

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI

BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 1208/Mum/2018 (Assessment Year 2012-13)

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| Haware Infrastructure Pvt. Ltd.<br>413/416, Vardhaman market,<br>Sector-17, DBC, Vashi, Navi<br>Mumbai-400705.<br><b>PAN: AABCH3852R</b> | Vs. | ITO-15(2)(1)<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai-400020. |
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Appellant

Respondent

ITA No. 1185/Mum/2018 (Assessment Year 2012-13)

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| ITO-15(2)(1)<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai-400020. | Vs. | Haware Infrastructure Pvt. Ltd.<br>413/416, Vardhaman market,<br>Sector-17, DBC, Vashi, Navi<br>Mumbai-400705.<br><b>PAN: AABCH3852R</b> |
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Appellant

Respondent

Appellant by : Shri J.P. Bairagre/S.K. Mutsaddi and  
Mr. Raturaj Harivijay Gurjar (AR)

Respondent by : Shri Rajeshwar Yadav (CIT-DR)

Date of Hearing : 16.04.2019

Date of Pronouncement : 31.05.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. These cross appeal are directed against the order of Id. Commissioner of Income-tax (Appeals)-24, Mumbai [for short the Id. CIT(A)] dated 28.12.2017, which in turn arises from the assessment order passed under section 143(3) on 31.03.2015. The assessee has raised the following grounds of appeal:

1. On facts and in circumstances of the case and in law, the CIT(A) has erred in upholding the disallowance of Rs.50.84 Crores paid by the appellant during the year to the Reddy Family in respect of development of the project - Fantasia Business Park at Plot No.47, Sector 30-A, Vashi, Navi Mumbai.

2. On facts and in circumstances of the case and in law, the CIT(A) has erred in upholding that the amount paid of Rs.50.84 Crores by the appellant was towards purchase of equity shares of the company Mohan Entertainment Co. Ltd. (MECL) from the Reddy family and not as part of the Project Cost as claimed by the appellant for improving & betterment of its Development Rights of the project Fantasia Business Park at Plot No.47, Sector 30-A, Vashi, Navi Mumbai. The CIT(A) has further erred in not accepting the appellant's plea that the value of purchase consideration paid in respect of the equity shares of MECL, acquired from the Reddy family was Rs.39,99,000/- only, and that the amount of Rs.50.84 Crores paid to the Reddy Family by the appellant was for improving & betterment of its Development Rights of the project Fantasia Business Park at Plot No.47, Sector 30-A, Vashi, Navi Mumbai. The payment of Rs.50.84 Crores being part of the Project Cost should have been allowed.

**2. The revenue in its cross appeal has raised the following grounds of appeal:**

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.114.84 crores on account of Revenue recognition from the Fantasia building project, relying on the stay order dated 13.12.2011 of the City Civil Court, Thane, granting injunction, thereby holding that the assessee could not carry out any other activities of buying or selling or lease or any other related activities of the project, and had to maintain the status quo, ignoring that the assessee had received Occupancy Certificate vide letter dated 29.10.2011, and project completion method is consistently followed by the assessee and the registration of agreements of all the units had also been already made."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.114.84 crores on account of Revenue recognition from the Fantasia building project, ignoring the decision In the case of Champion Construction Co. (5 ITD 76) wherein the Hon'ble Tribunal

held that proportionate profit must be charged to tax, and therefore the assessee having received Occupancy Certificate vide letter dated 29.10.2011, during the Financial Year 2011-12 relevant to Assessment Year 2012-13, it is the trigger point that the project is complete and the revenue has to be recognized in Assessment Year 2012-13."

3. "The appellant prays that the order of the CIT(A), Mumbai on the above directions be set-aside and that of the assessing officer be restored."

4. "The appellant craves leave to amend or alter any of the aforesaid grounds or add a new ground of appeal, which may be necessary, at any time before or at the time of hearing of appeal."

3. Brief facts of the case are that the assessee-company is engaged in the business of real estate development and construction. For assessment year under consideration the assessee filed its return of income on 28.09.2012 declaring loss of Rs. 9,83,499/-. The return of income was selected for scrutiny. After issuing statutory notice and various questionnaire, the assessment was completed on 31.05.2015 under section 143(3) assessing the total income of Rs. 114,74,42,730/-. The Assessing Officer while passing the assessment order made disallowance of payment made on account of development right of Rs. 50,84,00,000/- and further held that the project was completed during the assessment year under consideration and computed the profit of project at Rs. 114,84,26,221/-.
4. The facts leading to additions are that during assessment proceedings the assessing officer noted that the assessee was developing a commercial project "Fantasia Business Park", Plot No. 47, Sector 30A, Vashi, Navi Mumbai. As per the approved plan, the total constructed area is 12652.3 sq. mtr. The assessee claimed that it has regularly following the Project

Completion Method (PCM) for revenue recognition. No income was offered from the project, as project was not completed till the end of March 2012. The assessee acquired development right in the project from Mohan Entertainment Company Ltd. (MECL) in the year 2003. The Assessing Officer also noted that assessee has paid an amount of Rs. 50.84 Crore towards the development right for the project in previous year 2011-12 and claimed it as revenue expenditure. The assessee was asked to substantiate the claim with documentary evidences.

5. In response to the notice, the assessee filed its reply dated 09.03.2015. In the reply, the assessee stated that assessee-company entered into development agreement with MECL on 27.03.2009, then owned by Reddy Family for developing of land admeasuring 12677.30 Sq. Mtr. at Plot No. 47, Sector 30A, Vashi, Navi Mumbai. As per the agreement, the assessee has to pay 3/4<sup>th</sup> of the leasing premium of Rs. 3.80 Crore, development 60% of the built-up area with 1 FSI and sale assigned, transfer the developed area to the prospective purchaser. On 40% of the land retained by MECL, the assessee had to construct a multiplex theatre on the condition that up to 600 per sq. mtr. of plot area (i) the cost would be entirely borne by the developer/assessee (ii) the cost in excess of 600 per sq. ft. area of built-up are in excess of would be shared in the ratio of 60:40 by developer(assessee). In the intervention period, the Reddy Group, who owned MECL entered into series of agreement with assessee group

through Late Satish Kashinath Haware. As per these agreements (series) the share of Haware Group in development property incurred substantially and developed rights of the said plot and control and management of MECL was agreed to be transferred to Haware Group. On 27.09.2003, four different agreements were executed between MECL and Haware Group, for first agreement shareholding agreement in the ratio of 80:20 for ownership of MECL (Haware Group 80% and Reddy Group 20%) (iii) agreement for transfer of share by Manish Nitya Reddy, Harish Haware in respect of share of MECL, third agreement for transfer of share of Manish Mohan Reddy and Satish Haware, fourth agreement for transfer of share of Pratik Reddy and Satish Haware, fifth agreement for transfer of shares of Mohit Reddy and Mr. Satish Haware.

6. After some time, Mr. Mohan Reddy, who was the main person of Reddy Group entered who entered in above five agreements expired on 06.04.2005. Mr. Satish K. Haware also died after some time. After the death of Mohan Reddy the claim of Haware group was totally denied and disputed by Reddy Group. The relations between assessee group and Reddy group became sore, both the groups made claims and counter claims which culminated into various Civil, Criminal and Corporate litigation between two groups including arrest of ladies in Haware Group. These litigations remained under progress for few years and the matter

became more complicated including stoppage of project (Fantasia Business Park).

7. However, in the mean time, the assessee continued to develop the plot of land and giving effect to the unregistered development agreements dated 2709.2003 and received advances from customers for sale of unit in the project, the year wise bread-up of closer balance of March 2010, 2011 & 2012 as under:

| Sr.No. | Particulars   | As           | at | As           | at | As           | at |
|--------|---|--------------|----|--------------|----|--------------|----|
|        |   | 31/03/2010   |    | 31/03/2011   |    | 31/03/2012   |    |
| i      | Site work in progress Multiplex 47/30A, vashi site "Fantasia" | 20,95,75,331 |    | 33,38,71,924 |    | 89,74,96,057 |    |
| ii     | Advances received from customers for said project "Fantasia"  | 19,52,71,949 |    | 57,68,81,571 |    | 80,90,12,552 |    |

8. As both the groups were claiming control on the management of MECL through Board which were disputed by the other group i.e. MECL was claimed by Reddy Group and Haware Group. Subsequently, with the intervention of well-wisher and common friends, the entire dispute and difference between Haware Group and Reality Group were resolved as per the agreement of settlement/ substituted agreement for settlement dated 05.02.2012 with addendum dated 18.03.2012 and further addendum dated 18.05.2012. As per the substituted agreement for settlement dated 15.02.2012, the assessee group agreed to pay a lump sum compensation of

Rs. 110 Crore for (i) transfer of share of Real Optimist India Ltd. (earlier known as MECL), (ii) settlement of all pending issues in various Forums, (iii) acquisition of acquire development right regarding the plot in order to buy peace. As a result of settlement, the ratio of obligation and retention of 60:40 between the assessee and MECL were changed to 90:10. Under these circumstances, the total composition of cost underwent changed retrospectively and therefore, the loan of Rs. 60 Lakhs from assessee, which was utilized for incurring the cost then by MECL is now transfer in the books of assessee. Similarly, as a result of 40% contribution, Rs. 9.48 Crore were attributed to MECL and its books, the same has to be changed in consonance with 90:10 ratio and therefore, brought into cost of the assessee-company. The assessee-company made the following payments to family members of Reddy family mentioned as below:

| Sr.No. | Name of person      | Assessment year 2012-13 | Assessment year 2013-14 | Total                |
|--------|---------------------|-------------------------|-------------------------|----------------------|
| i      | Harishvardhan Reddy | 20,90,50,000            | -                       | 20,90,50,000         |
| ii     | Muthu Pratima Reddy | 11,25,00,000            | 15,00,00,000            | 26,25,00,000         |
| iii    | MuthuRohit Reddy    | 17,44,23,414            | 44,15,26,586            | 61,59,50,000         |
| iv     | Nitya Reddy         | 1,25,00,000             | -                       | 1,25,00,000          |
|        | <b>Total</b>        | <b>50,84,73,414</b>     | <b>59,15,26,586</b>     | <b>110,00,00,000</b> |

9. The above said composition of Rs. 110 Crore was paid to Reddy Group for various considerations and acquisitions of shares were incidental and not main consideration. The share of Reddy Group were transferred to Haware Group in the name of assessee-company on 18.05.2012 at the face value of

share i.e. Rs. 10/- each share. Prior to 18.05.2012, the assessee-company was holding 30000 equity share of Rs. 10/- each. The details of share acquired on 18.05.2012 by assessee from Reddy family are as under:

| Sr.No. | Name of party       | No. of Equity shares | Date of transfer | Amount in Rs.    |
|--------|---------------------|----------------------|------------------|------------------|
| i      | Harishvardhan Reddy | 3,45,000             | 18/05/2012       | 34,50,000        |
| ii     | Muthu Pratima Reddy | 18,500               | 18/05/2012       | 1,85,000         |
| iii    | MuthuRohit Reddy    | 20,400               | 18/05/2012       | 2,04,000         |
| iv     | Nitya Reddy         | 16,000               | 18/05/2012       | 1,60,000         |
|        | <b>Total</b>        |                      |                  | <b>39,99,000</b> |

10. The additional compensation of Rs. 109,60,01,000/- (Rs. 1,10,00,000 – Rs. 39,99,0000) over and above for the acquisition on share, was effectively for the project Fantasia Business Park only and hence the same accounted as project cost in the Financial Year ending on March 2012 (Rs. 50 Crore and balance Rs. 59.60 Crore in the Financial Year 2013).

11. The assessee also provided the details of (i) Civil Suit No. 758 & 759/2011 filed by Reddy Group for cancellation of development agreement preparing for possession of land including permanent injunction for development and sale of property, wherein Reddy Group made Sub-Registrar, Thane, Architecture, Chartered Accountant, Navi Mumbai Municipal Corporation, Cosmos Bank Ltd. and Registrar of Companies and Directors of Haware Group and sister concern as a parties to the Civil Suit. (ii) The Occupancy Certificate issued by Navi Mumbai Municipal Corporation was stayed on 08.12.2011 on the application dated 03.12.2011

filed by Rohit Reddy. Copy of public notice issued by Reddy Group issued dated 19.03.2012 published in Times of India warning the public at which so as not entered into transaction with Haware Infrastructure in respect of Plot No. 47, Sector 30A, Vashi, Navi Mumbai. The details of status qua order granted for Civil Suit No. 758/2011 by Civil Judge (Senior Division, Thane). The details of payment made in pursuance of agreement dated 15.02.2012 and details of withdrawal of different Suits/litigations in pursuance of agreement dated 15.02.2012. The assessee also contended that perusal of various documents made it clear that the complete project namely Fantasia handled in all respect including financial, contractual, legal and other technical inputs by assessee. Therefore, there was no question for any significant value remaining with NEPL after compromise. The purchase of share, per say, was an incidental formalities for which a face value was the fair consideration.

12.The Assessing Officer further noted that Directorate of Income-tax (Investigation), Hyderabad conducted a survey action under section 133A in case of Reddy Group to whom the assessee have made payment of development right. In connection with the said survey, enquiry was made from the assessee. The report of investigation was forwarded to the Assessing Officer. In the said enquiry, it was emerges that the said payment is not admissible as revenue expenditure and that payments were made for acquisition of share of MECL. The assessee was show-caused

vide show-cause dated 20.03.2015 as to why the payments of Rs. 50.84 Crore revenue expenditure should not be disallowed.

13. The assessee filed its reply vide reply dated 25.03.2015. In the reply, the assessee despite in addition to contents of its earlier reply dated 09.03.2015 further stated that the issue regarding that Reddy's have treated the receipt as capital receipt of share, in fact indicates that the mistake is at the end of recipient and the same cannot be based for adverse inference against the assessee. If at all any tax is to be levied as revenue transaction, it should have been on Reddy's who have treated the entire receipt as capital gain and not the assessee-company for who, it is the cost incurred that too which was agreed under a duress as it was to ensure that all the projects expenses gone into development of project and the right created therein remained undisturbed and duly protected. The assessee specifically stated that the dispute was never of share or ownership of the company but was of development right of the project in any case, the assessee-company had only 10% of the right in the development in any case the company HECL had only 10% of the right in the developed property that too with further obligation of payment. The value of share of the company sans the liability as per books was insignificant. No third party could have paid more beyond the face value of shares, as the share did not have intrinsic value since the development right was already transferred. The claim of Reddy's group of capital gain of share should have been verified in the backgrounds

of facts, plethora of documents and various cases filed and settled by the parties. The assessee paid consideration for transfer of share of Real Optimist India Ltd. (supra), settlement of all pending issues /disputes in various Forums, acquisition of clear development right regarding the project in order to buy peace. The assessee also stated that as stated in reply dated 09.03.2015 as also assuming that it was a capital receipt in the hand of recipient i.e. under both the circumstances, the assessee-company is concerned, the payment is necessarily, solely, explicitly and only for the purpose of betterment of its development right which was wrongfully denied by Reddy's and under duress to get rid of various disputes, as the prohibitory order of the Court for getting Occupancy Certificate, the payment was made thereof has to be inevitably nothing but a revenue expenditure.

14. The contention of assessee was not accepted by Assessing Officer. The Assessing Officer observed that DIT (Inv.), Hyderabad conducted a survey under section 133A in Muthu Rohit Reddy (Reddy's Group), in the said survey, the enquiry was also made from assessee-company. After detailed enquiry and investigation came to the conclusion that payment is nothing but payment made for acquisition of share of Real Optimist (India) Ltd. (presently MECL). The Assessing Officer also referred the report of Investigation Wing in para-5.3 of his order. In para-6 of Investigation Report, it is mentioned that the assessee-company has wrongly debited Rs.

109.60 Crore towards the project cost for its Profit & Loss Account which is actually in nature of capital expenditure incurred for acquisition of share. The Reddy group to whom the payments were made were not the owner of the land and they do not have any development right, hence, the assessee's explanation that the payments were made for the purpose of development right is not tenable and after though to camouflage the capital expenditure as revenue expenditure. On the basis of report of investigation wing and after considering the submission of assessee, the Assessing Officer took the view that payment made to Reddy Group are nothing but payments for acquisition of shares and accordingly a claim of expenses (out of Rs. 110 Crore) Rs. 50.84 Crore paid during the relevant Assessment Year towards the development right were disallowed and reduced from working-in-progress.

15. The Assessing Officer further noted that the assessee is following the Project Completion Method. The assessee has received Occupancy Certificate on 29.10.2011 i.e. during the relevant previous year; the assessee has not taken any profit during the previous year. The assessee was show-caused as to why the project should not be treated as completed and the profit of the project should not be brought to tax. The assessee filed its reply dated 09.03.2015. In the reply, the assessee stated that there was legal dispute with regard to the cancellation of development agreement, permanent injunction for sale of property under development.

The Reddy Group with whom the assessee entered into development agreement filed Civil Suit before Civil Judge (Sr. Division), Thane vide Suit No. 758 & 759/2011 wherein the assessee was restrained from creating third right and to maintain status qua vide stay order dated 13.12.2011. The said order was vacated only on 14.01.2012. No revenue was recognized in the Financial Year ending on 31.03.2012. The revenue was recognized for the Financial Year ending on 31.03.2013. The submission of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that the assessee received Occupancy Certificate during the relevant previous year. Once the project is completed and Occupancy Certificate is obtained. The Assessing Officer further concluded that it is clearly established that once Occupancy Certificate is obtained in respect of any project, the project must have completed in all practical purpose. As the assessee has obtained Occupancy Certificate, nothing is left to establish that project has already completed before the date of issuance of Occupancy Certificate by Navi Mumbai Municipal Corporation. The Assessing Officer further concluded that the assessee simply delayed the revenue recognition on the ground that there was dispute and that matter was sub-judice before Civil Judge, Thane. The Id. CIT(A) concluded that in his opinion, even if, there is dispute, cannot affect the status of project completion. The Assessing Officer worked out the profit of project in the following manner:

|                                   |                               |  |
|-----------------------------------|-------------------------------|--|
| <i>“Agreement value of sale</i>   |                               | <i>Rs. 153,75,22,278</i>               |
| <i>WIP shown in the books</i>     | <i>Rs. 89,74,96,057</i>       |  |
| <b><i>Less:</i></b>               |                               |  |
| <i>Profit discussed in Para-5</i> | <u><i>Rs.50,84,00,000</i></u> |  |
| <b><i>Reworked WIP</i></b>        |                               | <u><i>Rs. 38,90,96,057</i></u>         |
| <i>Profit of the project</i>      |                               | <b><u><i>Rs.114,84,26,221”</i></u></b> |

16. Accordingly, the Assessing Officer worked out profit of the project at Rs.114,84,26,299/-. Aggrieved by the order of Assessing Officer, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition of Rs. 114.84 Crore on account of revenue recognition of the project namely Fantasia. However, the treatment/disallowance of Rs. 50.84 Crore as capital expenditure was confirmed. Aggrieved by the order of Id. CIT(A), both the parties have filed their respective appeal before us. The assessee has challenged the validity of disallowance of Rs. 50.84 Crore and the revenue has challenged the validity of deleting the addition of Rs. 114.84 Crore.

17. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. We have also deliberated on various case laws relied by lower authorities as well as by respective parties. Ground No.1 & 2 relates to disallowances of Rs. 50.84 Crore. Both the grounds of appeals are interconnected; therefore, we will discuss both the grounds together. The learned authorised representative (AR) of the assessee submitted that assessee is reputed builders in Navi Mumbai. The assessee followed the project completion method of accounting for

recognizing revenue for the year under consideration. The assessee was developing a project namely “Fantasy” a business park at Plot No. 47 sector 30-A Vashi, Navi Mumbai. The development rights were acquired by the assessee vide an unregistered agreement dated 27<sup>th</sup> September 2003 from Mahon Entertainment company Ltd (MECL), which was a closely held company, owned by Reddy family. The agreement for development right dated 27<sup>th</sup> September 2003 was executed on a stamp paper of Rs. 20/- only. Though, the agreement was unregistered, the same was acted upon and the assessee company started the development on the said plot. During the development of the project the assessee company received advances from various prospective buyers against sale of various units in the project. The breakup of closing balance as on 31<sup>st</sup> March 2010, 31<sup>st</sup> of March 2011, 31<sup>st</sup> March 2012 and 31 March 2013 was provided to the assessing officer. Unfortunately, the founder promoter Directors of both the companies i.e. assessee as well as of MECL expired. The remaining shareholders and directors of MECL finding an opportunity of unfair advantages refused to acknowledge the un-registered agreement, acted upon earlier by both the parties in the regime of its founder promoters / shareholders. This episode give rise to the serious dispute, which multiplied due to the claims and counter claims and drives to many areas such as Accounts, Company Law matters, Contracts filing of Criminal Complaints and Civil Suits. As a result of dispute and a number

of complaints were filed against the assessee. The assessee company has already spent huge amount on development, thus, the assessee was on a defensive stand due to an arm-twisting tactics of the Reddy's family. The assessing officer as well as learned CIT (A) was provided the copy of the development agreement and the details of various litigations launched by the Reddy family.

18. The learned AR submits that in the Civil Suit filed before Civil Judge Senior Division vide Suit No. 758 & 559/2011 by Reddy family. The Id. Civil Judge granted injunction order on 14.12.2011, wherein, the assessee was restrained from creating third party right and was directed to maintain the *status quo* of the project till the disposal of the Suit. The assessee received occupancy certificate on 21<sup>st</sup> October 2011 from Navi Mumbai Municipal Corporation (NMMC) in respect of the building at Fantasy project. The Assistant Director of Town Planning Navi Mumbai Municipal Corporation stayed the implementation of occupancy certificate granted to the assessee on 08.12.2011 on the application filed by Rohit Reddy. Thus, the assessee was restrained from handing over possession of the unit and the implementation of occupancy certificate granted was stayed, the project of the assessee became a standstill and the assessee started suffering huge losses. Due to various litigations by Reddy Family the assessee suffered huge loss of time and personal injury and defamation. The lady Directors of the assessee company was arrested on the false

complaint by Reddy family. Faced with the above litigations, when the project was practically completed, especially, when the occupancy certificate was issued on 21<sup>st</sup> of October 2011 any adverse order from courts would have serious consequences of the scraping of the project, cancellation of the sale agreements with buyers and refund of the advance against sale received to the tune of Rs. 81 Crores with compensation and that would have affected the business of assessee company including project and bad name. The assessee after taking into account all these risk factors related contingencies in order to protect the business interest, the assessee company was forced into entering into consent terms with the Reddy family comprising of Harshvardhan Reddy, Muthu Pratima Reddy, Muthu Mohit Reddy and Nitya Reddy (Reddy family) on 15<sup>th</sup> February 2012. The copy of consent agreement dated 15<sup>th</sup> February 2012 is also placed on record. In the consent agreement the assessee agreed to make the compensation of Rs. 110 crore, out of which Rs. 50.84 crore was paid in assessment year 2012-13 and balance of Rs. 59.15 crore was paid in assessment year 2013-14. Consequent upon agreement the Reddy family agreed to withdraw all the suits, complaints, petitions and to release the project for further commercial exploitation by the assessee company.

19. The learned AR for the assessee further submits that as an incidental, commercial requirement share Reddy's family owned company MCPL of worth Rs. 40.00 lakhs were also surrendered by Reddy family, they having

achieved their ulterior motive of upfront cashing their proud of flesh. Out of which Rs. 109.60 crore towards acquisition of development rights regarding the plot of land and sum of Rs. 39.99 lakh (399900 Share x Rs.10/-) was paid for a consideration of acquisition of the balance shares from Reddy family. The shares of company had no significant value having an agreed to give clean project to the assessee company. However, as a matter of convenience the value of shares was arrived at an aggregate value of Rs. 39.99 lakhs. The valuation of Rs. 10/- per share was adopted as per Rule 11UA of Income –tax Rules 1962. The acquisition of share of MECL by the assessee from Reddy family was only incidental for smooth handling and exploitation of the project fantasy which had received occupation certificate but not a single sale condition consideration could be received appropriated due to various legal obstructions. As per substituted agreement dated 15<sup>th</sup> February 2012 between assessee group and Reddy group the assessee agreed to pay sum of Rs. 110 Crore to Reddy group a lump sum compensation, details of which were provided to the lower authorities. Out of total payments of Rs. 110 crore Rs. 50.84 crore were paid during the assessment year under consideration, which has been correctly recorded by assessing officer in assessment order. The learned AR for the assessee further clarified that out of total/additional compensation of Rs. 110 Crore, out of which Rs. 109.60 Crore was paid on account of betterment of development right in the project and

remaining amount of Rs. 39.99 lakhs were paid for acquisition of shares. The receipt of development rights cannot be considered as a sales consideration for sale of share as it was an afterthought stand of Reddy family to save the tax as revealed in the report of enquiry proceeding under section 131. The assessing officer wrongly treated the total amount of Rs. 110 crore paid to Reddy group towards purchase of share. As per the statement of Reddy family recorded by DIT (investigation) that they treated the said amount as capital gain in the hands of family members and ignored the statement of Sanjay Haware, Director of Assessee Company recorded by the same investigation team /wing.

20. In the above background the learned AR of assessee submits that perusal of initial development agreement agreements dated 27.09.2003, nature of various litigations and complaints filed by that Reddy family and subsequent agreement dated 15<sup>th</sup> February 2012, copies of which is already placed on record, it will be abundantly clear that complete project on the aforesaid plot was handled in all respect including financial, contractual, legal and under other technical inputs by assessee. Therefore, there was no question of any significant value remaining with the MECL after the compromise. As such the purchase of share, per se was an incidental formality for which the face value was the fair consideration the assessee has correctly appropriated a sum of Rs. 39.99 lakhs as paid to the Reddy family on account of acquisition of shares and the balance consideration of

Rs. 109.06 crore was paid out of commercial expediency and exclusively incurred for the purpose of business, without which the business could have come to a standstill. In the receipt executed by the family members of Reddy's are in respect of development rights of plot No 47 Sector 30-A Vashi, Navi Mumbai. The lower authorities were incorrect in appreciating the above facts while interpreting the settlement document.

21. The learned AR further submits that if the apparent is not real, then the onus is on the person who alleges to do so. The learned Commissioner (Appeals) merely relying on the para 6(d)(iii) of the agreement to arrive at a conclusion that entire consideration was paid for purchase of share by ignoring the facts mentioned in the complete agreement and the facts of the case. Therefore, the conclusion of learned Commissioner (Appeals) is not correct.

22. The learned AR of the assessee in his without prejudice to his earlier submissions submits that the plot underneath development of fantasy project was allotted to MECL by CIDCO. After the allotment of said plot the said company was not able to even pay full consideration to CIDCO and to make construction on the said plot. Thus, vide unregistered development agreement dated 27<sup>th</sup> September 2003 the said MECL entered into agreement with Assessee Company to assigned development right on the plot on the term agreed as per the agreement. The assessee company, thereafter started construction in full speed and also sold the unit to various

parties from time to time and received advances. When the project was near completion the Reddy family disputed the unregistered agreement and filed various complaint and suits at various places to obstruct the completion of the project by getting into the argument that the plot of land belongs to them and the development agreement executed is not valid. After negotiation, the settlement was arrived and accordingly a sum of Rs. 110 crore in total was paid to various members of Reddy family who were holding shares in MECL. The assessee treated the sum of Rs. 109.60 crore towards acquisition of clear development right of the plot and debited the sum toward the cost of purchase of share of Rs. 39.99 lakhs for purchase of 399900 shares @ Rs. 10 per share of MECL and got the transfer of balance share of MECL in the name of assessee company for the smooth completion of project so that family members of Reddy family could not raise any further dispute in future. Though, the family members of Reddy to whom the payments were made mentioned in the receipt that amount received by them is on account of transfer of development right of the plot of land in favour of Assessee Company, but in their return of income they have declared the amount as Capital Gain for the sale of share of MECL. Since, both the parties acted upon the agreements though unregistered the substantial right in the developed project belong to the assessee company, therefore MECL could not have such large values. The complete enjoyment of 90% development right was obstructed by Reddy Group

hence the compensation was paid. Moreover, MECL had received fund from the appellant company which was correctly reflected as liabilities in the balance sheet of MECL as due to the assessee company and hence no stretch of imagination the consideration could have been related to share which was a miniscule portion of the total package.

23. The Id. AR of the assessee submits that the Supreme Court in *Shahazada Nand & Sons* (108 ITR 358 SC) held that if the payment is made through commercial expediency, the same would be allowed as business expenditure, further in *Malayalam Plantation* (43 ITR 114 SC) it was held by Hon'ble Supreme Court that the expression wholly and exclusively laid out or expended for the purpose of business need not necessarily be construed for the purposes of earning profits. For the purpose of business is wider than the scope of expression for the purposes of earning profits. Its range is so wide, it may take in not only the day to day running of a business and for protection of its assets and property from expropriation coercive process or assertion of hostile title. Further, in *Meenakshi Mills Ltd.* (63 ITR 207 SC) the Hon'ble Supreme Court held that the expression for the purposes of business is wider than the purpose of earning income. The former would include within its scope expenditure incurred on the grounds of commercial expediency. In *Dalmia Jain Co. Ltd.* (81 ITR 754 SC), the Hon'ble Supreme Court held that where litigation expenses are incurred by an assessee for the purposes of creating, curing or completing

the assessee's title to capital, then the expenditure incurred must be considered as capital but if litigation expenses are incurred to protect the business of the assessee they must be considered as revenue expenditure.

24. It was submitted by Id. AR of the assessee that Hon'ble Delhi High Court in South Asia Industries Pvt. Ltd. (132 ITR 144 Del.) held that expenditure incurred to protect business and reputation of the company is a amounts spent for safeguarding and saving the assets of the assessee's business and keeping it on a sound footing expenditure incurred for this purpose is allowable expenditure. Further, Hon'ble Delhi High Court in Gopaldass Estates & Housing Pvt. Ltd. (103 taxmann.com 334 Del.) held that compensation paid by the assessee developer to allottees of commercial spaces for surrender of their rights, therein could not be set to be disallowed on the grounds of such payments having being made for extraneous considerations. Assessee has a plausible explanation for making such payments of compensation to protect its business interest. While it is true that there was no contractual obligation to make payment, it is plain that the assessee was also looking to build its own reputation in the real estate market. The court further held that the recipients treated the said payments as capital gains in their hands in their returns would not be relevant in deciding the issue whether the payment by the assessee should be treated as business expenditure. It was argued that while rendering this decision, the Delhi High Court had relied on the decision of Shahazada

Nand & Sons (108 ITR 358), Nainital Bank Ltd. (62 ITR 638), Sharada Binding Works (102 ITR 187). In CIT Vs. Nainital Bank Ltd. (62 ITR 638 (SC) the Hon'ble Supreme Court held that "a large quantity of jewellery pledged with assessee bank by its constituents were stolen by dacoits from premises of bank. Bank paid the market value of the jewellery pledged by the constituents and claimed the same as expenditure which is allowed" The ld. AR also relied on case law in CIT V Is. Panbari Tea Co. Ltd. 57 ITR 422(SC) wherein it has been held that "It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the court, having regard to the other circumstances, to ascertain the intention of the parties." The ld. AR submits that in Sumati Dayal V/s. CIT, (214 ITR 801 (SC), it has been held that apparent must be considered real until it is shown that there are reasons to believe that apparent is not real and that taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying real test of human probabilities.

25. The ld. AR also referred the decision of Hon'ble Bombay High Court in the case of CIT V/s. Chemosyn Ltd. (371 ITR 427), wherein it has been held that "Due difference between groups, assessee company was directed to buy 34 per cent of shareholding of one of warring group, as said

expenditure was incurred only to enable smooth running of business, it was a deductible expenditure".

26. It was argued that in this case the dispute is between the assessee and the shareholders of the Mohan Entertainment Pvt. Ltd. from whom the assessee has acquired the development rights. The ld. AR submits that Hon'ble Madras High Court in the case of CIT V/s. Sarada Binding Works, (102 ITR 187), held that in order to decide whether some particular expenditure of a trader should be brought into account, four tests, similar to those considered in relation to receipts, should be applied. First, is the expenditure wholly and exclusively laid out for the purposes of the trade. If not, it will be excluded. Secondly, is the expenditure of revenue, and not of a capital in nature. Unless it is of a revenue nature it will be excluded. Thirdly, may tax be deducted and retained on payment. If so, it will be excluded. Finally, is there some other special provision of the Income-tax Act which permits, or requires, the payment to be brought in or left out of accounts.

27. The ld. AR of the assessee has also filed the following documents in the form of Paper Book and certified that all the documents were filed on the record of lower authorities.

| <b>Sr. No.</b> | <b>Particulars</b>  | <b>Page No.</b> |
|----------------|---|-----------------|
| 1.             | Statement of Total Income for AY 2012-13                      | 1               |
| 2.             | Acknowledgement for Filing of Return of Income for AY 2012-13 | 2               |

|     |  |           |
|-----|--|-----------|
| 3.  | Audited Final Accounts for March 2012  | 3-20      |
| 4.  | Copy of the Agreement dtd.27.09.2003 for assignment of development rights between the assessee and Mohan Entertainment Ltd.  | 21- 32    |
| 5.  | Copy of the Substituted Agreement dtd.15.02.2012   | 33 -74    |
| 6.  | Copy of the addendum dtd.18.03.20 12 to the substituted agreement dtd.15.02.2012.  | 75 - 84   |
| 7.  | Copy of The Addendum dtd.18.05.20 12 to the substituted agreement dtd.15.02.2012   | 85 - 90   |
| 8.  | Copy of the communication dtd.18.05.2012 addressed by the Reddy family to Haware Group.  | 90A - 90B |
| 9.  | Copy of the receipts dtd.09.12.2011, 03.12.2011, 09.12.2011, 09.12.2011, 09.12.2011, 09.12.2011, 14.04.2012, 09.12.2011, 03.02.2012, 13.03.2012, 14.04.2012, 18.05.2012, 09.12.2011, 03.02.2012, 14.02.2012, 13.03.2012, 14.04.2012, 14.04.2012, 14.04.2012, 18.05.2012, 12.11.2012, 12.11.2012, 12.11.2012,09.12.2011,03.02.2012, all issued by the Reddy Family. | 91 - 114  |
| 10. | Summary of the payments made to the Reddy Family by the appellent.   | 115       |
| 11. | Summary of the litigation disposed off with the settlement as a result of the compromise.  | 116-118   |
| 12. | Copy of the corrigendum agreement to development of property.  | 119 - 130 |
| 13. | Copy of occupancy certificate issued by NMMC.  | 131 - 133 |
| 14. | Copy of the Civil Judge (S.D.) Thane, Spl. Civil Suit No.758 of 2011 in Thane City Civil Court being suit for cancellation of agreement, declaration for injunction & for consequential relief.  | 134 - 236 |
| 15. | Copy of the order dtd.13.12.2011 directing the assessee to maintain status-quo till disposal of suite No.758 of 2011.  | 237 - 239 |
| 16. | Copy of Public Notice dtd.29.02.2012 issued by Reddy family in the Times of India, Hyderabad and later on, on 29.03.2012 issued in the Times of India, Mumbai, cautioning people not to enter any agreements with the assessee in respect of the property - Fantasia.  | 240       |
| 17. | Copy of the application dtd.14.12.2012 & Prayer filed by Mohan Entertainment Co. Ltd. & Reddy Family in special civil Suit No.: 758/2011 (City Civil Judge, (SD) Thane at Thane Court) withdrawing the suit filed against the assessee and its Directors. At Page 242 on 14.12.2012, the Judge allows the plaintiff to withdraw the suit.                          | 241 - 246 |
| 18. | Copy of the application dtd.14.12.2012 in City Civil Suit No.: 759/2011 filed by filed by Mohan Entertainment Co. Ltd. &   | 247 - 252 |

|     |   |           |
|-----|---|-----------|
|     | Reddy Family in special civil Suit No.: 759/2011 (City Civil Judge, (SO) Thane at Thane Court) withdrawing the suit filed against the assessee and its Directors. At Page 248 on 14.12.2012, the Judge allows the plaintiff to withdraw the suit. |           |
| 19. | Copy of the Acknowledgement and Computation of Income for AY 2013-14, including revised return of Income.   | 253 - 256 |
| 20. | Audit financial statement for the year ended March 2013.  | 257 - 279 |
| 21. | Chart pertaining to breakup of agreement values of Rs.153.75 Crores considered by the AO In the assessment order.   | 280 - 301 |
| 22. | Copy of Assessment Order for AY 2013-14.  | 302 - 319 |

28. On the other hand, the Id. Departmental Representative (DR) for the revenue supported the order of lower authorities. The Id. DR further submits that during the survey at the Reddy Group, the family member of Reddy Group admitted that they were in receipt of Rs. 110 Crore toward the share transferred to the assessee. Clause 6(d)(ii) of Settlement Agreement clearly spelt out that shares of MECL shall be transferred to nominee of Haware Group or lumpsum compensation of Rs. 110 Crore, out of which Rs. 50 Crore were already received and balance were receivable on or before 15.06.2012. The said clause clearly spelt out that payment of Rs. 110 Crore toward the transfer of share by Reddy Group to the assessee. When the agreement clearly specified the same there is no ambiguity in the interpretation of agreement clause. The Id. DR for the revenue prayed for confirming the order of Id. CIT(A).

29. We have considered the rival submission of the parties and have gone through the orders of authorities below. The Income Tax Act does not define the terms "Capital Expenditure" and "Revenue Expenditure", one

has to depend upon their nature meaning as well as decided cases. It is settled position that Capital Expenditure is acquired, extending or improving its fixed assets, whereas Revenue Expenditure is incurred in the normal course of business as a routine expenditure. Capital Expenditure provides benefit for several previous years, whereas Revenue Expenditure is consumed within a previous year. Similarly Capital Expenditure makes improvement in earning capacity of a business and on the other hand, the Revenue Expenditure, maintains the profit making capacity of business. For determining whether expenditure is of capital or revenue in nature, it is immaterial how the recipient treated the money in their hand. Though, the dividing line between the capital and revenue expenditure is real, yet some time it become difficult to draw that line. Therefore, a decision has to be taken in each case on the facts and surrounding circumstances.

30. During the assessment, the Assessing Officer received letter from DIT (Inv.)/133A/2014-15 dated 05.03.2015 that assessee has claimed revenue expenditure of Rs. 109.60 Crore as revenue expenditure (for F.Y. 2011-12 Rs. 49.65 Crore and F.Y. 2012-13 Rs. 59.94 Crore) toward project cost. It was noted by Assessing Officer that the said payments were made for acquisition of share of MECL. On verification of break-up of work-in-progress furnished during the course of assessment, the Assessing Officer recorded that assessee claimed payment of Rs. 50.84 Crore for payment of development rights from Reddy Group. The assessee was issued show-

cause notice as to why the claim of Rs. 50.84 Crore should not be disallowed. The assessee filed its detailed reply dated 25.03.2015. The sum and substance of reply is the same as explained by Id. AR of the assessee in his submission. The assessee claimed that the expenses were incurred exclusively, solely and only for the purpose of betterment of its development right which were wrongfully denied by Reddy's after the death of their founder Director. The assessee under duress and to get rid of various cases as well as prohibitory order passed by Civil Court and Occupancy Certificate was stayed by Administrator of Navi Mumbai, the payments were made, it was nothing but revenue expenditure. The explanation of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that in the survey conducted under section 133A on the Reddy Group, the investigation wing came to conclusion that the payment is nothing but payment made for acquisition of share of MECL. The Assessing Officer also recorded the bifurcation of payments received by various family members was disallowed. The assessing officer reduced the said expenses from the work-in-progress shown by the assessee.

31. During first appellate stage the assessee filed detailed written submissions, which are recorded by Id. CIT(A) in his order. It was explained that that the assessee paid compensation of Rs. 110 crore to Reddy group. The entire payments consist on account of transfer of share of MECL, settlement of

all pending issues in various courts, acquisition of clear development rights regarding the plot where the assessee was undertaking development project and for the smooth functioning of its project. The payments to Reddy group were made in various tranches, as explained in the substituted agreement and were shown to learned CIT(A). It was claimed that on payment of compensation the assessee would get the right title of the project along with the shareholding of MECL. It was further explained that the assessee was in receipt of advance of Rs. 8090 Crores from various customers for project it had completed work of Rs. 38.90 Crores. Had the assessee not entered into settlement agreement, it would have a long run dispute and would have created a huge financial losses to the assessee. The assessee also explained that only Rs. 39,90,9000/-was paid for acquisition of shares and the balance consideration of Rs. 109,60,01,000/-was effectively and essentially for the project "fantasia", without payment of this money the assessee was not in a position to carry out further development at site. All details of Criminal Complaints, Civil suits and other litigation pending in various other legal forums were also explained. After considering the submission and explanations furnished by assessee, the learned CIT(A) appeal concluded that once the payment is made for acquisition of shares, it is the payment for capital investment and therefore, capital in nature. The assessee explained that compensation of Rs. 110 Crore was paid to ensure that it run the project fantasia smoothly and to

acquire the share of MECL and that all complaints lodged against the assessee were withdrawn. The reliance by assessee on case law of Hon'ble Bombay High Court in Chemosyn Ltd. (Appeal No. 361 of 2013) was also distinguished by Id. CIT(A) holding that facts of the said case are different. Issues involved in the said case were of family settlement, however, in the present case, the additional amount incurred to acquire further step in MECL. The other case law relied by assessee in Empire Jute Company Ltd. (1980) 3 Taxman 69 (SC) was also distinguished. The Id. CIT(A) concluded that issue in that case was the nature of purchase of looms was capital or revenue, whereas in the present case, the issue is complete acquisition of share of another group in assessee's favour. Thus, the Id. CIT(A) concurred with the finding of Assessing Officer.

32. Now let us examine the facts of the case and the circumstances under which assessee paid/incurred the expenses of Rs. 50.84 crore was made by the assessee. From the facts as narrated above, it is brought on record that complete project namely Fantasia on the plot was handled including financial, contractual, legal and other technical inputs. There was no significant value remained with MEPL. Due to dispute between the Reddy Group and assessee group, Civil Court restrained the assessee from selling unit or creating any third party interest. The disputes were ultimately settled on payment of Rs. 110 Crore by assessee group to Reddy Group. The Reddy Group while acknowledging the receipt of, part of settlement

amount clearly mentioned on the receipt that the payments were made towards development right. The assessee has appropriated a sum of Rs. 39.99 lakhs as paid to Reddy family on account of acquisition of shares. The balance amount of Rs. 109.06 Crore was claimed by the assessee as paid on account of commercial expediency and claim exclusively incurred for the purpose of business. As we have noted earlier that during the survey action on the Reddy Group. The Reddy Group claimed that the said amount was received on account of transfer of shares. As per the substituted agreement executed on 15.02.2012, the assessee agreed to pay Rs. 110 Crore to Reddy Group against transfer of equity share of MEPL, settlement of all pending litigation before various Forums, acquisition of clear development right and to buy peace. The Id. AR of the assessee also vehemently submitted that the assessee has made huge investment in the project and a number of investor invested substantial investment. The assessee under the compelling circumstances has no option except to accept the unreasonable demand and payment of Rs. 110 Crore, out of which only Rs. 39.90 lakhs was paid for transfer of shares. The amount was incurred for commercial expediency and allowable as business expenses for the previous year.

33. The Hon'ble Supreme Court in Shahazada Nand & Sons (supra) held that if the payment is made through commercial expediency, the same would be allowed as business expenditure. Further Hon'ble Supreme Court in

Malayalam Plantation (supra) held that the expression wholly and exclusively laid out or expended for the purpose of business need not necessarily be construed for the purposes of earning profits. For the purpose of business is wider than the scope of expression for the purposes of earning profits. Its range is so wide, it may take in not only the day to day running of a business and for protection of its assets and property from expropriation coercive process or assertion of hostile title.

34. Further, in Meenakshi Mills Ltd. (supra) the Hon'ble Supreme Court held that the expression for the purposes of business is wider than the purpose of earning income. The former would include within its scope expenditure incurred on the grounds of commercial expediency.

35. In Dalmia Jain Co. Ltd. (supra), the Hon'ble Supreme Court held that where litigation expenses are incurred by an assessee for the purposes of creating, curing or completing the assessee's title to capital, then the expenditure incurred must be considered as capital but if litigation expenses are incurred to protect the business of the assessee they must be considered as revenue expenditure.

36. The Hon'ble Delhi High Court in South Asia Industries Pvt. Ltd. (supra) held that expenditure incurred to protect business and reputation of the company is a amounts spent for safeguarding and saving the assets of the assessee's business and keeping it on a sound footing expenditure incurred for this purpose is allowable expenditure.

37. Further, Hon'ble Delhi High Court in *Gopaldass Estates & Housing Pvt. Ltd.* (supra) held that compensation paid by the assessee developer to allottees of commercial spaces for surrender of their rights, therein could not be set to be disallowed on the grounds of such payments having being made for extraneous considerations. Assessee has a plausible explanation for making such payments of compensation to protect its business interest. While it is true that there was no contractual obligation to make payment, it is plain that the assessee was also looking to build its own reputation in the real estate market. The court further held that the recipients treated the said payments as capital gains in their hands in their returns would not be relevant in deciding the issue whether the payment by the assessee should be treated as business expenditure. The Hon'ble Delhi High Court relied on the decision of *Shahazada Nand & Sons* (supra), *Nainital Bank Ltd.* (62 ITR 638), *Sharada Binding Works* (102 ITR 187).
38. In *CIT Vs. Nainital Bank Ltd.* (supra) the Hon'ble Supreme Court held that "a large quantity of jewellery pledged with assessee bank by its constituents were stolen by dacoits from premises of bank. Bank paid the market value of the jewellery pledged by the constituents and claimed the same as expenditure which is allowed"
39. The Hon'ble Supreme Court in *CIT V/s. Panbari Tea Co. Ltd.* (supra) held that "It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the

court, having regarding to the other circumstances, to ascertain the intention of the parties."

40. In *Sumati Dayal V/s. CIT*, (supra), the Hon'ble Apex Court held that that apparent must be considered real until it is shown that there are reasons to believe that apparent is not real and that taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying real test of human probabilities.

41. The Hon'ble Bombay High Court in the case of *CIT V/s. Chemosyn Ltd.* (371 ITR 427), held that "Due difference between groups, assessee company was directed to buy 34 per cent of shareholding of one of warring group, as said expenditure was incurred only to enable smooth running of business, it was a deductible expenditure".

42. Keeping in view the above referred case law vis a vis the facts and surrounding circumstances of the present case. We are of the view that assessee incurred/paid expenses of Rs. 50.84 Crore for removing encumbrances, settlement of pending issues in various legal Forums, acquisition of clear development right pertaining to clock underneath the project Fantasia. Therefore, the disallowance made by Assessing Officer and reducing the same from work-in-progress was not justified. Thus, he we set-aside the order of lower authorities and direct the Assessing Officer to treat the expenses as Revenue Expenditure. In the result, the grounds of appeal raised by assessee are allowed.

43. In the result, appeal of assessee is allowed.

**ITA No. 1185/Mum/2018 by revenue**

44. The Id. DR supported the order of Assessing Officer. The Id. DR for the revenue submits that once the Occupancy Certificate was issued, the project was completed for all practical purpose. The assessee instead of offering the revenue in the year under consideration has offered in subsequent Assessment Year. Thus, the Id. DR strongly relied upon the order of Assessing Officer.

45. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the assessee in the assessment order has clearly recorded that the assessee was consistently following the Project Completion Method for revenue recognition. In earlier years, the expenses on project is taken but work-in-progress. The Id. AR further submits that assessee received the Occupancy Certificate of project on 21.10.2011 issued by NMMC, however, the same was stayed by NMMC on 13.12.2011 on the application/objection made by Rohit Reddy vide application dated 18.12.2011. The Id. AR of the assessee further submits that there was no injunction order dated 13.12.2011 passed by Civil Judge, (Sr. Division, Thane) restraining the assessee and to maintain status qua until the disposal of Suit. The Reddy Group had withdrawn the Suit on 14.12.2012. Thus, the assessee-company has taken the project completion in Assessment Year 2013-14. The Id. AR further submits that

in Assessment Year 2013-14, the assessee has offered income from project and furnished the copy of assessment order dated 30.03.2016 passed under section 143(3). The ld. AR of the assessee further submits that in appeal for Assessment Year 2009-10 and 2007-08 on similar issue of project completion method was accepted. Copy of order of Tribunal for Assessment Year 2007-08 & 2008-09 is also placed on record.

46. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the Assessing Officer noted that the assessee was following the Project Completion Method and had received the Occupancy Certificate on 29.10.2011 from Navi Mumbai Municipal Corporation (NMMC). Once the Occupancy Certificate is received, the project is complete. The Assessing Officer after considering the agreement value of sales and considering the work till progress shown the books and after deducting addition on account of Capital Expenditure worked out the profit of project and added the same to the income of assessee. During the first appellate stage, the assessee filed detailed written submission and explained the fact that the assessee was restrained from creating third party interest in the units constructed in the project and the operation of Occupancy Certificate was stayed by ld. Civil Judge, Thane vide order dated 13.12.2011. Rohit Reddy also filed application before NMMC for cancellation of Occupancy Certificate and the operation of Occupancy Certificate was also stayed by NMMC. The ld.

CIT(A) after considering the explanation and written submission furnished by assessee observed that by specific order of City Civil Court dated 13.12.2011, the assessee was restrained and directed to maintain status qua in respect of project till the disposal of appeal (in Civil Suit) by Reddy Group and MECL. By following the order of Civil Court, the assessee did not recognize the revenue which would lead to contempt of court. The Id. CIT(A) after considering the facts of the case and the surrounding circumstances concluded that the assessee could not carried out the activities of buy or sale or lease or any other related activities of the project and had to maintain the status quo. The Occupancy Certificate was itself in litigation. The assessee was not in a position to carry out any activities in the project due to direction of Civil Court to maintain status quo. On the above observation, the Id. CIT(A) concluded that assessee has rightly not recognized the revenue and directed the Assessing Officer to delete the addition.

47. There is no dispute that initially Occupancy Certificate of the project was issued on 21.10.2011 by NMMC. The operation of Occupancy Certificate was stayed by NMMC on the application of Rohit Reddy. It is an admitted fact that Id. Civil Judge of City Civil Court restrained the assessee and directed to maintain status quo till the disposal of Suit. The Reddy Group withdrew the said suit on 14.12.2012, during the Assessment Year 2013-14. The assessee has shown the Project Completion in Assessment Year

2013-14. The treatment of revenue recognition on project completion is not in dispute. Therefore considering the facts that the assessee was restrained to handover the units in the project by the order of Civil Court and the occupancy certificate was also stayed by operation of injunction order. The injunction order was lifted on the withdrawal of the civil suit on 14.12.2013. The assessee has shown the completion of the project in assessment year 2012-13, therefore, the action of the assessing officer in bringing the profit in the year under consideration was not justified. Thus, we affirm the view taken by the Id CIT(A). In the result, the grounds of appeal raised by the revenue are rejected.

48. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 31/05/2019.

**Sd/-**

**G.S. PANNU**

**VICE-PRESIDENT**

Mumbai, Date: 31.05.2019

SK

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "H" Bench, ITAT, Mumbai
6. Guard File

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**