

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA Nos. 461, 462 & 463/Mum/2018

(A.Y: 2007-08, 2008-09 & 2009-10)

DCIT, CC-5(1) Room No. 1928, 19 th Floor, Air India Bldg Nariman Point, Mumbai – 400 021.	Vs.	M/s karburi Properties Ltd., 324, master Mind – IV Royal Palms, Aarey Milk Colony, Goregoan East, Mumbai - 400065
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCK6968M		
Appellant	..	Respondent

CO Nos. 185, 186 & 187/Mum/2018

(A.Y: 2007-08, 2008-09 & 2009-10)

M/s karburi Properties Ltd., 324, master Mind – IV Royal Palms, Aarey Milk Colony, Goregoan East, Mumbai - 400065	Vs.	DCIT, CC-5(1) Room No. 1928, 19 th Floor, Air India Bldg Nariman Point, Mumbai – 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCK6968M		
Appellant	..	Respondent

Revenue by :	Smt.Madhumalti Ghosh. DR & Shri.Tejiinder PalSinghAnand.DR
Assessee by :	Shri Vijay Mehta.AR

Date of Hearing	28.11.2022
Date of Pronouncement	19.12.2022

आदेश / O R D E R

PER BENCH:

These three appeals are filed by the revenue and the cross objections are filed by the assessee against the common order of the Commissioner of Income Tax (Appeals) – 53, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

Since the issues in these appeals and cross objections are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up the ITA No.461/Mum/2018 for the A.Y.2007-08 as a lead case and the facts narrated. The revenue has raised the original grounds of appeal :

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has justified in deleting the protective additions in this case considering that the issue of substantive addition in the case of Shree Global Tradefin Ltd., has not reached finality”.

2. The brief facts of the case are that the assessee company is engaged in the business of property development works. The assessee has filed the return

of income for the A.Y 2007-08 on 23.10.2007 disclosing a total income of Rs. Nil. A search action was conducted u/s 132(1) of the Act by the Investigation Wing in the Jogia Group on 04.03.2010 and notice u/s 153A of the Act was issued. In response to notice, the assessee has filed the return of income on 26.02.2011 disclosing a total income of Rs.Nil and the assessment was completed u/s 143(3) r.w.s 153A of the Act on 26.12.2011 determining total income of Rs.Nil. Subsequently, the case was reopened u/s 147 of the Act. Whereas due to the survey operations u/sec133A of the Act conducted in the Llyod and jogia group of companies on 19.12.2012 the survey team has found various information and details. The Assessing Officer (AO) has received the information from DGIT(Inv) that the assessee has invested Rs.3.5 Crs. share application money in M/s Shree Global Tradefin Ltd. The AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act on 21.03.2014. In response to notice, the assessee has filed a letter dated 02.04.2014 to treat the return of income filed u/s153A of the Act on 26.02.2011 as due compliance.

3. Whereas the AO on perusal of the financial statements found that the assessee has invested in the F.Y.2006-07 an amount of Rs. 3.5 Crs as share application money in M/s Shree Global Tradefin Ltd. Further the AO found that the assessee company has received share application money from the various companies aggregating to Rs.43.5 Crs during the F.Y 2006-07 to 2008-09 and the AO has referred to the statement of details of amount at page 3 of the assessment order.The AO has dealt on the facts and provisions of the Act and made specific findings on the transactions and treated as none genuine referred at Para 4 of the assessment order as under:

4 During the survey, statement of Shri Om Hari Halan was recorded on 19.12.2012 wherein he admitted that he is the whole and sole controller of all the 14 companies including Jogia Properties Group Concerns. And that his brother Shri Narayan Halan and Shri Bijay Basavatia are only namesake directors and did not know about the affairs of the 14 companies. Furthermore, he admitted that he had opened these companies (including Jogia Properties Group Concerns) to route the funds from the investing companies to the above companies and then to pass it on to Shree Global Trade fin Ltd and that no documentations of agreements or any paper work was ever made with any of the companies, mere cheques were received which were directly deposited in bank accounts.

He has also accepted his inability to prove, in spite of being given repeated opportunities, the identity, genuineness, and creditworthiness of the various companies from whom funds have been shown in the books of companies managed by him. Additionally he also admitted that he has done this at the instance of Shri Babulal Agarwal

4. Further the Ld.AO has dealt on the legal and factual aspects of the case and came to a conclusion that the assessee has failed to establish the sources of the amount received and the amount has to be treated as unexplained cash credit u/s 68 of the Act. The AO find that the assessee company along with 13 other companies (being 14 companies) belong to Jogia Group has obtained the share application money from 53 investor companies. In the F.Y 2006-07 the assessee has obtained share application money from 22 companies which are included in the list of 53 investor companies belong to Jogia Group. The AO emphasized and observed that the amounts have been received by the 14 companies including the assessee from 53 investor companies and the said same amounts were transferred by the 14 companies to one company namely M/s Shree Global Tradefin Ltd and the transactions of flow of funds is clearly

identified. The AO has considered the voluminous information and the details discussed and issued the show cause and in lieu of notice, the assessee has filed the explanations referred at Para 5.6 to 5.6.3 of the AO order as under:

5.6 The assessee in its reply to the show cause stated the following:

"16. ...We would further bring to your kind attention that in the survey proceedings u/s 133A Mr. Babulal Agarwal, the director of Lloyds Steel Industries Ltd. has categorically admitted in reply to question no. 40 that Lloyds Steel Industries Ltd. earned income to the extent of Rs. 557.50 crores during the A.Y. 2007-08 to 2010-11 and this income which was not recorded in the books of account of Lloyds Steel Industries Ltd. was introduced as share application money in the 14 companies and these companies have further invested the amount in the share capital of Shree Global Tradefin Ltd... The notices u/s 148 for A.Y. 2007-08 to 2010-11 and the assessment order is passed in reassessment proceedings accepting the stand of Lloyds Steel Industries Ltd. and including the income of Rs 557.50 crores in their total income for A.Y. 2007-08 to 2010-11....

17. Please note that the share application money received by our client amounting to Rs 3,50,00,000/- in A.Y. 2007-08 is a part of Rs 557.50 crores and our client is also one of the 14 entities to which there is a reference in the statement of Lloyds Steel Industries Ltd. "

The assessee has contended that the share application money received by the assessee has already been

assessed and taxed in the hands of Lloyds Steel Industries Ltd. However this colourable device is used by the assessee to defraud the revenue. The so-called offered income by the Lloyds Steel Industries Ltd. was set-off against the loss of approximately 1000 crores. Thus Lloyds Steel Industries Ltd. has therefore not paid any penny in taxes against the so-called offer of undisclosed income by the Lloyds Steel Industries Ltd. Furthermore undisclosed income cannot be classified under any head of income because there is no certainty that the said unknown or undisclosed source is not business or house property or capital gains or winnings from lotteries. Since the source of undisclosed income is unknown corresponding deductions which are applicable to the incomes under any of these various heads, should not be available to the assessee. This view is supported by the decision of Hon'ble Gujarat High Court in the case of Fakir Mohmed Hazi Hasan(247 ITR 290). The assessee only knows the source of the undisclosed income or investments and there is little that the Assessing Officer can do to know the exact source of such undisclosed income or how such related investments were made. The source of the share application money in the Jogia Group including the assessee for the relevant A.Y. as cash receipts from business of Lloyds Steel Industries is something which is in the exclusive knowledge of either the directors of Lloyds Steel Industries or the directors of the assessee company. Thus their acceptance of the above premise could be for the benefit of either Lloyds Steel Industries or the assessee company or for both to come out of the confrontations of the survey. In the absence of any solid evidence being provided by the assessee during the re-assessment proceedings to support the above, it is difficult for the A.O. to accept the

same. In this respect the assessee's contention that the share application money received is a part of the undisclosed income of Lloyds Steel Industries Ltd. cannot be held with conviction.

5.6.1 In this context it is also necessary to place on record that there is no statutory provision to offer relief in respect of any income assessed in the hands of any persons merely because it is being taxed in the somebody else hand. In this regard attention needs to be invited to the provisions of the section 40A(2) wherein the Assessing Officer is empowered to disallow excessive payment made to any entity listed in section 40A(2)(b). However such disallowance does not offer any relief in the hands of the payee, though it is taxed in the hands of the payer. Going by this statutory provision the assessee's claim does not deserve any cognizance.

The assessee has also failed to explain the modus operandi of how the unaccounted income of the Lloyds Steel Industries as contented by the assessee has reached into the accounts of the assessee. As per the survey report and statement of Shri Babulal Aggrawal, M/s Lloyds Steel Industries has generated unaccounted income during the A.Y. 2007-08 to A.Y. 2010-11 which it transferred into the accounts of 53 different companies. These 53 companies in turn transferred money in the form of share application money in the 14 concerns of the Jogia Group including the assessee. The 14 companies in turn transferred this money in the form of share application money in M/s Shree Global Tradefin Ltd, who is a promoter of the Lloyds Group of companies. However neither the assessee nor Mr. Babulal Aggrawal has furnished any details of how such funds got into the hands of the 53 investor companies. Further the 53 companies are located at multiple locations with different

directors. Moreover some of the 53 investor companies like Novelty Traders Pvt. Ltd., New Outlook Securities Ltd., Ispat Sheets Ltd etc. are not traceable. The trail of funds therefore is not very clear. Also during the assessment proceedings u/s 147 of Lloyds Steel Industries, no evidences regarding that the income offered by the Lloyds Steel Industries is applied by way of introduction of share capital into 14 companies (including the assessee) through 53 companies was placed before the concerned AO.

"5.6.3 It is also pertinent to mention here the flow of funds as explained in the survey report which is as follows: Money from different proprietorship concerns were transferred to some of the 53 investor companies. These 53 investor companies further invested as share application money into the 14 companies of the Jogia group including the assessee who further invested into the Shree Global Trade fin Ltd as share application money. On verification of the bank details of the assessee it is seen that the assessee has transferred or withdrawn from its bank account immediately after deposits were made into its account. Immediate withdrawal of money after deposits almost each and every time, speaks of the sinister motives of the assessee whether it is for not coming into the eyes of the regulatory authorities or to not show funds with unexplainable sources in its bank accounts, etc. However no details have been mentioned in the survey report regarding the source of funds in those proprietorship concerns or of some of the assessee 's investor companies. Also in absence of any details filed by the assessee regarding the source of funds of these concerns or how the unaccounted income of the Lloyds Steel Industries reached into their hands as asserted by the assessee, it is almost impossible to come to the

conclusion that the source of the investments is actually of M/s Lloyds Steel Industries."

5. The A.O was not satisfied with the explanations and details submitted and made an addition of Rs. 3.5 Crs as unexplained cash credit and further the AO has estimated the commission @ 3% from M/s Shree Global Tradefin Ltd and made the addition of Rs.10.5 lakhs. Whereas the similar addition was made to the income of M/s Shree Global Tradefin Ltd on substantive basis and in the hands of the assessee the addition was made on protective basis. Finally the AO has assessed the total income of Rs.3,60,50,000/-and passed the order u/s 143(3) r.w.s 147 of the Act dated 31.03.2015.

6. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, findings of the scrutiny assessment and the submissions of the assessee and observed that the grounds of appeal raised by the assessee on the validity of reassessment proceedings, does not have merits. The A.O. has reopened the assesseeement based on the survey

operations, were the revenue has received the information of the share application and the reopening is based on prima-facie evidences and the CIT(A) has confirmed the validity of re assessment and dismissed the legal grounds of appeal. Whereas on the additions by the AO, the CIT(A) has considered the findings of the AO and the submissions of the assessee and found that the assessee has after receiving the share application money from the companies has provided same amount/ money to M/s Shree Global Tradefin Ltd. The CIT(A) found that there is a one to one nexus of the amount received/credited and paid by the assessee. Further the CIT(A) has also dealt on the submissions at page 15 to 33 and the movement of funds at 124 to 176 of the order. Finally the CIT(A) has observed in the appellate order that the conduit Jogia Group entities has no financials to elicit any premium or any genuine investments. The CIT(A) has considered the facts that these entities are merely conduit for transferring money to M/s Shree Global Tradefin Ltd. immediately after receiving the same from the investor companies. The CIT(A) in the case

of M/s Shree Global Tradefin Ltd has simultaneously disposed of the appeal, in whose hand the same amount was added by the AO on the ground that the ultimate destination of money has not been established as genuine.

7. Whereas the CIT(A) concluded that the AO has erred in not considering the facts of sources and the CIT(A) found that the amount received from 53 companies were not genuine. The CIT(A) is of the view that the amount is to be taxed in the hands of the entity which is the ultimate destination of the money. Consequently the amount is to be taxed in the hands of the M/s Shree Global Tradefin Ltd. Further the CIT(A) was of the view/opinion that the assessee being the conduit, has transferred money/ amounts from various entities to M/s Shree Global Tradefin Ltd and hence the addition cannot be made in the hands of the assessee. The CIT(A) dealt on the facts and observed at page 191 Para 8.29 of the order as under:

"8.29 The AR has also contended that similar addition u/s. 68 is made in the cases of Shree Global Tradefin Ltd

('SGTL) whose appeals are pending before me. While the amounts received through these entities are not genuine and credit worthiness is not there of the 54 entities, there is almost one to one correspondence between amount received by 14 entities and amount received through them by SGTL is the ultimate beneficiary who has received the money. Hence, it is only logical that the amount is assessed in the hands of SGTL. The assessing officer was queried on this and he has reported that the additions in the case of Jogia Group 8 cases be treated as protective addition. I am of the view that the additions must be made only in the hands of Shree Global Trade fin Pvt. Ltd since the Jogia Group entities are merely conduit entities and the money was raised and brought in for Shree Global Trade fin Pvt. Ltd Simultaneously, appellate orders are passed in those appeals also ho/ding the same. The same view has been taken in the appellate orders of even date in the case of the appeals in SGTL before me."

Finally the CIT(A) has considered the facts of share application money received at a premium during the year fails test of creditworthiness and genuineness. The addition of unexplained cash credit u/s 68 of the Act was accordingly sustained in the hands of M/s Shree Global Trade fin Ltd and the same amount of Rs.3.5 Crs was deleted in the case of the assessee. Further the CIT(A) has deleted the consequential addition of estimated commission of Rs.10.50 lakhs made by the AO in the assessee's case

under the head income from other sources and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal and the cross objection by the assessee before the Honble Tribunal.

8. At the time of hearing, the Ld.DR submitted that the modified grounds of appeal are filed by the revenue appeal and are to be considered. We find that the revenue has filed the modified ground of appeal with authorization memo dated 29.07.2022 read as under:

In the pending Appeal being ITA No.461/Mum/2018 for A.Y.2007-08 before the Hon'ble Income Tax Appellate Tribunal, Mumbai filed against Appeal Order No.CIT(A)-53/IT-30/DCCC-5(1)/2015-16 dated 17.11.2017 in the case of M/s. Karburi Properties Ltd. PAN: AABCK6968M for A.Y.2007-08. I hereby direct the ITO-12(3)(1), Mumbai to file the following modified ground before the Hon'ble Income Tax Appellate Tribunal, Mumbai in the pending appeal being ITA No.461/Mum/2018:-

"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has justified in deleting the additions in this case without appreciating the facts that the issue of addition in the hands of the beneficiary Shree Global Tradefin Ltd. had not attained finality."

Now the revenue has filed a letter dated 01.08.2022 and modified grounds of appeal as under:

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has justified in deleting the additions in this case without appreciating the facts that the issue of addition in the hands of the beneficiary Shree Global Tradefin Ltd. had not attained finality.

9. The Ld. AR has raised the objections for admission of modified ground of appeal and made elaborate submissions on the admission and also on the merits of the case and supported the submissions with paper book and the coordinate bench decision of the Honble Tribunal in respect of similar and identical issue of other group company. Whereas, the Ld. DR submitted that the modified grounds of appeal are supported with the authorization memo of CCIT(OSD)I/C Pr.CIT-4 Mumbai. We on perusal of the facts, consider it appropriate to compare the original grounds of appeal and modified grounds of appeal filed by the revenue.

(i).The original Grounds of appeal filed on 22-01-2018 by the Revenue in as under:

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has justified in deleting the protective additions in this case considering that the issue of substantive addition in the case of Shree Global Tradefin Ltd., has not reached finality".

(ii).The modified Grounds of appeal filed on 01-08-2022 by the Revenue in as under:

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has justified in deleting the additions in this case without appreciating the facts that the issue of addition in the hands of the beneficiary Shree Global Tradefin Ltd. had not attained finality

Whereas, the main contentions of the revenue in the original grounds of appeal that "the CIT(A) erred in deleting the protective additions in this case considering that the issue of substantive addition in the case of M/s Shree Global Tradefin Ltd has not reached the finality". Whereas it was brought on record that subsequent to the filing of the appeal by the revenue, the Hon'ble Tribunal in the case of M/s. Shree Global Tradefin Ltd in ITA no.7310 to 7313/Mum/2017 vide order dated 15.10.2019 has deleted the addition on merits which is not disputed by the revenue.

10. Now the revenue is filling the modified grounds of appeal excluding the specific word "Protective " and on the same ground that the addition in respect of

beneficiary Shree Global Tradefin Ltd has not attained finality, will not stand on its legs as the Hon'ble Tribunal vide order dated 15.10.2019 has deleted the substantive addition on merits and the revenue has not disputed these facts on record.

11. We are of the opinion that the modified ground of appeal filed by the revenue is not in accordance with the provisions of law. Further there is no prayer/explanation for admission of modified ground of appeal, which is materially different from the original ground of appeal. Whereas, the original ground of appeal is filed based on the statements and findings of the A.O. before the Appellate authority. The A.O. has asked the CIT(A) to consider the addition as protective addition. Therefore considering the factual aspects and the basis of observations of the A.O., the revenue has filed the original ground of appeal on the disputed issue of deletion of protective addition. Whereas, the revenue has now filed modified ground of appeal which effectively to treat the addition on substantive addition and to decide on merits. Further the modified ground of appeal also

specify that the issue of addition made in the hands of the beneficiary M/s Shree Global Tradefin Ltd has not attained the finality but it is undisputed fact that the Hon'ble Tribunal vide order dated 15.10.2019 has deleted the substantive addition on merits. Accordingly, the modification of the ground of appeal on the same reason does not hold good as the disputed issue has attained finality. Accordingly the modified ground of appeal is not admitted and dismissed in limine.

12. Further we wish to mention that this Bench in the case of similar conduit company in the revenue appeal DCIT CC Vs. M/s Auster properties Ltd in ITA No. 454/Mum/2018 & CO.no.179/M/2018 vide order dated 21.05.21 has observed that the assessee has filed the additional evidence in CO, containing five pages by letter dated 26.04.2019 and prayed for admission of additional evidence for dealing with legal issue challenging the initiating of reassessment proceedings. We find the additional evidences was filed by the assessee before the Tribunal for the first time and admittedly these documents were not

available before the Ld. CIT(A) while adjudicating grounds of appeal raised for challenging the reassessment proceedings and therefore with specific directions the additional evidences were admitted and remitted the matter to the file of the CIT(A) for limited purpose for denovo adjudication of legal issues. In the present appeal & CO, the Ld. AR has mentioned that the assessee has not submitted any additional evidences/ documents in the course of hearing, therefore the appeal and CO has to be decided on merits and there is no necessity to restore to the file of lower authorities. We find the submissions of the Ld.AR are realistic and observe that all the facts are filed on record and there is no new evidence was filed by the parties to call for investigation by the lower authorities. Further the revenue has furnished the report/ on the various references on 02.08.2022, 21.09.2022 and 10.10.2022 based on the material information on record. We are of the considered opinion that the matter has to be decided on merits and there is no new evidence filed by the assessee/revenue and accordingly decide the

revenue appeal based on the facts and evidences on merits.

13. We heard the submissions of both the parties even on the merits of the case. Whereas in respect of original grounds of appeal raised by the revenue, we found that the identical issue was decided by the Coordinate Bench of this Tribunal in the case of DCIT Vs. Chikura Properties Ltd in ITANo.457/Mum/2018 and CO 181/Mum/2018 dated 06.08.2020 dealt at Page 17 Para 9 of the order read as under:

9. We have heard the rival contentions and perused the materials placed before us including the written submissions by both the sides and impugned order passed by ld CIT(A). The undisputed facts are that the assessee is a group company of Jogia Group and invested a sum of Rs. 43.50 Crores in M/S Shree Global Tradefin Ltd. The assessee received the equivalent sum from 25 companies as share application money and passed on the same to M/S Shree Global Tradefin Ltd. immediately as advance which was later on converted into share capital. The AO as well as CIT(A) recorded a findings companies who invested in the assessee company are included in the list of said 53 investor companies which have advanced money to 14 companies including the assessee and same amount has been transferred by all 14 companies including the assessee to one company namely M/S Shree Global Tradefin Ltd. Thus, the amounts have been transferred by 14 companies including assessee to M/S

Shree Global Tradefin Ltd., and the flow of funds are clearly evident and discernible. As such, there is no doubt as to the source of money. The AO added 43,50,00,000/- u/s 68 of the Act on protective basis in the hands of the assessee and simultaneously similar addition of Rs. 43,50,00,000/- was made to the income of Shree Global Tradefin Ltd. on substantive basis on the ground that source of money was not proved. The AO also added to the income of the assessee, commission @ 3% on the total investments in Shree Global Tradefin Ltd., and accordingly addition of Rs. 1,30,50,000/- was also made. Both these additions were deleted by Id. CIT(A) by holding that the assessee is a pass through entity whereas the addition was confirmed in the hands of M/S Shree Global Tradefin Ltd. Pertinent to note that in the appellate proceeding, the Tribunal deleted the addition in the case of Shree Global Tradefin Ltd., in ITA No. 7310 to 7313/Mum/2017, vide order dated 15.10.2019 and there is no finding by the Coordinate Bench that the said amount of Rs. 43.50 Cr belongs to the present assessee. We note from the perusal of the order of coordinate bench that the addition in the case of M/S Shree Global Tradefin Ltd. has been deleted on merit. Thus, the coordinate bench has not given any finding that the money belongs to the assessee. We also note that both the authorities below have recorded a findings of fact that there is one to one nexus between the funds received from 25 companies and advanced to M/S Shree Global Tradefin Ltd and the assessee is merely a conduit. As stated elsewhere in this order that in the case of the assessee, the addition was made on protective basis. The protective addition is always made whenever there is a doubt about the correct entity or correct assessment year. Thus, where there is a doubt as to whom the income belongs to, the addition is

made in the hands of two persons, i.e. on substantive basis in the hands of one person and on protective basis in the hands of the other person. The protective addition would become substantive, only and only if substantive addition is deleted by the appellate authority on the ground that the income belonged to the person in whose hands protective addition has been made. The protective addition does not survive if the substantive addition has been confirmed or substantive addition has been deleted on merits. In the present case before us the addition was made on protective basis while on substantive basis it was made in the case of M/S Shree Global TradefinLrd. The said substantive addition was deleted by the coordinate bench vide order dated 15.10.2015 passed in ITA No. 7310 to 7313/Mum/2017 dated 15.10.2018 on merits. In our considered opinion the protective addition has to go as the substantive addition was deleted on merits. We do not find nay force in the arguments/written submissions of the ld. DR that where substantive addition is deleted the protective has to restored to the AO as in the case of M/S Shree Global TradefinLtd , assessment has not attained finality. We are therefore inclined to dismiss the appeal of the revenue by upholding the order of CIT(A).

10. The assessee has also filed cross objection challenging the re-opening and assessment order on various grounds. Since we have dismissed the appeal of the revenue on merits, we are, therefore, not adjudicating the grounds raised by the assessee in the cross objections. Accordingly the cross objections are dismissed.

14. Similarly the Honble Tribunal in ITA no 456/M/2018 & CO.No.180/M/2018 of the Revenue appeal DCIT Vs Archive Realty Developers Ltd vide order dated 6-07-2022 And (i) In the Case of DCIT CC Vs Reva Properties Ltd ITA no 458 to 460/M/2018 & Co 182,183 & 184/M/2018 & (ii) In DCITCC Vs Martand Properties Ltd ITA.No.464&465/M/2018 & CO No 188&189/M/2018 vide order dated 8-8-2022 has considered the above judicial decisions discussed and dismissed the revenue appeal.

Since the issues involved in this present appeal of the revenue is identical to ratio of the decision of Honble Tribunal discussed above and we follow the judicial precedence and accordingly dismiss the grounds of appeal of the revenue.

**ITA Nos. 462/Mum/2018, A.Y 2008-09 &
ITA No. 463/Mum/2018, A.Y 2009-10**

15. As the facts and circumstances in these appeals are identical to ITA No. 461/Mum/2018, for A.Y 2007-08 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis

mutandis for this case also. Accordingly, the grounds of appeal of the revenue are dismissed.

CO Nos. 185, 186 & 187/Mum/2018

A.Y: 2007-08, 2008-09 & 2009-10

16. Since, We have dismissed the appeal of the revenue on merits considering the issue of protective addition and substantive addition and decided in favour of the assessee and against the revenue. We are view, that the grounds raised by the assessee in cross objections become infructuous and are dismissed. In the result the cross objections of the assessee are dismissed.

17. In the result, the appeals filed by the revenue and cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 19.12.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.12.2022

KRK, PS