

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

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 656/MUM/2013 (A.Y. 2007-08)

M/s. Shree Bal Constructions Pvt. Ltd., Office No. 4, Buona Casa 2 nd Floor, Opp. Kashmir Art Emporium Fort, Mumbai - 400001 PAN: AABCS1781J	V.	ACIT – OSD – 2(3) Mumbai
(Appellant)		(Respondent)

ITA NO. 2528/MUM/2013 (A.Y. 2007-08)

ACIT – OSD – 2(3) Room No. 556, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	V.	M/s. Shree Bal Constructions Pvt. Ltd., Office No. 4, Buona Casa 2 nd Floor, Opp. Kashmir Art Emporium Fort, Mumbai - 400001 PAN: AABCS1781J
(Appellant)		(Respondent)

ITA NO. 4787/MUM/2014 (A.Y. 2007-08)

ITA.No. 6154/MUM/2014 (A.Y. 2007-08)

Income Tax Officer - 2(3)(2) Room No. 581A, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	V.	M/s. Shree Bal Constructions Pvt. Ltd., Office No. 4, Buona Casa 2 nd Floor, Opp. Kashmir Art Emporium Fort, Mumbai - 400001 PAN: AABCS1781J
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Suyog Bhave & Shri Kalpesh Turalkar
Department Represented by	:	Shri K.C. Salvamani
Date of Hearing	:	03.11.2022
Date of Pronouncement	:	30.01.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. The appeals in ITA Nos. 656 & 2528/MUM/2013 are cross appeals filed by assessee and revenue respectively against order of the Learned Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 07.01.2013 for the A.Y. 2007-08. Appeal in ITA.No. 4787 & 6154/MUM/2014 are filed by the revenue against orders passed by the Ld.CIT(A) u/s. 154 and u/s. 271(1)(c) of Income-tax Act, 1961 (in short "Act") respectively for the A.Y. 2007-08.

2. First we shall deal with the cross appeals filed by the assessee as well as revenue.

3. Brief facts of the case are, assessee is a Company in which public are not substantially interested and which is engaged in the business of construction. Assessee filed the return of income for A.Y.2007-08

declaring total income of ₹.13,63,310/- on 31.10.2007. The return was processed u/s.143(1) of the Act on 07.02.2009. Subsequently, the case was selected for scrutiny under the "CASS" and notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

4. During the assessment proceedings, Assessing Officer observed that assessee had filed its Profit and Loss Account which are as under: -

- (i). *General Profit and loss account*
- (ii). *Kapil Malhar Intelligent Homes Phase-1 Contract P & L A/C.*
- (iii). *Sale of development rights, Baner Contract P & L A/C.*
- (iv). *S.No.146-Baner Contract P & L A/C.*
- (v). *S. No.164/4/2 Kalate Property, Wakad Contract P & L A/C.*
- (vi). *Business Centre Profit and loss A/c.*

5. Assessing Officer observed that out of the above Profit and Loss Account at Sl.No. 4 and 5 had only closing work-in-progress on the credit side of the Profit and Loss Account and expenditure on the debit side. Therefore, there was no sales/income in respect of the said Profit and Loss Account. In respect of Kapil Malhar Intelligent Homes Phase-I Contract Profit and Loss Account an amount of ₹.16,11,24,323/- was shown on the credit side of the Profit and Loss Account under the head

'Contract receipts/sales' and on the debit side an equal amount is shown under the head 'Opening work-in-progress'. Thus, no profit was shown in the said Profit and Loss Account also. Further, he observed that in respect of the sale of development rights, Baner Contract Profit and Loss Account an amount of ₹.3.6 Crores was credited under the head 'Sale of development rights' and an amount of ₹.2,85,79,832/- was debited under the head 'land cost' thereby showing a profit of ₹.74,20,168/-. In the business centre Profit and Loss Account the assessee credited an amount of ₹.28,51,200/- under the head 'Business Centre Receipts' and an amount of ₹.2,65,200/- under the head 'Maintenance charges received'. He observed that against the above receipts, the assessee debited various expenses such as licence fees, salary and bonus, interest, electricity charges, telephone charges, security charges, rates and taxes, etc., to show a net profit of ₹.5,15,925/-. Therefore, out of the five Profit and Loss Accounts, the assessee showed profit/loss in respect of only two Profit and Loss Accounts and the said profit is transferred to the General Profit and Loss Account. He observed that in the General Profit and Loss Account in addition to the profits transferred from Sale of development rights Profit and Loss Account and Business Centre Profit and Loss Account the assessee also credited interest received on Fixed Deposit and against

these incomes, the assessee claimed expenses under various heads such as audit fees, bank interest, depreciation, legal expenses, repairs and maintenance, salary and bonus, etc., to arrive at profit of ₹.13,61,587/-.

6. With the above observation of the Assessing Officer, we observe that assessee has taken five grounds of appeal before us and Ld. AR submitted that assessee is not pressing Ground No. 1 and 5, accordingly, these grounds are dismissed. With regard to Ground No. 3 and 4 he submitted that Ld.CIT(A) has allowed these grounds in the appeal filed before him passed u/s. 154 of the Act. Therefore, assessee is not pressing these two grounds at this stage. Accordingly, we dismiss these grounds as not pressed at this stage.

7. Ld. AR submitted that assessee is pressing only Ground No. 2 wherein Ld.CIT(A) has estimated the income from the project at the rate of 10% of the work-in-progress and he further submitted that the appeal filed by the revenue is against the same issue raised by the assessee in Ground No. 2.

8. The relevant facts relating to the above grounds are, assessee during the year has transferred its project under construction to its sister

concern M/s Indorigin Electric Ltd., by assignment deed dated 31.03.2006 and deed of rectification dated 15.11.2007 and another assignment deed 18.05.2006. From the assignment deeds the Assessing Officer observed that by the assignment dated 31.03.2006 signed by Shri Sharad Bal on behalf of the assessee company and Mrs Vrunda Sharad Bal w/o Shri Sharad Bal on behalf of M/s Indorigin Electric Ltd., both are directors in both the companies. By the above said assignment deed, the development right was transferred by the assessee company to M/s Indorigin Electric Ltd for a consideration of ₹.3.60 Crores for FSI/TDR measuring 9823.58 sq.mt.

9. Similarly, development agreement dated 18.05.2006 is a tri-party agreement, the first part consisting of 52 owners of the land, 53rd being Mrs Vrunda Sharad Bal and 54th being the assessee company through power of attorney. Mrs Vrunda Sharad Bal being the party of the first part, the second party being M/s. Indorigin Electric Ltd and the third being the assessee company Shree Bal Construction Pvt Ltd i.e. the promoters/consenting party. As per the above deed the promoters had decided to assign and transfer of development rights in respect of third phase i.e. construction of three buildings i.e. T-04, T-05 and T-06

consisting of 88 tenements on the land measuring about 6500 sq.mt. with a consideration of ₹.3.60 Crores.

10. Based on the above assignment deed and development agreement assessee has transferred land for ₹.7.2 crores and shown profit on transfer of land amounting to ₹.76,39,580/- during the A.Y. 2006-07 and ₹.74,20,168/- during the A.Y. 2007-08. It was observed that assessee has not shown any profit on transfer of work-in-progress.

11. The Assessing Officer observed that the sale of development rights pertained to only the second phase of the Kapil Malhar projects and has got nothing to do with the first phase of the said project, which was undertaken by the assessee in respect of which the value of work-in-progress was ₹.16,11,24,323/- and the advance against the sale of said flats received by the assessee was ₹.22,17,94,752/-. Whereas, the assessee claims to have transferred both the above liability and assets to M/s.Indorigin Electric Limited, which is factually not true. Assessing Officer observed that since the above liability and assets are shown to have been Nil as on 31.03.2007 as per the books of accounts of the assessee, the difference between the two working out to ₹.6,06,70,429/-

is treated as assessee's income during the year from the above project in Phase I for the present assessment year i.e. A.Y. 2007-08.

12. Similarly, Assessing Officer observed that assessee showed a liability of ₹.7,53,12,160/- to M/s.Indorigin Electric Limited, which is stated to be payable by the assessee in connection with the acquisition of development rights by the said company from the assessee. He further observed that, it is not understood as to why the assessee has to pay the above amount to M/s.Indorigin Electric Limited when the said company has to pay the sale consideration to the assessee.

13. Assessing Officer by referring to the confirmation letter received from M/s.Indorigin Electric Limited he observed that there is no mention of above amount receivable by the said company from the assessee. Accordingly, he came to the conclusion that the said liability shown by the assessee in its Books of Accounts is not a genuine and non-existent liability. Accordingly, he disallowed ₹.7,53,12,160/-.

14. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) after considering the detailed submissions of the assessee, came to the conclusion that assessee has transferred two projects during

the year to its sister concern i.e., M/s Indorigin Electric Ltd. which was work-in-progress in the books of the assessee and he observed that assessee has transferred the work-in-progress to its sister concern without estimating the profit. Therefore, he estimated the profit @10% attributable to these projects and accordingly, he sustained the addition of ₹.1,41,36,133/- and he deleted the other additions proposed by the Assessing Officer.

15. Aggrieved, both assessee as well as revenue are in appeal before us objecting to the estimation of profit adopted by the Ld.CIT(A) at the rate of 10%.

16. At the time of hearing, Ld. DR submitted the relevant facts on record and he brought to our notice Para Nos. 6 and 7 of the Assessment Order and submitted that assessee has not submitted clear evidences in support of its claim before the Assessing Officer and he objected to the estimation of income adopted by the Ld.CIT(A). He also submitted that the grounds raised by the revenue are similar to the Ground No. 2 raised by the assessee in its appeal.

17. Ld. AR also agreed with the submissions of the Ld. DR and however, both of them agreed that assessee has transferred two existing projects to its sister concern as per the value declared in balance sheet and it is fact on record that assessee has transferred the project at the work-in-progress value to its sister concern without adding any profit to the above said project cost. While enquiring, the bench directed the assessee to bring on record and to submit the net profit declared by M/s Indorigin Electric Ltd., from these two projects. Accordingly, Ld. AR submitted a certified statement that M/s Indorigin Electric Ltd. has earned profit of 7.71% out of these projects.

18. Considered the rival submissions and material placed on record, we observe from the record that assessee has partly completed the two projects namely Kapil Malhar Intelligent Homes Phase-II and development rights and transferred the same at the end of the current assessment year to its sister concern M/s Indorigin Electric Ltd. It is fact on record that assessee has transferred the same as per the Books of Accounts at cost without adding any profit of the effort put in by the assessee on these projects. On enquiry assessee has declared profit earned by sister concern i.e. M/s Indorigin Electric Limited at 7.71% after completion of

the projects. Therefore, to the extent the assessee has completed the project which was declared in the Books of Accounts as work-in-progress at the end of the year which was subsequently transferred to its sister concern. Therefore, it is proper and just to estimate the profit @7.71% on the value of work-in-progress transferred to its sister concern. Accordingly, Assessing Officer is directed to add the profit on these projects @7.71% on the value of work-in-progress transferred during the year at the value of ₹.7.2 crores. Accordingly, ground raised by the assessee as well as revenue are partly allowed.

19. Revenue has filed additional ground of appeal that Ld.CIT(A) erred in deleting the addition made on account of land cost claimed as expenses by the assessee amounting to ₹.2,47,57,242/- on the basis of the fresh evidence, without giving an opportunity to the Assessing Officer as per the provisions of Rule 46A.

20. At the time of hearing, Ld. DR submitted that Assessing Officer has clearly brought on record that assessee has claimed land cost in other expenses and no record was submitted before the Assessing Officer. However, assessee has submitted the relevant information before the Ld.CIT(A) in violation of Rule 46A.

21. On the other hand, Ld. AR brought to our notice Page No. 12 of the Ld.CIT(A) order and submitted that as per the details mentioned in assignment deed the assessee has assigned the land area of about 6500 sq. Meters to its sister concern as part of sale of development rights. He submitted that it is not a fresh evidence submitted before the Ld.CIT(A). This information was very much available during the assessment proceedings also, Ld.CIT(A) has clearly brought on record in its finding that this information is gathered from the assignment deed submitted before him. Therefore, he submitted that Rule 46A is not applicable in this present case. Further, he brought to our notice Paper Book filed dated 08.09.2022 and he brought to our notice actual cost of ₹.9,44,99,839/- and the cost presumed by the Assessing Officer of ₹.2,85,79,332/- is the part of the same actual cost.

22. Considered the rival submissions and material placed on record, we observe from the record that the Ld.CIT(A) considered the various submissions of the assessee and while deleting the addition made by the Assessing Officer he heavily relied on the information contained in the assignment deed based on which the project was transferred to its sister concern. Therefore, it clearly shows that it is not an additional evidence

submitted before the Ld.CIT(A). Accordingly, the additional ground raised by the revenue is dismissed.

23. In the result, appeal filed by the assessee as well as revenue are partly allowed as indicated above.

ITA.No. 4787/MUM/2014 (A.Y. 2007-08)

24. Coming to the appeal in ITA.No. 4787/Mum/2014, brief facts of the case are, assessee filed rectification application u/s. 154 of the Act against order passed by Ld.CIT(A) dated 07.01.2013 and in the rectification application assessee has contended that there are certain mistakes apparent on record and accordingly, filed the following information, for the sake of clarity it is reproduced below: -

"Our client is in receipt of Your Honour's Order passed for Assessment Year 2007-08 on 7th January, 2013. Under the instructions and on behalf of our clients we most humbly state & submit herewith as under:-

1) *Income from Business Centre:*

We may bring to Your Honour's kind notice that for earlier assessments i.e., Asst. Years 2005-2006, 2004-2005 and 2003-2004, the learned A. O. have assessed said income as Income from Business. The fact was submitted in statement of facts attached with Appeal memo. In the said circumstances, We most humbly request Your Honour to rectify the assessment u/s. 154 of the Income Tax Act, 1961 relying on C.I.T. vs Bilhari Investment (P) Ltd. (2008). 299 ITR 1 (SC) and Radhasoami Satsang Vs. CIT 193 ITR 321(SC) ie. consistency of system of accounting adopted in earlier years.

2) *Estimation of Income of Rs. 1,41,36,133/*

Your office has estimated income at 10% of Work-in-progress (W.I.P.). We most humbly draw Your Honour's kind attention towards the fact that our company is following project completion method. The said system was accepted u/s. 143(3) of the Income Tax Act, 1961 by A. O. for A. Y. 2005-2006. In the said circumstances your office should not have erred in estimating income at 10% of W.I. P in the said circumstances, We most humbly request Your Honour to pass an order u/s. 154 of the Income Tax Act, 1961 relying on C.I.T. vs Bilhari investment (P) Ltd. (2008) 299 ITR 1 (SC) and Radhasoami Satsang Vs. CIT 193 ITR 321(SC) Le. consistency of system of accounting adopted in earlier years.

3) *Addition of Interest paid of Rs. 50,96,138/ paid to Bank of Maharashtra.*

06.02.2014 We most Humbly want's to draw Your Honour's kind attention towards the fact that your office has inadvertently stated that our company does not have any business activity, hence interest of Rs. 50,96,138/- be not allowed. In fact our income has been assessed as business income for the year at Rs. 3,50,35,867/- after giving effect to your order dated 7th January. 2013. In addition vide our letter dated 6th November, 2011 we had submitted that the borrowed funds were utilized for the purpose of business and there is no diversion of borrowed funds. In addition in statement of facts it was submitted that current liabilities of Rs. 8,44,03,076/- was non-interest bearing funds and same was used in business. Hence there was no investment made for non business purpose. We had also submitted our submission in statement of facts in clause 6 to the appeal memo that interest payment to Bank of Maharashtra of Rs. 50,96,138/-be allowed by relying on judgement in case of Reliance Utilities & Power Ltd vs C.I.T. It is submitted that the same be followed being jurisdictional court, ie. High Court Bombay as per details given below:-

	<i>Amount (Rs.)</i>
<i>i. Fixed Assets</i>	<i>6,90,692.00</i>
<i>ii. Investment</i>	<i>1,56,00,068.00</i>
<i>iii. W. I. P.</i>	<i>4,40,225.00</i>
<i>iv. Cash and Bank</i>	<i>13,47,339.00</i>
<i>v. Current Assets</i>	<i>4,14,02,596.00</i>
<i>vi. Loans and Advances</i>	<i><u>7,53,67,519.00</u></i>
	<i><u>13,48,48,439.00</u></i>

Less: Liability

<i>i. Liability Bank Loan</i>	<i>3,43,01,227.00</i>
<i>ii. Current Liability</i>	<i>8,44,03,076,00</i>
<i>iii. Provision</i>	<i><u>5,42,350.00</u></i>
	<i><u>11,92,46,653.00</u></i>

In the said circumstances, we most humbly request Your Honour to pass an order u/s. 154 of the Income Tax Act, 1961 to allow interest expense of Rs. 50,96,138/- as business expenses and. We further submit that the same order be passed considering abovementioned decision being of jurisdictional court i.e. Bombay High Court.

4) Addition of Rs. 1,38,16,738/ on account of transfer of sundry creditors:

We most Humbly want's to draw Your Honour's kind attention towards the. fact that your office is erred in confirming the addition of Rs. 1,38,16,738/on account of transfer of sundry creditors. Your predecessor has overlooked the confirmation given on 8th November, 2012 by transferee company, M/s. Indorigin Electric Ltd., stating that the said liability of Rs. 1,38,16,738 has been fully paid by said company as per journal entry produced before your office. We most humbly draw Your Honour's kind attention towards the fact that your office neither verified the details nor discussed the reasons in the order passed on 7th January, 2013 for not allowing the said payment made by transferee company, Le. M/s. Indorigin Electric Ltd. The details were produced before your predecessor from time to time. In the said circumstances the addition of Rs. 1,38,16,738/- be deleted by passing an order u/s 154 of the Income Tax Act, 1961.

In the said circumstances, you are requested to allow following deduction u/s. 154 of the Income Tax Act, 1961.

In view of the above we most humbly request Your Honour to kindly:

- i. The Income from Business Centre be treated as business income and not as Income from Other Sources.*
- ii. Estimated income of Rs. 1,41,36,133/, being 10% of W. I. P. be deleted.*
- iii. Addition of Rs. 50,96,138/- on account of disallowance of interest be deleted.*

iv. *Unexplained cash credit on account of transfer of sundry creditors of Rs. 1,38,16,1738/-be deleted."*

25. After considering the above rectification application, Ld.CIT(A) allowed the claim of the assessee with regard to interest expenditure of ₹.50,96,135/- and on the issue of transfer of outstanding sundry creditors of ₹.1,38,16,738/- to the sister concern with the following observations:-

"6.9. The appellant had taken loan from Bank of Maharashtra for the project Kapil Malhar. The said loan has been utilised for the said project Kapil Malhar. During the year under consideration, the project Kapil Malhar has been sold to a third party. The profit from the sale of the remaining part of the project has been declared and assessed as Business Income Against this 'Business Income the appellant has claimed the interest expenditure incurred by it for the said project. On these very clear facts, it is evident that the deduction in respect of this interest expenditure cannot be denied to the appellant. In my opinion, these very evident facts which are apparent from the records. have not been appreciated by the Ld. CIT(A) and hence, a mistake the appellant from the records has occurred. The same therefore deserves to be rectified and the appellant is entitled to deduction of interest expenditure of Rs.50,96,138/-. I hold accordingly. The AO is directed to allow deduction of interest expenditure of Rs 50,96,138/-

6.10. Without prejudice to the above (for the sake of repetition to some extent), it may be noted that following facts are on record [both before the AO as well as Ld. CIT(A)];

a. The appellant had obtained the loan of Rs. 4 crores from Bank of Maharashtra for construction of project of Kapil Malhar. During the year under consideration, the remaining part of this project Kapil Malhar has been sold to Indorigin Electric Ltd. However, the loan outstanding against Bank of Maharashtra as on 31st of March 2006 has not been transferred to the transferee company Indorigin Electric Ltd as a liability.

b. It was the contention of the appellant [both before the AO and Ld. CIT(A)] that the balance amount of loan (at Rs.2,53,76,467/-) was utilised for giving deposit of

Rs.2,95,00,000/- against the leave and license agreement of commercial building at Balewadi, Pune (ie. the Business Centre of the appellant). This fact is verifiable from the balance sheet of the appellant for the current year.

c. Thus, the loan taken from Bank of Maharashtra (the balance amount outstanding at Rs 2.53.76,467/-) has now been utilised for deposit in respect of the leased premises at Balewadi, Pune (i.e. the Business Centre of the appellant), whose income has been held to be assessable under the head 'Income from Other Sources'. This fact is also verifiable from Para 8.5(ii) on page 13 of the assessment order. Hence the interest liability in respect of the said loan is even otherwise allowable as per the provisions of section 57 of the Act

d. It may be noted that earlier the income from Business Centre of the appellant was being assessed as Business Income and hence there was no need to consider the allowability or otherwise of the interest liability in respect of the bank loan against the Business Income of the appellant.

e. It can be seen that the interest expenditure which has been incurred in respect of the deposit given for taking on lease the Business Centre is related to the income earned from Business Centre; hence, the same, in the alternative has to be allowed to the appellant against the income from Business Centre.

f. Further, during the course of appellate proceedings, the appellant had given following details to establish the nexus of borrowed funds with the investments:

Borrowed funds	Amount (Rs.)	Investments	Amount (Rs.)
HDFC Ltd A/c No. 22437 (rent discounting)	93,17,799.00		
Bank of Maharashtra TL/NPG-49 (cash credit)	2,53,76,467.00	Deposit with Shree Bal Properties & Finance Pvt. Ltd	2,95,00,000.00
		Deposit with Deccan Education Society	8,23,000.00
		Deposit - BSNL	11,000.00
		Deposit - MSEB	86,500.00
		Income Tax Refund	4,48,655.00

Borrowed funds	Amount (Rs.)	Investments	Amount (Rs.)
		Cash in Hand	2,34,166.88
		HDFC Bank Ltd, Law College Road, Pune	10,02,980.76
		HDFC Bank Ltd, FC Road, Pune	1,02,620.67
		IDS (AY 2007-08)	12,41,669.00
		Prepaid Brokerage	14,25,600.00
Total	3,46,94,266.00	Total	3,48,76,192.31

g. Apparently the above table could not be seen by the Ld. CIT(A), while deciding the claim of the appellant for grant of the claim of the appellant in respect of interest of Rs.50,96,138/-.

6.11 Hence, it is clear that from the records that the interest liability on bank loan was an allowable deduction. Apparently, the Ld. CIT(A) had not considered the overall facts and circumstances as were available on records which resulted in a mistake which was apparent from records. Due to non-consideration of these facts already on record, a mistake apparent from records has occurred. Hence, the AO, as already indicated above, is directed to allow deduction of interest of Rs.50,96,138/-."

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7.3 I have gone through the appellant's submissions before the Ld. CIT(A) and have also seen the relevant documents. Indeed it appears that Ld. CIT(A) had not gone through the development agreement for transfer of the project with Indorigin Electric Ltd and had also not looked into the confirmation dated 08/11/2012 from the said company Indorigin Electric Ltd that the liabilities in the nature of sundry creditors had also been taken over by the said company Indorigin Electric Ltd. In these circumstances therefore there was no question of appellant discharging the liabilities in respect of sundry creditors from its own undisclosed sources of income.

7.4 It may be seen that following clauses of the development agreement (.e. the transfer agreement in respect of the balance of the project) with Indorigin Electric Ltd already indicate that the whole of the remaining project has been transferred on 'as is and where is' basis and the liabilities in respect of the sundry creditors outstanding in respect of the said remaining project had automatically got transferred:

Page No. 17, Column No. 11:

That all the costs and expenses relating to the development, construction of the tenements including cost material, labour, supervision etc, in respect of the proposed 3 buildings namely i.e. T-04, T-05 & T-06 to be constructed on the said portion of land shall be borne exclusively by the Developers and the Owners and the Promoters shall not be liable in respect thereof. All materials required by the Developers for the Development of the said portion of land and construction of the proposed 3 buildings shall be purchased by it in its own names and to its own account and the Owners and the Promoters shall have no liabilities to the parties supplying the same.

Page No. 18, Column No. 14:

That all claims whatsoever nature, made by the suppliers of materials. equipments used or to be used in the development of the said portion of land and construction and completion of the proposed 3 buildings, as aforesaid, under this agreement including all claims for damages or otherwise made by the purchasers of the new tenements or any part of the said buildings in the aforesaid scheme or for any delay in the performance of their contract or on account of any defect in the construction or completion of the said buildings or all claims, damages, compensation or expenses payable in consequence of any accident or injury sustained by any workmen or other person whether in employment of the Developers or not shall be paid by the Developers and not by the Owners and the Promoters. The Developers shall keep the Owners and the Promoters indemnified from all such claims and demands whatsoever.

Page No. 20, Column No. 20:

That all sums receivable and recovered by way of consideration or otherwise in the said the scheme i.e. constructions and sale of 90 tenements in the proposed 3 buildings namely i.e. T-04, T-05 & T-06 to be constructed on the portion of land at measuring 6500 sq. mtrs. of area out of the said land shall accrue to the benefit and to the account of Developers. The said amount shall be received by the Developers towards reimbursement of all

the expenses and costs incurred by them pursuant to the provisions of this agreement and towards their consideration for assuming the obligations under this agreement. In the event however, if any loss being suffered whatsoever then and in that event, the same shall be on account of the Developers and the Owners and the Promoters shall not be responsible for the same.

7.5 Above clauses of the agreement themselves indicate that the liabilities incurred by the appellant in respect of the balance of the project, which has been sold to Indorigin Electric Ltd are automatically transferred to the said company Indorigin Electric Ltd. Further, the clarificatory letter dated 08/11/2012 from the said company Indorigin Electric Ltd to this effect submitted by the appellant before Ld. CIT(A) had also settled the doubts, if any, remaining in this regard. It is thus evident that a mistake apparent from records has occurred and the addition made by the AO of Rs. 1,38,16,738/- has been wrongly sustained by Ld. CIT(A), because the liabilities of Rs.1,38,16,738/- were no more the liabilities of the appellant and had been taken over by Indorigin Electric Ltd. The addition of Rs. 1,38,16,738/- is therefore directed to be deleted”

26. At the time of hearing, Ld. DR relied on the order of the Assessing Officer and objected to the findings of the Ld.CIT(A).

27. On the other hand, Ld. AR relied on the findings of the Ld.CIT(A).

28. Considered the rival submissions and material placed on record, on careful consideration of the findings of the Ld.CIT(A) in rectification made u/s. 154 of the Act we observe that assessee has taken loan from Bank of Maharashtra for the project Kapil Malhar and the loan was utilized in the project. During the year the above said project was sold to a third party.

The profit from the sale of the remaining part of the project was declared and assessed as 'Business Income". Against this 'Business Income" the assessee has claimed the interest expenditure incurred by it for the said project. We are in agreement with the findings of the Ld.CIT(A) that the interest expenditure claimed by the assessee is towards the loan taken from Bank of Maharashtra and the funds were utilized in the said project was subsequently transferred. Therefore, the assessee declared the income earned from this project as the business income. Accordingly, assessee is eligible to claim the above said interest expenditure as business expenditure. Therefore, we do not find any reason to interfere with the findings of the Ld.CIT(A). Accordingly, Ground No. 2 raised by the revenue is dismissed.

29. With regard to Ground No. 3 we observe from the record that assessee had an outstanding creditors liability in its Books of Accounts. However, during the year assessee has transferred the development rights and projects to its sister concern and as per the assignment agreement they agreed to transfer the remaining project on "as is and where is basis" and the liability in respect of the sundry creditors outstanding in the above said projects are automatically transferred to the

sister concern. Therefore, there is no liability in the Books of Accounts as per the transfer of the projects to its sister concern. Therefore, the Assessing Officer has merely presumed that the assessee has written off these sundry creditors and he presumed that this falls under deemed income of the assessee. Ld.CIT(A) has verified the development agreement and came to the conclusion that the assessee has transferred the project along with the liability to its sister concern. Therefore, there is no reason to interfere with the findings of the Ld.CIT(A). Accordingly, Ground No. 3 raised by the revenue is dismissed.

30. Ground No. 1 and 4 are general in nature, accordingly, these grounds are also dismissed.

31. In the result, appeal filed by the Revenue is dismissed.

ITA.No. 6154/MUM/2014 (A.Y. 2007-08)

32. Considered the rival submissions and material placed on record, we have heard the parties elaborately and we noticed from the record that all the additions made by the Assessing Officer are deleted by the Ld.CIT(A) in section 154 proceedings and there was only one issue of

estimation of profit on the project transferred by the assessee to its sister concern and we noticed that Ld.CIT(A) has adjudicated the issue by adopting estimation of income @10% which we have reduced to 7.71% based on the profit earned and declared by the sister concern i.e., M/s Indorigin Electric Limited. This addition also was made based on the estimation of income and it is a settled position of law that penalty cannot be levied on estimation of income, accordingly, the appeal filed by the Revenue is dismissed.

33. In the result, appeal filed by the Revenue is dismissed.

34. In short, appeal filed by the assessee in ITA.No. 656/Mum/2013 is partly allowed. The appeal filed by the Revenue in ITA.No. 2528/Mum/2013 is also partly allowed. The appeals filed by the Revenue in ITA.Nos. 4787 and 6154/Mum/2014 are dismissed.

Order pronounced in the open court on 30th January, 2023

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 30/01/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUZ RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum