

**/IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G”, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.2311/Mum/2014
(Assessment year 2010-11)**

The Deputy Commissioner of Income-tax (OSD-1), Central Range 7 Room No.409, 4 th Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020	vs	M/s Simplex Realty Limited Keshavrao Khadye Marg Snt Gadge Maharaj Chowk Mahalaxmi (E), Mumbai-400 011 PAN : AA ACT4056E
APPELLANT		RESPONDENT

**I.T.A. No.2554/Mum/2014
(Assessment year 2010-11)**

M/s Simplex Realty Limited Keshavrao Khadye Marg Snt Gadge Maharaj Chowk Mahalaxmi (E), Mumbai-400 011 PAN : AA ACT4056E	vs	Dy. Commissioner of Income Tax (OSD-1) CR-7, Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri J.D. Mistry, Sr.Advocte & Satish Modi
Department represented by	Dr. Kishore Dhule – CIT DR

Date of hearing	25-07-2023
Date of pronouncement	28-07-2023

ORDER**PER : MS PADMAVATHY S. (AM)**

These cross appeals by the assessee and the revenue are against the order of the Commissioner of Income-tax (Appeals)-40, Mumbai (in short, 'the CIT(A)') dated 26/02/2024 for A.Y. 2010-11.

2. The assessee is a widely held public limited company which was earlier owning a textile mill land near Byculla which was converted into residential house and the assessee entered into real estate business. The assessee entered into an agreement with Godrej Properties Limited (GPL) dated 24/09/2004 for the development of a residential project in which there was an arrangement to share the surplus from the project at an agreed percentage. The project comprised of 5 towers having approximately saleable area of 6,50,000 sq.ft. The assessee followed percentage completion method in which the income was offered based on the flats sold during the year and the cost of acquisition against the same was based on the estimated cost as agreed with GPL. There was a substantial delay in the project on account of various changes in the development control rules and litigation relating to the development of mill land which led to increase in the cost of construction. GPL from time to time has been issuing letters regarding the revised cost of construction to the assessee based on which, the assessee has been computing the profit for the relevant assessment years.

3. For the assessment year 2010-11, the assessee filed the return of income declaring an income of Rs.25,73,24,918/- on 30/09/2010. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the

year under consideration, the assessee has shown revenue arising from development of land at Rs.20,98,24,657/- in the P&L Account as per the below working:-

	SRL	GPL	TOTAL
Tower I	178,091,589	63,342,506	241,434,095
Tower II	153,112,063	55,757,366	208,869,429
Tower III	154,213,675	58,730,697	212,944,372
Tower IV	318,812,184	136,633,793	455,445,977
Tower V	973,648,874	330,894,816	1,304,543,690

	Area	Sale Value	Cost	Surplus
Tower I	130802	652,152,375	410,718,280	241,434,095
Tower II	118911	82,249,969	373,380,540	208,869,429
Tower III	120216	590,422,612	377,478,240	212,944,372
Tower IV	126212	851,751,657	396,305,680	455,445,977
Tower V	123022	1,878,365,770	570,822,080	1,304,543,690
	619163	4,551,942,382	2,128,704,820	2,423,237,562

CLUB DEVELOPMNET, PARKING AND TRANSFER FEES

	SRL	GPL	TOTAL
Tower I	35,427,205	13,034,795	48,362,000
Tower II	31,723,515	11,676,485	43,400,000
Tower III	33,507,363	12,732,137	46,239,500
Tower IV	34,195,000	14,655,000	48,850,000
Tower V	61,250,443	20,999,557	82,250,000

TOTAL SHARE

	SRL	GPL	TOTAL
Tower I	213,518,794	76,377,301	289,896,095
Tower II	184,835,578	67,433,851	2522,269,429
Tower III	187,721,038	71,462,834	259,183,872
Tower IV	353,007,184	151,288,793	504,295,977
Tower V	1,034,899,317	351,894,373	1,386,793,690

