

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.727/MUM/2021  
(Assessment Year: 2012-13)**

M/s Conwood Realty Pvt. Ltd. Dy. CIT, Circle-12(1)(2)  
Yashodham, D.B. House, Gen. Vs. Aayakar Bhavan, 2<sup>nd</sup> Floor,  
A.K. Vaidya Marg, Goregaon M.K. Road, Mumbai 400020  
(East), Mumbai – 400063

**PAN No. AADCC2501Q**

**(Assessee)**

**(Revenue)**

**ITA No.6447/MUM/2019  
C.O. No. 55/Mum/2021  
(Arising out of ITA No. 6447/Mum/2019)**

**(Assessment Year: 2012-13)**

ACIT, Circle-12(1)(2) M/s Conwood Realty Pvt. Ltd.  
R. No. 128D, 1<sup>st</sup> Floor, Aayakar Vs. Yashodham, D.B. House, Gen.  
Bhavan, Churchgate, A.K. Vaidya Marg, Goregaon  
Mumbai 400020 (East), Mumbai – 400063

**PAN No. AADCC2501Q**

**(Revenue)**

**(Assessee)**

Assessee by : Shri Prakash Jhunjhunwala, A.R  
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 29/07/2021  
Date of pronouncement : 26/10/2021

## ORDER

**PER RAVISH SOOD; JM:**

The present cross-appeals are directed against the order passed by the CIT(A)-20, Mumbai, dated 25.07.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 31.05.2015 for A.Y 2012-13. Also, the assessee is before us as a cross-objector. We shall first take up the appeal filed by the assessee wherein the impugned order has been assailed on the following grounds before us:

- “1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of interest u/s.36(1)(iii) of Rs.1,23,87,552/- under the reason that interest bearing funds had been utilised for acquiring the shares of subsidiary company;
  - 1.1 Without prejudice to Ground No.1.0 a prayer is made to direct Ld. AO to allow the capitalization of interest of Rs.1,23,87,552/- to investment in shares;
- 2.0 On facts and circumstances of the case and in law, Ld. CIT(A), having accepted the brokerage paid of Rs.1,24,64,408/- as directly related to sale of flats, however erred in confirming the disallowance of such brokerage since corresponding sales were not recognized as revenue income during the year;
- 3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition of surplus earned on sale of TDR of Rs.3,25,71,195/- thereafter enhancing such income at Rs. 5,56,12,975/-, though appellant had claimed that such surplus on TDR is to be reduced from Work-in-progress (WIP) of the housing project;
  - 3.1 Without prejudice to Ground No.3.0, Ld. CIT(A) having taxed the profit on sale of TDR of Rs.5,56,12,975/- as business income, ought to have directed the Ld. AO to correspondingly increase the work-in-progress (WIP), since such surplus was reduced by the appellant from WIP account.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”

2. Briefly stated, the assessee company which is engaged in the business of development and construction of real estate had on 30.09.2012 e-filed its return of income for A.Y 2012-13 declaring a loss of Rs.8,43,68,326/-. The return of

income was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. The A.O vide his order passed u/s. 143(3), dated 31.03.2015 assessed the income of the assessee company at Rs.3,42,15,260/- after inter alia making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Disallowance of interest u/s. 36(1)(iii). (investment made by the assessee in the shares of subsidiary company)	Rs.1,23,87,552/-
2.	Disallowance of interest u/s 36(1)(iii) (for loan given by the assessee to its subsidiary company)	Rs. 59,00,000/-
3.	Disallowance of brokerage and commission	Rs.1,24,64,408/-
4.	Disallowance of depreciation	Rs. 70,09,252/-
5.	Disallowance of various expenditure claimed in the profit and loss account.	Rs.4,82,51,174/-
6.	Profit on sale of TDR	Rs.3,25,71,595/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Insofar the disallowance of interest u/s 36(1)(iii) pertaining to the investment made by the assessee in the shares of its subsidiary company, viz. M/s Consolidated Crop Protection Pvt. Ld. (CCPL) was concerned, the CIT(A) not finding favor with the contentions advanced by the assessee upheld the same. As regards the assessee's claim for deduction of commission and brokerage expenses of Rs.1,24,64,408/-, the CIT(A) taking cognizance of the fact that the corresponding sales were not recognized by the assessee company as its revenue/income during the year under consideration confirmed the disallowance made by the A.O. However, the alternative contention of the assessee that the aforesaid expenses be treated as part of its work-in-progress (W.I.P) was principally accepted by the CIT(A). Accordingly, the CIT(A) directed the A.O to add the amount of the brokerage and commission expenses for the purpose of computing the WIP i.e the project cost on 31.03.2012 subject to verification of the genuineness of the said expenses. As regards the addition of the profit on sale of TDR of Rs.3,25,71,195/- that was made by the A.O, the CIT(A) rejected the assessee's claim that the profit/surplus arising therefrom was not liable to be

assessed in its hands and was rightly reduced from the WIP i.e the project cost. It was observed by the CIT(A) that as the profit derived on sale of TDR had no inextricable nexus with the construction activity of the assessee, therefore, the aforesaid treatment of the profit on sale of TDR in its books of accounts was not correct. Observing that though the assessee had earned a profit of Rs. 5,56,12,975/- from the sale of TDR, however, the A.O had on an estimate basis made an addition of only Rs. 3,25,71,198/-, the A.O after putting the assessee to notice enhanced the addition by an amount of Rs. 2,30,41,777/-. As regards the disallowance u/s 36(1)(iii) by the A.O of the assessee's claim for deduction of interest expenditure of Rs. 59 lac pertaining to the interest free loans that were advanced by the assessee to its subsidiary company, viz. CCPL, the CIT(A) finding favor with the contentions of the assessee vacated the same. Also, the disallowance of the assessee's claim for depreciation of Rs.70,09,252/- on office equipments, vehicles etc. was vacated by the CIT(A). On a similar footing, the CIT(A) being of the view that the assessee's claim for deduction of general administrative expenses did not form part of the project expenses and were allowable as a deduction in the year in which they were incurred, thus, deleted the disallowance of Rs. 4,83,51,174/- made by the A.O. Accordingly, on the basis of his aforesaid observations the CIT(A) partly allowed the appeal.

5. Before proceeding any further, we may herein observe that the appeal filed by the assessee involves a delay of 572 days. It was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee that the aforesaid delay of 572 days after excluding the period of Covid-19 pandemic was scaled down to a period of 154 days. Be that as it may, the Id. A.R had taken us through the multiple reasons which had led to the delay in filing of the present appeal. It was submitted by the Id. A.R that the primary reason leading to the delay in question was the fact that the father of the managing director of the assessee company, viz. Mr. Pramod Kumar Goenka was abducted and kidnapped during

his visit to Mozambique, East Africa on 17.02.2018. It was submitted by the Id. A.R that due to the abduction of his father the managing director of the assessee company, viz. Shri Yashwardhan Pramod Goenka had remained extremely disturbed and in fact slipped in a mental state of depression. It was submitted by the Id. A.R that Shri. Yashwardhan Pramod Goenka had exhausted all his efforts to trace the whereabouts of his father by filing police complaints, approaching the Indian High commission and Ministry of External Affairs. In order to buttress his aforesaid contention the Id. A.R had taken us through an "affidavit" that was filed by Shri Yashwardhan Pramod Goenka a/w his application seeking condonation of the delay involved in filing of the present appeal. The Id. A.R took us through a letter that was addressed by Shri Yashwardhan Pramod Goenka, dated 19.02.2018 to the Dy. Commissioner of Police, Sahar Police Station, Mumbai, wherein he had lodged a complaint and had sought registering of a FIR about his father i.e Shri Pramod Kumar Goenk having gone missing upon landing at Mozambique, East Africa. Further, our attention was drawn to the letters dated 20.02.2018 and 24.02.2018 that were filed by Mr. Yashwardhan Goenka (supra) with the Dy. Commissioner of Police, Bandra seeking his intervention for filing of a FIR concerning certain persons who were allegedly involved in the abduction of his father. Also, the Id. A.R took us through another letter dated 07.03.2019 that was addressed by Mr. Yashwardhan Pramod Goenka to the Dy. Commissioner of Police, Andheri wherein he had followed up the matter and had sought information as regards the progress in respect of the aforesaid matter. The Id. A.R also took us through a letter addressed by Mr. Sharad Pawar, Member of Parliament, dated 20.02.2018 to the Minister of External Affairs, wherein he had requested that a direction be given to the Embassy in Maputo, Mozambique to get information about Mr. Pramod Goenka. Further, the Id. A.R took us through the extracts of the various newspapers, viz. Times of India, Mumbai Mirror etc. wherein the news about kidnapping of Mr. Pramod Goenka was published. Our attention was also drawn by the Id. A.R to the intelligence report concerning the

kidnapping of Mr. Pramod Goenka. It was submitted by the Id. A.R that as the assessee under the aforesaid unfortunate circumstances during the relevant period of time, and thereafter, had remained extremely upset and slipped into depression, therefore, he could not attend to his income-tax matters. Apart from that, it was submitted by the Id. A.R that as the construction activities of the ongoing housing project of the assessee due to the aforesaid circumstances had remained completely closed, therefore, he was also subjected to threats by the investors/buyers, civil contractors etc. for honoring his financial commitments, which had further added to his agony. In order to fortify his aforesaid claim the Id. A.R had taken us through the relevant part of the "affidavit" of Mr. Yashwardhan Pramod Goenka. Also, it was stated by the Id. A.R, that apart from the aforesaid circumstances which had led to the delay in filing of the present appeal, even otherwise, the assessee's chartered accountant who was looking after its regular income-tax matters had failed to advise him about filing of the appeal before the Tribunal. It was submitted by the Id. A.R that the assessee who was not conversant with the income-tax law had thereafter on learning about its aforesaid lapse in filing of the appeal within the stipulated time period appointed another counsel and had filed the same alongwith a prayer seeking condonation of the delay therein involved. Our attention was drawn by the Id. A.R to the deposition of Shri Yashwardhan Pramod Goenka in support of the aforesaid fact. It was submitted by the Id. A.R that considering the aforementioned unfortunate circumstances the delay involved in filing of the present appeal may be condoned.

6. Per contra, the Id. Departmental Representative (for short 'D.R') did not seriously object to the seeking of condonation of the delay in filing of the present appeal by the assessee. Only contention that was raised by the Id. D.R was that the assessee's claim that its chartered accountant who was looking after the affairs at the relevant point of time had not advised him to file the appeal before

the Tribunal was a totally unsubstantiated claim and could not be acted upon in the absence of any supporting material.

7. We have given a thoughtful consideration to the aforesaid request of the assessee for condonation of the delay involved in filing of the present appeal before us. After giving a thoughtful consideration, we find that there are justifiable reasons which had led to the delay on the part of the assessee in filing the present appeal. As observed by us hereinabove, the fact that Shri Pramod Goenka i.e father of Shri Yashwardhan Pramod Goenka, Managing Director of the assessee company was abducted during his visit to Mozambique, East Africa stands duly substantiated on the basis of the exhaustive documents that have been filed by the assessee before us. Apart from that, we find that the aforesaid factual position is duly supported by the "affidavit" of Shri Yashwardhan Pramod Goenka, wherein he had clearly deposed the aforementioned facts. Further, we also find substantial force in the claim of the assessee that due to the closure of the construction activities of its ongoing housing projects he was threatened by the investors, buyers and civil contractors who had pressurized him to honor his financial commitments, which had further added to the agony he was already undergoing. In the totality of the aforesaid facts, we are of the considered view that it can safely be concluded that the circumstances prevailing at the end of the assessee clearly justifies the delay in filing of the present appeal before us. Apart from that, the fact as deposed by Shri Yashwardhan Pramod Goenka in his "affidavit" i.e the assessee's chartered accountant who was looking after its income-tax affairs had not advised him to file the appeal before the Tribunal further substantiates the bonafides due to which the present appeal could not be filed within the prescribed period of limitation. Be that as it may, in our considered view, as there are justifiable reasons explaining the delay in filing of the present appeal by the assessee, we, thus, hold a strong conviction that the delay of 573 days involved in filing of the same merits to be condoned.

8. We shall now advert to the merits of the case involved in the present appeal before us.

9. We shall first take up the grievance of the assessee that the CIT(A) had erred in confirming the disallowance of interest of Rs. 1,23,87,552/- u/s 36(1)(iii) of the Act. As is discernible from the orders of the lower authorities, the assessee had in its 'balance sheet' shown an amount of Rs.1,58,37,069/- as "*borrowing cost referable to investment in equity shares of Consolidated Crop Protection Pvt. Ltd.*" ("Note 19" of balance sheet). In its computation of income the assessee company had claimed deduction of interest expenses of Rs.1,23,87,552/- (out of the sum of Rs.1,58,37,069/-). On a perusal of the records, it was observed by the A.O that the assessee had raised a loan for acquiring certain shares of M/s Consolidated Crop Protection Pvt. Ltd. (for short "CCPL") on which interest of Rs.1,23,87,552/- was paid during the year under consideration. On being queried as to how the aforesaid interest of Rs.1,23,87,552/- was allowable as a deduction, it was submitted by the assessee that the same pertained to the loan that was raised by it for acquisition of shares of the aforementioned company, i.e CCPL which subsequently had become its wholly owned subsidiary company. However, the A.O did not find favor with the aforesaid claim for deduction of interest expenditure by the assessee and disallowed the same. It was observed by the A.O that the assessee had not debited the aforesaid interest expenditure in its Profit and loss account and had shown it as a 'current asset' in its balance sheet. It was further noticed by the A.O that though the assessee had acquired 100% shareholding of CCPL, however, it was proposed by the assessee to sell the said shares in future. Accordingly, the A.O was of the view that the interest paid by the assessee on the amount borrowed for acquiring the shares of CCPL was to be capitalized as a part of the cost of the shares, which thereafter on its sale would result to lower amount of capital gain in the hands of the assessee.

10. On appeal the CIT(A) did not find any infirmity in the view taken by the A.O. It was observed by the CIT(A) that the reliance placed by the assessee on the judgment of the Hon'ble Supreme Court in the case of S.A. Builders Limited Vs. CIT(Appeals) & Anr. (2007) 288 ITR 1 (SC) being distinguishable on facts would thus not assist its case. It was observed by the CIT(A) that while for in the case of S.A. Builders (supra) as the assessee had given interest free loan to its subsidiary for the latter's business purposes, therefore, it was considering the said fact that the Hon'ble Apex Court had held that the interest expenditure on the funds borrowed by the assessee could not be disallowed. On the contrary, it was observed by the CIT(A) that the assessee in the present case had purchased the shares of CCPL from a third party and had given the borrowed funds to a third party unlike as in the case of S.A. builders Ltd. (supra) where the funds were made available to the subsidiary company for its business purposes. Accordingly, in the backdrop of his aforesaid deliberations the CIT(A) upheld the disallowance of the assessee's claim for deduction of interest expenditure of Rs.1,29,83,552/- u/s 36(1)(iii) of the Act.

11. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions in context of the aforesaid issue in hand. It is the claim of the Id. A.R that the assessee had acquired 100% shareholding of CCPL. It was submitted by the Id. A.R that the lower authorities on the basis of misconceived facts had disallowed the assessee's claim for deduction of interest expenditure u/s 36(1)(iii) of the Act. It was submitted by the Id. A.R that the lower authorities had wrongly observed that the assessee company had planned that the shares of CCPL were to be transferred in future. Also, it was submitted by the Id. A.R that the lower authorities had erroneously observed that investment in shares was not the

business of the assessee company. Rebutting the observations of the lower authorities, it was submitted by the Id. A.R that the investment in the shares of CCPL of Rs.20.44 crores was made by the assessee not during the year under consideration but in the preceding years. In order to buttress his aforesaid claim the Id. A.R had taken us through Page 3 & 4 of the assessee's paper book (APB), which revealed that the investment of Rs. 20.44 crore in the shares of CCPL was reflected as an opening balance on 01.04.2011. Further, it was submitted by the Id. A.R that the lower authorities had failed to appreciate that the investment for acquiring the shares of CCPL was made by the assessee out of the mixed funds that were available with it in the bank accounts. It was submitted by the Id. A.R that as a matter of fact the acquisition of shares of CCPL was primarily sourced from the maturity proceeds of its fixed deposits held with Oriental Bank of Commerce, Mumbai. In order to drive home his aforesaid claim the Id. A.R had taken us through the investments that were made by the assessee in CCPL and the copy of its bank accounts at Page No. 5 -10 of APB. It was further submitted by the Id. A.R that no part of the interest on borrowed capital was disallowed by the department in its case for the preceding year during which the shares of CCPL were purchased/acquired. It was further submitted by the Id. A.R that as the assessee had sufficient own funds to justify the investment made in purchase of shares of CCPL, therefore, no part of the interest on borrowed capital was liable to be disallowed. In order to support his aforesaid claim the Id. A.R had drawn our attention to the 'balance sheet' of the assessee company on 31.03.2012. It was submitted by the Id. A.R that the assessee company had sufficient self-owned funds of Rs.72.42 crore on 31.03.2011 which had increased to an amount of Rs. 103.45 crores on 31.03.2012. Backed by the aforesaid facts, it was the claim of the Id. A.R that as the investment of Rs.20.44 crores made in purchase of shares of CCPL could safely be related to the self-owned funds available with the assessee, therefore, no part of the interest expenditure on the borrowed funds was liable to be

disallowed. In support of his aforesaid contention the Id. A.R had relied on the judgments of the Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) and that of CIT Vs. Reliance Utility & Power Limited (2009) 313 ITR 304 (Bom).

12. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. After deliberating at length on the contentions advanced by the Id. Authorized Representatives for both the parties, we find substantial force in the claim of the Id. A.R that as the assessee had sufficient self-owned funds available with it to justify the investment of Rs.20.44 crores made in the shares of its subsidiary company, viz. CCPL, therefore, no part of its claim for deduction of interest expenditure u/s 36(1)(iii) was liable to be disallowed. As observed by us hereinabove, the assessee company had acquired/purchased the shares of CCPL from a third party not during the year under consideration but on 22.11.2010 i.e the period relevant to the immediately preceding year. As is discernible from the records, the investment made by the assessee towards purchase of shares of its subsidiary company was out of its mixed funds, which as stated by the Id. A.R, and rightly so, were primarily sourced out of the maturity proceeds of its fixed deposits with Oriental Bank of Commerce, Mumbai. As observed by us hereinabove, it is a matter of fact borne from the record that the assessee had sufficient self-owned funds i.e Rs.72.42 crores (on 31.03.2011) and Rs.103.45 crores (on 31.03.2012) which would justify the investments made in the shares of its subsidiary company, viz. CCPL. In our considered view as the assessee had sufficient self-owned funds to make investments in the shares of its subsidiary company, viz. CCPL, therefore, as held by the Hon'ble High Court of Bombay in the case of HDFC Bank Ltd. (supra) that in case of mixed funds i.e interest bearing borrowed funds and the self-owned funds/interest free funds available with an assessee, the presumption would be that the investment was made by the assessee out of its self-owned

funds. We are of the considered view that pursuant to the availability of sufficient interest free funds with the assessee to justify the investment of Rs. 20.44 crore made towards purchase of shares of its subsidiary company, viz. CCPL, no part of the assessee's claim for deduction of the interest expenditure u/s 36(1)(iii) could have been disallowed. We, thus, set-aside the order of the CIT(A) and vacate the disallowance of Rs.1,23,87,552/- made by the A.O u/s 36(1)(iii) of the Act. The **Ground of appeal No. 1** is allowed in terms of our aforesaid observations.

13. As the Id. A.R had stated that the ground of appeal No. 1.1 is not being pressed, therefore, as per his concession the **Ground of appeal No. 1.1** is dismissed as not pressed.

14. We shall now advert to the assessee's grievance that the CIT(A) had erred in upholding the disallowance of the assessee's claim for deduction of brokerage & commission expenses of Rs.1,24,64,408/-, for the reason, that no corresponding sales were recognized as revenue/income by the assessee company during the year under consideration. As is discernible from the assessment order, the assessee had in its books of accounts shown brokerage and commission charges of Rs.1,24,64,408/- i.e selling expenses for units forming part of the projects undertaken for development and construction as "prepaid expenses". However, the same were claimed as a deduction by the assessee while computing its income for the year under consideration, for the reason, that the same represented selling expenses which could not be included for valuing the Project cost i.e WIP cost. On being confronted with its aforesaid claim which militated against that reflected in the books of accounts the assessee had relied on the judgment of the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Company Ltd. Vs. CIT (1971) 82 ITR 365 (SC) and submitted, that the accounting entries were not conclusive for the purpose of claiming an expenditure. However, the A.O was not persuaded to accept the

aforesaid claim for deduction of brokerage and commission expenditure that was raised by the assessee. Observing, that though the aforesaid expenses were against the sales, however, the assessee had neither credited any sale in its profit and loss etc, nor claimed the aforesaid expenditure in its Profit and loss account, the A.O disallowed the assessee's claim for deduction of brokerage and commission expenditure of Rs.1,24,64,408/-.

15. On appeal, the CIT(A) after deliberating at length on the contentions that were advanced by the assessee was however not inclined to accept the same. Observing, that the brokerage and commission expenditure was directly related to the sale of flats and office premises, the CIT(A) concurred with the view taken by the A.O that as the assessee had not recorded any sale during the year under consideration, therefore, no expenditure towards brokerage and commission could have been allowed while computing its income. However, the alternative claim of the assessee that the aforesaid expenses be considered as a part of the W.I.P cost of the project was principally accepted by the CIT(A). Accordingly, the CIT(A) directed the A.O to add the commission and brokerage expenses to the W.I.P cost of the assessee's project on 31.03.2012 though, subject to verification of the genuineness of the said expenses.

16. Before us, it was submitted by the Id. A.R that as the brokerage expenses are finance/selling expenses, therefore, they have to be allowed in full as a revenue expenditure despite the fact that the assessee might not have generated any revenue from sale of flats/office premises during the year under consideration. It was submitted by the Id. A.R that the assessee as a builder/developer of real estate had to incur brokerage and commission expenses in the normal course of its business. It was the claim of the Id. A.R that as the brokerage and commission expenses are in the nature of selling expenses, therefore, the same could not be included for valuing the project W.I.P cost. In order to buttress his aforesaid claim the Id. A.R had relied on AS-7 –

Para 8.4 to Para 8.8. Adverting to Para 8.7 of AS-7, it was submitted by the Id. A.R that the same, inter alia, provided that as 'selling costs' were in the nature of costs that were though related to the activities of the contractor generally, but cannot be related to specific contracts, therefore, the same were allowable as a deduction. Referring to the Para 8.8 of AS-7, it was submitted by the Id. A.R that it was therein specifically provided that brokerage expenses being in the nature of selling costs were to be excluded from the accumulated contract costs. In order to support his aforesaid claim the Id. A.R had relied on the judgment of the Hon'ble High Court of Delhi in the case of PCIT-3 Vs. DLF Home Developers Ltd. (2020) 114 taxman.com 97 (Del). It was submitted by the Id. A.R that the Hon'ble High Court in its aforesaid order, had observed, that expenses incurred on brokerage and commission on booking of properties being in the nature of finance/selling expenses were allowable in full, despite the fact that no revenue from sale of properties was recognized during the year. It was submitted by the Id. A.R that the aforesaid judgment of the Hon'ble High Court of Delhi had thereafter been upheld by the Hon'ble Supreme Court in PCIT-3 Vs. DLF Home Developers Ltd. (2020) 114 taxman.com 98 (Del). Also, reliance was placed by the Id. A.R on the judgment of the Hon'ble High Court of Delhi in the case of Gopal Das Estates & Housing Pvt. Ltd. Vs. CIT (2019) 412 ITR 489 (Del). It was submitted by the Id. A.R that the Hon'ble High Court in its aforesaid order, had observed, that the expenditure incurred on advertising being necessary for promotion of the assessee's business was to be allowed as a business expenditure. Accordingly, the Id. A.R drawing an analogy from the aforesaid order submitted, that on the same line the expenditure incurred by the assessee towards brokerage and commission that was indispensably required to be incurred for running of its business was to be allowed as a business expenditure. Also, support was drawn by the Id. A.R from the "Guidance Note for Accounting for Real Estate transactions (Revised 2012)". Referring to Para 2.4 of the aforesaid guidance note it was submitted by the Id. A.R that it was therein

specifically provided that selling costs should not be considered as part of construction costs and development costs.

17. Per contra, the Id. D.R relied on the orders of the lower authorities. It was submitted by the Id. D.R that as the assessee had not recognized any revenue from sale of properties during the year under consideration, therefore, the lower authorities had rightly concluded that the brokerage and commission expenditure could not be allowed as a deduction while computing the assessee's income. Apart from that, it was submitted by the Id. D.R that the assessee itself had reflected the aforesaid expenses as prepaid expenses and had not debited the same in its Profit and loss account for the year under consideration.

18. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, it is a matter of fact borne from the record that the assessee had shown the brokerage and commission expenses as prepaid expense in its audited accounts. However, the assessee had claimed the aforesaid expenses as a deduction while computing its income for the year under consideration. Insofar the claim of the revenue that the assessee's claim for deduction was liable to be rejected, for the reason, that it had itself reflected the same as prepaid expenses, the same does not find favor with us. As stated by the Id. A.R, and rightly so, as held by the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Company Ltd. Vs. CIT (1971) 82 ITR 365 (SC) the accounting entries made by an assessee are not conclusive for the purpose of determining its entitlement for claim of an expenditure. Also the Hon'ble Supreme Court in the case of CIT Vs. British Paints Limited (1991) 188 ITR 44 (SC), has held, that it is not only the right but the duty of the Assessing Officer to act in exercise of his statutory power and reject the accounting system adopted by the assessee for determining what,

in his opinion, is the correct taxable income. Backed by our aforesaid observations, we are unable to persuade ourselves to accept the aforesaid claim of the revenue that as the assessee had reflected the aforesaid expenses as prepaid expenses and had not debited the same in its Profit and loss account for the year under consideration, thus, for the said standalone reason its claim for deduction of the same was not to be accepted.

19. Apropos the merits of the assessee's claim for deduction of brokerage and commission expenses, we find, that it is the claim of the assessee, that as the said expenses are in the nature of selling expenses which cannot be included for valuing the project work-in-progress, therefore, the same were rightly claimed as a deduction for computing its income for the year under consideration. In our considered view the aforesaid claim of the assessee is duly supported by the "Guidance Note on Accounting for Real Estate Transactions" (Revised 2012), wherein at Para 2.4(b) it is provided that selling costs are not to be considered as part of the construction costs and development costs. In fact, we find that the issue in hand is squarely covered by the judgment of the Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax Vs. DLF Home Developers Ltd. (2019) 411 ITR 378 (Del). In its aforesaid order the Hon'ble High Court had observed that as brokerage and commission expenses are not a direct expense for acquiring a specific property but it is in fact a financial cost/selling expense, thus, the same are fully allowable in the year in which they are incurred. For the sake of clarity the relevant observations of the Hon'ble High Court are reproduced as under:

"3. So far as the question of brokerage is concerned, the issue stands covered in ITA No.54/2019 decided on 23 01.2019. The court had then observed as under: - In DLF Universal Limited (supra) this Conn after framing questions with respect to allowance under brokerage and commission claimed the assessee in the context of percentage completion method adopted by it held as follows:

8. The assessee had claimed Rs.61,78,414/- as expenditure towards brokerage and commission. The amount was paid to its brokers for

booking and sale of certain properties during the assessment year. The Assessing Officer disallowed this expenditure on the ground that during the conveyance of the sale deeds were not executed. The CIT(A) and ITAT accepted the assessee's contentions and set aside the disallowance. At the outset, we notice that the assessee's explanation clearly suited is as follows:-

"In this connection it is submitted that brokerage and commission is not a direct expenses for acquiring to specific property but it is in fact financial cost/selling expenses and is fully allowable in the year in which the same is incurred. The property brokers who have rendered their services to obtain advances on booking of properties are entitled to the payment of commission in terms of agreement entered into with them. Therefore, the expenses incurred on brokerage and commission on booking of properties being a finance/selling expenses are allowable in full. On this point where in the addition on account has been deleted. Your attention is also drawn to order dt. 20.7.1994 of Hon'ble ITAT, New Delhi For the assessment year 1983-84 of the Income-tax wherein an additional ground taken by the Deptt. for inclusion of the amount of brokerage and commission in the sale promotion expenses u/s 37(2)(a) have been dismissed. We understand that the Deptt. has not filed any reference application in the High Court against this order.

9. It is not disputed by the Revenue that for the other years, the assessee's treatment of such expenses had been in his favour and the Revenue has not chosen to challenge it. Even otherwise, we are of the opinion that such expenditure has to be allowed. The question of law is consequently answered in favour of the assessee and against the Revenue."

20. We find that the aforesaid judgment of the Hon'ble High Court of Delhi in the case of DLF Home Developers Ltd. (supra) had thereafter been upheld by the Hon'ble Supreme Court in PCIT-3 vs. DLF Home Developer Ltd. (2020) 114 taxman.com 98 (SC) and the 'Special Leave Petition' (SLP) filed by the revenue had been dismissed. Also, as noticed by us hereinabove, a similar view had been taken by the Hon'ble High Court of Delhi in the case of Gopal Das Estates & Housing (P) Ltd. Vs. DCIT (2019) 412 ITR 489 (Del). It was observed by the Hon'ble High Court that in case of an assessee engaged in real estate business, the expenditure incurred on advertising and publicity being necessary for promotion of business was to be allowed as business expenditure. We, thus, in terms of our aforesaid observations are of the considered view that as the

commission and brokerage expense incurred by the assessee company are in the nature of finance/selling expenses, therefore, the same were allowable as a revenue expenditure during the year under consideration. Accordingly, we herein vacate the disallowance of the assessee's claim for deduction of brokerage and commission expenses of Rs.1,24,64,408/-. The **Ground of appeal No. 2** is allowed.

21. We shall now take up the grievance of the assessee that the CIT(A) had erred in law and the facts of the case in not only sustaining the addition made by the A.O qua the surplus earned on sale of Transferable Development Rights (TDR) of Rs.3,25,71,195/-, but had further erred in enhancing the said addition to an amount of Rs.5,56,72,975/-. During the course of the assessment proceedings, it was observed by the A.O that the assessee had sold certain quantity of TDR's that were purchased from the market in the preceding years. It was noticed by him that the TDR's were sold by the assessee during the year for a consideration of Rs. 13,02,84,774/-. As per Note 29 of the "notes to the accounts" it was the claim of the assessee that as it was constructing a residential project at Thane, therefore, it had purchased the TDR's from the market in the prior years. It was further stated that due to certain factors the management of the company considering the stage of development of its aforesaid project had carried out a technical evaluation of the TDR's in hand, and being of the view that certain quantity of TDR's would not be required for a certain period of time had thus decided to liquidate the same and re-purchase it as and when it was so required. As per "Schedule-21" (project expenses) of the audited accounts the assessee had reduced the project cost i.e WIP cost of the project by the aforesaid amount of sale proceeds of TDR. On being called upon to put forth an explanation as regards its aforesaid accounting treatment, the assessee justified the reduction of the sale consideration of Rs. 13,02,84,774/- from the project cost i.e WIP for the reason, viz. (i).that its intention for liquidating

the surplus TDR's was not to trade in the same but to make available funds for the project; and (ii). that on repurchase the TDR's would again form part of the cost of its project i.e WIP cost. However, the A.O was not persuaded to accept the aforesaid claim of the assessee. On being queried as to why the profit/surplus arising on the sale of TDR's may not be brought to tax in its hands the assessee relied on its explanation in Note 29 of its "notes to the accounts". It was observed by the A.O that the assessee who was a builder and developer had purchased the TDR's for loading on its project for which development was being undertaken. It was noticed by the A.O that the assessee had purchased TDR of Rs.27.58 crore during the year ended 31.03.2011 and TDR of Rs.6.10 crore during the year ended 31.03.2012. Observing, that as the TDR's being a part and parcel of the project cost was the stock-in-trade of the assessee, the A.O was of the view that the profit earned from the sale of the same was liable to be assessed as its business income. As the assessee had failed to furnish the details as regards the corresponding cost of TDR's that were sold during the year, therefore, the A.O estimated the profit @ 25% of the sale value of the TDR's and made an addition of Rs.3,25,71,195/- (25% of Rs.13,02,84,774/-).

22. On appeal, the CIT(A) did not find favor with the contentions of the assessee that the profit/surplus on the sale of TDR's was not liable to be assessed as its business income and principally concurred with the view taken by the A.O. Before the CIT(A) the assessee reiterated its claim that as the TDR's were purchased for the purpose of its construction business and formed part of its project cost, therefore, the sale consideration of the surplus TDR's that were for the time being not required and were liquidated with an intention of making funds available for the said project were rightly reduced from the WIP cost i.e the project cost. It was the claim of the assessee that the TDR's as and when purchased would again form part of its project cost. The CIT(A) directed the

assessee to furnish the details as regards the profits from transactions in TDR's which was furnished by the assessee as under :

Particulars	Date	Quantity in Sq. mt.	Total cost	Date of sale	TDR sold in sq.Mt.	Sale proceeds net of brokerage	Proportionate cost	Profit/Loss
TDR 1	08.10.2009	1000	75,96,000	10.12.2011	1000	2,95,10,490	75,96,000	2,19,14,490
TDR 2	22.09.2010	2,013.75	4,36,61,157	10.12.2011	1600	4,78,31,155	4,36,61,157	1,64,79,054
				15.12.2011	413.75	1,23,09,056		
TDR 3	10.12.2011	4,469	5,92,55,000	23.02.2012	1629	3,88,18,535	2,15,99,104	1,72,19,431
Total		7,482.75	11,05,12,157		4642.75	12,84,69,236	7,28,56,261	5,56,12,975

23. Observing, that the assessee had on sale of TDR's made a profit of Rs.5,56,12,975/- while for the A.O had made an addition of only Rs.3,25,71,198/- ,the CIT(A) vide his 'Show cause' notice dated 08.02.2019 called upon the assessee to explain as to why the addition of the profit on sale of TDR's may not be enhanced by an amount of Rs.2,30,41,777/-. In rebuttal, the assessee tried to impress upon the CIT(A) that the profit on the sale of TDR's was not liable to be brought to tax and was rightly reduced from the cost of project i.e WIP cost. However, the CIT(A) was not inclined to accept the aforesaid explanation of the assessee. As regards the reliance that was placed by the assessee on the order of the ITAT, Mumbai in the case of ACIT Vs. Skylark Build (2011) 48 SOT 306 (Mum), the same was found to be distinguishable on facts by the CIT(A). It was observed by the CIT(A) that in the case of Skylark Build (supra) as the TDR's were earned by the assessee while executing the project and were inextricably linked with the project, therefore, the Tribunal finding that the sale proceeds of the TDR were directly relatable to the project had for the said reason approved the reduction of the sale proceeds of the TDR from the project cost i.e WIP cost. It was observed by the CIT(A) that unlike as in the case of Skylark Build (supra), in the case of the present assessee the TDR's were purchased from the market and had no nexus with its project. After exhaustive deliberations, the CIT(A) concluded that as the TDR's in the case of the assessee before him had no inextricable nexus with its construction activity, therefore, the profit/surplus earned from the sale of the same was liable to be independently brought to tax in

its hands. Backed by his aforesaid observations, the CIT(A) rejected the assessee's claim for reduction of the surplus on transfer of the TDR's from the WIP i.e project cost. Accordingly, the CIT(A) concluded that the profit of Rs. 5,56,12,975/- that was earned by the assessee from sale of TDR's was liable to be assessed as its business income during the year under consideration.

24. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions in context of the aforesaid issue in question. On a perusal of the record, we find that the TDR's purchased by the assessee from the market were added by him in the respective years to the project cost i.e WIP cost. On the other hand, on sale of the TDR's during the year under consideration i.e. A.Y 2012-13 the assessee had reduced the project cost i.e the WIP cost by the amount of sale consideration i.e Rs.13,02,84,774/-. It was submitted by the Id. A.R that as the TDR's formed part of its project cost i.e WIP cost, therefore, as and when the same is sold it is to be reduced from the project-WIP. In order to support his aforesaid claim the Id. A.R had relied on the order of a co-ordinate bench of the Tribunal, viz. ITAT 'D' bench, Mumbai, in ITO-10(2)(3) vs. M/s DKP Engineers & Constructions Pvt. Ltd. ITA No. 7796/Mum/2010, dated 31.08.2012. It was submitted by the Id. A.R that the Tribunal in its said order had observed that as the TDR had a direct nexus with the development work, therefore, on sale of the same the assessee who was following project completion method was correct in reducing the sale proceeds of the said TDR from the work-in-progress. Also, reliance was placed by the Id. A.R on the order of ITAT, Mumbai Bench 'E' in the case of ACIT vs. Skylark Build (2011) 15 taxman.com 213 (Mum). It was submitted by the Id. A.R that the Tribunal in its aforesaid order had taken a similar view and had concluded that as TDR receipt was directly linked to the execution of the project,

therefore, before the completion of the project the income from sale of TDR or any other such receipt being inextricably linked to the project would only go to reduce the cost of the project. It was submitted by the Id. A.R that the Tribunal in its aforesaid order had approved the reduction of the TDR sale proceeds from the project cost i.e WIP cost. Further, reliance was placed by the Id. A.R on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Bokaro Steel Ltd. (1999) 263 ITR 315 (SC). It was submitted by the Id. A.R that the Hon'ble Supreme Court in its aforesaid judgment had observed, that if the assessee before the commencement of its project received any amounts which were inextricably linked with the process of setting up of its plant and machinery then, such receipts would go to reduce the cost of its assets and being in the nature of capital receipts could not be taxed as its income. Further, the Id. A.R took us through the relevant extracts of a deed of transfer of TDR, dated 21.10.2009 that was executed by the assessee regarding a TDR admeasuring 1000 sq. mtrs. that was purchased with respect to development of its residential project at Thane. On the basis of his aforesaid contentions, it was submitted by the Id. A.R that the lower authorities had erred in dislodging the assessee's well founded claim that the profit/surplus from transfer of TDR being inextricably linked to its project cost i.e the WIP cost was thus liable to be reduced from the same and could not on a standalone basis be subjected to tax in its hands.

25. Per contra, the Id. D.R relied on the orders of the lower authorities. Our attention was specifically drawn by the Id. D.R to Para 8.1 to Para 8.3 of the assessment order.

26. Controversy involved qua the issue in question hinges around the solitary aspect i.e as to whether or not the surplus/profit on the sale of TDR's by the assessee was liable to be brought to tax in its hands, as claimed by the revenue; or was to be reduced from the project cost i.e WIP cost, as claimed by the assessee. The TDR's were over the years i.e A.Y 2011-12 to A.Y 2012-13

purchased by the assessee from the market for loading onto its residential project at Thane. TDR's as and when purchased formed part of the project cost i.e WIP cost of the assessee's residential project at Thane. On sale of the TDR's, we find that the assessee adopted a similar approach and reduced the sale consideration of Rs.13,02,84,774/- from the project cost i.e WIP cost. Rebutting the aforesaid accounting treatment the A.O was of the view that as the sale of TDR's was nothing but a sale of stock-in-trade by the assessee, therefore, the profit/surplus arising therefrom was liable to be brought to tax in its hands during the year of sale. As the details regarding the corresponding cost of the TDR's that were sold by the assessee for a consideration of Rs.13,02,84,774/- were not forthcoming, therefore, the A.O estimated the profit @ 25% of the sale consideration i.e at an amount of Rs. 3,25,77,195/- and brought the same to tax in the hands of the assessee. On appeal, the CIT(A) approved the view taken by the A.O and concurred with him that the profit/surplus on sale of the TDR's was liable to assessed in the hands of the assessee. As the assessee had furnished with the CIT(A) the requisite cost- details of the TDR's and had quantified the profit/surplus arising from their sale at an amount of Rs.5,56,12,975/-, therefore, he had after putting the assessee to notice u/s 251(2) of the Act enhanced the addition of the profit on sale of TDR's from an amount of Rs.3,75,77,198/- to an amount of Rs.5,56,2,975/-.

27. After deliberating at length on the issue in hand, we find substantial force in the view taken by the lower authorities that as the transaction of sale of TDR's that were purchased by the assessee from market in prior years was nothing but sale of its stock-in-trade, therefore, the profit/surplus arising therefrom was liable to be brought to tax in its hands as its business income. Admittedly, the TDR's in question were purchased by the assessee for loading onto its residential project at Thane and the same formed part of its stock-in-trade. Also, it is an undisputed fact that the assessee was following mercantile system of accounting on project

percentage completion method for its residential project at Thane. As observed by us hereinabove, it was the claim of the assessee before the lower authorities, as well as before us, that as the sale of the surplus TDR's was carried out not with an intention to trade in the same but to make funds available for the project, therefore, the sale proceeds of the TDR's was rightly reduced from the project cost i.e WIP cost. It was, thus, the claim of the assessee that as it was not in the business of purchase and sale of TDR's, therefore, the surplus/profit on the sale of TDR's in question could not have been divorced from its project, viz. residential project at Thane and separately assessed as its income for the year under consideration. At the first blush the aforesaid claim of the assessee was though found to be convincing, however, we are afraid that the same does not merit acceptance. In a case where the TDR is earned by an assessee i.e a builder and developer in the course of execution of its project, then, undeniably the said TDR would be inextricably linked or in fact interwoven and intertwined with the project, and the sale of the same cannot be divorced and therein considered on a standalone basis i.e separately from the project. In cases relied upon by the Id. A.R, viz. M/s DKP Engineers & Constructions Pvt. Ltd. (supra) and Skylark Build (supra) the TDR that were sold were earned by the said respective assessee's from their project; unlike the case of the assessee before us who had purchased the same from market. In our considered view, both the lower authorities had rightly observed that as the assessee had purchased the TDR's from market, therefore, the same could by no means be held to be inextricably linked or interwoven with its residential project at Thane. Accordingly, we concur with the view taken by both the lower authorities that as the sale of TDR's in the case of the assessee before us was nothing but a simpliciter sale of stock-in-trade by the assessee, therefore, the profit/surplus arising therefrom was liable to be assessed as its business income. As regards the reliance placed by the Id. A.R on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC), the same too being distinguishable

on facts would not assist the case of the assessee. In the said case the assessee was in receipt of income from letting out quarters to employees of contractors who were engaged in construction of assessee's plant, hire charges for letting out plant and machinery to contractors, interest on amounts advanced to them and royalty received from them for allowing excavation of stones, etc. It was in the backdrop of the aforesaid facts that the Hon'ble Apex Court had observed, that as the said receipts were inextricably linked with the process of setting up of the plant and machinery of the assessee, therefore, the same were in the nature of capital receipts which would go to reduce the cost of construction and cannot be taxed as income. However, as in the case before us the purchase and sale of the TDR's in question are in no way inextricably linked or interwoven with the assessee's residential project at Thane, therefore, the profit/surplus on sale of the same clearly being a sale of stock-in-trade had rightly been brought to tax by the lower authorities as its business income. We, thus, finding no infirmity in the view taken by the CIT(A) who had principally concurred with the view taken by the A.O uphold his order to the said extent.

28. We shall now take up the alternative claim of the Id. A.R that if the profit/surplus from sale of TDR's is held to be taxable as business income of the assessee, then, the "Closing WIP" be increased by the amount of the sale proceeds of the TDR's i.e Rs. 13,02,84,774/-. Elaborating on his aforesaid contention, it was submitted by the Id. A.R that as it had reduced the project cost i.e WIP by the sale consideration of TDR's, therefore, if the profit/surplus arising therefrom is to be assessed as its 'business income', then, the "Closing WIP" ought to be increased by the amount of such sale consideration. We have given a thoughtful consideration to the aforesaid claim of the Id. A.R. As the view taken by the lower authorities that the profit/surplus on the sale of TDR's is to be assessed as the 'business income' of the assessee has been approved by us, therefore, we herein direct the A.O to increase the value of the "Closing WIP" to

the extent of the cost of the TDR's whose corresponding sale consideration was reduced by the assessee from the WIP cost i.e the project cost. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations.

29. The appeal of the assessee is allowed in terms of our aforesaid observations.

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30. We shall now take up the appeal filed by the revenue. The revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of interest expenses amounting to Rs.59,00,000/- attributable to the interest free loans by relying upon the decision of Apex Court in the case of M/s. S. A. Builders without appreciating the facts of the assessee company is quite distinguishable from the facts of M/s. S. A. Builders.
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the assessee's contention of considering the expenses claimed on account of brokerage and commission of Rs. 1,24,64,408/- be treated as part of WIP when the Ld. CIT(A) himself confirmed that there is no revenue front business in the books of assessee.
3. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in setting aside the order of the AO on the issue of expenses claimed by the assessee to be allowed as W.I.P without considering the provisions of the Act which does not provide such pointer to the Ld. CIT(A).
4. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred deleting the addition of Rs.70,09,252/- on account of depreciation on office equipments, vehicles etc. with directions to include the depreciation stated to be linked to the project as part of W.I.P. without appreciating that there was no revenue from any activity in the books the assessee.
5. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred deleting the addition of Rs.4,82,51,174/- on account of various expenditures by considering the same to be administrative expenses by merely relying on the Guidance note of ICAI issued for real estate Developers ignoring the fact that there was no such activity to incur such, expenses.

6. The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.
7. The appellant craves leave to amend or alter any grounds or add a ground which may be necessary.”

31. We shall first take up the claim of the revenue that the CIT(A) had erred in deleting the disallowance of the assessee's claim for deduction of interest expenses of Rs.59,00,000/- u/s 36(1)(iii) of the Act. As is discernible from the assessment order, the assessee had debited in its Profit and loss account interest expenditure of Rs.1,84,15,283/-. Observing, that the assessee had advanced interest free loan of Rs.12,88,22,551/- to its subsidiary company, viz. CCPL the A.O had disallowed the corresponding interest expenditure of Rs.59,00,000/-.

32. On appeal, the CIT(A) observed that the loan advanced by the assessee to its subsidiary company, viz. CCPL was used by latter in its business of development of real estate. In fact, the assessee vide its letter dated 01.02.2019 had by way of 'additional evidence' under Rule 46A of the Income Tax Rules, 1962 furnished the 'balance sheet' of its subsidiary company, viz. CCPL which substantiated the aforesaid factual position. On being confronted with the aforesaid claim of the assessee the A.O failed to rebut the same. Accordingly, the CIT(A) observing that the subsidiary company of the assessee, viz. CCPL had utilized the interest free loan received from its holding company i.e the assessee company for its business purposes, therefore, followed the judgment of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT & Anr. (2007) 288 ITR 1 (SC) and vacated the disallowance of the assessee's claim for deduction of interest expenditure of Rs.59,00,000/-.

33. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into

service by the Id. A.R to drive home his aforesaid contention. Admittedly, it is a matter of fact borne from record that the assessee company had advanced an interest free loan of Rs.12,88,22,551/- to its wholly owned subsidiary company, viz. CCPL. Observing, that part of the interest bearing funds had been diverted by the assessee as an interest free advance to its WOS, viz. CCPL, the A.O had disallowed the corresponding interest expenditure of Rs.59,00,000/-. In our considered view, as the aforesaid interest free loan advanced by the assessee company to its WOS, viz. CCPL was undeniably utilized by the latter for the purpose of its business, therefore, the CIT(A) by relying on the judgment of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra) had rightly held that no part of the assessee's claim for deduction of interest expenditure pertaining to the interest free loan given by the assessee to its subsidiary company, viz. CCPL could have been made. Accordingly, finding no infirmity in the view taken by the CIT(A) we uphold the same. The **Ground of appeal No. 1** raised by the revenue is dismissed.

34. We shall now advert to the claim of the revenue that the CIT(A) had erred in directing that the brokerage and commission of expenses of Rs.1,24,64,408/- be treated as part of the project cost of the assessee company. As we had while disposing off the assessee's appeal observed that the brokerage and commission expenses of Rs.1,24,64,408/- had rightly been claimed by the assessee as a revenue expenditure, therefore, the aforesaid claim of the revenue is rendered as infructuous. The **Grounds of appeal Nos. 2 & 3** are dismissed in terms of our aforesaid observations.

35. We shall now take up the claim of the revenue that the CIT(A) had erred in law and the facts of the case in deleting the addition of Rs. 70,09,252/- on account of depreciation on office equipments, vehicles etc. On a perusal of the orders of the lower authorities, we find that the assessee had claimed depreciation of Rs. 70,09,252/- on the following block of assets :

Assets	Depreciation (Rs.)
Computer	4,67,632/-
Furniture & Fixture	13,80,316/-
Office Equipment	5,51,286/-
Vehicles	46,10,018/-
Total	70,09,252/-

Observing, that the assessee who was engaged in the business of a builder & developer had not recognized any income from such development activity during the year under consideration, the A.O declined his claim for depreciation. On appeal, the CIT(A) vacated the disallowance made by the A.O, observing as under :

“6.4.1. I have considered the rival contentions. The AR of the appellant submitted that these assets (furniture, computer, office equipment) are located at office premise at Dynamics House, Yashodham, Gen. A.K Vaidya Marg, Goregaon (E), Mumbai. He submitted that thee assets have no direct nexus with the 2 projects carried on by the appellant. The AO’s contention that the depreciation is not allowable if the income from the project is not offered for tax is not correct. Depreciation on those assets which are directly linked to the project are to be included in the WIP. On the contrary, depreciation on office equipments, computers, fixtures and furniture and vehicles which are used for administrative work will not form part of WIP and are allowable separately. I, therefore, direct the A.O to allow depreciation of Rs. 70,29,252/- claimed by the appellant. In the result, ground of appeal no. 3 is allowed.”

We have given a thoughtful consideration to the aforesaid observations of the CIT(A) and concur with the view taken by him. As observed by the CIT(A), and rightly so, unlike the depreciation on assets which are directly linked to the project and are to be included in the project cost i.e WIP cost; depreciation on office equipments, computers, fixtures and furniture and vehicles which are used for administrative work will not form part of such project cost and would be separately allowed as a deduction. Accordingly, finding no infirmity in the view

taken by the CIT(A) we uphold the same. The **Ground of appeal No. 4** raised by the revenue is dismissed in terms of our aforesaid observations.

36. We shall now deal with the claim of the revenue that the CIT(A) had erred in vacating the disallowance of the assessee's claim for deduction of administrative expenses amounting to Rs.4,82,51,174/- by simply relying on the guidance note of ICAI issued for real estate developers, failing to appreciate that there was no such activity to incur such expenses.

37. As is discernible from the assessment order the assessee had debited various expenditure in its Profit and loss account, as under:

Nature of Expenditure	Debiting P &L A/c Rs.	Disallowance in Computation	Balance claimed as allowable
Employee Benefit Expenses	1,72,48,542	Nil	1,72,48,542
Finance Cost	1,84,15,283	1,09,78,003	74,37,288
Depreciation	31,30,136	31,30,136	Nil
Other expenses	3,47,56,984	52,91,640	2,94,65,344
		Total	5,41,51,174

As the A.O had already disallowed the assessee's claim for deduction of interest expenditure of Rs.59,00,000/- (supra), therefore, the balance amount of the assessee's claim for expenditure of Rs.4,82,51,174/- was disallowed by him. On a perusal of the assessment order, we find that the A.O was of the view that as the assessee had not credited any income in its Profit and loss account for the year under consideration, therefore, it was not entitled to claim the aforementioned expenses as a deduction. It was observed by the A.O that as the only business of the assessee was to develop the project, therefore, now when the corresponding income from the project was not credited in its Profit and loss account, there was no reason that any expenditure incurred for the purpose of development of the project be allowed as a deduction. It was observed by the A.O that the amount of Rs.91.49 crore that was received by the assessee against the sale of the projects were reflected as advances in its books of accounts,

which proved that the project of the assessee was significantly booked and uncertainty had significantly reduced. In sum and substance, the A.O was of the view that the allowing of the aforesaid claim of expenditure of the assessee without any corresponding income defeated the very purpose of matching principle. Accordingly, the A.O disallowed the assessee's claim for deduction of the aforesaid expenses of Rs.4,82,51,174/-.

38. On appeal, the CIT(A) relying on Para No. 2.4 of the "Guidance Note for Accounting for Real Estate transactions (Revised 2012)" observed, that the "General administrative costs" were not to form part of the project expenses and were allowable as a deduction in the year in which they accrued. Also, it was observed by him that the expenses which formed part of the project cost were listed in Para Nos. 2.3 & Para No. 2.5 of the "Guidance Note on Real Estate Transactions (Revised 2012)". Accordingly, the CIT(A) concluded that the general administrative expenses of Rs.4,82,51,174/- which comprised of viz. employee benefit expenses; finance Cost; depreciation and other expenses were not to form part of the project cost i.e WIP cost and were allowable as a deduction in the year in which those have been incurred. The CIT(A) backed by his aforesaid deliberations vacated the addition of Rs.4,82,51,174/- made by the A.O.

39. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. After deliberating at length on the issue in hand, we find substantial force in the claim of the Id. A.R that as the aforesaid expenses in question do not form part of the project cost i.e WIP cost, therefore, the same for the purpose of computing the income of the assessee are to be allowed as a deduction in the year in which they were incurred. We find no infirmity in the reliance placed by the CIT(A) on the "Guidance Note for Accounting for Real Estate transactions (Revised 2012)",

wherein Para 2.4 of the same, inter alia, provides that the general administrative costs, research and development costs, depreciation on idle plant & equipment etc. are not to be considered as part of construction costs and development costs. Apart from that, we are of the considered view that the CIT(A) had rightly observed that the expenses which form part of the project cost i.e WIP cost are specifically listed in Para Nos. 2.3 & Para No. 2.5 of the “Guidance Note on Real Estate Transactions (Revised 2012)”. We, thus, finding no infirmity in the view taken by the CIT(A) who by relying on the “Guidance Note for Accounting for Real Estate transactions (Revised 2012)” had rightly vacated the disallowance of the assessee’s claim for deduction of general administrative expenses of Rs.4,82,51,174/- uphold his order to the said extent. The **Ground of appeal No. 5** raised by the revenue is dismissed.

40. The **Grounds of appeal Nos. 6 & 7** being general are dismissed as not pressed.

41. The appeal filed by the revenue is dismissed.

**C.O No. 55/Mum/2019**  
**A.Y. 2012-13**

42. The assessee in its cross-objection had objected to the order passed by the CIT(A) before us. On a perusal of the respective grounds raised by the assessee in its aforesaid cross objection, we find that they pertain to the same issues which have been raised by the assessee in its appeal, viz. ITA No. 727/Mum/2021 that had been adjudicated by us hereinabove. On being confronted by the aforesaid facts, the Id. A.R submitted that in case the delay involved in the filing of the appeal is condoned, then, the aforementioned cross-objections would not be pressed by him.

43. As we have condoned the delay involved in the appeal filed by the assessee before us and have disposed off the issues therein raised on merits,

therefore, in the backdrop of the aforesaid concession of the Id. A.R the cross-objections filed by the assessee are dismissed as not pressed.

44. The cross-objections filed by the assessee are dismissed in terms of our aforesaid observations.

45. Resultantly, the appeal filed by the assessee in ITA No. 727/Mum/2021 is partly allowed in terms of our aforesaid observation while for its cross-objection No. 55/Mum/2021 and the appeal of the revenue in ITA No. 6447/Mum/2019 are dismissed.

Order pronounced in the open court on 26.10.2021.

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 26.10.2021

\*\*PS: Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
ITAT, Mumbai