

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 1937/Ahd/2016 & CO No. 155/Ahd/2016

Assessment Year : 2012-13

The Income Tax Officer, Ward-1(1)(1), Ahmedabad	Vs	M/s. Aarya Realties Pvt. Ltd., 10, Sadanand Society, Nr. Telephone Exchange, Vasna, Ahmedabad-380002 PAN: AAFCA 1686 C
(Appellant)		(Respondent/Cross-Objector)
Assessee by :		Shri Bhavin Marfatia, AR
Revenue by :		Shri Anand Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 29/07/2022

घोषणा की तारीख /Date of Pronouncement: 08/09/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-1, Ahmedabad ["CIT(A) in short]" dated 23.05.2016 and the same is being disposed of along with Cross Objection filed by the assessee being CO No. 155/Ahd/2016.

2. In Ground No.1 raised in its appeal, the Revenue has challenged the action of the learned CIT(A) in restricting the addition of Rs. 2,63,59,170/- made by the Assessing Officer on account of estimated profit on sale of 5 units to Rs.58,31,955/-.

3. The assessee, in the present case, is a company which is engaged in the real estate business. Return of income for the year under consideration was filed by it on 14.08.2013 declaring a loss of Rs.1,29,02,944/-. The case of the assessee was selected for scrutiny on CASS basis and a notice under Section 143(2) of the Income-tax Act, 1961 ("the Act" in short) was issued by

the Assessing Officer to the assessee on 04.09.2014. As noted by the Assessing Officer during the course of assessment proceedings, the assessee-company was appointed as a developer by M/s. Advait Realty Pvt. Ltd. by an agreement dated 28.06.2005 for the development of a land and with the permission of Ahmedabad Municipal Corporation, a building known as "Arya Arcade" was constructed by the assessee in terms of the said development agreement. The said building comprising of ground plus four floors was having 11 offices which were sold by the assessee for a total consideration of Rs.8,31,60,140/-, including the amount of Rs.2,57,80,674/- received towards land cost which was credited to the share amount as per the development agreement. The total consideration net of share amount amounting to Rs.5,73,79,466/- was declared by the assessee as sale in the Profit and Loss Account for the year under consideration and after debiting the cost of finished building at Rs.7,14,63,296/-, the net loss was declared by the assessee in the return of income. As noted by the Assessing Officer, 5 out of 11 offices were sold by the assessee during the year under consideration for a total consideration of Rs.6,20,79,312/-, including share amount; whereas the remaining 6 offices had been sold by the assessee in the earlier years. He worked out the average cost incurred by the assessee for construction of building at Rs.2368/- and by applying the same to the area of 5 offices sold by the assessee during the year under consideration, the cost of construction attributable to the 5 offices sold during the year under consideration was worked out by the Assessing Officer at Rs.3,26,66,474/-. After allowing credit of Rs.30,53,668/- on account of excess sale consideration taken by the assessee for the remaining 6 properties, the profit earned by the assessee during the year under consideration was worked out by the Assessing Officer at Rs.2,63,59,170/- as under:-

Total revenue from operations as per P & L A/c	6,20,79,312/-
Less: Excess sale consideration taken by the assessee in Sales account of 6 properties for calculating the Business income (sale shown in the accounts Rs.5,73,79,467 – Rs.5,43,25,799 Sale value of 5 Properties as per the copy of deed submitted	<u>30,53,668/-</u> 5,90,25,644/-
Less : Cost of construction incurred for 13792 sq. ft. Sold during the year	<u>3,26,66,474/-</u>
Profit earned after considering other expenses	<u>2,63,59,170/-</u>

3.1 Accordingly, the business income of the assessee was determined by the Assessing Officer at Rs.2,63,59,170/- as against the loss of Rs.1,29,02,944/- claimed by the assessee in the assessment completed under Section 143(3) of the Act vide an order dated 27.03.2015.

3.2 Against the order passed by the Assessing Officer under Section 143(3) of the Act, an appeal was filed by the assessee before the learned CIT(A) and the following submissions in writing were made on behalf of the assessee while challenging the estimation of its business profit as made by the Assessing Officer at Rs.2,63,59,170/-:-

“6.3 The Appellant in Appeal proceedings furnishes following facts and explanations on the estimated addition made by AO before your goodself:

(i) The project was started by the appellant company "Aarya Realities Pvt Ltd" as per Development Agreement dated 21-11-2006, where commercial premises was to be constructed on land of "Advait Realty Pvt. Ltd." (Pg. no. 29 to 63).

(ii) The commercial building was constructed with Ground floor and other four floors. The B.U. (Building usage) permission was given by Ahmedabad Municipal Corporation on 23-06-2007 (Pg. no. 22).

4

(iii) The appellant company sold out following units of second floor, third floor and fourth floor in AY 2007-08, AY 2008-09 and AY 2009-10. The sale proceeds was charged for land and building as well as shares contribution pertaining to shares of Advait Realty Pvt. Ltd. The summary of sale of units is as under:

Office No.	Floor	Area (Sq. ft)	Date of sale	Construction amount	Share amount	Total Sale Deed Amount	Sale rate per sq. ft.
401	4th Floor	2123	06.12.06	613962	1745578	2359540	1111
301	3rd Floor	6907	03.03.07	5959236	5678064	11637300	1685
402	4th Floor	2392	20.06.07	1122631	1966119	3088750	1291
403	4th Floor	2392	20.06.07	1122631	1966119	3088750	1291
201	2nd Floor	1875	23.04.08	2818185	1541815	4360000	2325
202	2nd Floor	1875	23.04.08	2818184	1541816	4360000	2325
	Total	17564		14454829	14439511	28894340	

(iv) The construction sale, which includes land and construction sale accounted for in the books of Appellant Company "Aarya" and the share amount is distributed to the shareholders of the company owning land "Advait".

(v) The construction cost including land cost is worked out by AO in the show cause notice amounting to Rs. 749,82,255/-, which include land cost of Rs.337,65,056/-. The sellable area of project is 31356 sq. ft., out of which 17564 sq. ft. was sold out till AY 2009-10 and the remaining area of 13792 sq. ft. sold out in AY 2012-13. The details are as under:

Office No.	Floor	Area (Sq. Ft.)	Date of Sale	Construction Amount	Share Amount	Total Sale Deed Amount	Sale rate per sq. ft.
GF	Ground Floor	5976	28-02-12	23585937	4914063	28500000	4769
101	First Floor	1875	30-03-12	5428182	1541818	6970000	3717
102	First Floor	1875	28-02-12	5428185	1541815	6970000	3717
103	First Floor	2033	28-03-12	5888266	1671734	7560000	3718
203	Second Floor	2033	30-03-12	2594067	1671733	4265800	2098
		13792		42924657	11341163	54265800	

Thus, 13792 sq. ft. area was sold out in AY 2012-13, which mainly consist of ground floor and first floor. The construction sale includes land and construction sale accounted for in the books of Appellant Company "Aarya" and the share amount is distributed to the shareholders of the company owning land "Advait".

(vi) For computing revenue from operations amounting to Rs. 590,25,644/-, the AO has taken following amounts:

Particulars	Amount (Rs)	Amount (Rs)
Sale proceeds of 5 Offices in AY 2012-13		54265800
Rent income from above offices	3950543	
Other incomes (forfeiture of rent deposit)	727875	4678418
Maintenance income		21427
	Total	58965645
AO has taken at Rs. 590,25,644/-, as in Para no. 4.2, Pg. no. 3 of Assessment Order sale consideration of Ground floor taken at Rs. 285,60,000/- ¹ whereas, the correct amount is of Rs. 285,00,000/-, as mentioned in Chart on Para no. 4.4, Pg. no. 5. (Thus, the revenue is more by Rs. 60,000/-).		58965645

(vii) The AO computed cost of construction for 5 offices sold out in AY 2012-13 of 13792 sq. ft, at Rs. 326,66,474/-. The cost worked out by average formula i.e.. total construction cost of Rs. 749,82,256/- (land cost and construction cost) divided by 31658 sq. ft. The total cost worked out by AO is as under:

Particulars	Amount (Rs)	Amount (Rs)
Land cost		33765056
Construction cost - B/f from last year		35503652
Total		69268708
Cost incurred during AY 2012-13:		
Purchase Expenses	790118	
Electric Line Expenses	237390	
Labour Expenses	1167080	
Finance Expenses	1509170	
Other Expenses	2009789	5713547
	Total	74982255
Sold out area 13792 sq.ft./ Total Area 31658 sq. ft.	Per sq. ft.	2368

(viii) Thus, the cost per sq. ft. comes to Rs.2,368/-. Whereas, the sellable cost per sq. ft. is different on various floors i.e. on ground floor highest, on first floor higher and on other floors lower than these floors. Therefore as per sale value of each floor, the project cost required to be distributed. The allocation of project cost on sale rate / weighted cost for each floor is as under:

SN	Floor	Unit No.	Name of Members	Super Buildup Sq. Ft. Area	Rate of sale	% Allocation of project cost	Allocation of project Cost
1	Ground Floor	GF	Girishbhai B. Patel HUF & Others	5976	4700	35.07	24295741
2	First Floor	101	Lokesh V. Patel & 3 Others	1875			6201291
		102	Purshottam S. Patel & 4 others	1875			6201291
		103	Bharti S, Patel & 5 others	2033			6723853
			Total	5783	3700	27.61	19126435

6

3	Second Floor	201	Lokesh V. Patel & Others	1875			3687254
		202	Lokesh V. Patel & Others	1875			3687254
		203	Ilesh N. Patel & 2 Others	2033			3997967
			Total	5783	2200	16.42	11372475
4	Third Floor	301	Kraft Software Pot. Ltd.	6907	1600	11.94	8270891
5	Forth Floor	401	Am it Shah / Pratiti Shah	2123			1906664
		402	Mushir Irfan	2392			2148252
		403	Irfan Amirkurashi	2392			2148252
			Total	6907	1200	8.96	6203168
			Grand Total	31356			69268708

(ix) Accordingly, the cost of 5 offices of ground floor, first floor and second floor are as under:

SN	Floor	Unit No.	Name of Members	Super Buildup Sq. Ft. Area	Rate of sale	% Allocation of project cost	Allocation of project Cost
1	GF	GF	Girishbhai B. Patel HUP & Others	5976	4700	35.07	24295741
2	FF	101	Lokesh V. Patel & 3 Others	1875	3700	27.61	6201291
		102	Purshottam S. Patel & 4 others	1875	3700	27.61	6201291
		103	Bharti S. Patel & 5 others	2033	3700	27.61	6723853
3	SF	203	Ilesh N. Patel & 2 Others	2033	2200	16.42	3997967
			Project Cost + Land cost	13792			47420143
			Cost incurred in AY 2012-13				5713547
			Cost of 5 units as per weighted average basis				53133690

(x) As the properties / commercial units sold out are mainly on ground floor and first floor, therefore, the land cost and construction cost is higher on such floors. These floors also bring higher value in terms of sales and in comparison to other floors. As per general practice in the real estate market, these two floors bring 60 to 65% revenue and also the maximum cost attributable to these floors, which is evident from above chart. Hence, the AO has estimated cost per sq. ft. at general basis and not on scientific basis..

In view of the above, the estimated profit on sale of 5 units in AY 2012-13 on total sale price i.e. sale deed price and at the price after reduction of share amount is as under:

Particulars	Amount (Rs)	Amount (Rs) Total sale price	Amount (Rs) Sale price without shares amount
Sale proceeds of 5 Offices in AY 2012-13		54265800	42924637
Rent Income from above offices	3950543	0	0
Other incomes (forfeiture of rent deposit)	727875	4678418	4678418
Maintenance income		21427	21427
Total Revenue		58965643	47624482
AO has taken at Rs. 590,25,6447-, as in Para no. 4.2, Pg. no. 3 of Assessment Order sale consideration of Ground floor taken at Rs. 285,60,000/-, whereas, the correct amount is of Rs. 285,00,0007-, as mentioned in Chart on Para no. 4.4, Pg. no. 5. (Thus, the revenue is more by Rs. 60.000/-).		58965645	47624482
Less: Cost of 5 units as per weighted average basis for 13792 sq.ft.		-53133690	-53133690
Profit for the year		5831955	-5509208

Thus, there is actual loss to the appellant company of Rs. (-) 55,09,208/-, as the share amount is given to shareholders. However, without prejudice to the workings in P& LA/c, if, the workings of AO are considered, there is profit of Rs. 58,31,955/.

(xi) It is submitted that the project was started as per Development Agreement (Pg. no. 29 to 63). The important conditions of Development Agreement are as under.

"1.1 The Developers to demolish the existing developments and constructions of the Said Land, and to put up construction of commercial complex, consisting of various commercial premises, and to dispose of the same to Company's members and share holders, as prospective acquires in such manner and on payment of such amount and on such other terms and conditions as it may deem fit and proper. The prospective acquirer may be made available the premises as Company's allottee member, or in any other manner whatsoever as the Developer may deem fit.

3.6 To admit and enroll as its members and shareholders as Transferee to acquire eligibility shares all those who may acquire commercial units in the project, as may be recommend by the Developer and / or to enter into or join in such vesting documentation work as may be required depending upon the nature' of transaction.

7.1 The Developer from the gross receipt from the proposed project shall pay to the Company for grant of this Development Rights, the amount equal to as stated in 9.1(b) below, and to be paid as may be received from the project, from time to time.

9.1 The cost of the project to be worked out by the Developer may include:-

9.1 (a) payment for or towards purchase or acquisition of share capital of the Company

9.1 (b) Amounts equal to or required to meet and pay and discharge all outstanding liabilities of the Company, including referring to meet the capital cost of the Sale Land / Property, particulars whereof have been separately given by the Company to the Developer.

13.1 The premises in the project to be allotted only to those persons who are already members of the company or who agree to become members of the company, and are eligible for the same, and agree to make such payment towards the allotment or making otherwise available the premises, and to be paid in the manner as may be agreed upon with the Developer."

(xii) The share amount collected from buyers of offices / units against sale of shares by shareholders of Advait Realty Pvt. Ltd was offered for taxation by the shareholders in their hands in AY 2007-08 to AY 2009-10 and AY 2012-13. Summary of share amount collected in AY 2012-13 and capital gain offered in IT Return are as under:

SN	Name of Shareholder	Share Qty	Sale Price	Capital Gain
1	Lokesh V Patel	17969	1477591	1196406
2	Ileshbhai N Patel	19927	1638597	1328888
3	Prakash B Karia HUF	17971	1477755	1183854
4	Lasti L Patel	5131	421921	340877
5	Priyavandana I Patel	3172	260834	210733
6	Kaushik B Karia HUF	5131	421923	338010
7	Ramubhai N Patel	4400	361812	292315
8	Sejal P. Patel	5500	452265	369164
9	Purvesh R Patel HUF	7709	633911	517312
10	Veenaben R Patel	5498	452101	365262
11	Bharfi S Patel	6898	567222	459729
12	Indira J Patel	15858	1304003	1064147
13	Jalpa K Patel	3334	274155	222953
14	Kamlesh S Patel	3564	293068	236776
15	Sadhana P Patel	15858	1304003	1145423
	TOTAL	137920	11341161	9271849

(xiii) It is further submitted that the project was started in the year 2006, the BU permission was received on 23-06-2007 and from that year some offices of third floor and fourth floor were sold out till April 2008 and thereafter there was no sale till February 2012, as it was very difficult for the developer to sell the offices / units due to following reasons:

(a) In market it was common rumor that the businesses in the left side of road from Mithakhali Six Roads to Mithakhali Railway Crossing are making losses, therefore, there was neither any buyer of properties nor any party to take the same on rent

(b) The building "Aarya Arcade" is opposite side of Muslim Society / locality; therefore, no one easily ready to buy and there was maintenance cost of premises, which is increasing cost.

(c) Due to the above reasons, the rates in this area (left side) are very lesser, therefore, there is no recovery of cost + interest, etc. as the project was lying unsold for 5 years.

(d) There was recession in market in this period.

(e) Finally, the units were taken by shareholders of either Aarya Realities or by shareholders of Advait Realty Pvt. Ltd., as there were no buyers and the companies were carrying the offices from long period.

Under the above circumstances, as there were no buyers for offices from last 5 years, finally due to burden of interest and maintenance cost of building, these offices were given on rent and finally transferred to shareholders. Accordingly, the developer company has incurred losses of Rs. 129,02,944/- on account of sale of offices.

6.4 The AO has made various observations in assessment order before estimating profit for the year. Rebuttal to such observations of the AO are furnished as under:

Para No.	AO's observations	Rebuttal by Appellant Company
4.5	The assessee has not taken the share amount received of Rs.2,57,80,674/- in the P & I Account as appearing in the Registration Deed of the properties as sale value. Further, on perusal of the Balance Sheet, it is noticed that the assessee has not shown any increase in the share capital! or shown any reserve and surplus from which it can be seen that the assessee has not brought the difference amount of Rs.2,57,80,674/- in the books of accounts though it was stated in the Memorandum of Allotment of each property that some portion of the sale consideration is towards sale of shares to whom the properties were transferred.	The amount collected from buyers of 5 offices is construction amount and share amount are shown in allotment deed. The share amount is transferred to the shareholders of "Advait Realty Pvt. Ltd" owners of land company. Therefore, such amount was transferred to the shareholders. The construction amount collected is shown as construction sale.

4.7	<p>It is also pertinent to note here that the assessee is not the owner of the land but the land belongs to M/s. Advait Realty Pvt Ltd, As per the Development Agreement, the assessee was given the land for development purpose only. Therefore, it is not understandable as to why the land cost was transferred to the assessee's account when the property is being sold particularly, when the assessee was not the owner of the land and incurred any expenditure for purchase of land.</p>	<p>The land is owned by Advait Realty Pvt. Ltd and the development rights were given to Aarya Realty Pvt Ltd, In the sale deed / allotment deed, the ownership of the property was transferred to the buyers by land owner and developer i.e. both the parties. The land cost is integral part of cost of building / commercial premises constructed by Aarya Realty Pvt. Ltd., which is recovered from buyers at the time of sale.</p>
4.8	<p>..... Therefore, I proceed to calculate the profit earned by the assessee on the sale of 5 offices taking- the sale value shown in the sale deed made year the under' consideration by adopting proportionate area of sale to the proportionate cost including land value. Here it is pertinent to mention that the other income shown by the assessee as per P & L account has also been considered and the total profit earned by it from the business activity is worked out as under.</p>	<p>The AO has computed cost of construction by adopting proportionate area of sale to the proportionate cost including land value.</p> <p>Whereas, the properties mainly of ground floor and first floor were sold out. Such properties fetches higher value in terms of sale price and the cost is also attributable to such area in weighted cost ratio to work out correct profitability. Therefore, the proportionate ratio adopted by AO is incorrect method.</p>

6.5 In view of the above it is submitted that the actual loss as per profit & loss account is of Rs. 129,02,944/-. Whereas, the AO has worked out profit at Rs. 263,59,170/-, where the AO has not given credit of sale proceeds collected for shares of Advait Realty Pvt, Ltd. and also the cost of construction worked out by AO on general basis, whereas, there is scientific basis / weighted cost to be taken for various floors of commercial projects, where highest cost attributable to ground floor and first floor shops / offices and remaining floors are having cost at very lower value. According to this basis, the cost of project attributable to ground floor and first floor is 60 to 65%, which is amounting to Rs. 531,33,690/- and the estimated profit is Rs. 58,31,955/- instead of profit worked out by AO of Rs.263,59,170/-. It is therefore prayed that the profit estimation may kindly be restricted to Rs.58,31,955/- as worked out above."

3.3 After considering the submissions as well as the material available on record, the learned CIT(A) decided the issue vide paragraph No.3.4 of his impugned order as under:-

3.4. I have gone through the facts of the case, finding of A.O. in assessment order and submissions of the appellant. The A.O. estimated profit for the year under consideration by taking sale proceeds of 5 offices of Rs.5,42,65,800/-, rent income of Rs. 39,50,543/-, forfeiture of rent deposit of Rs. 7,27,875/-, and maintenance income of Rs. 21,427/-, from such revenue cost of construction incurred for 13,792 sq. ft. (Area sold during the year) was reduced at Rs. 3,26,66,474/- and profit for the year worked out at Rs.2,63,59,170/-. The A.R. of the appellant company stated that the A.O. has not reduced the amount of shares, which is part of sale proceeds as shown in allotment deed executed by land owner as well as developer. Whereas, the A.O. has taken sale amount of offices without reducing share amount, as no reply is given by appellant company regarding share amount received by it, therefore, I do agree with the A.O. to take full value of consideration as sale consideration of 5 offices, which in this case is of Rs. 5,42,65,800/-.

The A. O. from the revenue from operation has reduced cost of construction of Rs. 3,26,66,474/- worked out on proportionate basis for 13792 sq. ft. sold during the year. The A.R. of the appellant company stated that the sale rate as well as cost of construction including land cost is different at all floors of commercial building. He further stated that as per general practice in the real estate market, ground floor and first floor brings 60 to 65% revenue at the same time, the cost allocable / attributable to these floors are also 60 to 65%, for this the A.R. of the appellant company filed workings for computation of cost of 5 offices on weighted basis amounting to Rs. 5,31,33,690/-. After reduction of such weighted cost, the net profit worked out at Rs. 58,31,955/- (Revenue from operations Rs. 5,89,65,645/- less: Cost of 5 offices Rs. 5,31,33,690/-). I have gone through the facts of the case and workings that the sale price of ground floor and first floor is higher than other floors.

Therefore, I am inclined to agree with the appellant that the sale rate of ground floor and first floor is higher than other floors. Similarly, the cost of ground floor and first floor is also higher and same ratio cannot be applied to all floors as applied by AO. Such arbitrary attribution of cost is not giving correct profit for the year, therefore, the cost worked out by AO is not proper as discussed above, therefore, the AO is directed to accept profit after reduction of weighted cost of Rs.5,31,33,690/- as furnished by appellant. Accordingly, the profit estimated by AO Rs.2,63,59,170/- is reduced to Rs.58,31,955/-. This ground of appeal is partly allowed."

3.4 The learned CIT(A) thus restricted the estimation of the business profit of the assessee as made by the Assessing Officer at Rs.2,63,59,170/- to Rs.58,31,955/-. Aggrieved by the relief allowed by the learned CIT(A), the Revenue has raised Ground No.1 in its appeal.

4. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the methodology adopted by the Assessing Officer to determine the income of the assessee for the year under consideration from the project namely "Arya Arcade" was duly explained by the assessee in the written submission filed before the learned CIT(A) which is already reproduced in the foregoing portion of this order. The mistake committed by the Assessing Officer in his working was also pointed out by the assessee by submitting that the offices sold during the year under consideration were situated on the ground floor and first floor; and the sale price of the same as well as the corresponding cost of construction was much higher than the remaining offices sold in the earlier years. In this regard, the learned CIT(A) found that the revenue generated by the assessee from the sale of 5 offices in the year under consideration was 60 to 65% of the total revenue generated from the project. On the basis of this finding, the learned CIT(A) accepted the claim of the assessee that construction cost allocable/attributionable to the 5 offices sold during the year under consideration should have been worked out on weighted basis at Rs.5,31,33,690/- as against the cost of Rs.3,26,66,474/- taken by the Assessing Officer on average basis. At the time of hearing before us, the learned Departmental Representative has not been able to rebut or controvert this finding of fact recorded by the learned CIT(A) while giving relief to the assessee. We, therefore, find no justifiable reason to

interfere with the order of the learned CIT(A) taking the cost of construction of 5 offices sold during the year under consideration at Rs.5,31,33,690/- on weighted basis.

4.1 The other contention raised by the assessee before the learned CIT(A) was that the sale consideration of 5 offices as taken by the Assessing Officer including share amount received towards land cost was not correct and the same should have been taken net of such cost. The learned CIT(A), however, did not accept this stand of the assessee on the ground that the share amount was a part of sale proceeds received by the assessee against 5 offices sold during the year under consideration. We find ourselves in agreement with this view taken by the learned CIT(A). It is observed that the land cost was included by the assessee in the cost of construction claimed as deduction and this being so, we are of the view that the total sale consideration of 5 offices including the share amount received towards land cost should be taken into account for determining profit of the assessee-company. We, therefore, find no infirmity in the impugned order of the learned CIT(A) restricting the estimation of business profit of the assessee-company as made by the Assessing Officer at Rs.2,63,59,170/- to Rs.58,31,955/-; and upholding the same, we dismiss Ground No.1 of the appeal of the Revenue.

4.2 As regards the issue raised by the Revenue in Ground No.2 of its appeal relating to the deletion by the learned CIT(A) of the disallowance of Rs.2,41,365/- made by the Assessing Officer on account of interest expenses, it is observed that an advance of Rs.20,11,378/- was given by the assessee free of interest, while interest expenses of Rs.15,09,170/- was claimed by the assessee as deduction. Since no satisfactory explanation in this regard was

offered by the assessee, interest attributable to the said advance calculated @ 12% amounting to Rs.2,41,365/- was disallowed by the Assessing Officer. On appeal, the learned CIT(A) deleted the said disallowance after having found that the amount of Rs.20,11,378/- was not in the nature of advance given by the assessee but the same was rent deposit which was transferred to the office owners. At the time of hearing before us, the learned Departmental Representative has not been able to bring anything on record to rebut or controvert this finding of fact recorded by the learned CIT(A). We, therefore, find no justifiable reason to interfere with the impugned order of the learned CIT(A) giving relief to the assessee on this issue and upholding the same, we dismiss ground No. 2 of the Revenue's appeal.

5. In its Cross Objection, the assessee has raised the following grounds:-

"1. The ld. CIT (Appeals) has erred in law and on facts in partly confirming the addition without appreciating the fact that the project was completed on 23.06.2007, but due to recession in market, the properties were unsold for a long period till February / March 2012. Due to huge losses in cost and interest after 4-1/2 years, all remaining offices / properties were finally distributed amongst shareholders / directors to restrict the losses and accordingly, sale deeds were executed. Therefore, it is prayed that under such circumstances, the assessment may be made at NIL income.

2. The Id. CIT (Appeals) has erred in law and on fact in partly confirming the addition to the extent of Rs. 58,31,955/- without appreciating the fact that there is no profits from such sale, as the properties are merely transferred to shareholders / directors to restrict losses in future. As the current years' return income is at loss of Rs. 129,02,944/-. The same is not considered by AO as well as CIT(A), this also shows that there is no profits. The same may kindly be considered."

6. After considering the rival submissions and perusing the relevant material available on record, it is observed that the issue raised by the assessee in the Cross Objection has already been dealt with by us in

paragraph No. 4.1 of this order while deciding the issue relating to estimation of business profit of the assessee from the project "Arya Arcade" as raised in the Revenue's appeal. Keeping in view the reason given therein, we find no merit in the Cross Objection raised by the assessee and dismiss the same.

7. In the result, the appeal of the Revenue as well as Cross Objection of the assessee, both are dismissed.

Order pronounced in the open Court on 8th September, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 08/09/2022

ॐ

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad