

pertaining to the Flats sold in the year in which substantial sales of flats were made.

(c) The C.I.T (Appeals) should have seen that even after obtaining part occupancy certificate from the CIDCO, the appellant had to incur expenses to comply with the directions issued in the part occupancy certificate dated 10.06.2008.

(d) The First Appellate authority ought to have seen that even after obtaining part occupancy certificate, expenses were incurred by the appellant to fix leakages and other deficiencies pointed out by the purchasers of flats.

2 The C.I.T. (Appeals) failed to consider the following decisions placed before her in support of the Appellant's claim

(i) Decision dated 7.1.2011 in M/S Aditi Developers vs Asst. Commissioner of Income Tax in IT No.3302/M/2010.

(ii) Decision dated 20.5.2011 in Mantri Developers vs ITO-ITA No. 2819/M/2010

(iii) Decision dated 6.2.2013 in Aditya Builders vs CIT in ITA No. 2220/M/2012.

(iv) Decision dated 17.2.2015 in ACIT vs Paras Build Call Pvt. Ltd. ITA No. 234&4316/DEL/2010.

3. Without prejudice to the ground mentioned at 1 above, the appellant claims that the first appellate authority should have allowed construction expenses amounting to Rs. 13,37,447 incurred between 16.4.2008 and 10.6.2008 (date of part occupancy certificate).

(a) The C.I.T. (Appeals) was not correct in rejecting the claim of the appellant regarding interest of Rs. 27,56,111 on the basis that the appellant has been following the mercantile system of accounting.

(b) Here again the first appellate authority failed to notice that the appellant followed be project compilation basis in offering its income for income Tax.

(c) The C.I.T (Appeals) failed to consider the following decisions placed before her:

(i) Decision dated 22.09.2005 in wall street construction limited vs. Joint C.I.T reported at 5 SOT 103 (MUM) (SB)

(ii) C.I.T. vs Lokhandwala construction industries Ltd reported at 260 ITR 579(BOM)

5. *The CIT(Appeals has not considered the details showing the amounts of Tax Deducted at source from the interest paid to the loan creditors and the fact that the same was paid into govt. account, in giving direction to the AO to verify the same.*

6 (a) *The First appellant Authority was not justified in confirming the disallowance of Rs.99,377/- out of the expenses incurred by the Director of the appellant company inc arrying on the business of the appellant.*

(b) The CIT (Appeals) failed to appreciate the facts of appellant's case that the construction-site is located 60 kms away from the Registered office of appellant. It was necessary to incur such expenses.

(c) At any rate the appellant claims that the disallowance of Rs. 99,377 is arbitrary.

7. (a) *The first Appellate authority was not correct in confirming the directions issued by the AO that the following amounts should be reduced out of the expenses in completing the IT assessment for the A.Y. 2010-11*

(i) out of construction expenses incurred after 15.4.2008 Rs. 705580

(ii) Out of interest paid Rs. 648789

(iii) Disallowance of expenses pertaining to earlier years (out of 653153) Rs. 153883

(iv) Out of expenses incurred by Director in carrying on business of the appellant Rs. 30595

(v) Disallowances u/s 40(a)(ia) as expenses relating to the earlier years Rs. 173590

(b) The CIT (Appeals) should have seen that no direction can be given by the AO in so far as such direction related to the next assessment year.

(c) The First appellate authority has not considered the Asst. order for AY 2010-11, placed before wherein the AO accepted the figures furnished by the appellant."

2. The brief facts of the case are that the assessee company, engaged in the business as builder and developer, did not file return of income for A.Y. 2009-10

u/s. 139(1) of the Income tax Act, 1961. Thereafter, the Assessing Officer issued notice u/s. 148, dated 08.03.2013, and called upon the assessee to file return of income. In response, the assessee has filed return of income on 01.04.2013 declaring total income of ₹ 6,97,560/-. The case was selected for scrutiny and notices u/s. 143(2) & 142(1) of the Act were issued. In response to notices, the AR of the assessee appeared from time to time and filed various details as called for. During the course of assessment proceedings, the Assessing Officer noticed that the assessee is a builder and undertook development of residential cum commercial project at Nalasopara on Plot No.,67 & 68, Survey No.7 & 8, Village More, Taluka Vasai, Thane District. The Assessing Officer further observed that the assessee has not declared any income from the project and, therefore, called upon to explain as to why no income has been declared even though project was completed and Occupation Certificate was obtained during the financial year relevant to A.Y. 2009-10. In response, the assessee has filed its justification for not offering income from the project. The Assessing Officer after considering relevant submissions of the assessee, completed assessment u/s. 143(3) on 24.03.2014, determining total income at ₹ 51,96,050/- by making additions towards disallowances of expenses incurred towards project after obtaining completion certificate from the authorities, disallowances of interest paid for last three financial years on loans and advances and disallowance of expenses incurred by the Director for failure to file necessary evidences.

3. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee submitted that expenditure incurred towards project is for completing certain additional works as desired by the occupants of the flat like fixation of aluminum sliding, fabrication work, additional electrical fittings, polishing and other plumbing works, painting, POP work, etc., which are incurred after obtaining completion certificate from the authorities. Therefore, the Assessing Officer erred in disallowing such expenses proportionately by allocating expenses to two different projects. In so far as disallowance of interest is concerned, the assessee submitted that it is following mercantile system of accounting, as per which it has provided interest on loan during the year under

consideration including for earlier two assessment years, for which necessary explanation has been filed before the Assessing Officer. The said interest has been paid to the lenders after deducting necessary TDS applicable as per the law and, hence, the Assessing Officer was incorrect in disallowing interest expenditure. Similarly, in so far as disallowance of expenses incurred by Director on behalf of the company is concerned, the assessee submitted that the Director- Ms. Falguni Dhuruva has expended various expenses, which are incurred wholly and exclusively for the purpose of business of the assessee. The assessee has filed necessary evidences before the Assessing Officer, but the Assessing Officer has ignored all evidences filed by the assessee to make disallowance, which is incorrect.

4. The CIT(A) after considering relevant submissions of the assessee dismissed the appeal filed by the assessee, wherein she had upheld additions made by the Assessing Officer towards disallowances of expenses incurred towards project after obtaining completion certificate from the authorities by stating that once completion certificate is obtained for the project, no further expenses are required to be expended and, hence, there is no merit in the arguments of the assessee that it has incurred various expenses towards completion of the project. The CIT(A) further observed that although the assessee claimed to have incurred various expenses such expenses might be incurred for the remaining part of the project and, therefore, directed the Assessing Officer to allow expenses for work-in-progress for the part of the balance project i.e. Wing 'B'. Accordingly, the expenses incurred after obtaining Occupation Certificate is not allowable for the project which is completed and Occupation Certificate is granted. In so far as disallowance of interest is concerned, the CIT(A) observed that since the assessee is following mercantile system of accounting, it needs to provide all expenditure relating to the particular period whether the same had been paid or not. In this case, the assessee claims to have not paid interest for earlier two years to provide for such interest during the current financial year so as to reduce its taxable income. Therefore, the CIT(A) opined that the Assessing Officer was right in disallowing interest pertaining to previous assessment years. The CIT(A) further observed that in so far as interest expenses for the current assessment year i.e. A.Y. 2009-10 is concerned, if the

assessee has credited interest income to the respective lenders account and deducted TDS then, the same may be allowed for the year under consideration. As regards disallowance of expenses incurred by the Director of the above company is concerned, the learned CIT(A) upheld the additions made by the Assessing Officer by observing that assessee has failed to furnish any evidence in the form of bills and vouchers. Similarly, the CIT(A) rejected the ground taken by the assessee towards adjustment proposed by the Assessing Officer to Work-in-progress for A.Y. 2010-11 to the extent of 23.54% of total expenses disallowed. Aggrieved by order of the CIT(A), assessee is in appeal before us.

5. The first issue that came up for consideration is disallowance of expenses incurred for the project after 15.04.2008. The facts with regard to the impugned dispute are that during the year under consideration total area considered for sales is worked out at 76.46% and the balance 23.54% is treated as Work-in-progress being the second phase of the total area under construction. The assessee has booked total expenditure incurred for the project @76.46% for the current financial year and the balance expenses representing 23.54% has been allocated to Work-in-progress. Similarly, the assessee has booked revenue from sale of 76.46% of constructed area. The Assessing Officer disallowed construction expenses of ₹ 22,91,738/- being 76.46% of total expenses of ₹ 33,73,918/- incurred after 15.04.2008. According to the Assessing Officer, assessee has obtained completion certificate from architect on 15.04.2008 and the Part Occupancy Certificate from CIDCO on 10.06.2008, therefore, whatever expenditure was incurred after 15.04.2008, cannot be deducted from 76.46% of project completed and sold during the current financial year. It is the contention of the assessee that it has obtained Part Occupancy Certificate from the Architect on 15.04.2008 and from CIDCO on 10.06.2008 to ensure timely completion and to show delivery of plots to the customers. However, at the time of obtaining completion certificate the project was not fully complete for occupancy and some minor work like POP work, installation of grills & fabrication, internal paintings, alterations in locations of wash basin, alteration in windows etc. and other small work were pending, for which the assessee has incurred various expenses after 15.04.2008. The assessee further

claimed that the details of expenses incurred after 15.04.2008 has been furnished to the Assessing Officer along with necessary supporting evidence.

6. We have heard both the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee has developed the project in two phases. The first phase consists of Block 'A' and the second phase consists of Block 'B'. The assessee claims that it has completed 76.46% of the total project and sold it during the current financial year. The assessee also booked revenue from sale of 76.46% of the total built up area and corresponding expense during the current financial year. It is also an admitted fact that the assessee has obtained completion certificate from the Architect on 15.04.2008. The assessee has also obtained Part Completion Certificate from the Executive Engineer of CIDCO on 10.06.2008 on Block 'A'. The assessee has treated incomplete portion of Block 'B' as Work-in-progress and whatever expenses incurred on the project has been allocated to Work-in-progress @23.54%. To this extent there is no dispute. The only dispute is with regard to allowability of expenses incurred after 15.04.2008. The assessee claims to have incurred a sum of ₹ 33,73,918/- after 15.04.2008, for remaining work to be completed in the project like POP work, installation of grills & fabrication, internal paintings, alterations in locations of wash basin, alteration in windows etc. The assessee has given various reasons for incurring such expenses. According to him, flat owners sometimes demand additional work to be carried on as per their requirements. Therefore, to satisfy its customers' needs it had to carry out some repair work and alterations for which it has incurred expenses after 15.04.2008.

7 Having heard both the sides, we do not find any merit in the arguments of the assessee for the reason that the assessee itself has claimed that the project has been completed in all respect to the extent of 76.46% and also it had obtained completion certificate from the Architect on 15.04.2008 and Part Completion Certificate from CIDCO on 10.06.2008. Once, the project has been complete in all respect and the authorities have issued Occupancy Certificate on being satisfied with the completion of the work, then the assessee cannot claim that it has incurred

such a huge expenditure for carrying out further work in the project. Although, the assessee claimed to have incurred various expenditure like POP work, installation of grills & fabrication, internal paintings, alterations in locations of wash basin, alteration in windows etc., it fails to substantiate such claim with necessary evidence in the backdrop of obtaining completion certificate for the project. Therefore, we are of the considered view that the Assessing Officer was right in disallowing expenses incurred after 15.04.2008 @76.46% and balance amount of 23.54% to be reduced from Work-in-progress.

8. Coming to the alternative claim of the assessee that although it has obtained completion certificate from the Architect on 15.04.2008, the fact remains that it has obtained Part Occupancy Certificate from the competent authorities i.e. from CIDCO on 10.06.2008, hence, at least expenditure incurred for the period from 16.04.2008 to 10.06.2008 should be allowed. We find that the assessee claims to have incurred a sum of ₹ 13,37,447/- between 16.04.2008 and 10.06.2008 i.e. the date of partial Occupancy Certificate obtained from the competent authority. The assessee claims that it has filed necessary evidence before the Assessing Officer to justify those expenses. We find that although the assessee has obtained completion certificate from its Architect on 15.04.2008, what is relevant is the completion certificate obtained from the competent authority i.e. CIDCO on 10.06.2008. Therefore, we are of the considered view that whatever expenditure has been incurred between 16.04.2008 and 10.06.2008 needs to be allowed, if the assessee substantiated incurring various expenses for the work stated to be carried out in the project. Hence, we direct the Assessing Officer to call for necessary enquiries in the light of the claim along with necessary evidence and if the Assessing Officer find that the assessee has substantiated expenses incurred with necessary evidences, then the Assessing Officer is directed to allow the expenses incurred between 16.04.2008 and 10.06.2008 of ₹ 13,37,447/.

9. The next issue that came up for consideration is disallowance of interest of ₹ 21,07,322/-. During the year, the assessee has debited interest to loans and advances for F.Ys. 2005-06, 2006-07 and 2009-10. The assessee claims that during

the earlier period the company has not paid any interest because of inadequacy of profit. However, the management has decided to pay interest on loans retrospectively from F.Y. 2005-06 onwards, accordingly, it paid interest for F.Y. 2005-06 ₹ 8,26,413/- for F.Y. 2006-07 ₹ 9,62,444/- and for F.Y. 2008-09 ₹ 9,67,254/-. The Assessing Officer disallowed interest claimed by the assessee on the ground that assessee has inflated expenditure to reduce incidence of tax for the year under consideration, which is evident from the fact that even though it is following mercantile system of accounting it has not provided for any interest in the earlier financial years. The Assessing Officer further observed that once mercantile system of accounting is followed, all expenses incurred for the particular period needs to be provided in the books of account whether the same has been paid or not. Since the assessee has not chosen to pay any interest for earlier period and paid interest during the current financial year, disallowed interest paid by the assessee and apportioned on the basis of completion of project and, accordingly, 76.46% of interest has been disallowed and the balance amount of ₹ 6,48,749/- being 23.54% is reduced from Work-in-progress.

10. We have heard both the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee is following mercantile system of accounting. It is also undisputed fact that the assessee has not provided any interest for the earlier two financial years. The assessee has provided interest for the current financial year including F.Y. 2005-06 and 2006-07. The assessee has given reasons for providing such interest that during current financial year the project has yielded good return therefore, the management has decided to pay interest retrospectively from F.Y. 2005-06 onwards. The assessee further claims that such interest has been paid after deducting applicable TDS as per the provisions of the Act. Having heard both the sides, we do not find any merits in the arguments of the assessee for the reason that the assessee cannot pick and choose to pay interest on loans and advances according to its convenience. If loans have been taken with interest, the assessee, who is following mercantile system of accounting have to provide for interest in the books of account whether such interest has been paid or not. In this case, on perusal of facts, we find that

assessee claims that it has not paid and also not chosen to pay interest in the earlier period due to inadequacy of profits. During the current financial year, the assessee has paid interest retrospectively from A.Y. 2006-07 onwards. The assessee has not given any reasons for paying interest for earlier period. We further notice that once mercantile system of accounting is followed, the assessee needs to provide all expenses incurred for the period in the books of account whether or not paid during the relevant period. Therefore, we are of the considered view that the Assessing Officer was correct in disallowing interest for earlier two financial years 2005-06 and 2006-07. In so far as A.Y. 2009-10 is concerned, the assessee has paid interest of ₹ 9,67,254/- for the current financial year. The assessee has given reasons for payment of such interest. The assessee claims to have paid interest after deducting necessary TDS. The Assessing Officer has not disputed these facts. Once the Assessing Officer has accepted the fact that interest has been paid after deducting applicable TDS, then there is no reason for the Assessing Officer to disallow interest paid for the current financial year. The learned CIT(A) after considering the relevant facts has directed the Assessing Officer to verify whether interest for the year has been really paid or only provision has been made in the books of account. We do not concur with the findings of the CIT(A) in so far as A.Y. 2009-10 is concerned for the reason that the treatment of interest in the books of account is irrelevant whether the same has been paid or provided in the books of account. What is relevant is the assessee has paid interest after deducting necessary TDS applicable as per law. In this case, the lower authorities have not disputed the fact that the assessee has paid interest after deducting applicable TDS. Therefore, we are of the considered view that the Assessing Officer has erred in disallowing interest for A.Y. 2009-10 and, hence, we direct him to allow interest paid for A.Y. 2009-10.

11. The next issue that came up for consideration is disallowance of expenses incurred by the Director on behalf of the company. The Assessing Officer has disallowed expenditure incurred by the Director on the ground that assessee has failed to file any evidence to prove that the Director has incurred expenses wholly and exclusively for the purpose of business of the assessee. It is the contention of

the assessee that the Director had incurred various expenses on behalf of the company and such expenses are incurred wholly and exclusively for the purpose of business. The reason for incurring expenses by the Director is that the project executed by the assessee is almost 60 km away from the registered office and the Director travels to the project office by incurring various expenses like travelling etc. and later the assessee company reimbursed such expenses. The relevant details have been filed before the Assessing Officer.

12. Having heard both the sides, we find that the Assessing Officer has disallowed expenses incurred by the Director on behalf of the company without assigning any reasons and concluded that the assessee has not filed any details in respect thereof. But, it is the claim of the assessee that it has filed necessary details in respect of expenditure incurred by the Director and reimbursed by the company. The facts are contradicting each other. Therefore, we are of the considered view that the issue needs to be re-examined by the Assessing Officer in the light of claim of the assessee. Hence, we set aside the issue to the file of the Assessing Officer and direct him to call necessary inquiries and take decision in accordance with law.

13. The next issue that came up for consideration is reduction of certain expenses from Work-in-progress while completing the income tax assessment for A.Y. 2010-11. The Assessing Officer has disallowed certain expenses on the basis of project completion ratio as per which it has disallowed 76.46% of expense for the current financial year and remaining 24.54% has been reduced from Work-in-progress. It is the claim of the assessee that the Assessing Officer may disallow certain expenses for the current financial year while completing assessment, but he does not have any power to give directions for the subsequent assessment year when the matter is not pending before him. We find that the Assessing Officer has disallowed certain expenses like construction expenses, interest paid on loans and expenses incurred by the Director and allocated such expenses @76.46% for the current financial year and 23.54% to be reduced from the Work-in-progress for the next financial year. According to the Assessing Officer, the expenses claimed by the

assessee are not allowable deduction and, hence, to the extent project completed during the current financial year and offered to tax, the Assessing Officer has disallowed expenses pertaining to the project completed during the current year and balance amount has been directed to be reduced from the Work-in-progress. No doubt the Assessing Officer has disallowed certain expenses for current financial year for the reasons stated in the assessment order, but giving directions to reduce the remaining part of expenses while completing the assessment for A.Y. 2010-11 is beyond the scope of the Assessing Officer. Whether a particular expense is allowable or not and it needs to be excluded from the value of Work-in-progress, has to be decided while completing assessment for A.Y. 2010-11. Therefore, we are of the considered view that the Assessing Officer erred in giving directions to reduce remaining part of the expenses from Work-in-progress while completing assessment for A.Y. 2010-11. Hence, we set aside the direction given by the Assessing Officer for A.Y. 2010-11. However, the Assessing Officer is at liberty to take necessary steps, if permissible under law for the A.Y. 2010-11 in accordance with law.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on this day of 25th July 2018.

**Sd/-
(Joginder Singh)
JUDICIAL MEMBER**

Mumbai, Dated : 25th July, 2018.

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'H' Bench, ITAT, Mumbai

**Sd/-
(G Manjunatha)
ACCOUNTANT MEMBER**

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai