

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.2053/Del./2017
Assessment Year 2010-2011

M/s. Saamag Developers Pvt. Ltd., B-67, Sarita Vihar, New Delhi – 110 076. PAN AAJCS4952R	vs	The ACIT, Central Circle-19, New Delhi.
(Appellant)		(Respondent)

ITA.No.2054/Del./2017
Assessment Year 2010-2011

M/s. Saamag Construction Ltd., B-67, Sarita Vihar, New Delhi – 110 076. PAN AAHCS8522R	vs	The ACIT, Central Circle-19, New Delhi.
(Appellant)		(Respondent)

ITA.No.2055/Del./2017
Assessment Year 2010-2011

M/s. Saamag Infrastructure Ltd., B-67, Sarita Vihar, New Delhi – 110 076. PAN AAJCS5438A	vs	The ACIT, Central Circle-19, New Delhi.
(Appellant)		(Respondent)

ITA.No.2056/Del./2017
Assessment Year 2010-2011

M/s. Saga Developers Pvt. Ltd., B-67, Sarita Vihar, New Delhi – 110 076. PAN AAJCS4932K	vs	The ACIT, Central Circle-19, New Delhi.
(Appellant)		(Respondent)

ITA.No.2057/Del./2017
Assessment Year 2010-2011

M/s. Pyramid Realtors Pvt. Ltd., B-67, Sarita Vihar, New Delhi – 110 076. PAN AADCP4395F	vs	The ACIT, Central Circle-19, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri M.P. Rastogi, Advocate
For Revenue :	Shri Pradeep Singh Gautam Sr. D.R.

Date of Hearing :	30.08.2018
Date of Pronouncement :	08.10.2018

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by different assessees of the same group are directed against the different Orders of the Ld. CIT(A)-27, New Delhi, Dated 30.01.2017, for A.Y. 2010-2011.

2. We have heard the Learned Representatives of both the parties and perused the material available on record. It is stated by Learned Representatives of both the parties that three issues arise in all the appeals. They have argued mainly in ITA.No.2053/Del./2017 and have submitted that the Order in this case may be followed in the remaining appeals. Learned Counsel for the Assessee filed details of ground-wise additions in all the appeals which is reproduced as under :

S.No.	Assessee	ITA.No.	Grounds of Appeal by Assessee		
			Development Rights	Disallowance of Expenses	Deemed Dividend
1.	Saamag Developers Pvt. Ltd.,	2053/D/2017	62,59,639	2,30,88,128	47,08,000
2.	Saamag Construction Ltd.	2054/D/2017	3,04,89,086	3,84,61,268	91,67,650
3.	Saamag Infrasctucture Ltd.,	2055/D/2017	4,68,48,831	2,14,49,458	---
4.	Saga Developers Pvt. Ltd.,	2056/D/2017	---	2,25,66,035	---
5.	Pyramid Realtors Pvt. Ltd.,	2057/D/2017	---	2,26,62,796	5,00,000

2.1. For the purpose of disposal of appeals, we decide ITA.No.2053/Del./2017 as under.

ITA.No.2053/Del./2017 – M/s. Saamag Developers Pvt. Ltd., :

3. The brief facts of the case as culled from the assessment order is that the assessee-company is engaged in the business of real estate development i.e. acquisition of land, development thereof, construction of residential apartments, commercial complexes etc. The assessee filed its return of income on 26.03.2012 declaring an income of Rs.1,45,27,554/- which was processed under section 143(1) of the IT Act, 1961. The case of the assessee was taken up for scrutiny and assessee filed necessary details, information and documents as called for by the assessing officer from time to time and the case was discussed. The A.O. completed the assessment under section 143(3) dated 26.03.2013 at an income of Rs.4,85,83,320/- as against the returned income of Rs.1,45,27,554/- wherein the assessing officer made an addition of Rs.62,59,639/- on account of development rights, Rs.2,30,88,128/- as disallowance of expenses and Rs.47,08,000/-under section 2(22)(e) of the I.T. Act, 1961.

3.1. The assessee challenged all the three additions before Ld. CIT(A). The Ld. CIT(A) confirmed all the three additions. The assessee is in appeal challenging the above three additions on all the seven grounds of appeals.

4. On ground Nos. 1 to 3 assessee challenged the Orders of the authorities below in confirming addition of Rs.62,59,639/- on account of transfer of development rights.

5. During the course of assessment proceedings, A.O. observed that there was an increase of Rs.3.52 crores in the Head “Advances Received” against development rights in the balance-sheet of the assessee-company. The assessee was asked to furnish the details regarding advances received against the development rights during the year under consideration. In response to the query raised by the A.O, assessee submitted that during the year under consideration assessee has given development rights of Rs.3,74,77,557/- to M/s. Sare Saamag Realty Pvt. Ltd.

Further M/s. Sare Saamag Realty Pvt. Ltd., has reversed Rs.7,79,86,969/- on account of development rights even by the assessee in previous year. Thus, a net debit of Rs.4,05,09,212/- has been made by M/s. Sare Saamag Realty Pvt. Ltd. to the account of the assessee-company. Finally, the A.O. held that increase of Rs.3.52 crores in the Head “Advances Received” against development rights during the year as evident from the balance-sheet of the assessee-company is taken as income and cost of the land purchased during the year of Rs.2,89,40,361/- should be deducted from the income of Rs.3.52 crores. Thus, addition of Rs.62,59,639/- was made by the A.O. to the income of the assessee on account of development rights received during the year.

6. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee explained that assessee is part of Saamag Group of

companies, the other constituents of the group are as under:

- a) Saamag Construction Ltd.,
- b) Saamag Infrastructure Ltd.,
- c) Saga Developers Pvt. Ltd.,
- d) Pyramid Realtors Pvt. Ltd.,

6.1. All these entities including the assessee-company ventured into the business of Real Estate Development since inception. More particularly during *the* A.Y. 2008-2009, the Saamag Group embarked upon development of a residential project in Village-Bamhetta, District-Ghaziabad, U.P. The details of the same were filed to show that joint venture entity had to develop a residential project in about 75.09 acres of land. During Assessment Year 2008-09, 46.67 acres of land was acquired and was in the possession of the Saamag Group. The development rights in respect of such lands of 46.67 acres were transferred and appropriate consideration was received. Since there was still further

land to be acquired, the process of acquisition of land by the Saamag Group of companies continued in the subsequent years also. During the assessment year, the assessee-company had transferred development rights of land measuring 1.314 acres. Accordingly, a Development Agreement dated 25th March 2010 was entered into by the assessee-company and M/s. Sare Saamag Reality Pvt. Ltd. for transfer of development rights in the said 1.314 acres of land. For transfer of this land, the assessee received a total consideration of Rs.3.52 crores which is also noted by the A.O. It can be seen from the various agreements placed on record that the transfer of development rights is only a transfer in vacuum. The right to carry out development work on this designated land is subject to various compliances, regulatory approvals, encumbrances etc. There is also a possibility that even after the transfer of development rights in the impugned land, the Ghaziabad Development Authority may not allow construction to take place. The Ghaziabad Development Authority gives approval to develop

land in accordance with the provisions contained in Section 14 of the Uttar Pradesh Urban Planning & Development Act, 1973 (in short “UPD Act”). It is quite possible that the land which has relevant development rights attached to it may not be available for construction at all. This could arise in a situation where the particular piece of land may fall in such a manner as laid down by the Town Planning Department that the same can be required for different purposes like Town Planning Scheme may be required for construction of roads and other public facilities like Government Hospital, Market, Post Office etc. In fact, such a situation has arisen in the case of the assessee-company itself and in Assessment Year 2008-2009 assessee-company had to surrender some land to Civic Authorities of Ghaziabad. In such situation, the assessee-company and the other Group companies had entered into another agreement Titled as “Supplemental Agreement” Dated 15.10.2009. It can be seen the said agreement that there is always a possibility of the development rights attached to the land becoming almost

infructuous with little or even no possibility of any development thereon. In A.Y. 2008-2009, under such circumstances, the development rights had to be returned to M/s. Sare Saamag Reality Pvt. Ltd. This aspect in fact has been noticed by the AO in the assessment order wherein the consideration of Rs.7,79,86,969/- on account of development rights transferred in A.Y. 2008-2009 had been recovered back by M/s. Sare Saamag Reality Pvt. Ltd. It is, therefore, clear that a simplicitor transfer of development rights in land and receipt of consideration would not give rise to accrual or arising of income within the meaning of Section 5 of the Income Tax Act. The assessee relied upon decision of Hon'ble Supreme Court in the case of CIT vs. A. Gajapathy Naidu, 53 ITR 114 (SC) in which the Hon'ble Supreme Court held that *"When the ITO proceeds to include a particular income in the assessment, he should ask himself inter alia, two questions namely (i) What is the system of accounting adopted by the assessee and (ii) if it is mercantile system of accounting, subject to the deemed provision, when*

has the right to receive accrued. If comes to the conclusion that such a right accrued or arise to the assessee in a particular accounting year, he shall include the said amount in the assessment of the succeeding assessment year". It was further held that "It would not be proper to extend the meaning of the word "accrue or arise" in Section 4 of the I.T. Act to take any amount received by the assessee in a later year though the receipt was not on the basis of right accrued in earlier year".

6.2. The assessee-company, therefore, contended that this principle in Gajapathy Naidu's case reiterates assessee's submissions that the assessee's rights to development rights, income will accrue and will be taxable only in the year when the assessee-company has complied with all its obligations, and the approval of the Ghaziabad Development Authority (GDA) is received for construction of the specified FAR area. In fact, the assessee-company whenever received GDA's approval for construction of the

specified approved FAR area, had admitted income, though the actual construction of the superstructure was completed at a later point of time. *The* assessee-company has relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Hindustan Housing & Land Development Trust Ltd., 161 ITR 524 (SC). The assessee-company, therefore, submitted that when a sum of money is received with certain restrictions, obligations and duties to be performed, then it is only when these acts are duly complied with, income will accrue/arise to be taxable under sections 4 and 5 of the Income Tax Act, 1961. In assessee's case, actual construction of the superstructure can begin only when the approval of GDA is received for the specified FAR area. GDA gives its approval after considering the project report for the designated FAR space. In giving its approval, GDA takes into account various modalities like provision for sanitation, sewerage plans, service lane etc. and after being satisfied, gives the approval. Due to changes/amendments in the local laws, even FAR may undergo changes. The assessee relied

upon decision of the Hon'ble Supreme Court in CIT vs. Bokaro Steels Ltd., 236 ITR 315 (SC) in which it was held that "*unless there is real income, there cannot be any income-tax*". In the case of assessee-company, such right to receive will accrue and will enure to the benefit of the assessee when approval of the GDA is obtained for construction of the relevant FAR space. The assessee-company is regulated by GDA. The consortium has to construct independent residential floors within the designated area of 75.09 acres of land. For this purpose also the assessee-company has to obtain the requisite permission under section 15 of UPD Act. The assessee-company has precisely done this and has obtained the approval of GDA for construction of 3,22,469 sq. ft FSI. This permission from GDA has been received in financial year 2012-13 and accordingly the assessee-company has admitted the corresponding development rights consideration as income. The details of the approval received is filed. The assessee-company relied upon the Order of the ITAT, Delhi Bench in the case of ITO vs. M/s

Finian Estates Developers Pvt. Ltd., in which it was held that *“unless the necessary approval for development is received from the regulatory authority, the consideration arising from transfer of development rights attached to the land will not accrue to the assessee. It is a contingent right only and will become a legal right to receive and enjoy the income only when the necessary approval is received”*. As per shareholders agreement dated 18.05.2007 that the assessee-company and the other Companies of the Saamag Group have a heavy legal burden and responsibility of delivering to the Consortium the agreed FSI and the agreed area of land. As per the same agreement there are heavy financial burden on the assessee-company when it is unable to deliver duly approved (by GDA) specified FSI of 34,94,371 sq. ft.

6.3. The Ld. CIT(A) considering the findings of the A.O, submissions of the assessee-company and material on record and all the agreements in question of the consortium,

noted that during the year under consideration there is an increase of Rs.3.52 crores under the head 'Advance received against Development Rights' in the balance sheet of the assessee-company. Cost of land is reduced and difference amount is added by the A.O. The Ld. CIT(A) noted that similar issue have been considered by him in A.Y. 2008-2009 and similar contention of assessee has been rejected that income from transfer of development rights is not taxable. Based on the same, Ld. CIT(A) held that the assessee's contention regarding income of Rs.62,59,639/- from transfer of development rights during the year under consideration is not taxable is not tenable. Therefore, this ground of appeal of assessee was dismissed.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that in A.Y. 2008-2009, assessee along with group companies entered into a Shareholders Agreement dated 18.05.2007, copy of which is filed at page-45 of the

paper book. In short, Shareholders Agreement with Sare (Cyprus) SPV3 Limited for development of a residential township at Ghaziabad. The name of four other group companies are (1) Saamag Construction Ltd., (2) Saamag Developers Private Limited (3) Saga Developers Private Limited (4) Pyramid Realtors Private Limited and (5) Saamag Infrastructure Ltd. The A.O. made similar addition in A.Y. 2008-2009 for consideration received in development rights after allowing the cost for such lands as deduction. The A.O. was not justified in making the addition because of the reason that it was not sale of land simpliciter by the assessee-company and the consideration was received under certain conditions for providing the approved development rights in terms of specific FSI to Sare (Cyprus) SPV3 Limited for development of project. There were many riders and in case, assessee is unable to provide the required FSI for development to Sare (Cyprus) SPV3 Limited, it would be liable to refund the money with penalty. The assessee would offer the income for development rights for

taxation when approval from GDA in the form of FSI is received. In A.Ys 2008-2009 and 2012-2013 the appeal of the assessee along with other constituents have been decided by ITAT, Delhi G-Bench, in the cases of M/s. Saamag Developers Private Limited vs. ACIT etc., in ITA.No.3618/Del./2014 etc., vide Order dated 12.01.2018 and similar addition have been deleted. The issue is, therefore, covered in favour of the assessee. The amount is taxable when approval is granted by GDA. It is offered for taxation in A.Y. 2010-2011 in a sum of Rs.3,89,29,660/- (PB-182), Rs.3,78,11,266/- in A.Y. 2013-2014 (PB-189) and Rs.1,61,44,227 in A.Y. 2014-2015 (PB-207). PB-134 is the details of land acquired through the same agreement in 1314 acres. PB-130 is Development Rights Agreement Dated 25.03.2010 between the assessee-company and M/s. Saamag Realtors Private Limited which relate to land acquired by assessee-company. It is also an un-registered agreement. The Tribunal has considered the identical issue in A.Y. 2008-2009. Therefore, no addition could be made

against the assessee and the amounts in question is not taxable during the assessment year under appeal.

8. On the other hand, Ld. D.R. though relied upon the Orders of the authorities below, but stated that issue may be covered by the Order of the Tribunal as above.

9. We have considered the submissions of the parties and gone through the material on record. The Ld. CIT(A) following the Order for A.Y. 2008-2009 confirmed similar addition against the assessee-company. In A.Ys. 2008-2009 and 2012-2013 the group appeals of the assessee-company and others have been decided by the Tribunal vide Order dated 12.01.2018 on identical facts (supra). The findings of the Tribunal in paras 10 to 11.9 of the Order is reproduced as under :

"Grounds No. 1 to 3/Additional Ground in all appeals – Chargeability and accruability of value of development rights together with land.

10. The facts in all appeals are common and identical, hence for the sake of convenience we are dealing with the facts of M/s Saga Developers Pvt. Ltd. The brief facts of the case are that the

assesseees are in the business of real estate development along with other group companies and were in the process of development of integrated township at Village Shahpur Bameta, Ghaziabad.

10.1 For the development of integrated township, the assessee along with other group companies in association with others had entered into a consortium agreement dated 20th January 2006 between:

- Saamag Construction Ltd.
- Saamag Developers Pvt. Ltd.
- Saga Developers Pvt. Ltd.
- Pyramid Realtors Pvt. Ltd.
- Saamag Realtors Pvt. Ltd.
- Manhattan Trading Co. Ltd.
- Safal Engineers & Associates
- SBC India Ltd.
- Simplex Infrastructure Ltd.

Under the consortium agreement, the lead member was named as Saamag Construction Ltd. (SCL) for submitting the proposal to the Government of Uttar Pradesh for selection of private developers for development of integrated township.

10.2 On 10th February 2006, a registration was granted by Ghaziabad Development Authority (GDA) to Saamag Construction Ltd. as private developer under category 'B'.

10.3 On 29th May 2006, a licence was granted by GDA for the development of integrated township at Village Shahpur Bameta where the group companies owned certain lands.

10.4 Later on, on 23rd February 2007 a development agreement was entered into by the lead member Saamag Construction Ltd. with GDA for the development of integrated township over 72.90 acres of land located at Shahpur Bameta. It was further provided under the agreement that GDA will provide assistance in acquisition of the land other than the land owned by the consortium parties which requires to complete the land for integrated township, i.e. 72.9 acres.

Keeping in view the consideration the huge finances required for the development of the integrated township, the consortium parties entered into a shareholders' agreement with a financial partner M/s SARE [Cyprus] SPV3 Ltd. on 18th May 2007.

10.5 Under the shareholders agreement, one of the group companies, M/s Saamag Realtors Pvt. Ltd., was a confirming party to the shareholders agreement, which also holds 10.39 acres of land and made SPV for the purpose. As per agreement, after signing the same the name of SPV would have to be changed to 'SARE SAAMAG REALTY PVT. LTD'. The other parties of the Saamag group hold 36.2246 acres of land on the date of the agreement.

10.6 The salient features of the relevant clauses of the shareholders' agreement are reproduced as under:-

Clause

- 2.5 *The loan facility of Rs.25 crores granted by Punjab National Bank and Indian Overseas Bank, on mortgage of land, be transferred in favour of SPV and also performance guarantee of Rs.4,75,00,000/- provided by GDA.*
- 2.6 *In case Saamag fails to obtain permission to transfer the loan facility in favour of SPV, then Saamag shall repay the whole amount and obtain a No Dues Certificate at its own cost and then SARE shall infuse the withheld amount as per clause 2.7.*
- 3.1 *The authorized capital of SPV shall be Rs.240 crores.*
- 3.1.2 *It is agreed that the development right together with the land in respect of 36.2246 acres of land owned by members of Construction Development Project Agreement together with the land has been valued at Rs.103,45,74,870/- vested in SPV. The SPV shall pay to the parties of the first part : Rs.62,07,44,920/- in cash being 60% of the land & development rights; AND Equity shares and fully convertible debentures of Rs.10/- (at face value) to the parties of the first part which shall be in proportion to the land area they owned respectively, multiplied by the agreed floor space index rate of Rs.595/- per sq ft of the project area and which collectively shall value Rs.41,38,29,950/- being a*

sum equivalent to 40% of total amount of Rs.103,45,74,870/- at which consideration the land and development right shall vest.

Project area has been defined in definition given in clause 1(ff) of the agreement and means and includes the entire piece of contiguous land of 72.9 acres having a total FSI area of 34,94,371 sq ft, i.e. on FSI area of 47,933.76 sq ft per acre for calculation purposes.

3.1.9 It was agreed that the balance land of 26.231774 acres required by SPV for execution of project of 72.9 acres shall be purchased by SPV in its own name. However, it shall be the responsibility of SCL to arrange and facilitate the same @ Rs.595/- per sq ft. In case the price of land is more than the amount over and above Rs.595/- per sq ft, it shall be borne by Saamag.

Time limit for acquiring land:

- i) Acquisition of 9 acres within five months.*
- ii) Remaining 17.23177 acres within eight months.*

3.1.10 i) In case Saamag acquired the land but fails to achieve sanction for the agreed project FAR of 34,94,371 sq ft, then Saamag shall pay a penalty to SARE @ Rs.635/- per sq ft of such shortfall.

ii) In case Saamag fails to acquire the remaining land and also fails to obtain the sanction of the prorata project FAR, then SARE shall have the right to obtain from Saamag its equity and convertible debt at par so that SARE could achieve its investment objective. In such case, Saamag shall be liable to pay to SARE a penalty amounting to 10% of the extra equity infused by SARE in the SPV.

3.1.11 In the event, Saamag is not able to obtain any statutory approval, permission, sanction including but not limited to completion certificate or approval of building plan due to failure to acquire land or otherwise and such failure on the part of SCL results in a loss to the SPV. M/s Saamag shall be liable to compensate SPV and SARE.

4.2.2 The capital contribution of the Saamag towards the capital of SPV shall remain in lock in period till the Saamag has undertaken all the statutory and other compliances and obtained all the necessary approvals, sanctions, permissions etc. from the appropriate Government authorities required by the SPV to undertake the development and construction of the project and final sale of units.

Clause 8.2 – Responsibilities and Obligations of Saamag:

8.2.1 Saamag agrees and undertakes that the execution of the project by SPV is the responsibility and obligation of Saamag and such responsibility and obligation includes but is not limited to those stated in this agreement and Saamag shall be exclusively responsible for the project from the beginning till its completion.

8.2.2 Saamag shall issue separate and individual irrevocable power of attorneys pertaining to their respective share in the project area, in favour of the SPV in order to facilitate and develop, construct, transfer or create charge of the project area by the SPV.

8.2.3 Saamag shall undertake all statutory compliances and shall further apply, obtain seek all the necessary sanctions, permits, approvals, permissions which may be required by the SPV for the completion of the project from the Government or any or all of its agencies, departments including but not limited to Uttar Pradesh Public Works Department, Uttar Pradesh Jal Nigam, Uttar Pradesh Power Corporation Limited etc. It is hereby agreed that the completion of the project under the terms of the agreement refers to entire gamut of activities which shall include but not be limited to the construction, development, marketing, sale promotion and sale etc. of

the project. All expenses except those payable as statutory fee or technical consultants for obtaining the project related approvals shall be borne by Saamag.

8.2.4 Saamag further agrees and undertakes that Saamag shall obtain the approvals, sanctions required for the commencement and effective completion of the project within a period of six months from the date of execution of this agreement or such other further extended period mutually agreed by the parties. Any failure of Saamag, either individually or collectively, to obtain the aforesaid sanctions, approvals, permits, licenses, etc. shall result in the reduction/dilution of voting rights of Saamag by 10% and profit share by 5% and the same shall continue to remain reduced till the time Saamag obtains all such necessary sanctions required for the completion of the project.

8.2.6 Saamag agrees that it shall jointly and severally, together with Directors of all Saamag companies being party of the first part indemnify the SPV and SARE for any or all present and future claims that may arise with respect to or which are connected to the area/land for which the development rights have been vested in the SPV.

8.2.8 All charges payable towards leveling of land, land-filling etc., approval of township scheme, master plan approval or any FAR relates fees will be paid by SCL.

8.2.21 *The SCL hereby undertakes to indemnify and keep the SPV and its affiliates and officers, directors, employees, agents and advisors harmless from and against any losses, damages, liabilities, suits, proceedings, actions, costs or expenses (including reasonable attorney's fees and other dispute resolution costs) that may be incurred, suffered or instituted (a) as a result of non-compliance with or breach of the undertakings and representations made by the SCL in this agreement, (b) as a result of any act of omission or commission or negligence in contravention of this agreement by SCL, and/or on the part of its officers, directors, employees and agents, (c) as a consequence of the third party claims against or legal dues or any nature on SCL in connection with the subject matter of this agreement, or (d) infringement of intellectual property of SPV caused by SCL.*

10.7 The aforesaid shareholders agreement was the main agreement and after that, further agreements were also made between the parties as and when the appellants acquired the land and such agreements in the year under consideration were dated 29th September 2007 and 19th October 2007. Whatever the sale considerations had been fixed under the shareholders agreement, the appellants had credited the same to the advance account in its books because they were of the view that keeping into consideration the overall terms of the contract, the agreement was in respect of the transfer of development rights together with land and because on the date of agreement, the

stipulated land was not approved by GDA for development purposes in terms of UP Urban Planning & Development Act, 1973, no development rights can be said to have accrued to the appellants. This sale consideration has been appropriated by the appellant in subsequent years as and when the GDA had granted the approval. The assessees stated that the approval has been granted by GDA not in one go but in piecemeal basis and accordingly as and when GDA granted the approval for the development of the land, the proportionate sale consideration have been appropriated and the profits have been disclosed by the appellants in subsequent years, viz. 2010-11, 2013-14 and 2014-15. However, the AO was of the view that because as per clause 3.1.2 of the shareholders agreement the appellant's land and development rights in collusion thereto have been got valued at Rs. 103.45 crores, which have been paid 60% in cash and 40% in terms of equity shares and fully convertible debentures and land vested in SPV, he inferred that because of possession of land has been given to SPV, hence it amounts to transfer in terms of section 2(47)(v) of the IT Act, as also observed by the Special Auditors so appointed and then the AO computed the profits on transfer of such development rights together with land in Assessment Year 2008-09 because the shareholders agreement has been made on 18th May 2007.

10.8. The AO's order has been affirmed by Ld. CIT (A) who also holds that in the case of immovable property, the profitability arises when the possession has been handed over.

10.9 During the hearing, Ld. Counsel of the Assessee objected to the action of the lower authorities. He stated that when the terms and conditions have been mentioned in a document, then a taxing statute has to be applied in accordance with the legal rights of the parties to the transactions as accrued under the agreement as held by the Hon'ble Supreme Court in the case of CIT vs. Motor & General Stores Pvt. Ltd. in 66 ITR 692. He, however, stated that the nomenclature and description given to a contract is not determinative of the real nature of the document or of the transaction thereof. These have to be determined from overall terms of the documents and all the rights and liabilities as well as results flowing therefrom and not by picking and choosing certain clauses as done by the AO. He further stated that in order to ascertain the true nature and meaning of several clauses of the contract, the words of each clause must be so interpreted as to bring them into harmony with the other clauses of the contract and not with reference to only of few terms or with just one of the rights flowing therefrom as held by the Supreme Court in the case of State of Orissa vs. Titagarh Paper Mills Co. Ltd. in [1985] 60 STC 213. Mr. Rastogi stated that the Hon'ble Supreme Court in the case of Titagarh Paper Mills (supra) observed that a chameleon may change its colour according to its surrounding, but a document is not a chameleon to change its meaning according to purpose of the statute with reference to which it falls to be interpreted.

10.10.1 Ld. Counsel of the assessee further stated that in the instant case, the AO has not considered the very

shareholders agreement as a whole but only considered clause No. 3.1.2 of the agreement and ignored the other clauses of the agreement containing the various obligations, liabilities of the assessee flowing from the other clauses of the contract as well as also ignored the various prohibitive and penal clauses flowing from the contract which have to be faced by the appellants on account of any breach of the terms of the contract. The AO also fails to take into cognizance the clause 4.2.2 containing prohibition of withdrawals of the amount in consideration within the lock in period till all the approvals and sanctions including completion certificate are received from the concerned authorities.

The aforesaid shareholders' agreement is a composite contract and indefeasible contract.

10.10.2 Ld. Counsel of the assessee further stated that having regard to the various clauses of the shareholders agreement, it was clear that under the agreement, it was the obligation of the consortium parties to provide fully developed land along with the approvals and permissions from the concerned statutory authority, i.e. GDA, and in case they fail to provide FSI, then they will be liable for penal consequences also. So unless and until the approval is granted and properly sanctioned by GDA, it cannot be imagined that any development rights have been accrued to the appellants. In the absence of such approval, no amount can be said to be due to the appellants without the development rights which can be said to

have accrued only as and when the approval is granted by the concerned authorities.

10.10.3 Ld. Counsel of the assessee also stated that in the absence of an approval granted by GDA, no development rights can be said to have accrued to the land and so the rights of the appellant also and in the absence thereof it cannot be imagined that the appellants have acquired a right to receive the income. He further stated that the very shareholders agreement on the basis whereof the AO is fastening the liability is not registered u/s 17(1A) of the Registration Act, 1908 and accordingly cannot be considered to be a document in the nature contemplated u/s 53A of the Transfer of Property Act because section 17(1A) of the Registration Act states that if such document is not registered, then it shall have no effect in the eyes of law for the purpose of section 53A of the Transfer of Property Act.

10.10.4 Ld. Counsel of the assessee stated that such provisions of the law have been judicially noticed and considered by the Supreme Court in the case of CIT vs. Balbir Singh Maini in 398 ITR 531. In the case of Balbir Singh Maini, the Hon'ble Supreme Court, while construing the provision of section 2(47)(v) of the IT Act with reference to the effect of section 17(1A) of the Registration Act which was inserted by the Amendment Act of 2001 which made compulsory the registration of the documents contemplated u/s 53A of the Transfer of Property Act and held that after the commencement of Amendment Act, 2001, in the absence of registration of such documents with the Registration Authorities, these documents cannot be considered to be a

document of the nature referred to in section 53A of the Transfer of Property Act and in such situation the allowing of any possession to the transferee is immaterial.

10.10.5 Ld. Counsel of the assessee pointed out that the provision of section 2(47)(v) of the IT Act has been brought to the Statute Book by the Finance Act, 1987 with effect from 1st April 1988 and prior to that it has been consistently held by various High Court and the Supreme Court including the Jurisdictional High Court that the taxability in respect of transaction relating to immovable property accrued or arisen in the year in which the sale deed has been registered irrespective of allowing of the possession of the property at an earlier date. Such law was held in the following cases:

Alapati Venkata Ramaya vs. CIT 57 ITR 185 (SC)

CIT vs. Meatles Ltd. 84 ITR 37 (SC)

CIT vs. Hindustan Cold Storage & Refrigeration Pvt. Ltd.
103 ITR 455 (Del)

Ghansham Dass Krishan Chander vs. CIT 121 ITR 121
(AP)

Ld. Counsel of the assessee further stated that now after amendment made in the Registration Act by the Amendment Act, 2001 by way of insertion of Section 17(1A) of the Registration Act, same position again prevails and such law has been declared by the Hon'ble Supreme Court in the case of Balbir Singh Maini (supra).

10.11 On the contrary, Ld. CIT (DR) stated that during the course of search conducted in the above group of cases on 29.01.2009, Mr. Dinesh Pandey admitted to have surrendered undisclosed income of Rs.81.13 crore and accordingly the addition as made by the AO deserves to be made and for this purpose he relied upon 234 Taxman 771 Kishore Kumar vs. CIT and also 351 ITR 143 Bhagirath Agarwal vs. CIT. Ld. CIT(DR) further stated that during the course of search, a profit & loss account was seized which has been reproduced at page 28 of the assessment order, wherein the assessee himself has worked out the profit on sale of land and development rights which clearly shows that the assessee has admitted the profitability on transfer of such development rights and land. Now the assessee cannot take the plea that there is no income on transfer of such development rights and land.

10.12. Ld. CIT(DR) further pointed out that clauses 5.1 and 5.2 of the Construction Development Project Agreement clearly states that the land owning companies agreed to vest in SPVs on irrevocable basis and the members of the consortium transferred the development rights including the land and delivered the vacant and physical possession of the land to the SPV. Mr. Rana further stated that the consortium agreement was registered with GDA on 10th February 2006 and the licence has also been granted by GDA and hence the appellant cannot state that it is not registered agreement. Mr. Rana further stated that in the case of CIT vs. Dr. T.K. Dayalu in 202 Taxman 531, the Karnataka High Court and also the Bombay High Court

in the case of Chaturbhuj Dwarka Dass Kapadia vs. CIT in 260 ITR 491, it has been held by the Courts that in the case of joint development agreements, if the assessee has given the possession and has received a non-refundable advance, then it amounts to transfer u/s 2(47)(v) of the Act and tax has to be levied in the year in which such agreement has been made and accordingly the AO has correctly levied the tax in the Assessment Year 2008-09 wherein the shareholders agreement has been made.

10.13 However, in rejoinder Ld. Counsel of the Assessee stated that as far as the surrender alleged to have been made during the course of search, it was made under pressure and under some ignorance and misconception of law and that is why later on the assessee had retracted from the same looking into the legal positions, which came to his notice about the year of accruality of income on transfer of development rights and land. Ld. Counsel of the assessee also stated that even the AO has not proceeded based on the surrender so made but he proceeded independently and at this moment the Revenue cannot justify its case based on the alleged surrender.

10.14 Ld. Counsel of the assessee further stated that as far as the registration with GDA is concerned, the same cannot amount to registration as contemplated u/s 17(1A) of the Registration Act, 1908, meant for compulsory registration of transfer of immovable property governed by the Transfer of Property Act with the Registration Authorities. The registration

with GDA of the consortium parties has no relevance for the purpose of determination of the year of taxability. So much so, the AO is not fastening any liability on the basis of the said consortium agreement but he is fastening the liability based on the shareholders agreement dated 18th May 2007 which has no connection with the registration with GDA. The Hon'ble Supreme Court in the case of Balbir Singh Maini has considered such joint development agreement in relation to the land in terms of section 2(47)(v) of the IT Act for the purpose of levy of tax.

11. We have both the parties and perused the relevant records. We are of the view that the whole issue relates to the interpretation of the provisions of section 2(47)(v) of the IT Act which defines the transfer required to be considered under the law for the purpose of levy of tax. For the sake of clarity, we are reproducing Section 2(47)(v) of the IT Act as under:

"2(47)(v) Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882)."

11.1 After perusing Section 2(47)(v) of the IT Act, we find that it deals with such transaction which involves the allowing of the possession of the property. After perusing the records, we find that recently, the Hon'ble Supreme Court has also considered the provision of section 2(47)(v) of the IT Act in

the case of CIT vs. Balbir Singh Maini in 398 ITR 531 (Supra) while construing a joint development agreement in relation to the land in which the possession of the land was also delivered to the developer. We further find that the Hon'ble Supreme Court held that prior to the year 2001, the contract referred to in section 53A of the Transfer of Property Act does not require any registration and if the possession of the property has been handed over under a transaction, then it would amount to transfer for the purpose of levy of tax. But after the amendment to the Registration Act, 1908 by way of Amendment Act, 2001, a provision of section 17(1A) has been introduced. Section 17(1A) of the Registration Act states that such agreement wherein the possession of the immovable property is already given, then such agreement is required to be compulsorily registered and if such documents are not registered on or after commencement of the Amendment Act, 2001, then they shall have no legal effect for the purpose of the said section 53A of the Transfer of Property Act. The Hon'ble Supreme Court, after considering the provision of section 2(47)(v) of the IT Act read with section 53A of the Transfer of Property Act and section 17(1A) of the Registration Act at pages 548-549 observed as under:

"20. The effect of the aforesaid amendment is that, on and after the commencement of the Amendment Act of 2001, if an agreement, like the JDA in the present case, is not registered, then it shall have no effect in law for the purposes of

Section 53A. In short, there is no agreement in the eyes of law which can be enforced under Section 53A of the Transfer of Property Act. This being the case, we are of the view that the High Court was right in stating that in order to qualify as a "transfer" of a capital asset under Section 2(47)(v) of the Act, there must be a "contract" which can be enforced in law under Section 53A of the Transfer of Property Act. A reading of Section 17(1A) and Section 49 of the Registration Act shows that in the eyes of law, there is no contract which can be taken cognizance of, for the purpose specified in Section 53A. The ITAT was not correct in referring to the expression "of the nature referred to in Section 53A" in Section 2(47)(v) in order to arrive at the opposite conclusion. This expression was used by the legislature ever since sub-section (v) was inserted by the Finance Act of 1987 w.e.f. 01.04.1988. All that is meant by this expression is to refer to the ingredients of applicability of Section 53A to the contracts mentioned therein. It is only where the contract contains all the six features mentioned in *Shrimant Shamrao Suryavanshi (supra)*, that the Section applies, and this is what is meant by the expression "of the nature referred to in Section 53A". This expression cannot be stretched to refer to an amendment that was made years later in

2001, so as to then say that though registration of a contract is required by the Amendment Act of 2001, yet the aforesaid expression "of the nature referred to in Section 53A" would somehow refer only to the nature of contract mentioned in Section 53A, which would then in turn not require registration. As has been stated above, there is no contract in the eye of law in force under Section 53A after 2001 unless the said contract is registered. This being the case, and it being clear that the said JDA was never registered, since the JDA has no efficacy in the eye of law, obviously no "transfer" can be said to have taken place under the aforesaid document. Since we are deciding this case on this legal ground, it is unnecessary for us to go into the other questions decided by the High Court, namely, whether under the JDA possession was or was not taken; whether only a licence was granted to develop the property; and whether the developers were or were not ready and willing to carry out their part of the bargain. Since we are of the view that sub-clause (v) of Section 2(47) of the Act is not attracted on the facts of this case, we need not go into any other factual question."

11.2 We note that in the present case, the very shareholders agreement dated 18th May 2007 is admittedly not registered u/s 17(1A) of the Registration Act, 1908 which is

the condition precedent to give effect to the provision of section 53A of the Transfer of Property Act. The Department has also not brought any evidence contrary to the fact. The registration with GDA is not the registration as contemplated u/s 17(1A) of the Registration Act, 1908. Therefore, in view of the above facts and the law as laid down by the Hon'ble Supreme Court, the provisions of section 2(47)(v) of the IT Act are not applicable to the transactions embodied in the shareholders agreement dated 18th May 2007 as well other agreements dated 29th September 2007 and 19th October 2007 because all agreements are unregistered agreements and accordingly no liability of tax can be fastened on the appellant merely on the basis that the possession of the land has been handed over by the appellant. Under the law, the appellant continues to be the owner of the land and has at no stage purported to transfer the rights taken to ownership to the SPV.

11.3 In the case of Balbir Singh Maini (supra), the Hon'ble Supreme Court, even after declaring that in the absence of registration of the joint development agreement u/s 17(1A) of the Registration Act, the provision of section 2(47)(v) of the IT Act is not applicable even if the possession has been handed over, has also examined the issue with reference to sections 4 and 5 of the IT Act on the point of accruality of income. The Hon'ble Supreme Court at pages 550-552 of the Report observed as under:

"24. The matter can also be viewed from a slightly different angle. Shri Vohra is right when he has referred to Sections 45 and 48 of the Income Tax Act and has then argued that some real income must "arise" on the assumption that there is transfer of a capital asset. This income must have been received or have "accrued" under Section 48 as a result of the transfer of the capital asset.

25. This Court in *E.D. Sassoon & Co. Ltd. v. CIT* AIR 1954 SC 470 at 343 held:

"It is clear therefore that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed *debitum in presenti, solvendum in futuro*; See *W.S. Try Ltd. v. Johnson (Inspector of Taxes)* [(1946) 1 AER 532 at p. 539], and *Webb v. Stenton, Garnishees* [11 QBD 518 at p. 522 and 527]. Unless and until there is created in favour of the assessee a debt due

by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him."

26. This Court, in *CIT v. Excel Industries* [2013] 358 ITR 295/219 Taxman 379/38 taxmann.com 100 (SC) at 463-464 referred to various judgments on the expression "accrues", and then held:

"First of all, it is now well settled that income tax cannot be levied on hypothetical income. In *CIT v. Shoorji Vallabhdas and Co.* [*CIT v. Shoorji Vallabhdas and Co.*, (1962) 46 ITR 144 (SC)] it was held as follows: (page 148)

"... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'hypothetical income', which does not materialise. Where income

has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

The above passage was cited with approval in *Morvi Industries Ltd. v. CIT* [*Morvi Industries Ltd. v. CIT*, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835] in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: (page 340)

". ... the date of payment ... does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount

even though it may not be immediately."

This Court further held, and in our opinion more importantly, that income accrues when there "arises a corresponding liability of the other party from whom the income becomes due to pay that amount".

11.4 It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

11.5 As far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement passbook, there was no corresponding liability on the Customs Authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is, therefore, not the income of the assessee.

11.6 In view of the facts of the present case, it is clear that the income from capital gain on a transaction which never materialized is, at best, a hypothetical income. It is admitted that, for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act.

11.7 In the present case also, on careful consideration of the shareholders agreement, it is clear that the consortium parties were under obligation to provide the developed land along with necessary approvals and permissions from the concerned competent authorities, i.e. GDA, having a total FSI area of 34,94,371 sq ft, i.e. an FSI area of 47,933.76 sq ft per acre of land and in case they failed to provide such FSI, then they would be liable for penal consequences and so much so the consortium parties could not withdraw their amounts fixed under the agreement. In this way, unless and until the approvals and permissions are granted by GDA, it cannot be said that any income accrued to the appellants.

11.8 It was brought to our notice that such approvals have been granted by GDA in subsequent years and that too in piecemeal manner. As and when GDA had granted the approvals, the appellants have appropriated the proportionate amount out of the advance so received under the shareholders

agreement and offered the same for tax. The assesses counsel pointed out that such offer had been made in Assessment Years 2010-11, 2013-14 and 2014-15. The assessments for the Assessment Years 2013-14 and 2014-15 have been made under scrutiny assessment and the Department has also accepted the same.

11.9 Keeping in view of the facts and circumstances of the case as explained above, the ground raised by the assessee relating to taxation of profits on transfer of development rights together with land is allowed.”

9.1. The assessee-company filed all the agreements in question on record which were the basis for making the addition against the assessee-company in A.Y. 2008-2009. The assessee-company rightly contended that income from transfer of development rights would accrue as per I.T. Act when assessee-company would receive approval for construction for specified FAR area from GDA. Unless and until it does not receive the approval from GDA, income would not accrue to the assessee-company. The assessee-company also rightly contended that as per the above agreements, transfer of development rights is only a transfer

in vacuum because the Town Planning Scheme may be required for construction of roads and other public facilities for public at large and in that situation, assessee-company may not be able to complete the development work in property in question. Therefore, it was a conditional agreement depending upon the approval taken from various authorities for completion of the agreement. The agreements also contain the penalty clause i.e., in case, the project is not completed, the assessee-company has to comply with all its obligations till the approval from GDA is received for construction of specified FAR area. Therefore, income would accrue to the assessee-company only on satisfying the conditions of the agreement. The assessee-company rightly offered the amounts for taxation in A.Ys. 2010-2011, 2013-2014, 2014-2015 on such basis. The agreements in question are unregistered as have been considered by the Tribunal in A.Y. 2008-2009. The facts and material on record are identical as have been considered in A.Y. 2008-2009 and in assessment year under appeal. Therefore, the

issue is covered in favour of the assessee by the Order of the Tribunal for A.Y. 2008-2009, dated 12.01.2018 (supra). The Ld. CIT(A) has followed his Order for A.Y. 2008-2009 for dismissing the appeal of assessee-company and no other independent reasons have been given. Since the Order of the Ld. CIT(A) for A.Y. 2008-2009 have been set aside by the Tribunal, therefore, nothing survives in favour of the Revenue. Following the Order of the Tribunal for A.Y. 2008-2009 (supra), we set aside the Orders of the authorities below and delete the addition. In the result, ground Nos. 1 to 3 of the appeal of the assessee are allowed.

10. On ground No.4, assessee-company challenged the Order of Ld. CIT(A) in holding that *“question of allowability of expenses of Rs.2,30,88,128/- does not arise being the cost of land and development expenses incurred by the assessee-company.”*

11. During the course of assessment proceedings, the A.O. asked the assessee-company to furnish explanation

regarding income offered of Rs.1,58,41,532/- on account of sanctioned FSI during the year under consideration. The assessee-company has offered Rs.3,89,29,660/- as income attributable to sanctioned FSI of 65,428 sq. feet and claimed Rs.2,30,88,128/- as expenses attributable to sanctioned FSI of 65,428 sq. feet. A.O. has accepted the income offered of Rs.3,89,29,660/- but disallowed the expenses of Rs.2,30,88,128/- claimed by the assessee-company.

12. The assessee-company challenged the addition before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee-company explained that it has received sanction from GDA for construction of FSI of 65,428 sq. feet. In respect of this FSI, assessee-company is entitled for consideration of Rs.3,89,29,660/- @ Rs.595/- per sq. feet from M/s. Saamag Realtors Private Limited. Since the sanction was received for this FSI, the assessee-company in its revised return of income had offered the income relatable to this sanctioned

FSI as per computation placed on record. In a nutshell, for the sanctioned FSI of 65,428 sq. feet, net income of Rs.1,58,41,532/- has been offered to tax. The A.O. while dealing with this issue, had disallowed the development and other relatable expenses attributable to said FSI aggregating to Rs.2,30,88,128/-. It was submitted that even the gross revenue of Rs.3,89,29,660/- referable to sanctioned FSI does not accrue in the captioned assessment year. This is because, even after sanction of such FSI, before construction by the assessee-company, the Government of Uttar Pradesh can acquire the impugned land when it is required for public purpose and this would be evident from this Supplementary Agreement Dated 15.10.2009. It was submitted that expenses incurred by assessee-company are allowable deduction. In A.Y. 2008-2009, assessee-company had transferred development rights referable to 46.67 acres of underlying land to M/s. Saamag Realtors Private Limited. The above referred sanctioned FSI of 65,428 sq. feet is part and parcel of 46.67 acres of land in respect of which,

development rights were transferred in A.Y. 2008-2009. Such addition made by A.O. has been confirmed. Thus, inclusion of revenue of Rs.3.89 crores will be an addition which has already been made in A.Y. 2008-2009. The assessee-company filed complete documents in support of the above contention.

13. The Ld. CIT(A) noted in the background of the assessee-company and agreements executed between the group companies for development of the project, in A.Y. 2008-2009, addition has been confirmed on account of transfer of development rights to the income of the assessee-company. The assessee-company recognized income of 65,428 sq. feet of FSI aggregating to Rs.3,89,29,660/- and also claimed proportionate expenses on the same FSI in a sum of Rs.2,30,88,128/- and thus, net income in a sum of Rs.1.58 crores have been shown and offered to tax. Ld. CIT(A) noted 65,428 sq. yd of FSI on which income is offered for tax are part and parcel of 46.67 acres of land on which

development rights has already been taxed in A.Y. 2008-2009, therefore, inclusion of income of Rs.3,89,29,660/- will result in double taxation and deserves to be excluded from the income of assessee-company in assessment year under appeal. The income offered by the assessee-company was thus, excluded as well as expenses of Rs.2,30,88,120/- was also excluded because the same does not arise in view of findings of the Ld. CIT(A).

14. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that in assessment year under appeal i.e., 2010-2011 assessee-company has offered income of Rs.3,89,29,660/- as income and against the said income, it has claimed expenses of Rs.2,30,88,128/-. Same is mentioned in the computation of income at pages 4 and 14 of the paper book. The net income of Rs.1,58,41,532/- was thus, offered for taxation in assessment year under appeal. The A.O. has accepted the same, but disallowed

proportionate expenses. The Ld. CIT(A) following his order in A.Y. 2008-2009, on which same income have been taxed, did not allow relief to the assessee-company. Learned Counsel for the Assessee referred to PB-281 which is details of proportionate allowance of development expenses claimed for A.Y. 2006-2007 to A.Y. 2014-2015. Learned Counsel for the Assessee submitted that assessee-company has been capitalizing expenses in the books of account and following its methodology regarding offering of income from sanctioned FSI. Whenever FSI is sanctioned, assessee-company offered the income for taxation and claimed proportionate development expenses. He has submitted that the Hon'ble Supreme Court in the case of Calcutta Co. Ltd. 37 ITR 1 it was held that *"the expression profit or gains in Income Tax Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipt is deducted therefrom"*. Learned Counsel for the Assessee further submitted that when the assessee

has offered income from sanctioned FSI in A.Y. 2013-2014, the A.O. vide Order dated 30.03.2016 under section 143(3) (PB-202, accepted such expenses which were proportionately claimed in A.Y. 2013-2014, details of the same, are filed at page-281 of the paper book). In A.Y. 2014-2015 such proportionate expenses have been allowed under section 143(1) of the I.T. Act. PB-191 is P & L A/c for A.Y. 2013-2014 to support the explanation of assessee-company. Learned Counsel for the Assessee, therefore, submitted that addition is wholly unjustified.

15. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that expenses were unverifiable.

16. We have considered the rival submissions and perused the material available on record. It is not in dispute that in assessment year under appeal, assessee-company has offered income for taxation in a sum of Rs.3,89,29,660/-. The A.O. did not dispute the same. However, the A.O. did not allow

the development expenses. The Ld. CIT(A) noted that since addition of income on account of development rights have already been made in A.Y. 2008-2009, therefore, he has excluded the income for the purpose of computation of income as it would amount to double addition as well as excluded the claim of the expenditure above. However, in A.Y. 2008-2009, the addition of income on account of development rights have already been deleted in A.Y. 2008-2009 and similar addition have been deleted in assessment year under appeal on Ground Nos. 1 to 3. Therefore, finding of the Ld. CIT(A) cannot be sustained in law. The findings of the Ld. CIT(A) are accordingly set aside and we direct that income offered by assessee-company for the purpose of taxation in sum of Rs.3,89,29,660/- shall have to be considered in assessment year under appeal. The assessee-company claimed development expenses, details of which, were filed at page-281 of the paper book. The assessee-company as per sanctioned FSI have been offering income for taxation and has been claiming proportionate expenses of sanctioned FSI. In A.Y.

2013-2014, assessee-company made a claim of development expenses in a sum of Rs.2,33,12,344/- which have been allowed by A.O. in assessment under section 143(3) of the I.T. Act, 1961. Copy of the P & L A/c for the A.Y. 2013-2014 is filed at page-191 of the paper book and assessment order for A.Y. 2013-2014 is filed at page-202 of the paper book. Similarly, in subsequent A.Y. 2014-2015, the similar claim has been allowed under section 143(1) of the I.T. Act, 1961. Therefore, following the rule of consistency, the Revenue Department cannot take a different stand against the assessee-company. It may be noted here that assessee-company offered the income on the basis of proportionate sanctioned FSI and claimed expenses on the same sanctioned FSI. Therefore, there was no reason to disallow the expenditure claimed by assessee-company which is also accepted by the A.O. in subsequent years. The assessee-company maintained books of account on the same accounting pattern as have been maintained in earlier years and the offering of the income as per sanctioned FSI have been

accepted by the Tribunal in A.Y. 2008-2009. When the assessee-company followed the same accounting system in subsequent year and accepted by the A.O, there is no reason for the A.O. to deviate from the same. The Ld. CIT(A) has not given any independent finding with regard to claim of the expenditure made by assessee-company as against proportionate income offered for taxation. No fault have been found in the accounting system followed by assessee-company. No material have been produced by the Revenue to rebut the contention of the assessee-company. In this view of this matter, we are of the view that there is no justification to disallow the expenses of Rs.2,30,88,128/- claimed by the assessee-company being cost of the land and development expenses incurred by the assessee-company. We, accordingly, set aside the orders of the authorities below and delete the addition. Ground No.4 of appeal of assessee-company is allowed.

17. On Ground Nos. 5 and 6, assessee-company challenged the Order of Ld. CIT(A) in confirming addition of Rs.47,08,000/- under section 2(22)(e) of the I.T. Act, 1961.

18. During the course of assessment proceedings, transaction between group companies have been treated as deemed dividend under section 2(22)(e) of the I.T. Act. As a result of advance received by the assessee-company from the group companies has been covered as deemed divided to the extent of Rs.47,08,000/- by the A.O.

19. The addition was challenged before the Ld. CIT(A). Written submissions of the assessee-company is reproduced in the appellate order, in which the assessee-company explained that all the group of companies have been promoted by (i) Shri Dinesh Pandey, (2) Shri Pramod Pandey and (3) Smt. Kusum Pandey, consisting of the following entities along with assessee-company viz., (a) Saamag Construction Ltd., (b) Saamag Infrastructure Ltd., (c) Saga Developers Pvt. Ltd., (d) Pyramid Realtors Pvt. Ltd., (e) Max Buildtech Pvt. Ltd., (f)

Hamshir Exim Pvt. Ltd., (g) Logic Construction Pvt. Ltd., and (h) Banyan Infrastructure Pvt. Ltd., All these companies are engaged jointly in the business of real estate development i.e., acquisition of land, development thereof, construction of residential apartments, commercial complexes etc., It is a known fact that under the respective State Land Laws parcels of land can be acquired by one entity with restrictions on the area of land. It is an accepted practice in real estate business to have a number of entities of the same group which has an intention to develop a large/huge real estate project. In such cases, the business of real estate development is jointly done by such group entities in tandem with each other i.e., funds mobilized by each entity for acquiring land, for registration thereof, for development, construction, supervision of construction. The Saamag group of companies and a few outside concerns have expertise in the field of real estate development, came together for development of an Integrated Township in the State of Uttar Pradesh. The group also entered into a Consortium Agreement with the object of

development of Integrated Township in the State of Uttar Pradesh. Different responsibilities have been provided to each constituent and assessee-company has been assigned the work of arranging finance and look-after implementation of the project, if awarded. The development of the Integrated Township envisaged acquisition of substantial area of land. These companies have received the advances from other group companies for the acquisition of the lands and other business purposes. The assessee-company filed chart showing utilization of funds received from (1) Hamshir Exim Pvt. Ltd., and (2) Max Buildtech Pvt. Ltd., It was submitted that money have been utilised and applied towards business of real estate development in respect of Bamhetta project and Rudrapur Project. Not a penny of monies so received has reached the shareholders. Nothing has enured to the benefit of shareholders i.e., Members of Pandey family who are having substantial shareholders in all Saamag group of companies. All monies have been applied for business purposes. Therefore, Section 2(22)(e) will not apply. The assessee-

company relied upon the decision of Hon'ble Delhi High Court in the case of Creative Dyeing and Printing Pvt. Ltd., 318 ITR 476 (Del.) in which it was held that *"the amounts advanced for business transaction will not fall within the definition of deemed dividend under section 2(22)(e) of the I.T. Act."* The assessee-company also relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. Ambassador Travels Pvt. Ltd., (2009) 318 ITR 376 (Del.) in which the assessee-company also entered into normal business transactions as a part of its day-to-day business activities. It was held that *"the financial transactions cannot in any circumstances be treated as loans or advances received by the assessee."* The assessee-company also relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. Raj Kumar 318 ITR 462 (Del.) in which the Hon'ble High Court interpreted the term *"Advance"* to mean such advance which carries an obligation of repayment. Here in, the sums of monies expended are towards purchase of land for the real estate business, such land being registered in the name of the member company. It was, therefore, held that *"a trade*

advance which is in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provisions of Section 2(22)(e) of the I.T. Act". The assessee-company also relied upon decision of the Hon'ble Bombay High Court in the case of CIT vs. Nagin Das M. Kapadia 177 ITR 393 (Bom.) in which it was held that "the words "Loans or Advances" can be applied to loans or advances simplicitor and not to those transactions carried-out in the course of business."

20. The Ld. CIT(A), however, did not accept the contention of assessee-company and noted that even if it is considered that these advances are business advances, Section 2(22)(e) does not differentiate between trade/business advance or other advance. Since the shareholding was more than 10% in assessee-company, therefore, addition was confirmed and appeal has been dismissed.

21. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted

that that funds were taken from sister concerns for business transactions and amounts have been utilised for the purpose of business only. Therefore, the provisions of Section 2(22)(e) of the I.T. Act, will not apply. Further, the issue is covered by the Order of ITAT, G-Bench, in the case of assessee-company and others dated 12.01.2018 (supra).

22. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that shareholding pattern and profit are not disputed. It is not proved that it was a commercial transaction. It is a loan or advance. Therefore, the addition is rightly made. The Ld. D.R. relied upon decision in the case of Smt. P. Sharada vs. CIT 229 ITR 444.

23. We have heard the rival submissions and perused the material available on record. It is not in dispute that Samag group of companies consisted of various entities engaged jointly in the business of real estate development in the State of Uttar Pradesh. Consortium Agreement and other Agreements were executed between all the group concerns.

Different responsibilities have been attached to each member of consortium. The assessee-company and other group companies have been taking money from others group company and utilized same for the purpose of development in respect of Bamhetta Project and Rudrapur Project. No amount have gone to shareholder. The above contention of assessee-company have not been disputed by the authorities below. It is, therefore, clear that amounts have been received by assessee-company for business consideration and business transactions only carried out by the group companies. An identical issue have been considered by ITAT, Delhi Bench in the case of assessee-company and others and vide Order dated 12.01.2018, the Tribunal in paras 14 to 14.5.2 of the Order held as under :

"14. The aforesaid grounds relate to the issue with regard to the deemed dividend. The assesses are the group companies and are in the business of real estate development and were in the process of execution of various real estate projects including an integrated township at Village Shahpur Bameta, Ghaziabad. All the group companies maintained current account with each

other and transferred the money as and when needed to each other. During the year under consideration also, the assessee had transferred certain money to other group companies and similarly the other group companies had also transferred certain money to the appellant from time to time as and when need arose.

14.1 The AO was of the view that because the assessee had made advances to its sister concerns and the shareholders are common shareholders, hence whatever advance has been made by the assessee to other concerns having common shareholders, the same has to be assessed as deemed dividend u/s 2(22)(e) of the IT Act and then made the additions on protective basis in the hands of payer company, i.e. the assessee.

14.2 However, on appeal the Ld. CIT(A) accepted the assessee's arguments that as far as deemed dividend as contemplated u/s 2(22)(e) of the Act is concerned, the same cannot be considered in the hands of payer company and then deleted the additions as made by the AO.

14.2.1 However, looking into the accounts, the Ld. CIT (A) noticed that the assessee-company had received amounts from various group companies which have to be considered as deemed dividend u/s 2(22)(e) of the IT Act and then enhanced the income of the aforesaid assessee-companies by an amount which had been received.

14.3 The assessee has come forward in the present appeals against the action of the Ld. CIT(A) wherein he has enhanced

the income of the assessee with an amount which had been received from other group companies. The assessee objected to the action of Ld. CIT(A) on the following grounds:

- (i) No opportunity has been granted by the CIT (Appeals) before enhancing the income, hence the enhancement so made by CIT (Appeals) is against the law and in violation of natural justice.
- (ii) It is a settled rule of law that unless and until the assessee falls within the ambit of charging section by clear words, he cannot be taxed by implications. Hence the charging section has to be construed strictly and for this purpose the appellant relied on the CWT vs. Eliss Bridge Gymkhana in 229 ITR 1. The appellant states that the addition as made by the CIT (Appeals) is not only against the very purpose of provision of section 2(22)(e) of the IT Act but is also not covered by the provision of section 2(22)(e) of the IT Act.
- (iii) The provision of section 2(22)(e) of the IT Act is a deeming provision. Hence the deeming provision should be construed strictly and be confined and limited to the purpose for which they are created and should not be extended beyond their legitimate field as held by the Supreme Court in the case of CIT vs. Vadilal Lalubhai in 86 ITR 2 and 181 ITR 1 (Kerala), CIT vs. P.V. John.
- (iv) In the case of CIT vs. Sarathy Mudaliar in 83 ITR 170, the Hon'ble Supreme Court

14.3.1 In the case of CIT vs. Sarathi Mudaliar in 83 ITR 170, the Hon'ble Supreme Court, while considering the provision of Section 2(6A)(e) of the Indian Income-tax Act, 1922 (which is parimateria to Section 2(22)(e) of the IT Act), observed as under:

"Sec 2(6a)(2) gives an artificial definition of 'dividend'. It does not take in dividend actually declared or received. The dividend taken note of by that provision is a deemed dividend and not a real dividend. The loan granted to a shareholder has to be returned to the company. It does not become the income of the shareholder. For certain purposes, the Legislature has deemed such a loan as 'dividend'. Hence, sec. 2(6A)(e) must necessarily receive a strict construction (p. 173)."

14.3.2 The Hon'ble Supreme Court, while considering the provision of Section 2(6A)(e) of the Indian Income-tax Act, 1922, which is parimateria to the provisions of Section 2(22)(e) of the IT Act, in the case of Navneet Lal C. Javeri vs. K.K. Sen, AAC in 56 ITR 198 at pages 207-208 of the Report had judicially noticed the purpose and the object of the insertion of such provision under the IT Act in the following words:

"In dealing with Mr. Pathak's argument in the present case, let us recall the relevant facts. The companies to which the impugned section applies are companies in which at least 75 per cent of the voting power lies in the hands of persons other than the public, and that

means that the companies are controlled by a group of persons allied together and having the same interest. In the case of such companies, the controlling group can do what it likes with the management of the company, its affairs and its profits within the limits of the Companies Act. It is for this group to determine whether the profits made by the company should be distributed as dividends or not. The declaration of dividend is entirely within the discretion of this group. When the legislature realized that though money was reasonably available with the company in the form of profits, those in charge of the company deliberately refused to distribute it as dividends to the shareholders, but adopted the device of advancing the said accumulated profits by way of loan or advance to one of its shareholders, it was plain that the object of such a loan or advance was to evade the payment of tax on accumulated profits under section 23A. It will be remembered that an advance or loan which falls within the mischief of the impugned section is advance or loan made by a company which does not normally deal in money-lending, and it is made with the full knowledge of the provisions contained in the impugned section. The object of keeping accumulated profits without distributing them obviously is to take the benefit of the lower rate of super-tax prescribed for companies. This object was defeated by section 23A which

provides that in the case of undistributed profits, tax would be levied on the shareholders on the basis that the accumulated profits will be deemed to have been distributed against them. Similarly, section 12(1B) provides that if a controlled company adopts the device of making a loan or advance to one of its shareholders, such shareholders will be deemed to have received the said amount of the accumulated profits and would be liable to pay tax on the basis that he has received the said loan by way of dividend. It is clear that when such a device is adopted by a controlled company, the controlling group consisting of shareholders have deliberately decided to adopt the device of making a loan or advance. Such an arrangement is intended to evade the application of section 23A. The loan may carry interest and the said interest may be received by the company; but the main object underlying the loan is to avoid payment of tax.”

14.3.3 It has been consistently held by the various High Courts and the Tribunals that the business transactions are not covered by the provision of Section 2(22)(e) of the Act. The payments under business transaction are outside the purview of the provision of Section 2(22)(e) of the Act.

- 177 ITR 393 (Bom), CIT vs. Nagindas M. Kapadia
- 173 Taxman 407 (Del), Ambassador Travels vs.
- (2005) 1 SOT 142 (Mum), Seamist Properties Ltd. vs. ITO

- (2007) 11 SOT 302 (Mum), M.S. Securities Ltd. vs. DCIT
- ITA No. 3036/Del/2005, Delhi Tribunal Bench order dated 9th May 2008 in the case of Creative Dyeing & Printing Pvt. Ltd. vs. ITO which has been affirmed by Delhi High Court reported in 318 ITR 476 (Del).

14.3.4 Under the provisions of section 2(22)(e) of the IT Act, the legislature has uses the expression “by way of advances or loans” which shows that it is not all the payments received from the sister company was to be treated as deemed dividend but only the payments which bear the characteristics of loans and advances are to be considered under the provisions of Section 2(22)(e) of the IT Act. Under the law, all the loans and advances are debts, but all debts are not loans and advances as contemplated u/s 2(22)(e) of the IT Act.

14.3.5 Under the Income-tax Act, the term ‘loans and advances’ has not been defined. Hence, it has to be understood in commercial sense and in the manner in which the Court has interpreted the same. The expression ‘loan’ was under consideration before the various Hon’ble High Courts and the Hon’ble Supreme Court of India.

14.3.6 In the case of Baidya Nath Plastic Industries (P) Ltd. & Others vs. K.L. Anand, Income Tax Officer in 230 ITR 522, the Hon’ble Delhi High Court, which is a Jurisdictional High Court, held that there is a distinction between the loan and deposit. In the case of loan, it is ordinarily the duty of the debtor to seek

out the creditor and to repay the money according to the agreement, whereas, in the case of depositor to go to the depositor and make a demand for it.

14.3.7 In the case of Bombay Steam Navigation Co. Pvt. Ltd. vs. CIT in 56 ITR 52, the Hon'ble Supreme Court held that a loan of money undoubtedly results in a debt, but every debt does not involve a loan. Liability to pay a debt may arise from diverse sources, and a loan is only one of such sources. Every creditor who is entitled to receive a debt cannot be regarded as a lender.

14.3.8 In the case of CIT, Lucknow vs. Bazpur Co-operative Sugar Factory Ltd. in 177 ITR 469, the Hon'ble Supreme Court further stated that for the purpose of loan there must be relationship of borrower and lender in the given transaction and if there is no relationship of borrower or lender then the amount received cannot be considered as loan.

14.3.9 In the case of Durga Prasad Mandelia's vs. Registrar of Companies (1987) 61 Companies Case 479, the Bombay High Court held as under:

"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and credit must come into existence., The terms "deposit" and "loan" may not be mutually exclusive, but nonetheless in each case what must

be considered is the intention of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies Ltd. constitute a loan and offend section 370 of the Companies Act, there is nothing else to show that these moneys have been advanced as a "loan". In the context of the statutory provisions, the word "loan" may be used in the sense of a "loan" not amounting to a deposit. The word "loan" in section 370 must now be construed as dealing with loans not amounting to deposits, because, otherwise, if deposit of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of section 370 of the Companies Act. Therefore, moneys given by the company to other bodies corporate is a loan within the meaning of section 370 of the Companies Act must be negated. Therefore, the petitioners would well be entitled to the relief."

14.3.10 The expression "loans & advances" has also been used in the Interest Tax Act. Under the Interest Tax Act, the tax is leviable on interest. The interest has been defined under Interest Tax Act under section 2(7) of the Act in following words:

"(7) "interest" means interest on loans and advances made in India and includes –

(a) commitment charges on unutilized portion of any credit sanctioned for being availed of in India; and

(b) discount on promissory notes and bills of exchange drawn or made in India;

but does not include –

(i) any amount chargeable to income-tax, under the Income Tax Act, under the head "Interest on Securities";

(ii) discount on treasury bills; (and)

(iii) interest on any term loan sanctioned before the 18th day of June 1980 where the agreement under which such loan has been sanctioned provides for the repayment thereof during a period of not less than three years.

Explanation. For the purposes of this sub-clause, "term loan" means a loan which is not repayable on demand;

(iv) interest on any deferred credit (that is to say, credit on the terms that the payment is to be deferred) sanctioned by a scheduled bank in connection with the export of capital plant and machinery outside India;

(v) interest on any loan in foreign currency sanctioned by any corporation or bank referred to in sub-clause (a) or sub-clause (b) or sub-clause (c) or

sub-clause (d) of clause (9) for the import of capital plant and machinery from a country outside India.”

14.3.11 The question arises before the Courts, whether the interest on debentures and Govt. Securities are liable to Interest tax or not. The Courts have consistently held that the debenture and the Govt. Securities do not bear the characteristics of loans and advances but they are the mode of investment. Hence, the interest received on debentures and Government Securities are not liable to tax under Interest Tax Act though they carry the interests thereon. To support his view, he relied upon following cases laws:-

- 259 ITR 312 (Bom), CIT vs. United Western Bank Ltd.
- 259 ITR 295 (Bom), Discount & Finance House of India Ltd. vs. S.K. Bhardwaj
- 87 ITD 11 (Del) PN Bank vs. DCIT
- 115 ITD 218 (Ahd) (SB) Gujarat Gas Finance Service Ltd. v. Assistant Commissioner of Income Tax.
- [2006]5 SOT 918 (Delhi)(SB) Housing & Urban Development Corporation Ltd. vs. JCIT

14.3.12 In the case of Creative Dyeing & Printing Pvt. Ltd. in ITA No. 3036/ Del/2005, the Delhi Bench, ITAT vide order dated 9.5.2008 has held that if the amount received by the recipient company as investment from the payer company, then such amount will not be a loan and advance as contemplated u/s 2(22)(e) of the IT Act. The order of the Delhi Bench of the ITAT in case of Creative Dyeing & Printing Pvt. Ltd. has also been

upheld by the Delhi High Court in CIT vs. Creative Dyeing & Printing Pvt. Ltd. in 318 ITR 476.

14.3.13 Section 2(22)(e) of the IT Act only considers those amounts which are having the characteristic of loans and advances. In the instant case, a transaction between the group concerns is not having a character of loans and advances but these are the current accounts. The transactions in current accounts are also outside the purview of section 2(22)(e) of the IT Act as held in the following cases:

- 28 SOT 383 (Mum Trib)
Bombay Oil Industries Ltd. vs. DCIT
- 367 ITR 78 (P&H)
CIT vs. Suraj Dev Dada
- 167 ITD 100 (Mum Trib)
Ravindra R. Fotedar vs. ACIT
- IT Appeal Nos. 958 & 959 of 2015 dated 21.12.2015
DCIT vs. Schutz Dishman Biotech (P) Ltd. (Guj)

14.3.14 Under the provisions of section 2(22)(e) of the IT Act, the expression used is “company in either case possesses accumulated profits”. In the case of Bhim Singh Jaipur vs. ACIT in ITA No. 89/JP/2008 as well as in the case of Madhuwanti Singh Jaipur vs. ACIT in ITA No. 88/JP/2008 reported in 42 Taxword 132, it has been held by the Tribunal, after considering the judgment of Delhi High Court in the case of R. Dalmia vs.

CIT in 133 ITR 169, the expression “possess” means that there must be physical availability of the accumulated profits capable of disbursement and in case if the investment made by the payer company in their assets are already more than the accumulated profits shown in balance sheet, then it cannot be said that payer company possesses accumulated profits. In the instant case, all the payer companies are having investment in the real estate more than their accumulated profits shown in the balance sheet.

14.4 The Ld. CIT (DR) justified the action of the CIT(A) and stated that the additions as made are in accordance with law because payer companies are having sufficient accumulated profits and the shareholders are common.

14.5 After hearing both the parties and perusing the relevant records, it reveals that they are in the form of current and inter banking accounts and contain both types of entries i.e. giving and taking the amount and appear to be a current account and cannot be considered as loans and advances as contemplated u/s 2(22)(e) of the IT Act.

14.5.1 We find that the Hon’ble Gujarat High Court in the case of DCIT vs. Shutz Dishman Biotech Pvt. Ltd, Tax Appeals No.

958 and 959 of 2015 dated 21st December 2015 held that if the accounts are inter banking accounts maintained by the parties, then they are not covered under the provision of section 2(22)(e) of the IT Act and no additions can be made as deemed dividend u/s 2(22)(e) of the IT Act. Similar propositions have also been made by the Punjab & Haryana High Court in the case of CIT vs. Suraj Dev Dada in 367 ITR 78 as well as the Mumbai Bench of the Tribunal in the case of Bombay Oil Industries Ltd. vs. DCIT reported in 28 SOT 383 and Ravindra R. Fotedar vs. ACIT in 167 ITD 100.

14.5.2 Keeping into consideration such position of law, we hold that the additions as made by the CIT (Appeals) in terms of section 2(22)(e) of the IT Act are not correct because such amounts received cannot be considered as loans and advances. Even otherwise also, the payer companies had already made their investment in capital field more than the accumulated profits and in that situation it cannot be considered that those companies were having physical possession of accumulated profits capable of being disbursed. Therefore, the additions in dispute stand deleted”.

23.1. In view of the above, it is clear that the identical issue have been decided by the Tribunal in the case of assessee and other group concerns. Following the same, we are of the view that the amount in question could not be treated as deemed dividend under section 2(22)(e) of the I.T. Act. The issue is covered in favour of the assessee by the Order of the Tribunal. We, accordingly, set aside the Orders of the authorities below and delete the entire addition. In the result, Ground Nos.5 and 6 of the appeal of the assessee are allowed.

24. In the result, ITA.No.2053/Del./2017 of the Assessee is allowed.

ITA.No.2054/Del./2017 – M/s. Saamag Construction Ltd.,

ITA.No.2055/Del./2017 – M/s. Saamag Infrastructure Ltd.,

ITA.No.2056/Del./2017 – M/s. Saga Developers Pvt. Ltd.,

ITA.No.2057/Del./2017 – M/s. Pyramid Realtors Pvt. Ltd.,

25. In the above four appeals, all the three issues are common as is mentioned in the details at page 3 of this Order.

Learned Representatives of both the parties submitted that the issues involved in these appeals are same as have been considered and decided in ITA.No.2053/Del./2017 in the case of M/s. Saamag Developers Pvt. Ltd., (supra). Following the same reasons for decision, in these cases also, we set aside the Orders of the authorities below and delete all the additions. Accordingly, all the appeals of the assessee are allowed.

26. In the result, ITA.No.2054/Del./2017, ITA.No.2055/Del./2017, ITA.No.2056/Del./2017 and ITA.No.2057/Del./2017 of the Assesseees are allowed.

27. To sum-up, all the Appeals of the Assesseees are allowed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 8th October, 2018

VBP/-
*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "G" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.

Date of dictation	26.09.2018
Date on which the typed draft order is placed before the dictation Member	04.10.2018/08.10.2018
Date on which the approval draft comes to the Sr. PS	
Date on which the fair order is placed before the Dictation member for pronouncement	
Date on which the fair order comes back to the Sr. P.S.	08.10.2018
Date on which the final order is uploaded on the website of ITAT	08.10.2018
Date on which the file goes to the Bench Clerk	08.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	