Tower I to II 100%

Tower III to IV 100%

Tower V	100%
Tower I to II	398,354,372
Tower III to IV	540,728,222
Tower V	1,034,899,317
Profit accrued to SRL	1,973,981,910
Less : Already booked in F.Y. 07-08	566,482,068

	<u>1,407,499,842</u>
Less : Already booked in F.Y. 08-09	1,197,675,185
Balance in F.Y. 09-10	209,824,657

4. During the year, the assessee has shown saleable area of 6,19,163 sq.ft. and the cost of construction was shown at Rs.2,12,87,04,820/- which works out to Rs.3,140 per sq.ft. for Tower I to IV and in respect of Tower V works out to Rs.4,640/-. The Assessing Officer, during the course of assessment proceedings noticed that as per the agreement dated 24/09/2004 entered into with GPL, the cost of construction for Towers I to IV was estimated at Rs.2,315/- per sq.ft. and in respect of Tower V at Rs.3,815/-. The Assessing Officer further noticed that in A.Y. 2009-10, there was an addition made in respect of excess claim of cost of construction over and above Rs.2,315/-. The Assessing Officer called on the assessee to explain why the excess claim of expenses should not be disallowed similar to the addition made in A.Y. 2009-10 for the year under consideration also. The assessee submitted before the Assessing Officer that these rates per sq.ft. have been taken based on the budgeted cost revised by GPL which have been passed on vide letters dated 24/07/2006, 24/08/2007, 01/12/2008 and 10/03/2012. The assessee further submitted that the claim made is based on estimate of cost to be

agreed in the cost of construction and requested the Assessing Officer to make a pointed enquiry with GPL to examine whether GPL have made claims for higher cost on the assessee or not. The assessee also submitted that based on further negotiations, the final cost reached was Rs.4,094/- sq.ft. The Assessing Officer issued a notice under section 133(6) to GPL and GPL in their reply stated that they have accounted on estimate basis of Rs.3,166/- per sq.ft. for the entire project, i.e. Towers I o V. The Assessing Officer, after considering the reply of GPL and the submissions of the assessee made an addition of Rs.10,32,70,436/- being assessee's share in the differential cost. Besides the said addition the Assessing Officer also made the following additions -

- i. Difference in revenue booked by the assessee and GPL - Rs.1,85,70,000/-
- ii. Long term capital gain on conversion of land into stock in trade - Rs.1,05,13,749/-
- iii. Disallowance of interest expenditure as development cost claimed as development cost - Rs.48,72,474/-
- iv. Disallowance of depreciation on building - Rs.2,54,776/-
- v. Disallowance of foreign travel expenses - Rs.8,86,299/-

5. Aggrieved, assessee filed appeal before the CIT(A). The CIT(A) confirmed the addition of Rs.10,32,70,436/- by considering the CIT(A)'s order for A.Y. 2009-10 where it was observed that the cost may be claimed in the year in which it actually got crystallized. The CIT(A), with regard to the addition made towards shortage of revenue, partially allowed the appeal to the extent of Rs.49,25,630/-. The CIT(A), deleted the addition made with respect to long term capital gain in respect of transfer of leasehold land by relying on the decision of the CIT(A) for the assessment year 2009-10. The CIT(A) also deleted the disallowance of interest.

6. Before the CIT(A), the assessee raised an additional ground, which reads as under:-

“Without prejudice, on the facts and in the circumstances of the case and in law the Ld.Assessing Officer erred in not allowing the additional cost of Tower 1 to 5 o Rs.23,20,35,862 disallowed in A.Y. 2009-10, claimed during assessment proceedings vide letter dated 04.03.2013 based on the letter dated 26-2-2013 received from Godrej Properties Ltd.”

7. The CIT(A) forwarded the additional ground to the Assessing Officer for his comments. The Assessing Officer, vide letter dated 18/09/2013 submitted the following reply:-

"On perusal of records, it is observed that the assessee has made a claim for allowing of additional cost of Rs.23,20,35,862/- vide letter dated 04.03.20/3 during the course of assessment proceedings for A.Y. 2010-11. In the said letter the assessee has mentioned that based on the reply of Godrej Properties Ltd. (GPL vide letter dated 26.02.2013, the cost pertaining to A.Y. 2009-10 which was disallowed during the said year should be allowed in the current year i.e. A.Y. 2010-11. It is also seen that the assessment for A.Y. 2009-10 was completed on the basis of the estimated cost of Rs.2,315/- per sq. ft. for Tower 1 to IV and Rs.3,815/- for Tower V. These costs were allowed on' proportionate basis i.e. proportionate fo the areas sold. In response to the enquiry u/s 133(6)' during the proceedings for A.Y. 2009-10, Godrej Properties Ltd. confirmed cost only at Rs.2,315/- and Rs.3S15/- for Towers I to IV and Tower V respectively. Hence only these costs were allowed and balance cost claimed was added back to the assessee's income. The Learned CIT(Appeals) had also upheld the above additions against . which the assessee is in appeal lo the Hon'ble IT AT. It seems that the assessee is now taking the additional around to claim the cost disallowed during. A. Y. 2009-10 fo the extent that it is confirmed by GPL. As per letter dated 26.02.2013 Godrej Properties Ltd has mentioned the average cost of construction for Tower I to V at Rs.3,166/- per sq. ft. The assessee has clarified, in their letter dated 04.03.2013 that if this average cost is broken up between Tower I to IV and Tower V, it would work out ; to Rs. 2, 868/- and Rs. 4, 368/- (Rs.2,868/- + Rs. 1,500/-) respectively. As per o the calculation submitted by the assessee along with the said letter, the proportionate cost being the difference between the cost allowed during A.Y. 2009-10 at Rs.2,315/- and Rs.3,815/- as compared with the cost confirmed by Godrej Properties Ltd at Rs.2,868/- and Rs.4,368/- will work out to Rs.553/- per sq. ft. The total area sold upto A.Y.

2009-10 is 6,00,288 sq. ft on which the total cost difference works out to Rs. 33, 19,59,264/- for which the share of the assessee at 69.90% works out to Rs.23,20,35,862/-.

The disallowance of this expenditure has been contested by the assessee before the Hon'ble ITAT. Allowing expenditure during this year may result into the assessee getting the double deduction in both years in case the appeal for A.Y. 2009- 10 is decided in favour of the assessee. Hence if it is submitted that the same should not be allowed during A.Y. 2010-11.

In view of the above discussion, it is requested not to admit additional grounds of appeal. The decision may be taken on merits."

8. The CIT(A), after taking into consideration, the remand report of the Assessing Officer and the further submissions made by the assessee in this regard allowed the claim of the assessee of additional cost of Rs.23,20,35,862/- after taking an undertaking from the Managing Director of the assessee that in case the appeal for AY 2009-10 is allowed in favour of the assessee the revenue can disallow the said amount in 2010-11 through rectification under section 154. The relevant observations of the CIT(A) is as under:-

"37. In any case the appellant company has given an undertaking through its managing director that in case Hon'ble ITAT grants than benefits in A.Y. 2009-10, in respect of this expenditure, than the same may be withdraw in the A.Y under consideration, u/s 154 of the Act. . In view of the above undertaking, I direct the Ld. AO to allow the claim of additional cost of Rs.23,20,35,862/- during the year under consideration with a rider that if the Hon'ble ITAT allows appellant's claim in A.Y. 2009-10, in future , then the relief allowed in this year (A.Y. 2010-11) , may be withdrawn , for which an undertaking has already been given by the Chairman and Managing Director of the appellant company . Accordingly, this ground of appeal is allowed."

9. The assessee and the revenue are in appeal before the Tribunal against the above order of the CIT(A).

ITA 2554/Mum/2014 (Assessee's appeal)

10. The assessee raised the following ground of appeal -

“1. Profits on sale of Flats in Planet Godrei -? 10,32,70,4367-

On the facts and in the circumstances of the case and in law, the Hon,ble CIT (Appeals)-40 erred in upholding the disallowance of Rs. 10,32,70,436/- in respect of additional cost of Tower I to V on the ground that the claim of additional cost was not settled among the parties”

11. The Ld.AR submitted that GPL has been issuing letters from time to time revising the cost of construction and for the year under consideration the cost of construction has been claimed by the assessee based on the letter issued by GPL. The Ld.AR in this regard drew our attention to the various costs of construction letters issued by GPL and the cost claimed by the assessee which is tabulated as under:-

Particulars	Cost per Sq Ft as per Agreement with GPL and subsequent letter for additional cost vide letter dated 24-07-2006 from GPL	Cost per Sq Ft as per letter dated 24-08-2007 from GPL	Cost per Sq Ft as per letter dated 01-12-2008 from GPL	Cost per Sq Ft as per letter dated 10-03-2012 from GPL	Cost per Sq Ft as per information given by GPL u/s 133(6) as per letter dated 26-02-2013	Final Cost as per agreement dated 31/03/2014	Claimed by appellant in A.Y. 2010-2011
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Tower I to IV	2315	2671	3299	3794	2868	N.A.	3140
Tower V	3815	4171	4799	5294	4368	N.A.	4640
Average cost for Project	2589	2971	3599	4094	3166	4118	3438

12. The Ld.AR submitted that from the table above, GPL vide letter dated 01/12/2008 had given the average cost of the project to be Rs.3,599/- and the assessee in the assessment year 2010-11 had claimed the cost of construction at Rs.3,438/- which is lower than the cost as given by GPL vide letter dated 01/12/2008/-. The Ld.AR also drew our attention to the supplementary development agreement dated 31/03/2014 entered into between the assessee and GPL whereby the final rate was agreed at Rs.4,118/- for Tower I to V as per clauses 1 & 2 of the agreement. Therefore, the Ld.AR submitted that the cost of construction considered based on GPL's submission i.e.Rs.3166 cannot alone be taken as the basis since GPL itself has been issuing letters quoting higher cost of construction. The ld AR further submitted that under percentage completion method, which the assessee is following the figures of cost of the project would change from year to year as compared to the original estimates and that the cost claimed in the subsequent years would also include the incremental per sq.ft cost in respect of units sold in the earlier years. The ld AR accordingly prayed that the cost as claimed by the assessee during the year under consideration should be allowed as a deduction.

13. The Ld.DR submitted that since the assessee is being offering only the incremental revenue under percentage completion method, whether the difference is cost of AY 2009-10 which is allowed by the CIT(A) includes the similar difference claimed in AY 2010-11 needs to be verified. The ld DR further relied on the order of the lower authority.

14. We heard the parties and perused the material on record. We notice that as per the original agreement entered into between the assessee and GPL, the cost of construction was agreed at Rs.2,315/- per sq.ft. It is further noticed that GPL has been issuing letters revising the estimated cost of construction per sq.ft. which is evidenced from the various costs communicated through letters as tabulated in the earlier part of this order. The Assessing Officer while making the addition has relied on the response received to the notice under section 133(6) of the Act where GPL has informed that they have accounted an estimated cost of Rs.3,166/- for the entire project. However, it is noticed that GPL vide letter dated 01/12/2008 has communicated a rate of Rs.3,599/- per sq.ft. It is also noticed that the average cost per sq.ft. claimed by the assessee for the assessment year 2010-11 works out to Rs.3,438/-. We, therefore, see merit in the submissions of the Ld.AR that the cost of construction as given by GPL keeps changing from time to time and that what the assessee for the year under consideration has taken as cost is less than the average rate communicated vide letter dated 01/12/2008 submitted by GPL. It is also noticed that the final cost of construction agreed between the assessee and GPL as per the supplementary agreement dated 31.03.2014 as per the agreement is Rs.4,118/-. Considering these facts, we see no infirmity in the cost of construction claimed by the assessee for the year under consideration at Rs.,3438/- per sq.ft. which is below the average rate communicated by GPL and the final rate agreed with GPL. Accordingly, we hold that the disallowance of Rs.10,32,70,436/- be deleted. The appeal of the assessee is allowed.

ITA 2311/Mum/2014 (Revenue's appeal)

15. The revenue raised the following grounds of appeal -

"1. "On the facts and circumstances of the case and in law, the Learned CIT(A) erred in deleting the addition of Rs. 1,05,13,749/- as long-term capital gain in respect of transfer of leasehold land."

2. "On the facts and circumstances of the case and in law, the Learned CIT(A) erred in deleting the addition of Rs. 48,72,474/- by disallowing interest in respect of loan of Rs. 36 Crores raised for repayment of loan to banks, etc and payment of VRS amount to the retrenched workers, etc."

3. "On the facts and in the circumstances of the case and in law, the Id CIT(A) erred in allowing the additional cost of Tower 1 to 5 of Rs. 23,20,35,862/- disallowed in A.Y. 2009-10, claimed during the assessment proceedings vide letter dated 04.03.2013 based on the letter dated 26.02.2013 received from Godrej Properties Ltd."

16. In the assessment year 2009-10, the Assessing Officer made a disallowance to the extent of Rs.23,20,35,862/- being the difference between the cost of construction claimed by the assessee in the return of income and the cost of construction as has been originally agreed with GPL. The CIT(A) upheld the above addition in AY 2009-10 against which the assessee went in further appeal before the Tribunal. The assessee during the appellate proceedings for AY 2010-11 raised the additional ground making the claim for the said amount stating that the amount since disallowed in AY 2009-10 should be allowed in AY 2010-11 and the CIT(A) after admitting the additional ground, called for a remand report from the Assessing Officer. It is to be noted that at the time of passing the appellate order for the year under consideration, the appeal pertaining to A.Y. 2009-10 was still pending before the Tribunal. The Assessing Officer in the remand report stated that if the expenditure claimed by the assessee in A.Y. 2009-10 was held in favour of the assessee by the Tribunal, then the deduction allowed in A.Y. 2010-11 also would result in double allowance. The CIT(A), during the course of appellate proceedings took a declaration from the assessee stating that if the assessment for

A.Y. 2009-10 is held in favour of the assessee by the Tribunal, then the department can pass a rectification order under section 154 for the year under consideration withdrawing the claim of the excess cost. The CIT(A), based on the said declaration, allowed the claim of expenditure of Rs.23,20,35,862/- for the assessment year 2010-11 and the revenue is in appeal before the Tribunal.

17. The Ld.AR during the course of hearing submitted that the Tribunal had quashed the assessment order passed for A.Y. 2009-10 on the technical ground which, in effect, would mean that the claim of the assessee towards cost of construction is allowed. The Ld.AR therefore fairly conceded that the departmental appeal with respect to this ground should be allowed. However, the Ld.AR submitted that the department has gone on further appeal against the order of the Tribunal for A.Y. 2009-10 before the Bombay High Court and, therefore, if the Bombay High Court reverses the order of the Tribunal, then the order of the CIT(A) should prevail i.e. assessee should be allowed cost of Rs. 23,20,35,862/- in AY 2010-11. The Ld.DR did not raise any objection to the said submissions of the Ld.AR.

18. We heard the parties and perused the material on record. The Hon'ble Tribunal, vide its order dated 21/10/2016 has quashed the assessment order for A.Y. 2009-10 on the legal ground that the assessment under section 153A is wrong. Accordingly, the claim of the assessee during the assessment year 2009-10 towards cost of construction originally claimed in the return of income was restored and allowed. Accordingly the assessee cannot be allowed the deduction once again for the assessment year 2010-11. At the same time we are inclined to agree with the submissions of the Ld.AR that on further appeal by the revenue if

the Hon'ble Bombay High Court reverses the order of the Tribunal, then the assessee should be allowed the deduction for the assessment year 2010-11. Therefore we set aside the order of CIT(A) to the extent of allowance of cost of construction of Rs. 23,20,35,862/- with a direction that the assessee be allowed the claim of Rs.23,20,35,862/- in the year under consideration in case the order of the Tribunal quashing the assessment order for A.Y. 2009-10 is reversed by the Hon'ble Bombay High Court. This ground of the Revenue is allowed.

19. Through ground 1, the Revenue is contesting the deletion of addition of Rs.1,05,13,749/- by the CIT(A). The assessee in the return of income had claimed the indexed cost of land @ Rs.260 per sq.ft on conversion of land into stock in trade based on the valuation given by the Government approved valuer. The Assessing Officer noticed that for AY 2009-10, the cost of acquisition was considered at Re.1 as against what is claimed by the assessee and accordingly questioned the assessee as to why a similar disallowance cannot be made in this year also. The assessee submitted that the right in the lease hold land is a capital asset and therefore the cost of the lease hold right as per the valuation report should be allowed. The Assessing Officer proceeded to consider only Re.1 as the cost of the lease hold right for the reason that the same was considered in AY 2009-10 and that the revenue is in appeal against the order of the CIT(A) allowing the claim.

20. On further appeal, the CIT(A) allowed the claim by relying on his own order for AY 2009-10 where it has been held that

"6.2 The appellant adopted 260/- per sq.ft. as fair market value of land as on 1.4.1981 and Rs.2,150/- p.s.f. as on the date of conversion based on the report dated 23.08.2008 of Government registered Valuer, Shri Santosh Kumar, for the purpose of calculating long term capital gain in respect of 152861.42 sq.ft. of land converted into stock-in-trade during the year.

6.3 The appellant owned freehold land admeasuring 2871762 sq mtrs bearing Cadastral Survey No. .1960 of Byculla Division at Keshavrao Khade Marg, Byculla, Mumbai. In addition to this land, the appellant acquired on lease, land admeasuring 7836.18 sq.mfrs, from the Collector of Mumbai vide lease agreement dated 24.12.1884. On going through the computation of income for A.Y.2008-09, the Ld.AO noticed that the appellant declared Capital Gains of Rs. 15,93,42,742/- on account of sale of stock-in-trade of freehold land of 15286142 sq.ft., which was converted from capital asset to stock-in-trade in the A.Y. 2002-03. It was further noticed that the appellant adopted the value of freehold land as well as leasehold land @ Rs.260/- -per sq.ft. The appellant supported his action with valuation report of Shri Santosh Kumar, Regd. Valuer dated 23.08.2008. On going through this valuation report, the Id.AO observed that the said report did not take into consideration any-sale-instances carried out in this area in and around 01.04.1981. Therefore, the valuation report submitted by the appellant was not considered reliable.

6.4 The Id.AO further observed that the area of the land is 28717.62 sq.mfr, which was more than the permissible limit allowed under Urban Land (Ceiling & Regulation) Act, 1976. Therefore, the land of the appellant was liable to be acquired by the State Government, unless the scheme of redevelopment was sanctioned by the competent authority u/s.22 of the said Act. Once the land is subject -to limitation under Urban Land (Ceiling. & Regulation] Act, 1976, a person cannot expect more compensation than allowable to if under the Urban Land (Ceiling & Regulation] Act, 1976. The compensation receivable under the Urban Land (Ceiling & Regulation] Act, 1976, is only Rs.10/- per sq.mfr. Since the Id.AO held the land to be vacant land within the meaning of Urban Land Ceiling & Regulation] Act, 1976, its fair market value as on 01.04.1981 was taken at Rs. 1.0/- per sq.mfr. i.e @ Rs. 0.93/- (93 poise] per sq.ft. Accordingly, Long Term Capital Gains was reworked as under:

6.5 Without prejudice to the above, the Id.AO held that wherever valuation is made for 1.4.1981 without taking into consideration the provisions of Urban Land (Ceiling & Regulation) Act, 1976, the value is to be reduced by 50%, in terms of the ratio laid down by the ITAT, Pune fch in the case of Shri Ajit J Mehta [103 TTJ (Punej 209],

6.6 In this regard, the Id.AR of the appellant submitted that the Textile Mill at Mumbai undertaking manufacturing of Suitings and Shirtings was in existence as on April 1, 1981 on the said freehold land. Thus, as on April 1, 1981, the said land was not 'vacant land'¹ within the meaning of ULCRA and, therefore, was not within the ambit of the said Act. Valuation has to be carried out as per the facts

and circumstances prevailing as on the valuation date. In this regard, the Id.AR placed reliance on the judicial pronouncement in the case of CIT v Lady Hirabai C. Jehangir [1990] 186 ITR 60 (Bomj, whereby the Hon'ble High Court held as under:

"In view of the admitted position that the identity of shares remained the same and, in any event, the extent of interest represented by each share in the assets of the company certainly remained the same and having regard to the fact that reduction in the face value of shares was an event subsequent 1-1-1954, it, was not possible to import the subsequent facts for the purposes of valuing those shares as on 1-1-1954. If was not in dispute that the shares sold during the previous year were the which the assessee owned and possessed. from long before 1-1-1954. Once that fact was accepted, the valuation of those-shares as on 1-1-1954, would have to be as it was on that' day and no adjustment in that regard would be justified on account of subsequent events."

6.7 The Id.AR claimed that the said ratio has been confirmed by the Hon'ble Pune Tribunal in the case of Ajit Mehta (supr) which has in fact been referred to by the Id. AO in his assessment order. The Id.AR distinguished the facts of his case from Ajit Mehta's case. In the case of Ajit Mehta, there was an alternative available to the assessee to obtain permission under Section 21 of the ULCRA. Section 21 of the ULCRA presupposes the fact that the land was a Vacant land' governed by the provisions of ULCRA. However, in the appellant's case, the land was never 'vacant land' as factory mill was already in existence as on April 1, 1981 ie. the valuation date.

6.8 I have carefully considered the issue. The Id. AR drew my attention to the valuation report in which the rate of ' 260/- adopted by the valuer is based on the rate notified by the town planning department @ ' 650/- per sq ft in 1990. As per the circular issued on 18.11.1991, the rate to be adopted for valuation in 1981 is @ 40% of the notified rate in 1990. Hence, according to the Id. AR, the valuation given by the approved valuer at 260/- per sq. ft. should be accepted. He also argued that the valuation given by the AO was based on surmises and conjectures and did not have any logical or scientific basis. As regards the applicability of ULC laws, he submitted that the Id. AO was totally misguided in interpreting and applying the compensation payable under the said law as the market value as on 1. 4. 1981. He heavily relied on the ratio laid down by the Bombay High Court in Lady Hirabai's Case to support the view that the valuation has to be carried out as per the facts and the circumstances prevailing on the valuation date. Since as on 1.4.1981 there was no vacant surplus land, it would not be proper to build in a hypothetical assumption of applicability of ULCRA and adopt the valuation. The Pune Tribunal decision in the case of Ajit

Mehta is clearly distinguishable. In that case, the land in question was purchased by the assessee and subsequently developed. Admittedly the land was vacant and, hence, the provisions of ULCRA were applicable. In the case of the appellant, there was a running textile mill on the said land and there was no vacant land on the date of the "valuation. Also the valuation given by the appellant is based on a scientifically" drawn up valuation report. In the result, - the valuation adopted by the appellant at " 260/- per sq ft is held to be proper and the addition made on this account is directed o .be deleted. This ground of appeal is, therefore, allowed."

21. In this regard, the Ld.DR submitted that the CIT(A) has followed his own decision for the earlier year without considering the issue independently for the year under consideration.

22. The Ld.AR on the other hand, submitted that the facts are identical for AY 2010-11 also since the land in question is the same land. The ld AR submitted that the whole basis on which the disallowance is made by the assessing officer is that the land is covered by Urban Land Ceiling & Regulation Act, 1976 (ULC) which the CIT(A) has clearly held as incorrect in AY 2009-10. Further issue is not specifically contested by the revenue before the Tribunal for the assessment year 2009-10 and therefore, the decision of the CIT(A) has become final. The Ld.AR accordingly prayed that the CIT(A) was correct in deleting the disallowance.

23. We heard the parties and perused the material on record. We notice that the Assessing Officer in AY 2009-10 has disallowed the claim of cost of land for the reason that the land was vacant and as per the ULC regulations certain area of the land in excess of the limits prescribed under ULC. The AO accordingly held the land to be vacant land within the meaning of ULC its fair market value as on 01.04.1981 was taken at Rs. I.O/- per sq.mfr. i.e @ Rs. 0.93/-. The CIT(A) in his order for AY 2009-10 has given a clear finding that the land was not vacant as on

the valuation date of 01.04.81 (since the factory building was there) and that the status as on the valuation date is what needs to be considered for the purpose of valuation by relying on the decision of the Bombay High Court. It is also noticed from the perusal of records that the revenue in the appeal filed before the Tribunal for AY 2009-10 had not raised any specific ground in this regard and therefore we see merit in the submission of the Id AR that the issue has reached finality. Considering the facts of the present case, we see no reason to interfere with the decision of the CIT(A) in allowing the claim of cost of acquisition at Rs.260 based on the valuation report. Accordingly this ground of the revenue is dismissed.

24. The next ground raised by the revenue is with respect to the deletion of addition of Rs.48,72,474/- by the CIT(A) in respect of interest on loans. The CIT(A) allowed the claim of the assessee for the reason that the interest is paid wholly and exclusively for the purpose of business and, therefore, allowable under section 36(1)(iii) of the Act. The CIT(A) further relied on the order of his predecessor for A.Ys 2008-09 & 2009-10 where a similar disallowance has been deleted. Accordingly, the CIT(A) allowed the claim for the year under consideration by holding that –

“25. I am completely in agreement with the finding of my learned predecessor on this issue and hold that this expenditure is relating to business of the appellant and is fair and reasonable and therefore should be allowed to the appellant. In any case, the interest expenditure is relating to the funds borrowed for the purposes of repayment of old loans to banks and financial institutions and also for payment of VRS amount to workers, which are allowable expenses. It has already been held by my learned predecessor that the appellant in question merely hived off the Akola and Gondia units and, therefore, the continuity of payment of interest for business stands at par with other payment like VRS, etc.”

25. The Ld.DR relied on the order of the Assessing Officer.

26. We heard the parties and perused the materials on record. The CIT(A) while allowing the claim of the assessee for A.Ys 2008-09 & 2009-10 had held that the interest paid by the assessee to the financial institutions is incurred wholly and exclusively for the purposes of business and that the expenses are incurred for the development cost of the project on percentage completion method. It is also noticed that the assessee has paid the interest on the loan taken from HDFC Bank which was borrowed for the purpose of settling employee dues so that the vacant land without any encumbrance can be handed over to the developer. Therefore we see merit in the submission that the interest is claimed as part of development cost since as per the terms of the agreement the assessee is required to give a clear and marketable title of the land to the developer. Further it is a settled position that interest cost incurred towards acquisition of the clear title of the property can be claimed as part of cost of acquisition. In the light of these discussions we uphold the decision of CIT(A) in allowing the claim of interest cost as part of development cost while computing the income.

27. In the result, appeal of the assessee is allowed and appeal of the revenue is partly allowed.

Order pronounced in the open court on 28/07/2023.

Sd/-

sd/-

(PAVAN KUMAR GADALE)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28th July, 2023

Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

**Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai**