

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

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

ITA.NO.1931/MUM/2019 (A.Y: 2013-14)

Income Tax Office -1(1)(1) 579, 5 th Floor, Aayakar Bhavan M.K. Road, Mumbai- 400020	v.	M/s Aristo Shelters Pvt. Ltd 43/11, Rajabhadur building Tamrind Lane, Fort Mumbai- 400001 PAN: AAHCA7596F
(Appellant)		(Respondent)

ITA.NO.5181/MUM/2019 (A.Y: 2014-15)

Income Tax Office -1(1)(1) 579, 5 th Floor, Aayakar Bhavan M.K. Road, Mumbai- 400020	v.	M/s Aristo Shelters Pvt. Ltd 8 th Floor, Aristo House N.S. Phadke Road Near E/W Flyover, Andheri (E) Mumbai- 400069 PAN: AAHCA7596F
(Appellant)		(Respondent)

Assessee Represented by	:	Shri V. G. Ginde & Shri Kumar Kale
Department Represented by	:	Shri R. S. Srivastav
Date of Hearing	:	15.11.2022
Date of Pronouncement	:	06.02.2023

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-2, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.01.2019 and 09.05.2019 for the A.Ys.2013-14 and 2014-15 respectively.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 1931/MUM/2019 for Assessment Year 2013-14 as a lead appeal.

3. Brief facts of the case are, assessee filed its return of income on 30.09.2013 declaring total income of ₹.NIL. The case was selected for scrutiny and notices u/s.143 (2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee along with questionnaire. In response to the notices, AR of the assessee attended and submitted the relevant information as called for.

4. During the assessment proceedings, while verifying the details submitted by the assessee, Assessing Officer observed that in the F.Y.2011-12 assessee has transferred its land purchased at a cost of

₹.201 Crores from M/s. Bombay Industrial Corporation in F.Y.2009-10 to Slum Rehabilitation Authority ("SRA") for a consideration in terms of Transferable Development Rights (TDR) of 16,86,083 sq. ft. The assessee has made a multipartite agreement between M/s Bombay Industrial Corporation, Assessee and SRA on 30.04.2011. As per the agreement, the project is proposed as per Clause 3.11 [under regulation 33(10)] of Development Control Regulation for Greater Mumbai, as per which assessee will convey the land to SRA and then construct tenements for Project Affected People as per Government directive and hand-over the constructed tenements to the Project Implementing Authority, viz. Slum Rehabilitation Authority. Assessing Officer observed that, in lieu of the above, the company will receive TDR in the ratio of 1:1 for land portion surrendered to SRA and in the ratio of 1:1.33 (1.33 times) for constructed area which can be sold to other developers in the open market to generate revenue.

5. Further, Assessing Officer observed that Assessee has to construct 59 buildings (G+24) (having 8582 Tenements) and other buildings comprising of one (1) school, one (1) Primary Health Care Centre & one (1) Dispensary, with a total construction area of 83,55,246 sq.ft. and is

entitled to receive a total of 1,27,98,560 sq.ft. of TDR. Out of the Total land TDR 16,86,083 sq.ft receivable, the assessee has received Land TDR of 1264561.93 sq. ft till 27.07.2012. The said land TDR received was sold by assessee company in the open market as under: -

Assessment Year	TDR	Amount
AY. 2012-13	1,78,790sqft	Rs. 39,72,94,104/-
A. Y. 2013-14	10,85,664 sq ft	Rs. 2,19,52,15,898/-

6. Further, Assessing Officer observed that the stages of release of TDR as under: -

(A) Land TDR is to be released in the following tranches:

Sr. No.	Stages	Land TDR to be released Sq. Mtr.	Land TDR (Sq. ft.)
1.	For the Land under PAP Tenement buildings	89061.89	9,58,662
2.	For the area kept as Buffer Zone as per the directions issued in the hearing, under no SRA/Eng/Destk-1/563 dated 23/04/2012	28418.78	3,05,900
3.	Against Amenity space CL. 57(4)(C)	39160.23	4,21,521
	Sub-Total (A): TOTAL LAND TDR		16,86,083

(B) Construction TDR is to be released in the following tranches:-

Sr. No.	Items	% of Cons. TDR to be released	Cons. TDR (Sq.ft.)
1.	On completion of Plinth	18%	20,00,246
2.	On completion of RCC Work upto 12 ^m slab (Masonry Work, Internal & External Plaster will be carried out proportionately with the slab due to aluminum from work system)	31%	34,44,868

Sr. No.	Items	% of Cons. TDR to be released	Cons. TDR (Sq.ft.)
3.	On completion of RCC Work upto 24 th slab (Masonry Work, Internal & External Plaster will be carried out proportionately with the slab due to aluminum form work system)	31%	34,44,868
4.	Building external CPVC Vertical lines	2%	2,22,249
5.	On completion Flooring & Internal Plumbing Work (Except sanitary ware, Drainage, Water, Electricity, Doors, Windows, Painting, Polishings, Lifts, Balance RCC Work etc.)	8%	8,88,998
6.	On completion the building & obtaining O.C.	8%-	8,88,998
7.	Retention at the time of occupation to be released only defect liability period of 2Years is over.	2% -	2,22,250
	Sub - Total (B): TOTAL CONSTRUCTION TDR	100%	1,11,12,477
	GRAND TOTAL (A+ B) TOTAL TDR		1,27,98,560

7. On verification of Balance Sheet and Profit and Loss account and its schedules filed by the assessee, it was observed by the Assessing Officer that the assessee has not recorded any transactions in Profit and Loss Account and declared ₹.NIL profit of the business. On verification of the balance sheet, it was observed that the assessee has increased its WIP Account for Chembur site by debiting direct expenses such as purchases, labour charges, and by debiting administrative expenses such as financial expenses, selling and distribution expenses. The WIP for the year was declared by the assessee at ₹.21,75,00,546/-. The above said sum of WIP along with brought forward WIP of ₹.23,07,302,814/- has been reduced from the TDR sale declared at ₹.2,19,52,15,898/- and thus the closing WIP was declared at ₹.32,95,87.461/- Assessing Officer observed that

since the assessee has sold the TDR received in lieu of transfer of land to SRA and the income from sale of TDR so received constitutes the income of the assessee for the year under consideration and thus by reducing the amount received as against sale of TDR the assessee has not followed correct method of accounting. Accordingly, a show-cause notice was issued asking for clarification.

8. In response, assessee vide letter dated 18.03.2015 submitted as under: -

"With reference to above subject, we submit as under-

We have perused your aforesaid letter dated 10/02/2016.

1. *We find that your office would like to follow Method of Accounting for transactions on Transfer of Development rights' (TDR) available from project at Chembur, Mumbai as devised by your office and referred to while passing Assessment Order for the A.Y. 2012-13.*

2. *At outset, we submit that we have preferred Appeal before CIT(A) against above referred Asst Order for AY 2012-13 AND do not agree with Department's Stand. We submit that method of Accounting followed by us is correct method of Accounting per attached detailed explanatory note (Exhibit-1).*

Note explaining method of accounting employed by the company

1. Facts:

Briefly stated, the material facts of the case are as under.

i) The assessee company is engaged in the business of real estate development. During the course of its business, the company

vide Agreement for Sale dated 5.2.2010 entered into with M/s. Bombay Industrial Corporation purchased land admeasuring approximately 1,56,640 sq. meters situate at CTS No. 619/A, 619/B, 620/A, 621/A, 621/B, 621/C, 623/A1, 623/A2 and 623/B at Village Mahul, Chembur, Mumbai ("said land") for purchase of price of Rs.201 crores with a view to develop the same.

ii) The company had given a rehabilitation proposal to the Slum Rehabilitation Authority ("SRA") for development of the said land under provisions of Clause 3.11 read with Clause 3.5 & 3.9 (ii) of Appendix-IV of Development (Control & Regulations) Rule 33(10), by constructing certain number of tenements at its own cost to be handed over the Municipal Corporation of Greater Mumbai ("MCGM"), free of cost, which in turn would allot these tenements to the slum dwellers removed from hutments along water mains of MCGM. In lieu of this our company would get Transferable Development Rights ("TDR") from MCGM. This rehabilitation project was declared as a Vital Public Project by the Government of Maharashtra.

iii) By Letter of Intent ("LOP") dated 31.3.2011 issued by SRA, our company is to construct 9002 tenements and other amenities to be handed over to MCGM through SRA free of cost for which following TDR would be allotted to the company:-

(A)	Land TDR		Sq. Meters	Sq. Ft
		1. Project Affected People Tenements	89,061.89	9,58,662
		2. Buffer Zone Area	28,418.78	3,05,900
		3. Amenity Portion	39,160.23	4,21,521
		Total		16,86,083
(B)	Construction TDR			1,11,12,477
		Total		1,27,98,560

iv) Simultaneous with the issue LOI dated 31.3.2011, a multipartite Agreement ("the Agreement") was executed between M/s. Bombay Industrial Corporation (as "Vendors"), our company (as "Developers") and the SRA (as 'Purchaser') and the SRA (as "Project Implementing Authority") setting out the terms and conditions for development of the said land in accordance with the LOI dated 31.3.2011. Clause (3) and (4) of the Agreement provide for consideration in the form of TDR to be allotted to our company

described as "Rehabilitation Component and Land Component" respectively for the obligations undertaken by the company in implementing the rehabilitation scheme at the said land

v) The aforesaid LOI was amended from time to time by several supplementary LOIS, the last being LOI dated 16.6.2012, which modified the no. of tenements to be constructed by the company to 8,399 and also other amenity tenements as per Clause (21) thereof.

vi) Clause (7) of the Agreement provides that the company shall be entitled to the benefit of TDR in the ratio of 1:1 in respect of the Land Component from the SRA, and the SRA will cause the MCGM of issue TDR in the form of Development Right Certificate ("DRC") in the name of the company in stages after the said land is transferred to SRA as specified in the Agreement. Clause (17) of the Agreement provides the time when the company will be entitled to the Land Component of TDR; while clause (18) of the Agreement provides the time when the company will be entitled to the Rehabilitation, Le. Construction Component of TDR. Clause (15) of the Agreement stipulates the compensation to be paid by the company to the SRA in case of default committed by the company in delaying the construction work.

vii) The company received the following TDR in respect of the Land Component:

Date of Release	Date of Receipt	Nature of TDR	TDR in Sq. Meters	TDR in Sq. Ft.
18.5.2011	16.9.2011	PAP Tenements-part	17,810.00	1,91,706.84
18.6.2012	16.7.2012	Buffer Zone Area	28,418.78	3,05,899.75
26.6.2012	27.7.2012	PAP Tenements - Balance	71,251.89	7,66,955.34
		Total	1,17,480.67	12,64,561.93

viii) The company has been consistently following project completion method for recognising revenue from this project. Consequently, all the expenses incurred on this project have been accumulated under the head "Work-in-Progress" till the completion thereof. The sales proceeds realized on sale of TDR during the construction period has been reduced from the cost of WIP, and the balance cost carried forward.

ix) It is important to state that after 27.07.2012, the company has not received any TDR. The said land being situated near HPCL and BPCL Refineries, they have taken serious objections to our project. Further, Public Interest Litigation involving our project is pending before the Hon'ble Bombay High Court. In view of these facts, the said project is couched in significant uncertainties at the moment. The copies of litigation filed by f) HPCL V/s. The Slum Rehabilitation Authority and Others including us is enclosed and (ii) Public Interest Litigation No. 140 of 2006 filed by Janhit Munch & Others V/s. MCGM, us and others - Volume-I & II enclosed.

2. Issue:

In the letter dated 10/02/2016, you have raised the issue of method of accounting qua this project. While our company did not recognise any profit or loss during the year ended 31.3.2013, you have proposed to invoke section 145(3) to compute profit of Rs.52.58 crores, as worked out in the said letter. We seriously object to this proposal on the principles of accounting, among others, for the following reasons:

3. Submissions:

3.1 We have followed correct method of accounting:

We respectfully submit that there can be no issue about the method of accounting followed by our company for this project. The Project Completion Method ("PCM") is a recognised method accounting that is followed by many enterprises operating in real estate business as it is a scientific method that has stood the judicial scrutiny in a number of precedents a few of which are mentioned as under:

- (a) CIT us. V. S. Dempo & Co. Pvt. Ltd. (1996) 131 CTR 203 (Bom)
- (b) Shapoorji Pallonji (Rajkot) Put. Ltd. vs. CIT (1994) 49 ITD 479 (Bom)
- (c) Nandi Housing Pvt. Ltd. vs. DCIT (2004) 2 SOT 395 (Bang)
- (d) DCIT vs. Ranka Developers (2006) 6 SOT 815 (Bang)
- (e) Haware Constructions (P) Ltd. vs. PIO (2011) 64 DTR (Mumbai) (Trib) 251
- (f) DCIT vs. Ankit Chirag Developers Pvt. Ltd. (2014) 40 CCH 018 JodhTrib

As per PCM, profit/loss of a project is recognised only on completion of the given project, and until then the costs are accumulated as WIP and advances received on account of any sales are carried forward as liability in the balance sheet

In accordance with this method, our company has consistently, year after year, taken all the costs to the WIP, and the proceeds realized on sale of TDR deducted from the cost of WIP, there was no question of recognising any profit or loss during the construction period until the project is completed.

3.2 Land Component of TDR cannot be considered de hors the total project:

The project under consideration is to develop/construct certain number of tenements and other amenity tenements on the said land to be given free of cost to MCGM, through the SRA, in lieu of the TDR in the form of DRC to be issue by the MCGM Though there are two components of the TDR, namely, the Land TDR and Construction TDR, they both form an integral and inseparable part of the project revenue, and cannot be separated and considered in isolation.

It is only a mechanism to provide the consideration to the developer, but the basic and fundamental obligation of the developer is to construct the required number of tenements and other infrastructure amenities as per the Agreement as a part of Rehabilitation Scheme of the SRA. Therefore, we submit that no profit or loss can be considered only in respect of the Land Component of TDR, when the project is still under construction.

Even the objective underlying the rehabilitation scheme is to create additional housing stock of rehabilitation tenements, which is to be utilized for rehabilitating project affected persons of vital public projects of the Government or its agencies (please refer Recital Clause (C) of the Agreement]. The arrangement between our company and the SRA is therefore for creating additional tenements for housing for project affected people. Transfer of the said land to the SRA is only a preliminary step in that direction; and not the end in it. Hence, the Land Component of the TDR cannot be separated from the main construction project for measuring any profit or loss from the same.

Further, and more importantly, as per Clause (17)(a) we are entitled to only 20% of the total Land TDR on execution of the Agreement, while as per Clause 17(b) & (c), the balance 80% is linked to construction of tenements. This clearly demonstrates that both these components are inseparable and cannot be considered in isolation independent of each other.

Therefore, any profit or loss of this project should be recognised only upon completion of the project as a whole when our company fulfils all its obligations under the Agreement.

3.3 Accounting Standard-9 (AS-9) on Revenue Recognition:

AS-9 pronounced by the Institute of Chartered Accountants of India lays down the accounting standard for recognising revenue by an enterprise. As per AS-9, revenue in case of sale is to be recognised when significant risks and rewards stand transferred between the parties. Further, the revenue can be recognised only when there is no significant uncertainty about its ultimate collectability.

Having regard to the nature of project under execution, it cannot be said that our company has transferred any significant risks of the project to the SRA when land is transferred to it while the construction of tenements, which is the basic obligation, is still in progress. It is only after handing over of the constructed tenements with occupation certificate obtained for the same, that one can say the company has transferred the associated risk and reward of the same to the SRA.

Further, the accrual of TDR in the form of DRC is also doubtful until construction is completed as stipulated. The stage-wise allotment of TDR is for the purpose of enabling the developer to raise finance required for the implementation of the project. This is provided in Clause (16) of the Agreement.

In any event, recognising revenue at every stage of allotment of TDR would mean adoption of percentage completion method; while our company follows PCM. It is legally well settled that it is the choice of the assessee to adopt a particular method of accounting; the only requirements are that (a) it should be a recognised method of accounting, and (b) the same method once adopted should be followed consistently. Thus, the method of accounting adopted by our company cannot be rejected, and a new method, i.e. percentage completion method thrust upon us by recognising profit/loss on sale of TDR receivable at different stages of the project.

3.4 Judicial Precedent supports our stand:

i. We would like to submit that our case is saucely covered by our sister concern's case of M/s. Atithi Builders And Constructors Private Limited (ITA No. 4047 & 4048/Mum/2009) for A.Y. 2004-05 and 2005-06 by Hon'ble Mumbai ITAT-A Bench (the copy of decision is enclosed) where CIT (A)'s decision is confirmed upending Project Completion Method for TDR sales. It was held as follows:

"We have heard the rival submissions and perused the relevant material on record. The only issue before us is whether TDRs should be taxed on receipt basis as has been done by the Assessing officer or in the year in which the project is completed. The assessee is admittedly following mercantile system of accounting and the project completion method has been approved by the Ld. CIT(A) as well. The Mumbai Bench of the Tribunal in Chembur Trading Corporation (supra) vide its order dated 21.01.2009 has held that when the assessee is following project completion method, sale proceeds of TDRs should be included in the year in which the project is completed. Similar view has been taken by another Bench of the Tribunal in ITO Vs. Sudhir V.Shetty in ITA No.4687/Mum/2006, copies of these two orders have been placed on record. The Ld. DR, after going through the above orders candidly admitted that the facts and circumstances of the instant appeals were mutatis mutandis similar. In view of these decisions it has become apparent that the sale of TDRs is to be accounted for in the year in which the project is completed and not when the work is going on. As the four assessment years under consideration are the years in which the project was unfinished, naturally the sale of TDRs cannot be included in the income of the assessee. However it is made clear that the sale proceeds of TDRS would be included in the total income of the assessee in the assessment year 2008-2009, subject to the availability of other deductions, as per law. The learned A.R. has stated at Bar that the assessee voluntarily included such amount in the income for the assessment year 2008-2009, assessment of which is still in progress and the assessment order has not yet been passed. We, therefore, hold that the amount of sale of TDRS in the years in question should not be taxed but the same are accounted for in the year of completion of project, that is A.Y. 2008- 09. We, therefore, uphold the impugned order on this issue."

ii. The accounting treatment given by our company is also supported by the judgment of the Appellate Tribunal in ACIT vs. Skylark Build [2011] 48 SOT 306 (Mumbai), wherein on identical facts and circumstances of the case, it was held as follows:

"8..... The assessee has been following project completion method which is an accepted method of accounting in construction business and also recommended as per accounting standard AS-7 of ICAL. Therefore, in such cases the income from the project has to be computed in the year of completion. The TDRS received are directly linked to the execution of the project and therefore, before the completion of the project the income from TDR or any other receipt inextricably linked to the project will only go to reduce costs of the project. Therefore, in our view the assessee had rightly set off TDR received against WIP. The addition made by the AO in 2006-07 on account of TDR receipt is not justified..... The cost of the buildings is claimed to be more than income from TDR, full details of which were given to the CIT(A) and therefore, even on this ground no income can be assessed in case of the assessee. In the asst. yr. 2006-07, the project was not complete and there is no dispute about this fact. Therefore, in asst. yr. 2006-07, TDR received has to be set off against WIP and cannot be assessed separately as income. We therefore, confirm order of CITYA) deleting the addition made in asst. yr. 2006-07. The position regarding asst. yr. 2007-08 is not clear. The AO has not given any finding regarding the year of completion of the project. Though the CIT(A) has held that the project was completed in asst. yr. 2007-08, he has not given any basis of such finding not any such specific plea was taken by the assessee before CIT(A). This aspect therefore requires verification. The construction of the transit buildings was only a part of the project. The actual year of completion of the project is required to be verified. We therefore, restore this aspect to the file of the AO for fresh order. In case on verification it is found that the project was completed in 2007-08, AO will compute the income from project after taking into account entire expenditure and the receipts from the beginning of the year including the TDRs as directed by CIT(A). However, in case the project is not found complete, the AO will set off TDR receipts against work in progress and no income will be assessed

on account of TDR receipts separately. We direct accordingly."

[Emphasis supplied]

5. In view of above discussion, we respectfully submit that the accounting treatment given by our company to the sales proceeds of Land TDR by deducting the same from the cost of WIP is correct and, therefore, it should be accepted. We, therefore, pray that in our case provisions of section 145(3) should not be invoked. The assessee further submitted that, without prejudice to above,

A) your goodself may note that, for Builders & Developers, who follows Project Completion Method, while computing net profit of the particular Project, financial figures of more than one year needs to be considered to arrive at profitability of such Project. Your goodself may note that we have borrowed funds of 90,00,00,000/- from IL&FS TRUST COMPANY LIMITED (ILFS) vide Debenture Subscription Agreement (copy placed as Exhibit-2). The Principal amount of Rs:30,00,00,000/- was repaid in FY 2012- 13. Balance Principal amount of Rs: 60,00,00,000/- and interest of Rs: 64,20,61,040/- was paid in F.Y. 2014-15. We enclose herewith (i) copy of Ledger A/c of ILFS(Exhibit-3): (ii) our Audited Accounts, both for FY 2011-12;2012-13;2013-14 & 2014-15.(Exhibit-4)

B) After debiting interest as referred to in para 4(A) above, we have prepared Profit/Loss A/c of the Chembur Project with Total cost incurred vis a vis Revenue generated from sales of TDR for the period 1-4-2011 to 31-03-2015 per method of accounting denied by your office and also for valuation of closing stock as on 31.03.2015(the copy as Exhibit- 5). The result of the Project period till 31.03.2015 shows net loss of Rs. 24,01, 73,617/- So taxing Income in particular year ignoring total life of the Project would give absurd results. Your goodself may note that Project is at halt due to litigation and stay by H'ble Bombay High court since 17/01/2013 (copies of two documents on litigation and stay are placed as Exhibit-6). These documents were also submitted during the course of assessment proceedings for A.Y. 2012-13.

So, in our humble view, Net Profit as stated in your letter can not be assessed as Income for F.Y.12-13 (A.Y.13-14)."

9. After considering the submissions of the assessee, Assessing Officer rejected the same and came to the conclusion that the TDR consists of

20% of the total TDR on execution of the agreement and balance 80% is linked to the construction of the tenements. Therefore, he is of the opinion that as per the tripartite agreement, the assessee has transferred the land with all its rights acquired on purchase of such land to the SRA. In return, assessee has received TDR from SRA. The cost of Land TDR is the cost of land purchased and expenses incurred on development of land. On acquisition of Land TDR, it can be said to be held as stock in trade and the cost of said TDR is the cost of land and the cost incurred on development of such land. By selling the TDR held as stock in trade, the assessee is acting just like a trader and he proceeded to treat the profit sale of TDR as income of the assessee after adjusting the cost of land and observed as under: -

"7.3 As per the multipartite agreement, the assessee got privilege and the right in construction of rehabilitation component. Such construction of buildings in the project commenced as per the direction of the SRA. In lieu of expenses incurred on construction of tenements/building of the project, the assessee will get TDR for sale in open market after commencement of work of construction of building in phased manner. In this process, the assessee is acting like a contractor and not a developer. As such, the assessee is not having any control over commencement of construction, allotment of residential tenements and the completion of whole project.

7.4 As per the multipartite agreement, the assessee has got privilege and right in construction of 9002 tenements. In the said agreement, there is a clause to construct a building by the assessee within 5 years of issue of commencement certificate. The project in question, comprising of 59 buildings for residential tenements and 3 other buildings for amenities. Since the project is so large and there is no time bound completion of the 'whole project, the method followed by the

assessee itself is questionable. During the course of assessment proceedings the assessee has never come forward with any proposal that when the said project will be completed and when it will offered the income generated from such project. The assessee by claiming that it has followed project completion method and the income will offered after the completion of project raises doubts about the intention of the assessee.

8. Since the assessee failed to determine profit of the business on sale of land TDR, the book result of the assessee are considered not reliable and accordingly stands rejected within the meaning of provisions of section 145(3) of the Act and the assessment is completed in the manner provided u/s 144 of the Act, on discussion hereinbelow.

9. While issue of the show cause regarding rejection of books of accounts, inadvertently closing stock balance has been taken at Rs. 32,95,87,461/-, representing figure as per capital work in progress shown by the assessee company instead of Rs. 50,26,28,147/-, cost of balance land TDR (421629 1192.11).

10. Considering the facts narrated above, evolution of evidences, references of facts and discussion, the correct method to determine profit on sale of land TDR is given here under:-

Opening Stock	1,78,14,63,752	Sale of TDR	2,19,52,15,898
Direct Expenses	16,31,263		
Administrative Expenses	14,91,85,667		
Financial Expenses	6,20,75,907		
Selling & Distribution Expenses	46,07,709		
Profit	69,88,79,747	Closing Stock	50,26,28,147
Total:	2,69,78,44,045	Total	2,69,78,44,045

Note on closing stock

1. Total land TDR receivable	16,86,083 sq ft.
2. Cost of land TDR as opening stock	Rs. 201,00,00,000/-
3. Cost of 1sq ft and land TDR	Rs. 1192.11/-
4. Land TDR sold during the year	10,85,664 sq ft.
5. Sale price of land TDR for the year	2,19,52,15,898/-
6. Balance land TDR with the assessee company	4,21,629 sq ft.
7. Cost of balance land TDR	Rs. 50,26,28,147/- (421629* 1192.11)

Accordingly profit on sale of land TDR is determined at Rs.69,88,78,747/- and same is treated as income of the assessee for the AY. 2013-14."

10. Further, Assessing Officer observed that assessee has debited interest expenses under the head "Financial Expenses" and adjusted in work-in-progress account as under: -

<u>Finance expenses:</u>	
Interest account	₹.62222922/-
Interest received on FD	<u>₹.1832412</u>
	<u>₹.,60390507</u>

11. He observed that interest payments were made to secured loan from bank, convertible debenture and to unsecured loans from parties not related to the assessee. Further, he observed that assessee has utilized the interest bearing fund/business fund for advancing it to its associate concern. The closing balance of advances given to associates concern is as under: -

To Director	₹.4,57,950/-
To M/s. Aristo Realtors Pvt. Ltd.,	₹. 167,36,35,000/-

12. Since the assessee utilized its business/interest bearing funds for non-business and non interest generated advance, in order to verify the assessee was show caused as to why the proportionate interest expenses

debited on interest bearing fund not utilized for business purpose should not be disallowed.

13. In response, assessee submitted that assessee has interest free funds available in the business and as per the presumption the interest free funds are applied which for such other purposes. However, Assessing Officer rejected the same by disallowing the proportionate interest as under: -

"13.3. Considering the above facts and as per statement given by the assessee, interest free fund available with the assessee and interest free advances given is worked out as under: -

A. Interest free loans received from Director & related parties:

- 1. From Director Rs. 10,68,852/-*
- 2. From related parties Rs. 41,02,36,335/-*

Interest fund available with assessee total Rs.41,13,05,187/-

B. Interest free loan/advances given to director and related parties:

- 1. To Director Rs. 4,57,950/-*
- 2. To Aristo Realtors Pvt. Ltd Rs.167,36,35,000/-*
- 3. Investment in related parties Rs. 18,00,00,000/-*
- 4. Total Rs. 1,85,40,92,950/-*

13.4 From the above working, it is seen that the assessee has given interest free loans/investment to related parties over and above interest free fund available with it.

13.5 Thus the assessee has given advances and made investments to related parties from the interest bearing fund meant for business amounting to Rs. 144,27,87,763/- so as to enhance its work in progress and thereby reduce its tax liability.

13.6 Since, the assessee has utilized its interest bearing business fund amounting to Rs. 144,27,87,763/- for interest free advance to its related parties, the interest paid on interest bearing fund taken from bank (secured) and from other parties (unsecured) amounting to Rs. 6,22,22,922/- is not allowable as business expenses as provided u/s 36(1)(iii) of the IT Act, 1961.

13.7 As regards to the reliance placed on in the case of CIT v/s Reliance Utilities & Power Ltd, the facts of the assessee case to the case relied upon are distinguishable and not identical as discussed in above paras. In the assessee case, advances given to its related parties and investment made is over and above of interest free fund available with the assessee. Hence, the decision relied upon does not help the assessee.

13.8 Considering the above facts, interest paid and debited/claimed against income amounting to Rs. 6,22,22,922/- is disallowed and added back to total income of the assessee. Since the assessee filed inaccurate particulars of income and thereby concealed particulars of income, penalty proceedings u/s 271(1)(c) is hereby initiated."

14. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions before him. After considering the detailed submissions Ld.CIT(A) allowed the appeal of the assessee, observing as under: -

"4.3 I have considered the A.O's order and the submissions made by the appellant. I find that the appellant has followed the project completion method which is a recognized method of accounting. Further, the appellant has entered into agreement with Slum Rehabilitation Authority (SRA) to construct certain numbers of residential tenements, balwadis, welfare centres, and other amenities as approved by SRA in consideration of Transfer of Development Rights (TDR). The TDRS are to be received for the land component i.e. land to be transferred by the appellant/developer to the SRA and construction TDR in respect of the construction of various buildings in the SRA project. The release of TDR in the form of Development Rights Certificates (DRCs) is to be done in stages to

enable the developer/appellant to raise finance and construct and complete the buildings/tenements within the time agreed between the SRA and Developer. Even the land TDR is to be released, as per clause 17 of the agreement dated 30.4.2011, in following manner:

- i) 20% on the execution thereof and lodging the conveyance with the registrar in respect of land agreed to be conveyed in favour of PIA i.e. Project implementing authority.*
- ii) 65% upon developer constructing 50% of the plinth of the tenements*
- iii) Balance 15% upon developer completing the construction of tenements.*

Therefore, I am inclined to agree with the appellant's contention that the sale proceeds of land TDR is part of the project undertaken and cannot be considered independently of the total project, for the computation of income for A.Y.2013-14. Reliance is placed on the following decisions, as cited by the appellant in its submissions:

- i) CIT vs. M/s Chembur Trading Corporation (Bombay High Court – IT Appeal No. 3179 of 2009)*
- ii) ACIT vs. M/s. Atithi Builders & Constructors p. Ltd. (ITA No. 4047 & 4048/MUM/2009)*

4.3.1 Further, I find that the issue raised in Grounds 1, 2 & 3 of Appeal has been decided in favour of the appellant by the CIT(A)-2, Mumbai for the A.Y. 2012-13, vide the Order dated 06.02.2017, in Appeal No.: CIT(A)-2/IT-120/2015-16. In the said order dated 06.02.2017, the decision of the jurisdictional Hon'ble Bombay High Court in CIT vs. Chembur Trading Corporation (IT Appeal No. 3179 of 2009), which upheld the decision of the Hon'ble Tribunal in CIT vs. Chembur Trading Corporation (ITA No.2593/Mum/2009), has been followed and the AO has been directed to accept the method of accounting followed by the appellant company i.e project completion method. Since the facts of the case remains the same for A.Y.2013-14 and the AO has followed the findings of AO in A.Y.2012-13, following the decision of the CIT(A) in A.Y.2012-13, it is held that the AO was not correct in rejecting the method of accounting followed by the assessee and making an assessment u/s.144 r.w.s 145(3) of the Act. It follows that the profit on sale of TDR is to be assessed in the year of completion of the project. Accordingly, the addition of Rs.69,88,79,747/-, made by the AO by treating the profit on sale of TDR as income for A.Y. 2013-14, is deleted. The AO is

directed to compute the income for A.Y.2013-14 by following the project completion method as done by the appellant. Ground No.1, 2, & 3 taken by the appellant are Allowed.

....

5.2. I have considered the AO's order and the submissions of the appellant. The AO has held that the TDR advances was in the nature of business fund and could not be treated as interest free fund mainly on the ground that if the assessee was not able to arrange the TDR, then it has to pay heavy compensation and the same was claimed as a business loss. This view of the AO is not found to be correct since the nature of TDR advance is like any other advance received in the course of business and since interest is not chargeable on such advance, it has rightly been considered as part of interest free funds available with the appellant. The appellant's claim of compensation paid on non delivery of TDRS as a business expenditure has to be considered on its own merit and the claim of such expense would not decide if the advance received is interest free or not. Therefore, I am of the considered opinion that TDR advances available with the appellant should be treated as part of the interest free funds.

5.2.1. The AO has considered the advances and investments made to related parties from interest bearing funds, meant for business, amounting to Rs.144,27,87,763/-, by excluding the TDR advances available with the appellant of Rs. 1,56,44,69,461. However, as noted above, the TDR advance has rightly been considered by the appellant as part of interest free fund and on that basis, the interest free advances and investment with related concerns/ Director are out of interest free funds. Thus, no disallowance of interest is called for u/s 36(1)(ii) of the Act, in view of the decision in the case of CIT vs. Reliance Utilities & Power Ltd. [2009] 313 ITR 340. In view of above discussion, the addition of Rs.6,22,22,922/-, made to total income on account of disallowance of interest paid is deleted. Ground no. 4 is allowed and ground no. 5 is dismissed as academic and infructuous.

15. Aggrieved revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.

69.88 Crore made by the AO on account of sale of Transferable Development Right (TDR) received on transfer of land to Slum Rehabilitation Authority (SRA), by holding that the TDR is part of the project work. in-progress; without appreciating the fact that sale of land to SRA has no nexus with the contract awarded for construction of free homes to Project Affected Persons (PAP) for which TDR is receivable on different stages of construction."

2. "Whether On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of Rs. 6.22 crore made by the AO being the proportionate interest on the interest free loan advanced out of the interest bearing loans, by holding that TDR advances are in the nature of interest free loan without appreciating the fact that the assessee has no adequate free funds available and that no evidences was furnished to prove the nexus of advance out of TDR advance."

16. At the time of hearing, Ld. DR brought to our notice findings of the Ld.CIT(A) at Page No. 17 of his order and he submitted that assessee has received two types of TDRs as per the Tripartite agreement. Assessee has transferred all the rights over the land to the SRA, accordingly, TDR received on the land has to be recognized as income of the assessee and with regard to TDR received for construction of the property, the assessee is following the of project completion method of accounting, accordingly, it can follow the procedure. Therefore, he submitted that the land TDR received by the assessee which has reached finality i.e. 20% of the TDR amount. Ld. DR submitted that Assessing Officer has treated the entire TDR as income of the assessee. However, Ld.CIT(A) has come up with the proposition that the TDR received by the assessee for land is separate

and for construction is separate which itself is not proper. Therefore, he submitted that the above finding of the Ld.CIT(A) is against the accounting principle followed by the assessee. He submitted that TDR are accrued to the assessee based on the project completion status. He strongly supported the findings of the Assessing Officer and prayed that Assessment Order may be restored.

17. With regard to, interest disallowance he brought to our notice Page No. 15 of the Assessment Order and supported the findings of the Assessing Officer. Further, he brought to our notice Page No. 19 and 22 of the Ld.CIT(A) order, to brought to our notice the interest free funds available in the balance sheet to the extent of ₹.1,97,57,74,648/- the utilization of non business purpose extent of ₹.1,88,05,85,350/-. He submitted that the balance sheet clearly shows that assessee has deployed the interest bearing funds for the non business purposes. Accordingly, he prayed that the findings given by the Assessing Officer in the Assessment Order may be restored.

18. On the other hand, Ld. AR submitted as under: -

- *The Respondent-assessee is engaged in the business of real estate development. During the course of its business, the Respondent vide Agreement for Sale dated 05.02.2010 entered into with M/s. Bombay Industrial Corporation, purchased land*

admeasuring approximately 1,56,640 sq. meters situate at CTS No. 619/A, 619/B, 620/A, 620/B, 621/A, 621/B, 621/C, 623/A1, 623/A2 and 623/B at Village Mahul, Chembur, Mumbai ("said land") for purchase price of Rs. 201 crores, with a view to develop the same under Slum Rehabilitation Scheme

- The Respondent had given a rehabilitation proposal to the Slum Rehabilitation Authority ("SRA") for development of the said land under provisions of Clause 3.11 read with Clause 3.5 & 3.9 (ii) of Appendix-IV of Development (Control & Regulations) Rule 33(10), by constructing certain number of tenements at its own cost to be handed over the Municipal Corporation of Greater Mumbai ("MCGM"), free of cost, which in turn would allot these tenements to the slum dwellers removed from hutments along water mains of MCGM. In lieu of this the Respondent would get Transferable Development Rights ("TDR") from MCGM. This rehabilitation project was declared as a Vital Public Project by the Government of Maharashtra.
- By Letter of Intent ("LOI") dated 31.3.2011 issued by SRA, the Respondent is to construct 9002 tenements and other amenities to be handed over to MCGM through SRA free of cost for which following TDR would be allotted to the Respondent:

(A)	Land TDR	Sq. Meters	Sq.Ft
	Project Affected People Tenements	89,061.89	9,58,662
	Buffer Zone Area	28,418.78	3,05,900
	Amenity Portion	39,160.23	4,21,521
		Total	16,86,083
(B)	Construction TDR		1,11,12,477
		Total	1,27,98,560

- Pursuant to the LOI dated 31.3.2011, a Multipartite Agreement ("the Agreement") was executed on 30.4.2011 between M/s. Bombay Industrial Corporation (as "Vendors"), the Respondent (as "Developers") and the SRA (as "Purchaser") and the SRA (as "Project Implementing Authority") setting out the terms and conditions for development of the said land in accordance with the LOI dated 31.3.2011. Clause (3) and (4) of the Agreement provide for consideration in the form of TDR to be allotted to the Respondent described "Rehabilitation Component" and "Land Component" as respectively for the obligations undertaken by the Respondent in implementing the rehabilitation scheme at the said land.

- *The aforesaid LOI was amended from time to time by several supplementary LOIS, the last being LOI dated 16.6.2012, which modified the no. of tenements to be constructed by the Respondent to 8,399 and also other amenity tenements as per Clause (21) thereof.*
- *Clause (7) of the Agreement provides that the Respondent shall be entitled to the benefit of TDR in the ratio of 1:1 in respect of the Land Component from the SRA, and the SRA will cause the MCGM of issue TDR in the form of Development Right Certificate ("DRC") in the name of the Respondent in stages after the said land is transferred to SRA as specified in the Agreement. Clause (17) of the Agreement provides the time when the Respondent will be entitled to the Land Component of TDR; while clause (18) of the Agreement provides the time when the Respondent will be entitled to the Rehabilitation, i.e. Construction Component of TDR. Clause (15) of the Agreement stipulates the compensation to be paid by the Respondent to the SRA in case of default committed by the Respondent in the construction work.*
- *The Respondent received the following TDR in respect of the Land Component:*

<u>Date of Release</u>	<u>Date of Receipt</u>	<u>Nature of TDR</u>	<u>TDR in Sq. Meters</u>	<u>TDR in Sq. Ft.</u>
18.5.2011	16.9.2011	PAP Tenements-part	17,810.00	1,91,706.84
18.6.2012	16.7.2012	Buffer Zone Area	28,418.78	3,05,899.75
26.6.2012	27.7.2012	PAP Tenements-Balance	71,251.89	7,66,955.34
		Total	1,17,480.67	12,64,561.93

- *The Respondent has been consistently following project completion method for recognizing revenue from this project. Consequently, all the expenses incurred on this project have been accumulated under the head "Work-in-Progress" till the completion thereof. The sales proceeds realized on sale of TDR during the construction period has been reduced from the cost of WIP, and the balance cost carried forward from year to year.*
- *It is important to state that after 27.07.2012, the Respondent has not received any TDR. The said land being situated near HPCL and BPCL Refineries, they have taken serious objections to this project. Further, Public Interest Litigation involving this project is pending before the Hon'ble Bombay High Court. HPCL filed W.P. No.*

2107 of 2013 before Hon'ble Bombay High Court against the SRA, Respondent-assessee and Ors., against sanction of development of this project. Vide Order dated 30.03.2016 passed by Hon'ble High Court this Writ Petition has been clubbed with Notice of Motion No. 19 of 2013 filed by Respondent-assessee in PIL. No. 140 of 2006 pending before the High Court. All these matters are pending. In view of these facts, the said project is couched in significant uncertainties even at present.

- In the immediately preceding year, i.e. A.Y.2012-13, the then Ld. AO had rejected the method of accounting employed by the Respondent and after invoking Section 145(3) of the Act, determined business loss of Rs. 38,01,13,034/- as against 'Nil' total income declared by the Respondent. The Respondent had carried the matter in appeal before the Ld. CIT(A)-2, Mumbai, who vide the Order dated 06.02.2017, upheld the Respondent's stand. No further appeal was filed against this order of CIT(A) before the Hon'ble ITAT.

Submissions:

1. Project Completion Method (PCM) is a recognized method of accounting:

1.1 PCM is a recognized and scientific method that has stood the test of judicial scrutiny in a number of cases, reference to which has been made in the written submissions filed before the Ld. CIT(A), a copy of which is placed at pp.187-204 of Paper Book (PB) filed by Respondent. The assessee has choice of the method of accounting to be followed, which method once adopted, should be consistently followed year after year, which the Respondent has done.

1.2 Assessing Officer can invoke section 145(3) if he is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting referred to in sub-section (1) or accounting standards notified under sub-section (2), have not been regularly followed by the assessee. The Ld. AO has not given any reason to discredit the accounts maintained by the Respondent, which are duly audited by a firm of Chartered Accountants under the provisions of the Companies Act, 1956. Further, no reasons are adduced to show that generally accepted accounting principle were not adopted by the Respondent in preparation of its financial statements. The Ld. AO's only case is that the Respondent ought to have recognized revenue from sale of TDR even though the project did not take off.

1.3 In Respondent's case, PCM is the most appropriate method of accounting because the approach adopted by the Ld. AO has resulted

in distorted profit/loss from year-to-year as under, even though the project has not yet taken off due to the pending litigation:

A.Y.	Income declared by the Respondent	Income computed by the Ld.AO Rs.	Assessment Order u/s.145(3) r.w.s 144 dated
2012-13	NIL	(38,01,13,034)	31.03.2015
2013-14	NIL	76,11,02,669	30.03.2016
2014-15	NIL	(73,89,32,572)	29.12.2016

2. Land Component of TDR cannot be considered de hors the total project:

2.1 *The Ld. AO erred in considering sale of Land TDR as an independent stream of income detached from the above project. Though there are two components of the TDR, namely, the Land TDR and Construction TDR, they both form an integral and inseparable part of the project revenue, which cannot be separated and considered in isolation. Clause (16) of the Agreement (p.87 of PB) provides that the release of TDR in the form of DRC in phases is to facilitate the developer to raise finance and construct tenements within the agreed time limit. The basic and fundamental obligation of the developer is to construct the required number of tenements and other infrastructure amenities as per the Agreement as a part of Rehabilitation Scheme of the SRA. Therefore, revenue from sale of Land TDR can be assessed only upon completion of the project, and not when the project is not yet taken off due to the pending litigation.*

2.2 *The Agreement dated 30.04.2021 (pp. 78-115 of PB) read as a whole, would show that it was a **composite agreement** for transfer of the land and construction of tenements/infrastructure facilities on the land. Recital 'B', 'C', 'D' and Clause (3), (7), (8) of the Agreement shows this fact. Clause (9)(ii) of the Agreement reads as under-*

"TDR in respect of the said Land Component which is declared to be part of the approved SRA project in this Agreement;"

Clause (12) of the Agreement reads as under-

"The SRA confirms that this scheme is for erecting of housing stock of rehabilitation tenements for rehabilitation project affected persons affected by vital public purpose project undertaken by Government and/or its agencies. Upon the Developer obtaining the occupation certificate from the SRA after completing all necessary on site infrastructures such as water supply line, electricity supply and drainage line, etc., the Developer shall be entitled to the balance Land TDR....."

Clause (17) of the Agreement provides the time when TDR for the Land Component will be recommended by the SRA in favour of the Respondent, and it is clearly linked to progress in the construction of tenements, and the final 15% TDR will be released only upon completion of construction of tenements and the occupation certificate for the same is issued by the SRA.

Recital T' and 'J' of the Conveyance Deed dated 30.4.2011 (pp.71 & 72 of PB) also stipulates that Respondent has agreed to undertake project of construction of tenements comprising certain built-up area sanctioned by SRA in phase in lieu of TDR in respect of the said land and conveyance is made in advance as required by SRA. Thus, conveying this land in favour of SRA was only because such advance conveyance was required by SRA; but it is a part and parcel of the rehabilitation project of construction of tenements for settlement of PAP. Further, the main body of the Conveyance Deed at p.5 onwards (pp.72 -74 of PB) stipulates that the said land has been conveyed in favour of SRA in the consideration of the SRA agreeing and undertaking with Respondent to provide or cause to be provided TDR in the form of DRC in respect of the said land as set out in the Agreement, and that the terms and conditions thereof are binding and form part of this Conveyance. In other words, the transfer of the said land was a part of the overall rehabilitation project undertaken by Respondent and could not be considered in isolation on standalone basis. It is further provided that the said Conveyance is conditional upon and subject to the obligation on the part of the SRA as stipulated in the Agreement and that Respondent is in possession of the said land for and on behalf of the SRA with a right to carry out construction of the tenements and develop the same in accordance with the terms of the Agreement and that the assessee has a special lien on the said land which will not be disturbed, affected and prejudiced by the SRA unless the term of the Agreement are complied with, observed and performed and the SRA shall not convey this land to anybody unless and

until SRA release all the benefit of TDR under the Agreement (p.74 of PB).

2.3 All the above provisions, stipulations and conditions clearly establish the inextricable, inseparable and organic nexus between the transfer of the said land and construction of tenements. It would be erroneous to consider transfer of the said land as a separate, independent and standalone transaction between Respondent and SRA, de hors the overall composite project undertaken by Respondent. Transfer of the said land to the SRA is only a preliminary step in that direction; and not the end in it. Clause (2) of the Agreement for Sale dated 5.2.2010 [p.139 of PB] entered into by Respondent with Bombay Industrial Corporation shows its clear intention to develop the said land under a scheme of SRA etc. It was never the intention of any of the parties to the Agreement to consider the land transfer as an independent transaction; it is always considered and intended as an integral part of the overall rehabilitation project.

2.4 Further, the Ld. AO also erred in not appreciating that until the end of the year under appeal, Respondent did not receive total TDR of Land Component. The Ld. AO himself has admitted in para (5.3) of the assessment order that till date the Respondent got 75% of the total Land Component TDR.

2.5 Respondent relies upon decision in **I.T.O. vs. Chembur Trading Corporation (ITA No. 2593/Mum/2006)** [pl refer **pp. 9-10** of Compilation of Case Laws), wherein the agreement was a composite agreement for handing over land for Expressway and also for construction of tenements and shops by the assessee on land belonging to it. The entire land was acquired in phases and also consideration in the form of TDR was received in phases. Consideration was received in kind. The funds received on sale of TDR were utilised for construction of tenements and shops. Hon'ble Tribunal held that it was clearly one project and not two projects as they have been treated by the AO. It was held that the AO cannot adopt two methods of accounting in one project to determine the income of the assessee. It observed that in case of construction activity there are two recognised methods of accounting viz. (1) Project Completion Method and (2) Percentage Completion Method. It is stated that the assessee has a right or a privilege to adopt any one of the methods of accounting for determining its profit. In this case, the assessee had been following the project completion method to

determine the profits of a project for last so many years, but during the year under consideration the AO had dissected the project in two segments and for one segment he applied project completion method and for the remaining segment, he determined the profit on sale of TDR. The method of accounting adopted by the AO was held to be neither prevalent nor recognised by the ICA! or under any law. Hon'ble Tribunal held that the assessee had rightly computed its profit on the basis of the project completion method. Accordingly, it upheld the order of CIT(A) and dismissed the appeal filed by the Revenue.

*Hon'ble Bombay High Court confirmed the above decision by dismissing the Revenue's appeal **CIT vs. M/s. Chembur Trading Corporation (Bombay High Court - IT Appeal No.3179 of 2009)** [pl refer p. 1 of Compilation of Case Laws]*

Reliance is also placed on the following judicial rulings:

- a) ACIT vs. M/s. Atithi Builders & Constructors P. Ltd. (ITA No. 4047 & 4048/Mum/2009) [pl. refer pp. 14-22 of Compilation of Case Laws]*
- b) CIT vs. Shri. Sudhir V. Shetty (Bombay High Court - IT Appeal No.6159, 6160 & 6161 of 2010) [pl refer pp.2-3 of Compilation of Case Laws]*
- c) ACIT vs. M/s. Videocon Atithi Shelters Pvt. Ltd. (ITA No. 3496-3499/Mum/2009)[pl refer pp.11-13 of Compilation of Case Laws]*
- d) ACIT vs. Skylark Build [2011] 48 SOT 306 (Mumbai)[pl refer pp.4-8 of Compilation of Case Laws]*
- e) M/s. Pushpa Construction Co. vs. ITO (ITA No.193/Mum/2010) [pl refer pp.23-25 of Compilation of Case Laws]*

3. Impact of Accounting Standard-9 (AS-9) on Revenue Recognition:

AS-9 pronounced by the Institute of Chartered Accountants of India lays down the accounting standard for recognising revenue by an enterprise. As per AS-9, revenue is to be recognised when significant risks and rewards stand transferred between the parties. Further, the revenue can be recognised only when there is no significant uncertainty about its ultimate collectability. Having regard to the nature of the project under execution, it cannot be said that Respondent has transferred any

significant risks of the project to SRA when land is transferred to it, while construction of tenements, which is the basic obligation, is not even started. On handing over of constructed tenements with occupation certificate one can say Respondent has transferred the associated risk and reward to SRA.

Further, accrual of TDR is also doubtful until construction is completed as stipulated. The stage-wise allotment of TDR is for purpose of enabling the developer to raise finance required for the implementation of the project. This is provided in Clause (16) of the Agreement.

In view of pending litigation before Hon'ble Bombay High Court, execution of this project is standstill, and therefore, it is now couched with very significant risks as to its ultimate completion and realization of revenue, though Respondent incurred costs (including interest on borrowings) year after year.

Therefore, it is submitted that in view of AS-9 also, there is no case for recognition of any revenue from this project at this stage.

AY 2013-14: Ground No.2:

Submissions:

The details of interest-bearing funds and interest-free funds available to Respondent and also its utilization for business purposes and non-business purposes are summarised as under:

Available Funds	Amount (Rs.)	Utilization of Funds	Amount (Rs.)
<u>I) Interest Free Funds</u>		<u>I) Non- Business Purpose</u>	
i) From Directors	10,68,852	i) To Directors	4,57,950
ii) From related parties	41,02,36,335	ii) To related parties	167,36,35,000
iii) TDR Advances	1,56,44,69,461	iii) TDR Advances	20,64,92,400
Total (I)	1,97,57,74,648	Total (I)	1,88,05,85,350
<u>II) Interest Bearing Funds</u>		<u>(II) Business Purpose</u>	
i) From non- related parties (Secured)	1,03,78,20,098	i) Work in Progress	32,95,87,462
ii) From non- related parties (unsecured)	31,38,04,913	ii) Sundry Debtors	31,54,70,092
		iii) Fixed Assets	86,25,65,386
		iv) Deposits	2,37,80,484
Total (II)	1,35,16,25,011	Total (II)	1,53,14,03,424
Total Funds (I) + (II)	3,32,73,99,659	Total Funds (I) +(II)	3,41,19,88,774

*It is submitted that where assessee has both, interest-free as well as interest-bearing funds, which are mixed, then, there is a legal presumption that the assessee has utilised interest-free funds for the purpose of financing non-business purposes. Reliance is placed on decision of Hon'ble Supreme Court in **CIT vs. Reliance Industries Ltd. [2019] 410 ITR 466** and Hon'ble Jurisdictional High Court in **CIT vs. Reliance Utilities & Power Ltd. [2009] 313 ITR 340**.*

It is further submitted that merely because the TDR Advances were received in the course of carrying on business cannot convert them into interest-bearing, when factually, they are not so. The claim of compensation that would be payable on non-delivery of TDR as business expenditure is to be considered on its own merits and the claim of such expenses can alter the fact that the TDR advances are interest free. Thus, TDR advances received are fundamentally interest-free funds available to the Respondent about which there can be no dispute. Reliance is placed on the order of Ld. CIT(A) on this issue.

In view of above, the Ld. CIT(A) had correctly, based on the facts and also in law, deleted the disallowance of interest paid of Rs.6,22,22,922/-.

*Without prejudice to the above, the Respondent further submits that the Ld. AO erred in adding the sum of Rs.6,22,22,922/- being the amount of disallowance of interest paid. The Ld. AO ought to have noted that the Respondent did not claim any deduction for the interest paid during the year under appeal, and the same was added to the WIP of the project. If at all, the disallowance was to be made, then, the same could be deducted from the WIP that is carried forward to the subsequent year. Reliance for this proposition is placed on the decision in **Savala Associates vs. ITO [2010] 35 SOT 148 (Mum-Trib)**.*

Prayer:

The Respondent prays Your Honours to kindly confirm the orders of Ld. CIT(A) and dismiss both the Grounds of Appeal raised by the Appellant-revenue for AY 2013- 14 and sole Ground of Appeal raised by the Appellant-revenue for AY 2014-15."

19. Considered the rival submissions and material placed on record, we observe that assessee has entered into an agreement to develop the slum rehabilitation scheme as per which assessee has acquired the land from M/s. Bombay Industrial Corporation and entered into multipartite agreement with SRA and different tenements. No doubt assessee has transferred the land to SRA and surrendered all the rights over the property. However, assessee had a basic obligation to construct the building and receive TDR on the portion of land on which the construction is completed in the ratio of 1:1 on TDR and construction TDR in the ratio of 1:1.33.

20. It is fact on record that the construction agreement received by the assessee is to construct the building as per the agreed terms only when assessee completes the constructions assessee gets the rights of TDR, that means assessee gets the TDR rights only when it completes the construction.

21. Further, we observed that assessee is following the project completion method which is recognized method of accounting. We observe that Ld.CIT(A) has extracted the clause (17) of the agreement dated 30.04.2011 as under: -

- i) 20% on the execution thereof and lodging the conveyance with the registrar in respect of land agreed to be conveyed in favour of PIA i.e. Project implementing authority.*
- ii) 65% upon developer constructing 50% of the plinth of the tenements*
- iii) Balance 15% upon developer completing the construction of tenements.*

22. By reference to the above Ld.CIT(A) came to the conclusion that the sale proceeds of land TDR is part of the project undertaken and cannot be treated independently of the total project for the computation of the income by relying on the decision of the CIT *v.* Chembur Trading Corporation (I.T. Appeal No. 3179 of 2009). Accordingly, he gave a direction to the Assessing Officer to accept the method of accounting followed by the assessee.

23. We observe that Hon'ble Jurisdictional High Court in the case of CIT *v.* Chembur Trading Corporation (supra) has held that in this case method of accounting followed by the assessee is completion of project and has offered the income received on sale of TDR in the subsequent assessment year and the same has been duly assessed. In these circumstances sustaining the addition in the assessment year in question does not arise.

24. Further, we observe that the Coordinate Bench decided the issue in ITO v. Chembur Trading Corporation in ITA.No. 2593/Mum/2006 dated 21.01.2009 for the A.Y. 2000-01 and held as under: -

"The Tribunal noted that the agreement was a composite agreement for handing over land for Expressway and also for construction of tenements and shops by the assessee on land belonging to it. The Tribunal also noted that the entire land was acquired in phases and also consideration in the form of TDR was received in phases. Consideration was received in kind. The funds received on sale of TDR were utilised for construction of tenements and shops. The Tribunal held that it was clearly one project and not two projects as they have been treated by the AO. The Tribunal held that the AO cannot adopt two methods of accounting in one project to determine the income of the assessee. It observed that in case of construction activity there are two recognised methods of accounting viz. (1) Project Completion Method and (2) Percentage Completion Method. The Tribunal stated that the assessee has a right or a privilege to adopt any one of the methods of accounting for determining its profit. In the present case, the assessee had been following the project completion method to determine the profits of a project for last so many years, but, during the year under consideration the AO had dissected the project in two segments and for one segment he applied project completion method and for the remaining segment, he determined the profit on sale of TDR. The method of accounting adopted by the AO was held to be neither prevalent nor recognised by the ICAI or under any law. The Tribunal held that the assessee had rightly computed its profit on the basis of the project completion method. Accordingly, it upheld the order of CIT(A) and dismissed the appeal filed by the Revenue."

25. Respectfully following the above said decisions, we are inclined to accept the findings of the Ld.CIT(A) and accordingly, grounds raised by the revenue is dismissed.

26. With regard to Ground No. 2, we observe that assessee has utilized the funds to its director and to its related concerns and we observe from the balance sheet submitted by the assessee that assessee has both interest free funds of ₹.1,97,57,74,648/- and interest bearing funds of ₹.1,35,16,25,011/-. From the submissions we observe that assessee had interest bearing funds of ₹.1,35,16,25,011/- and assessee has applied for business purpose in the work-in-progress, sundry debtors, fixed assets and other deposits totaling to ₹.1,53,14,03,424/-. Therefore, assessee has utilized the total interest bearing funds only for the purpose of business purposes to the extent of ₹.1,53,14,03,424/- which is more than interest bearing funds borrowed by the assessee. When there is a mixed funds available to the assessee, there is legal presumption that the assessee has utilized the interest free funds for the purpose of financing non business activities as held in the case of CIT *v.* Reliance Industries Ltd., [2019] 410 ITR 466. Therefore, we are inclined to accept the findings of the Ld.CIT(A) in deleting the proposed addition of notional interest. Accordingly, the ground raised by the revenue is dismissed.

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

ITA.No. 5181/MUM/2019 (A.Y. 2014-15)

28. Coming to the appeal relating to A.Y. 2014-15, since facts in this case are mutatis mutandis, therefore the decision taken in A.Y.2013-14 is applicable to this Assessment Year also. Accordingly, this appeal is dismissed.

29. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 06th February, 2023

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 06/02/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR 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