IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1768/Mum/2020 (A.Y. 2016-17)

M/s First Light Properties Pvt. Ltd.
(Erstwhile known as M/s Sumer Builders Pvt. Ltd.)
205, Commerce House, 140,
Nagindas Master Road, For,
Mumbai-400023
PAN: AAACS7947P ..... Appellant

Vs.

DCIT, CC-5(3),
Room No. 1906, 19th Floor,
Air India Building, Nariman Point,
Mumbai-400021. ..... Respondent

Appellant by	:	Sh. Nishit Gandhi
Respondent by	:	Sh. Sandip Raj, CIT-DR
Date of hearing	:	29/03/2022
Date of pronouncement	:	21/06/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter referred to as 'the CIT (A)'] dated 21.02.2020 for the Assessment Year (AY) 2016-17. The assessee has raised the following grounds of appeal:

ON NATURAL JUSTICE:

1.1 In the facts and circumstances of the case and in law the order passed by the Learned Commissioner of Income Tax (Appeals) - 53, Mumbai ["the Ld. CIT (A)" for short] is bad in law and void since the same is based on extraneous and totally irrelevant considerations, ignoring the relevant material and considerations and is also contrary to various judicial precedents and the extant law.

ON MERITS:

2.1. 'In the facts and circumstances of the case and in law, the Ld. CIT(A), erred in confirming the action of the Learned Deputy Commissioner of Income Tax, Central Circle - 5(3), Mumbai ["the Ld. AO" for short] whereby the Ld. AO had disallowed interest of Rs. 18,54,71,134/- paid by the Appellant to M/s India Bulls Housing Finance Limited ["IBHFL"] from the closing work-in-progress of the projects of the Appellant by treating the same as a prior period item.

2.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i) The said interest is on a borrowing specific to the projects and is therefore a project cost and not a period cost and the entire interest on the said loan has been capitalized to work-in-progress since inception and the said treatment has been accepted by the Department since the very inception;

(ii) The liability to pay the interest accrued only in the relevant previous year since the liability to pay interest was itself under serious dispute and this fact was informed to the Ld. AO during the assessment proceedings for the current assessment year as well as the earlier assessment year and which fact has not been disputed by the Ld. CIT (A) himself;

(iii) In any case, no specific show-cause notice was issued by the Ld. AO to the Appellant before making the said disallowance and was therefore unsustainable; and

(iv) Even otherwise, entry or absence in the books of accounts is not determinative of the allowability of a deduction under the Act and even on this count the disallowance could not be sustained.

2.3 Without prejudice to the above, even the computation of the interest disallowed by the AO is arbitrary and excessive and deserves to be substantially reduced.

3. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing an amount of Rs. 41,79,740/-

under section 14A of the Act r.w.r. 8D of the Income Tax Rules, 1962 from the work-in-progress of the Appellant during the year despite the fact that no exempt income was earned by the Appellant during the year under consideration and in any case the said disallowance is in violation of the amended Rule 8D of the Income Tax Rules, 1962.

4. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in sustaining the estimated addition of Rs.43, 550/- to the income of the Appellant in respect of the Indore Project merely on surmises and conjectures without appreciating the facts and reasons for non-recognition of revenue from the said project.

5. The Appellant craves leave to add, amend, alter, delete or modify all or any of the grounds of appeal."

2. Brief facts of the case are that the assessee has e-filed its return of income for AY 2016-17 on 19.03.2017 declaring total income of Rs. 2,17,750/-. The case was selected for scrutiny. Assessment proceedings have been conducted electronically and all the communications of data and documents took place through electronic mode.

3. Assessee-company was engaged in the business of real estate development and construction. During the year under consideration, the total work-in-progress (WIP) cost incurred was Rs. 49.93 crores which included the finance cost of Rs. 35.05 crores i.e. only Rs. 15 crores had been added to the WIP excluding interest component.

4. Ground No. 2.1, 2.2(i), (ii), (iii), (iv) and 2.3 are interlinked, hence, disposed of by common finding exhausting all the issues involved.

5. In the AY 2014-15 the appellant availed loan of Rs. 1.30 crore from M/s India bulls Housing Finance Ltd. (IBHFL) and during the said year it paid interest of Rs. 2,38,54,521/- to IBHFL on the said loan. The said interest expenditure was debited to the work-in-progress (WIP) of the projects of the appellant. The appellant's case for the AY 2014-15 was also selected for scrutiny and the said

interest debited to WIP was fully allowed. During the AY 2015-16, the appellant availed further loan of Rs. 5.45 crore from IBHFL and during the said year it paid interest of Rs. 4.56 crore to IBHFL. The said interest expenditure was debited to the WIP of the project of the appellant. It's a regular practice being followed by the appellant i.e. charging interest to the account of WIP and has been consistently accepted by the Department.

6. As the real estate market went sluggish and the financial position of the Appellant was precarious, the Appellant was in negotiation with IBHFL for reduction in rate of interest/waiver of interest. Pending conclusion of the consent terms with IBHFL the Appellant decided to not to accrue interest on the outstanding loan from IBHFL for the period from June 2014. Accordingly, the Appellant did not provide the interest in its books of account from June 2014 and the payments aggregating to Rs 43,23,00,000/- made from June 2014 onwards till March 2015 were adjusted by the Appellant against the principal amount of the outstanding loan. The Appellant's case for the said year was selected for scrutiny and during the course of assessment proceedings the said position was informed to the Ld. AO vide submission dated 26.12.2017 in response to the notice dated 19.12.2017 under section 142(1) of the Act. Copy of the said notice is enclosed herewith. Further copy of the said submission dated 26.12.2017 along with relevant annexure also enclosed herewith. After considering the same the said interest expenditure of Rs 4,56,52 840/- was fully allowed by the Ld. AO to be debited to the work-in-progress of the projects of the Appellant for AY 2015-16.

7. The appellant submits that during the AY 2015-16 it availed further loan of Rs 5,45,08,000/- from M/s India bulls Housing Finance Limited and during the said year it paid interest of Rs 4,56,52,840/- to M/s India bulls Housing Finance Limited. The said interest expenditure was debited to the work-in-progress of the

projects being carried out by the appellant. The appellant further submits that as the real estate market went sluggish and the financial position of the appellant was precarious, the appellant was in negotiation with M/s India bulls Housing Finance Limited for reduction in rate of interest / waiver of interest. Pending conclusion of the consent terms with M/s India bulls Housing Finance Limited the appellant decided to not to accrue the interest on the outstanding loan from M/s India bulls Housing Finance Limited for the period from June 2014. Accordingly, the appellant did not provide the interest in its books of account from June 2014 and the payments aggregating to Rs 43,23,00,000/- made from June 2014 onwards till March 2015 was adjusted by it against the principal amount of the outstanding loan. The appellant's case for the said year also was selected for scrutiny assessment and during the course of scrutiny assessment proceedings the said position was informed to the office of AO vide submission dated 26.12.2017 and after considering the same the said interest expenditure of Rs 4,56,52,840/- was allowed.

The appellant submits that as till the year under scrutiny no consensus were reached between the appellant and M/s India bulls Housing Finance Limited, the appellant paid a sum of Rs 36,60,00,000/- as interest in the year under scrutiny to avoid any penal interest liability and litigation with M/s India bulls Housing Finance Limited. The said interest expenditure is debited to the work-in-progress of the projects of the appellant. Further, apart from the said interest expenditure the appellant paid Rs 30, 40, 00, 00, 0/- towards the principal of the outstanding loan. Copy of the ledger account of M/s India bulls Housing Finance Limited as appearing the books of the appellant for AY 2014-15, AY 2015-16 and AY 2016-17 was also attached.

8. The ld. CIT (A) held as under:

"4.3. the finding of the AO in the assessment order, the written submission of appellant and various judgments relied upon have been gone through.

4.4. The AO had disallowed the interest expenditure and reduced if from work-in progress in respect of the interest paid to M/s India bulls Housing Finance Ltd. (IBHFL). The AO was of the opinion that in Note no 34 to the accounting policies annexed to the balance sheet, which referred to ongoing negotiation with IBHFL for reduction in the rate of interest/waiver of interest. As there was no conclusion, the Board of Directors of the company have passed a resolution not to provide the interest in the books of accounts from June 2014. The AO noted that the above referred note was part of the financial statement of FY 2015-16, relevant to AY 201617 and it was not a part of financial statement of FY 2014-15 relevant to AY 201516. It was also noted by the AO that in Col. No. 27(b) of 3CD report for FY 2015-16, it was mentioned that no particulars of income or expenditure of prior period were credited or debited to the P&L A/c. The AO held that as per the basic principle of allowability of expenses the expenditure should pertain to the relevant FY and not to the prior period. The AO had obtained a confirmation u/s 133(6) of the IT Act from IBHFL, in which it was stated that interest payable by the appellant for FY 2015-16, was Rs. 18,05,28,866/-. Therefore, the AO allowed the interest of Rs. 18, 05, 28,866/- and balance Rs. 18, 54, 71,134/-, which was related to FY 2014-15, was disallowed. The disallowed interest was also reduced from the work-in-progress for FY 2015-16.

4.5. The appellant has submitted that, as the real estate market went sluggish and the financial position of the Appellant was precarious, the Appellant was in negotiation with IBHFL for reduction in rate of interest/waiver of interest. Pending conclusion of the consent terms with IBHFL the Appellant decided to not to accrue interest on the outstanding loan from IBHFL for the period from June 2014. Accordingly, the Appellant did not provide the interest in its books of account from June 2014. The payments aggregating to Rs 43, 23, 00,000/- made from June 2014 onwards till March 2015 were adjusted by the Appellant against the principal amount of the outstanding loan.

Further it has been contended that interest expenditure on the loan from IBHFL was a project cost and not a period cost. Part of the interest paid to IBHFL had already been allowed to be capitalized in the earlier years. Further, year in which the loan was availed, entire interest expenditure was allowed by the AO, in such scenario there is no reason to disallow interest in subsequent years. It is also argued that there is no impact on total income of the appellant as work-in-

progress is not charged to P&L A/c. In view of the above facts and argument, the appellant had requested for deleting the disallowance made by the AO.

4.6. The main argument of the appellant is that the disallowance of interest related to FY 2014-15, paid to IBHFL, has no impact on the P&L A/c. The interest was not paid because of sluggish real estate market and the negotiation was going on for reduction of the interest rate or waiver of interest.

4.6.1. From the assessment records and the submissions/evidences submitted during the appellate proceedings, it is noticed that the appellant had not produced any evidence with respect to the negotiations between the appellant and IBHFL. Further, there has been no evidence of either reduction in the interest rate or waiver of interest by IBHFL. Any expenditure including interest expenditure is allowable in the year in which it is incurred. The appellant had taken the loan of Rs. 130 Crore from IBHFL in FY 2013-14. The appellant had paid interest of Rs. 2, 38, 54,521/- in FY 2013-14. In FY 2014-15, the interest liability of Rs. 18, 05, 28,866/-, was to be paid to IBHFL. However, the appellant did not pay the interest and even not made provision for payment of the interest in the books of accounts. The interest of Rs. 18, 05, 28,866/-, was paid in subsequent years i.e. FY 2015-16 and it was claimed as deduction. The auditor had made a specific note in Col. 27 (b) of 3CD report that no income or expenditure of prior period have been credited or debited to the P&L A/c of the appellant. The AO had made inquiry by issuing notice u/s 133(6) of the IT Act to IBHFL. In response to that notice, the IBHFL has replied that interest of Rs. 18,05,28,866/-, was payable by the appellant to it for FY 2015-16. The entire facts of the case reveal interest of Rs. 18, 54, 71,134/-, was payable by the appellant to IBHFL for FY 2014-15. But the appellant neither paid the interest nor provided for the interest in the books of account for FY 2014-15. The nature of the interest payable to IBHFL amounting to Rs. 18, 54, 71,134/-, is a prior period liability, which was incurred in FY 2014-15. Therefore, it was an allowable expenditure in FY 2014-15 relevant to AY 2015-16. The fact is that the appellant has paid interest of Rs. 18, 54, 71,134/- in FY 2015-16 and claimed it as an allowable expenditure. The interest of Rs. 18,54,71,134/- was incurred and the liability to pay interest accrued in FY 2014-15, so as per the mercantile system of accounting it could only be allowed in the year in which the expenditure was incurred and accrued. It is also not a case of the appellant that the interest liability was crystallized in FY 2015-16.

4.7. In the case of CIT vs Oberon Edifices & Estates (P) Ltd. (2019) 263 Taxman 377 (Ker), Hon'ble Kerala High Court has held that the expenditure is allowable in the year of accrual. The relevant part of the decision is reproduced as under —

"14. It is discernible from the decisions referred to above that, in order to claim deduction of business expenditure, it is not necessary that the amount has been actually paid or expended during the relevant accounting year itself. It is sufficient that the liability for payment had incurred or accrued during the relevant accounting year. The actual payment of amount or discharge of liability may occur in future. What is crucial is the accrual of liability for payment or expenditure during the relevant accounting year. But a contingent liability that may arise in future, cannot be treated as expenditure....."

In view of the above facts, the disallowance of interest expenditure of Rs. 18, 54, 71,134/- by the AO is in order and justified.

4.8. Further, the interest expenditure has been incurred in respect of the ongoing real estate project. The appellant has not clarified whether it is following a percentage completion method or completed contract method to recognize the revenue. The appellant itself has been debiting these expenditure in the work-in progress. In these circumstances, the action of AO to reduce the disallowance of interest expenditure of Rs. 18, 54, 71,134/- from work-in-progress is also justified.

4.9. In view of the above facts, the action of AO on both the counts is upheld."

9. We have carefully gone through the record of assessment proceedings, submission of the assessee along with finding of the ld. CIT (A). In the light of facts mentioned (supra), two questions arise to decide the fate of the matter under appeal:

(i) When an expense has not been debited/ charged to Profit & Loss A/c rather debited directly to WIP in balance-sheet can be disallowed?

It's an established position of law when an expense whether on accrual basis or cash basis incurred by the assessee but not charged to Profit & Loss A/c against the income of that year, no disallowance can be made. More specifically when the figures, source and project undertaken is not under dispute. In this case, assessee being a builder has taken finance for a specific project, a specific financial arrangement has been done for that very project and the amount of interest

incurred exclusively pertains to that very project only. Moreover, assessee itself debiting the whole amount of interest incurred to WIP of that project in balance-sheet. Relevant authorities of law in this regard pronounced by various Courts/ITAT are as under:

The Bombay High Court in the case of *CIT* v. *Nagri Mills Co. Ltd.*[1958] 33 ITR 681 has held as under:

"3. We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.

Moreover, during the assessment proceedings for AY 2015-16 assessee itself communicated to the concerned AO about a deadlock between assessee and IBHFL. Assessee has all the rights to protect its interest by way of negotiation or other tactics for reducing its cost of project by way of waiver of capital amount/reduction in interest rate. AO never raise any doubt over the figures of interest, use of funds and intentions of the assessee.

(ii) When a matter is in dispute between appellant and IBHFL and final position settled only in the current financial year i.e. AY 2016-17. Can it be classified in the category of “Prior Period Expenses”?

The amount under dispute may be in the nature of interest is not a period cost specifically in a case like this where the whole funding arrangements has been done for a particular project. It's a project base cost, has inextricable link with relevant project. Any deviation in the settled position has to be matched with the concerned project. In this case, the appellant did not provide the interest in its books of account from June 2014 and the payments aggregating to Rs. 43,23,00,000/- made from June 2014 onwards till March 2015 was adjusted by it against the principal amount of the outstanding loan. The Appellant's case for the said year also was selected for scrutiny assessment and during the course of scrutiny assessment proceedings the said position was informed to the office of AO vide submission dated 26.12.2017 and after considering the same the said interest expenditure of Rs. 4,56,52,840/- was allowed. The need to discuss Prior Period Expense arises only when there is an expense in the nature of period cost and there is no uncertainty about the liability and crystallization of amount. In this case, as discussed (supra) both the elements of certainty and crystallization of liability were missing. It got finalized in both the terms only in the year under consideration, so technically the interest debited to WIP does not fall in the category of Prior Period Expenses.

Supreme Build Cap (P.) Ltd. *v* .Assistant Commissioner of Income-tax

[2020] 117 taxmann.com 848 (Delhi - Trib.)/[2020] 183 ITD 72

Commissioner of Income-tax-10 v. Mahanagar Gas Ltd. [2014] 42 taxmann.com 40 (Bombay)

Principal Commissioner of Income-tax *v.* Escorts Ltd. [2018] 98 taxmann.com 291 (Delhi)

In view of the factual finding, we do not think that the impugned order requires interference, as the auditor in the note had qualified this expenditure as prior period expenditure. This qualification or note alone would not justify reversal of the factual finding recorded by the Tribunal. Auditor's opinion though relevant and

material would not be final and conclusive even when against the assessee. Auditor's report in a way is a third party and an independent report that can be equated with an expert opinion. It may be accepted or rejected or partly accepted and partly rejected. It has to be considered with other material. It cannot be treated as final or binding on the Assessing Officer, or for that matter even on the assessee, except when mandated by a statutory provision, which requires an unqualified auditor's report or certification. In the absence of statutory provision it would not be right to hold that a reservation or qualifying note in the audit report would be a conclusive and bind finding against the assessee. The Gujarat High Court in *Rajkot Engg. Association* v. *Union of India* [1986] 162 ITR 28/26 Taxman 60 (Guj.) had appropriately referred to the affidavit file by the Union of India repelling and quelling misgiving expressed by the assessee on the binding nature of qualifications or reservations expressed in audit reports under Section 44AB of the Act, to clarify and observe:—

> "53. It was, therefore, submitted that if the auditor finds that the financial information furnished to him is not according to the acceptable accounting policy and principles or not according to the relevant regulations and statutory requirements, he may refuse to give an unqualified opinion in which case an assessee would be exposed to grave consequences of not only a best judgment assessment but also to penalty. We can appreciate this apprehension expressed on behalf of the assessee. However, in view of the clarification made by the Union Government in the reply affidavit of Shri Kalyanchand, Under Secretary in the Finance Ministry to the Government of India in paragraph 15 that opinions given by the chartered accountants are not binding either on the assessee or on the assessing officer, we do not think that the assessee will be prejudiced by the qualified opinion given by the tax auditor in any given case. It is no doubt true that the assessee concerned may be required to persuade the Income-tax Officer that there was no justification for the qualified opinion or that there were valid and compelling reasons for an assessee for his failure or omission to satisfy an auditor. We are sure that the concerned tax authorities will not approach the matter in a strictly technical manner so as to make a best judgment assessment and/or to levy penalty merely because there is a qualified report of an auditor. The authorities will adopt a judicial approach and consider all attendant circumstances including the fact that the non-corporate assessee were not required to maintain their financial records in the manner in which the corporate assessee maintain as required under the law in force for the time being and the authorities will also bear in mind that non-corporate assessee should have reasonable time to adopt themselves to the changed situation emerging from the insertion of the impugned provisions for the first time in the statute book having far-reaching repercussions. This contention, therefore, also stands rejected."

7. The chartered accountant in the audit report could have qualified the expenditure claimed, as the sales incentive was also pertaining to sales made in the

earlier year. The finding of the Tribunal is that the sales incentive was to be quantified and was due and payable only during the period relevant to the assessment year 2005-2006. The appellant/Revenue has not placed on record any material and evidence to show and negate the factual finding of the Tribunal that sales incentive was not payable on the basis of the performance in the last 15 months. This factual finding is not specifically challenged as incorrect or wrong by relying on any document or correspondence exchanged between the respondent-assessee and the Assessing Officer or the dealers. Factual finding is not perverse and cannot be regarded as absurd only on the ground of qualifying note of the auditor.

Principal Commissioner of Income-tax *v.* Rajasthan State Seed Corporation Ltd. [2017] 88 taxmann.com 445 (Rajasthan)

Commissioner of Income-tax v. Jagatjit Industries Ltd. [2010] 194 TAXMAN 158 (DELHI)

Section 37(1), read with section 145, of the Income-tax Act, 1961 - Business expenditure - Year in which deductible - Whether if a particular accounting system has been followed and accepted and there is no acceptable reason to differ with same, doctrine of consistency would come into play - Held, yes - Assessee was following mercantile system of accounting - During relevant assessment year, it claimed prior period expenses on ground that vouchers of such expenses from employees/branch employees were received after 31st March of financial year - Assessing Officer disallowed expenses holding that nature of expenses was such that they had occurred and crystallized during earlier years - On appeal, Commissioner (Appeals) and Tribunal allowed said expenses on ground that as per accounting practice consistently followed by assessee, it had been debiting expenditure spill over to subsequent years and Assessing Officer had been allowing same for past so many years - Whether in absence of any material to show that there had been distortion of profit or books of account did not reflect correct picture, there was no justification to depart from accounting system which was accepted by department in respect of previous years and, therefore, Tribunal was justified in allowing prior period expenses claimed by assessee - Held, yes"

10. **As a conclusion to the discussions of law and fact (supra), ground no.2.1, 2.2, (i), (ii), (iii) & (iv) and 2.3 allowed and disallowance deleted.**

11. Ground No.3 is in respect of disallowance of an amount of Rs. 41, 79,740/- under section 14A of the Act.

12. It is noticed from the Balance Sheet of the assessee that the assessee company has shown investments amounting to the tune of Rs.5,48,55,554/-. However, no disallowance u/s 14A of the Act has been made by the assessee

company. The assessee was show caused as to why the disallowance u/s 14A of the act should not be made. In response to the show cause, it is submitted that the assessee company has neither earned, any exempt income nor claimed any exempt income and therefore disallowance under section 14A of the Act is not tenable. The assessee placed reliance on following judicial pronouncements:

1) Cheminvest Ltd vs CIT 378 ITR 33 (Delhi)

2) CIT vs Lakhani Marketing Inc-(2014) 272 CTR 265 (Punjab & Haryana)

3) CIT vs Winsome Textile Industries Ltd-(2009) 319 ITR 204 (Punjab & Haryana)

4) CIT vs Corrtech Energy (P) Ltd-(2014) 272 CTR 262 (Gujarat)

5) CIT vs Shivam Motors (P) Ltd (2015) 272 CTR 277 (Allahabad)

6) Pr. CIT vs M/s Ballarpur Industries Ltd-ITA No. 51 of 2016 (Bombay)

Further the assessee stated that the assessee is having own funds and other non-interest bearing funds exceeding the investments in equity shares and accordingly it is ought to be presumed that the investment made by the assessee is out of interest free funds available with the assessee and therefore the disallowance under section 14A of the Act is not warranted. In this regard, the assessee placed reliance on following judicial pronouncements;

1) CIT vs HDFC Bank Ltd (2014) 366 ITR 505 (Bombay)
2) CIT vs Reliance Utilities and Power Limited – (2009) 313 ITR 340 (Bombay)
3) HDFC Bank Limited vs DCIT (2016) 383 ITR 529 (Bombay)

13. **It is a settled position of law that where there is no exempt income earned, no disallowance under section 14A of the Act read with Rule 8D can be made. In this background, ground no.3 of the assessee is allowed and**

disallowance of Rs. 41, 79,740/- is deleted. Moreover, as discussed (supra) nothing has been charged/ debited to Profit & Loss A/c; no disallowance out of WIP can be made. Ground is allowed.

14. Ground NO. 5 is in respect of estimated addition of Rs. 43,550/- of the income of the appellant in respect of the Indore project. In the assessment proceedings AO observed that assessee has offered 8% as profit on Dadar project, whereas no profit was declared on Indore project.

15. Assessee was asked to explain this variation in policy. In respect of the Indore project appellant is following policy of 5% of the incremental project receipts. During the year under consideration the appellant had received Rs. 8,70,990/- as incremental revenue and estimated revenue @5% worked out to be 43,550/-. The appellant further submitted that he is the developer of the land and owner of land Mr. Narender Gorani and there is a dispute arisen between the appellant and Mr. Gorani, therefore appellant has not estimated and declared any income on the same.

16. We have observed that appellant has followed a particular system of revenue recognition consistently and the same has been allowed to be followed by the department also. Now on the plea of dispute between land owner and assessee being developer can't be a reason to be accepted as no document supporting the appellant was filed. Assessee can't deviate from his own developed and adopted system of accounting, without substantiating the same with evidence.

17. **In the result ground of appeal raised by assessee is dismissed and stand of AO is confirmed.**

18. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 21st day of June, 2022.

Sd/-	Sd/-
(VIJAY PAL RAO)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 21/06/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy. /Asstt. Registrar)
ITAT, Mumbai