

At time of original assessment the then Assessing Officer has considered all the above facts and circumstances of the case and after going through the document filed, correctly assessed the Long Term Capital Gains at Rs.6,02,60,134/-.

Even till today the appellant has not received the balance consideration from MIS. Ivory Property Trust.

From the above fact it is clear that the appellant has rightly claimed Long Term Capital Gains of Rs. 6,02,60,134[.

Thus, at the time of transfer of development rights, the original MoU entered into during FY 2004-05 was novated with supplementary MoU and later amended with consent/ undertaking dated if April, 2007, The AO was not justified in considering only the first MoU and not the subsequent developments in the matter. Even as per section 62 of the Indian Contract Act, 1872, novation of contract is permissible.

Reliance was placed on Polymat India P. Ltd. v. Mutual insurance Co. Ltd. (2005) 123 Corn. Cases 663 (SC)/CITv. ArunDua [1989] 186 ITR 494 (Cal.) (H

Ever? as per the nova ted terms between the Appellant and Ivory, the Appellant was entitled to receive only Rs,19 crores in lieu of transfer of development rights, which has been duly offered to tax.

The AO was not justified in treating Rs. 3 crores as part of sale consideration as the some was neither received by the Appellant nor accrued to ft. In other words, due to nonfulfillment of conditions, the Appellant was not entitled to the balance sum of Rs. 3 crores. Hence, the some cannot be considered as part

of 'full value of consideration received or accruing as a result of the transfer" in term r of section 48 of the income-(ox Act, 1961.

Reliance was placed in CIT v. ShoorjiVallabhdas[1962] 46 ITR 144 (SC)

Even till today the appellant has not received the balance consideration from Mils. Ivory Property Trust.

From the above fact it is clear that the appellant has rightly claimed Long Term Capital Gains of Rs. 6,02,60,134/-."

Apart from above, Ld. AR submitted that assessee being a public limited company was a sick unit declared by BIFR upto 31.03.07. The BIFR sanctioned a scheme of Rehabilitation which was subsequently modified and as per the modified rehabilitation, the assessee was permitted to enter into agreement with the builder for construction of residential /commercial building thereon. Pursuant to the tender, the bid of one M/s Ivory Properties Trust was accepted and approved and accordingly MoU dated 10.09.04 and supplement MoU dated 06.10.05 was

executed between assessee company and developer in respect of lease hold property of the assessee. It was further submitted by AR that although the initial MoU was executed subject to payment of total consideration of Rs. 22 crores for grant of development rights to M/s Ivory Properties Trust but since the assessee was not in a position to hand over the possession because of some unavoidable circumstance, therefore only 19 crore was received by the assessee and the balance consideration of Rs. 3 crore were not received by the assessee. It was further submitted that the possession of the property was still with the assessee, hence the capital gains cannot be assessed for the relevant year and to support his contention, the assessee relied upon the judgment of '**ChaturbhujDwarkadas Kapadia Vrs. CIT (2003) 260 ITR 49(Bom HC)**'.

It was further submitted by Ld. AR that since the assessee had received only 19 crores and the same have already been offered for LTCG and till today, the assessee has not received the balance consideration of Rs. 3 crores, therefore the addition by the by the revenue is not sustainable in the eyes of law.

In order to support his contentions, the assessee relied upon the judgment passed by Hon'ble Bombay High Court in the case of **CIT Vrs. Mrs. Hemal Raju Shete (2016) 239 Taxman 176 (Bom. HC)** wherein it was held that *“Only income that was actually received or accrued to assessee upon sale of shares had to be taxed and not any contingent deferred income.”*

Further the assessee has relied upon the judgment passed by Hon'ble Bombay High Court in the case of **CIT Vs. Texspin Engg. & Mfg. Works 2003) 263 ITR 345 ('Bom HC)** wherein it was held that *“One has to read the expression full value of the consideration received/accruing' u/s. 48 de hors a. 45(4) and if one reads a. 48 w. 5. 45(1) de hors a. 45(4), then the expression 'full value of consideration' in a. 48 cannot be the market value of the capital asset on the date of transfer. In such a case, the said expression has to be read in the light of the two judgments of the Supreme Court in the case of CIT v. George Henderson & Co. Ltd. 11967J 66 ITR 622 and CIT v. Gillanders Arbuthnot & Co. [1973 87 ITR 407 in which it has been held that the expression 'full value of the consideration' does not mean the*

market value of the asset transferred, but it shall mean the price bargained for by the parties to the transaction.”

12. On the other hand Ld. DR relied upon the orders passed by revenue authorities.

13. We have heard counsels for both the parties and we have also perused the material placed on record, judgment cited before us as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A) which is contained in para no. 4 in its order. The operative portion of the order of Ld. CIT(A) contained in para no. 4.3 to 4.7 of its order and the same is reproduced below:-

4.3 I have considered the facts and circumstances of the case which are discussed in detail in the above submissions. BIFR had declared the appellant company as a sick industrial unit and permitted the appellant to grant development rights at Kalina Unit and allotted the land to be developed arid also entered

into a Memorandum of Understanding for development rights with M/s Ivory Trust Property for Rs. 22 crores and supplementary MOU was entered on 6.10.2005. However, the appellant only received Rs. 19 crores as appellant could not fulfil certain conditions laid down vide the agreement as per the appellant's contentions. The AO had offered the long term capital gain at Rs. 60,26,0134/- considering as the total consideration received at Rs 19 crores instead of Rs,22 crores which was mentioned in the agreement. However, AO rejected the appellant's contention and computed the capital gains considering the appellant's total consideration at Rs. 22 crores. In the original assessment order, the AO had agreed with the appellant's contentions. However. CIT-10, Mumbai revised the order. Based on revised order of 263, AO had had considered the total considerations of the appellant at Rs. 22 crores.

4.4 The appellant's main contention in the submissions is AO had not considered the supplementary MoU which the appellant had entered and as the appellant could not fulfil all the conditions. Hence only Rs. 19 crores instead of Rs, 22 crores was paid by the developer to the appellant as mentioned in the supplementary MoU.

4.5 I had perused the MoU and Supplementary MoU which the appellant had entered on 6.10.2005. On perusal of the supplementary agreement Clause 1 is as under:-

“With respect to Plot A, instead of grant of development rights by the owner to the developer, the owner shall grant an assignment of all its right, title, interest and possession of Plot A to the Developer. With respect to the plot B, instead of grant of development rights by the owner to the developer, the owner shall sell, transfer and convey Plot B to the developer. In view of the transfer of plot A and Plot B being separated, as provided hereinabove, the aggregate consideration of Rs. 22,00,00,000/- (Rupees Twenty two crores only) has been agreed to be bifurcated in the following manner:

Amount	Plot A	Plot B
22,00,00,000	21,45,78,000	54,22,000

Accordingly the part considerations paid till date (including against the execution of this Supplemental (MoU) and the balance instalments have been agreed to be bifurcated in the following manner:

Amount (Rs)	Plot A	Plot B
1,00,00,000	97,50,000	2,50,000,
3,00,00,000	2,92,50,000	7,60,000

*ITA Nos. 2184/Mum/2015 &
C.O. No. 59/Mum/2017
Bombay Forgings Ltd*

9,00,00,000	8,77,50,000	22,50,000
3,00,00,000	2,92,50,000	7,50,000
3,00,00,000	2,92,50,000	7,50,000
3,00,00,000	2,93,28,000	6,72,000
22,00,00,000	21,45,78,000	54,22,000

4.6 On going through the full MoU and Supplementary MoU, there is no mention anywhere that the developer will be paying Rs. 19 crores only instead of Rs.22 crores agreed in the original agreement and MoU of the Supplementary agreement. Even when we perused the whole order, various payments for the various dates were also mentioned and appellant himself could not, pin point any material to show that Rs. 3 crore will not be paid to the appellant in time in future. In all the submissions of the appellant, there is no cogent evidence which is presented before me where appellant will not be receiving further Rs. 3 crores from the developer. In view of the peculiar situation, the facts of the case, appellant relied on the two cases laws:

Polymat India P. Ltd. v. Mutual Insurance Co. Ltd. (2005)123 Com. Cases 663(SC)/ CIT VrsArunDua(1989) 186 ITR 494 (Cal HC) wherein it was held by the Court that once the parties to the agreement had understood the

agreement in a certain way and had acted upon that agreement, it was not open to the ITO to give another interpretation and tax the assessee on hypothetical amount as payable. When we apply this ratio to our case, here the AO had not given any interpretation and taxed the assessee on hypothetical amount. The AO had only taken into consideration there was mentioned in both the agreements which the appellant had himself had acted. Hence this case is in favour of the AO than the appellant.

4.7 Further the appellant relied in the case of CIT vShoorjiVallabhdas (1962) 46 ITR 144(SC) in which the facts of this case are totally different from the fact of our case. This case only deals with the reduced commission paid to the appellant after considering the supplementary agreement and various clauses of the supplementary agreement. Though the appellant had received only Rs. 19 crores the other Rs. 3 crores the appellant could not show any cogent material was there to show that this amount will not be received in future. Hence the AO's computation of capital gains considering the amount of Rs. 22 crores mentioned in the agreement is justifiable. Hence AO's decision is upheld and ground of appeal is dismissed.

After having gone through the aforementioned order passed by Ld. CIT(A), we find that Ld. CIT(A) had upheld the additions only on the ground that MoU and supplementary MoU did not contained any condition that the developer will be paying only Rs. 19 crores instead of Rs. 22 crores agreed in the original agreement. From the record, we notice that the possession of the property in question even till today has not been handed over to M/s Ivory property trust and the same is with the assessee. Further, we find the following:-

- 1. As per the Order of the Bombay High Court and Small Cause Court there was a stay in handing over possession to third party, hence the property was not banded over to the developers, capital cannot be taxed in the hands of the Assessee.*
- 2. Possession was still with the assessee hence capital gains cannot be assessed for the relevant year. ChaturhujDwarkadas Kapadia v. CIT (2003) 26() ITR 49 (Bom.)(HC)*
- 3. Even till today the appellant has neither received the balance consideration from MIs. Ivory Property*

Trust. Nor the Appellant Company till today has executed deed of assignment. Title, Interest and Possession of Lease hold land to the developer Therefore there is no capital gain accrued as no possession was handed over to the developers.

4. *CIT vs. u. Mrs. Hemal Raju Shete (2016) 239 Taxman 176 (Bom. HC)*

Only income that was actually received or accrued to assessee upon sale of shares had to be taxed and not any contingent deferred income

5. *CIT Vs. Texspin Engg. & Mfg. Works 2003) 263 ITR 345 ('Bom HC),*

One has to read the expression 'full value of the consideration received/accruing' u/s. 48 de hors a. 45(4) and if one reads a. 48 w. 5. 45(1) de hors a. 45(4), then the expression 'full value of consideration' in a. 48 cannot be the market value of the capital asset on the date of transfer. In such a case, the said expression has to be read in the light of the two judgments of the Supreme Court in the case of CIT v. George Henderson & Co. Ltd. 11967J 66 ITR 622 and CIT v. Gillanders Arbuthnot & Co. [1973 87 ITR 407 in which it has been held that the expression 'full value of the consideration' does not mean the market value of

the asset transferred, but it shall mean the price bargained for by the parties to the transaction.

- 6. Without prejudice to the above, the Appellant is not liable to the capital gain tax under Income tax Act,1961. As per the BFIR order Modified Sactioned Rehabilitation Scheme dtd. 11/1112002, capital gain is not chargeable to tax uis,45(2) as arising from conversion of an assets in to stock in trade. Assessee is exempted.*
- 7. Provision of PJIFR override the provisions of Income - tax Act.*
- 8. As per CBDT Circular No. 5 of 2009 dtd.2/7/2009 the Assessing officer should follow the order of the BIFR and AAIFR.*

Addition confirmed by the CIT(A) may be deleted.

After observing the above, we find that the assessee has only received 19 crores out of the total consideration of Rs. 22 crores, as the assessee could not fulfill the certain conditions of the agreement. The assessee had also offered LTCG at Rs. 6,02,06,134/- considering as a total consideration received at Rs.

19 crores instead of 22 crores. We have also considered the judgments passed by Hon'ble Bombay High Court in the case of ***CIT vs. Mrs. Hemal Raju Shete (2016) 239 Taxman 176 (Bom. HC)*** wherein it was held that only income that was actually received or accrued to assessee upon sale of shares had to be taxed and not any contingent deferred income and the judgment passed in the case of ***CIT Vs. Texspin Engg. & Mfg. Works 2003) 263 ITR 345 ('Bom HC)***, wherein it was held that *one has to read the expression full value of the consideration received/accruing' u/s. 48 de hors a. 45(4) and if one reads a. 48 w. 5. 45(1) de hors a. 45(4), then the expression 'full value of consideration' in a. 48 cannot be the market value of the capital asset on the date of transfer. In such a case, the said expression has to be read in the light of the two judgments of the Supreme Court in the case of CIT v. George Henderson & Co. Ltd. 11967J 66 ITR 622 and CIT v. Gillanders Arbuthnot & Co. [1973 87 ITR 407 in which it has been held that the expression 'full value of the consideration' does not mean the market value of the asset*

transferred, but it shall mean the price bargained for by the parties to the transaction.

Thus, keeping in view the above judgments and the facts of the present case, we delete the additions made by the revenue. Resultantly, these grounds raised by the assessee are **allowed**.

Ground No. 4.

14. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowances of Rs.50.84,000/- being deferred revenue expenditure claimed by the assessee.

15. Ld. AR appearing on behalf of the assessee reiterated the same arguments which were raised before Ld. CIT(A). The arguments raised before Ld. CIT(A) are mentioned in para no. 5.2 of the order of Ld. CIT(A), which is reproduced below:-

5.2 The appellant's submissions are as under:

The appellant has debited the above expenses as exceptional expenses in the profit & loss account.

We would like to draw your honor's kind attention to Schedule-P, Notes forming Parts of Account for year ended 31.03.2007 wherein it was clearly mentioned that these are non-operative expenses which were incurred by the company at its unit at Na/ma, Mumbai during the period of discontinuance of its production activities and subsequent closure.

As per the direction of the B/FR the company sold its land at Kalinc and paid of the workers due in full and final settlement amounting to Rs.508.46 Lacs in the year 2005-06 i.e. A. Y2006-07. The company was debiting 1/10 of the above expenses every year as Deferred Revenue Expenditure i.e. Rs.50.84 Lacs every year. The unamortized balance was shown under Schedule 'K' as Deferred Revenue Expenditure.

We would also like to draw your honor's kind attention to the Directors Report attached along with the Annual Accounts wherein it is mentioned that exceptional items includes Rs.50.84 Lacs as Deferred Revenue Expenditure written off.

From the above facts it is clear that the above expenses are not prior period expenses but in the nature of Deferred Revenue Expenditure incurred for reviving the company and closing down the Kolinci Unit to consolidate the manufacturing activities at only one unit i.e. Aurangabad Unit (As per the direction of BIFR)."

16. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

17. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that AO disallowed the claim of the assessee considering it as prior period expenses which is not the expenditure of the year under consideration. However, as per the Directors Report of the Company, it was mentioned that exceptional items includes Rs.50,84,000/- as deferred revenues expenditure write off. We further notice that the said expenses are not prior period expenses but in the nature of deferred revenue expenditure incurred for reviving the

company and closing down kalian unit to consolidate the manufacturing unit. We further notice that once the expense has been allowed to be carried forward in the earlier year, then the expenses cannot be disallowed during the year. We find support from the judgment passed by Coordinate Bench of Hon'ble ITAT in the case of **Marwar hotel Ltd. Vs. AGIT (OSD)(2015) 155 ITD 655 (Ahmd.) (Trib)**, wherein it was held that “*where deduction of one fifth expenses amortized u/s 35D by assessee company in AY 2002-03, was allowed, same could not be disallowed in AY 2006-07*”.

Therefore keeping in view the above circumstances, the disallowance made by AO and confirmed by Ld. CIT(A) is hereby deleted. Resultantly, this ground raised by the assessee is **allowed.**

Additional Ground No. 5 to 7.

18. Since we have already decided the ground of appeal no. 1 to 4 on merits, therefore these grounds raised by the assessee become infructuous.

**Cross Objection No. 59/Mum/2017 (AY 2007-08)
filed by revenue.**

19. Since we have already decided the appeal of ITA No. 2184/Mum/2015 for the AY 2007-08 on merits and the grounds raised in the present cross objection are similar to that of appeal. Therefore, following our own decision in ITA No. 2184/M/15, we apply the same findings in the present cross objection in order to maintain judicial consistency which is applicable mutatis mutandis in the present cross objection filed by the revenue. Resultantly, this cross objection raised by the revenue stands **dismissed.**

20. In the net result, the appeal filed by the assessee stands **allowed** and cross objection filed by the revenue stands **dismissed.**

Order pronounced in the open court on 21st March, 2018.

Sd/-

Sd/-

(R. C. Sharma)

(Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.03.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**