IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No.112/PUN/2024
Assessment Year : 2018-19

VTP Mohite Associates Cannought Palace, Bund Garden Road, Pune – 411001	**Vs.**	DCIT, Circle 7, Pune
PAN : AABAV2960L		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Nikhil Pathak
Department by	**:**	Shri Sourabh Nayak, Addl.CIT
Date of hearing	**:**	27-05-2024
Date of pronouncement	**:**	25-06-2024

O R D E R

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 28.11.2023 of the CIT(A) / NFAC, Delhi relating to assessment year 2018-19.

2. Facts of the case, in brief, are that the assessee is an AOP engaged in the business of builder / developer. It filed its return of income on 30.10.2018 declaring total income of Rs.55,04,480/-. The case of the assessee was selected for complete scrutiny under E-assessment Scheme, 2019 on the following issues:

Sr. No.	*Issues*
i.	*Deductions from Income from Other Sources*
ii.	*Income from Real Estate Business*
iii.	*Sales Turnover/Receipts*
iv.	*Business Expenses*

3. Accordingly, the Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') along with questionnaire, in response to which the assessee furnished its replies. From the various details furnished by the assessee, the Assessing Officer noted that the assessee is recognizing the revenue on the basis of completion of project method. He observed that there are 54 properties, regarding which registration deeds were executed by the Sub-Registrar / authorities concerned which partakes the character of complete transfer. The total sale proceeds of such properties works out to Rs.22,29,15,353/-. However, the assessee has not taken into consideration the same while computing the gross receipts for the year under consideration and the assessee reflected the work in progress as on 31.03.2018 at Rs.67,05,37,121/-. He observed that no details were brought on record as to the distinction between the properties / flats sold as per the details available with the department amounting to Rs.22,29,15,353/- and the value of the remaining properties totaling to Rs.67,05,37,121/-. Further, the assessee had not reflected any sales for the year under consideration except a petty amount of Rs.2,44,800/- which is on account of sale of cement. The assessee failed to furnish any justification as to why the sale proceeds of flats and others should not be considered as final sales where the registration deeds have been executed in respect of all these properties which were available with the department. In view of the above, the Assessing Officer considered the sale proceeds of Rs.22,29,15,353/- as final sales in respect of which registration deeds have been executed and accordingly brought to tax an amount of

Rs.2,29,15,350/- by applying the net profit rate of 10% on the amount of Rs.22,29,15,353/-.

4. The Assessing Officer further noted from the Profit and Loss Account that the assessee has reflected the construction cost amounting to Rs.17,78,06,755/- and other direct expenses at Rs.8,09,64,766/- and financial expenses at Rs.2,26,19,617/-. He, therefore, confronted the assessee regarding the justification of expenses apportioned. It was explained by the assessee that a number of projects under construction during the year were undertaken by the different group companies. The expenses so incurred are aggregated and being incurred under common head and later on apportioned among the different companies at the year end. It was explained that the logic behind this is to maintain the brand name of VTP. However, the Assessing Officer rejected the contention of the assessee on the ground that no substantial material was brought on record to justify as to how and from which account the expenses are actually incurred and debited and how and from which accounts of the respective companies the expenditure is received later on. Since the assessee has not been reflecting sales / receipts even in respect of flats / shops in respect of which registration deeds have been executed before the registering authority of State and the assessee tried to take the benefit of argument of maintaining the brand name VTP without substantiating material, therefore, the Assessing Officer disallowed 10% of the total expenses of Rs.32,79,16,026/- debited to the Profit and Loss Account and accordingly made

addition of Rs.3,27,91,602/-. The Assessing Officer accordingly determined the total income of the assessee at Rs.6,12,11,432/-.

5. In appeal, the Ld. CIT(A) / NFAC upheld both the additions made by the Assessing Officer. So far as the addition of Rs.2,29,15,350/- being 10% of the sale proceeds of Rs.22,29,15,353/- is concerned, he upheld the same by observing as under:

> *"6.2 Findings and decision:*
>
> *I have carefully considered the facts of the case as wel1 as submissions filed by the appellant. I find no force in the arguments of the Appellant. The registered sale deed is a critical document in property transactions, in which at the time of registration, the seller admits before the Registrar of the documents that full consideration is received and the property along with full possession is conveyed to the purchaser After the registration of the documents the rights of the seller gets extinguished. Even the stamp duty has been paid on such transactions as noted by the Assessing Officer. In such a scenario, the profits from these transactions must be recognized. Further a specific provision of section 43CB for such projects has been introduced w.e.f. 01.04.2017 in the Income-Tax Act, which reads as under:-*
>
> ***[Computation of income from construction and service contracts.***
>
> > ***43CB**. (1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:*
> >
> > ***Provided** that profits and gains arising from a contract for providing services,-*
> >
> > *(i) with duration of not more than ninety days shall be determined on the basis of project completion method;*
> >
> > *(ii) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.*

> *(2) For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1)-*
>
> *(i) the contract revenue shall include retention money;*
>
> *(ii) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.]*

*After the introduction of this section, **IN THE ITAT MUMBAI BENCH 'E'** in the case of Trident Estate (P.) Ltd. v. Income-tax Officer-13(3)(4), Mumbai [2021] 127 taxmann.com 360 (Mumbai - Trib.), it was held as under:-*

> *25. Thus, we note that completed contract method and percentage complete method both were recognized method of accounting for computation of gains from construction contract. Section 43CB was inserted by the Finance Act, 2018 w.e.f. 1-4-2017 which provides that profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards. However, this section was not in existence and applicable in the assessment year 2014-15 which we are concerned with. Thus it is amply clear that percentage complete method and completed contract method were both acceptable method and accounting of construction contract in the impugned period. We note that the assessee has all along treated the said project as capitalised item and debited all the expenses to the capita! account. This method has been accepted by the Revenue in the past. It is also undisputed that in the current year project is not at all complete. Redevelopment is still in progress. The assessee has also to recoup expenditure from other co-owners. Agreement to sale has not been registered, possession of the property has not been handed over. In these circumstances, assessee cannot be thrust upon percentage of completion method of accounting by the Assessing Officer. Hence, though we do not agree with the assessee that it is not a business project, we agree that the project is incomplete and in substance if assessee wishes to offer for taxation its gain on completion of project i.e. apply completed contract method the same cannot be rejected. This proposition is duly supported by Hon'ble Supreme Court exposition as above. Also percentage completion method has been made compulsory by subsequent insertion of section 43CB of the Act, which is not applicable to the impugned assessment year.*

As per Assessee's own admission, registration deeds of 55 units out of total 111 units has been done. Hence profits are to be recognised during the year. The case laws cited by the Appellant have been considered but they are distinguishable on facts from the instant case. The law has been changed by the introduction of section 43CB of the Income-Tax Act. In light of these circumstances, the Assessing Officer is rightly justified to compute the profits of the year of Rs.2,29,15,350/- by applying the net profit rate of 10% on the amount of total sale proceeds of Rs.22,29,15,353/- and the addition so made by the AO, is hereby confirmed. The grounds of appeal no.2 to 5 are thus dismissed."

6. Similarly, he sustained the addition of Rs.3,27,91,602/- being 10% of total expenses debited to the Profit and Loss Account by observing as under:

> *"7.2 Findings and decision:*
>
> *I have carefully considered the facts of the case as well as submissions filed by the appellant. I find no force in the arguments of the Appellant. The Assessee has given details of the expense and simply stated that these have been apportioned between various group entities. But the Assessee has not given any finding regarding the basis on which these expenses have been apportioned. It has been observed by the Assessing Officer as under:-*
>
> > *"No substantiating material has been brought on record in this regard as to what was the justification and how and from which accounts the expenses are actually incurred and debited and how and from which accounts of the respective companies, the expenditure is received later on. In the absence of the relevant particulars, the argument of the assessee is not acceptable particularly keeping in view the fact that issue is not clear even as to how and under which circumstances the project completion method is being followed in the group companies and whether it is the consistent method of accounting being followed from the past years. Moreover, as has been observed in the foregoing paras that assessee has not been reflecting sales/receipts even in respect of flats/shops in respect of which registration deeds have been executed before the registering authorities of the State."*
>
> *In the submissions filed in the appellate proceedings, the Assessee has not been able to counter these observations. The case laws cited by the Appellant have been considered but they are distinguishable on facts from the instant case. In light of these circumstances, the Assessing Officer is rightly justified to make the disallowance of expenses as per P&L A/c amounting to Rs.3,27,91,602/- and the addition so made by the AO, is hereby confirmed. The grounds of appeal no.6 to 8 are thus dismissed."*

7. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

> *"The following grounds are taken without prejudice to each other -*
>
> *On facts and in law,*
>
> *1] The learned CIT(A) erred in confirming the addition of Rs.2,29,15,350/- on account of profit estimated @ 10% on the alleged sale proceeds of Rs.22,29,15,353/- of the flats of which the agreements to sale were registered during this year.*

2] The learned CIT(A) failed to appreciate that for the following reasons, the above income was not taxable in this year –

a. The appellant had registered agreements to sale of the flats and not the sale deeds and the flats were under construction and the sale proceeds were to be received in future as per the agreements in installments and thus, the question of holding that the sale had taken place in this year did not arise at all.

b. Just because. Agreements to sale of the flats were registered as per law, it did not imply that the flats were sold.

c. The appellant had not received the entire sale proceeds of the flats at the time of registering the agreements, the flats were under the construction and the question of handing over the possession of the flats did not arise in this year and hence, no profit on registering the agreements accrued to the appellant in this year.

3] The learned CIT(A) further failed to appreciate that for the Following the same parity of reasoning, reasons the addition is not sustainable in this year –

a. Completion of project method followed by the appellant is a recognized method of accounting for the builders and hence, as per that method, the above income did not accrue in this year as the construction of the flats was not completed nor was the possession given to the customers.

b. The provisions of section 43CB did not apply in the case of the appellant as it is a builder and promoter and not a contractor.

c. CBDT Circular No. 10/2017 dated 23.03.2017 in response to Q. No.12 therein had clarified that ICDS applied to the contractors and not to the builders and thus, the question of following ICDS for determining the income of the appellant did not arise.

4] The learned CIT(A) erred in holding that -

a. In the case of a builder, promoter and developer, after the introduction of section 43CB, profits cannot be computed as per the project completion method and they have to be computed only as per percentage completion method.

b. The decision of ITAT, Mumbai in the case of Trident Estate Pvt. Ltd. has held that section 43CB compulsorily applies to the builders.

5] The learned CIT(A) erred in confirming the disallowance of Rs.3,27,91,602/- out of the common business expenses pertaining to the group entities.

6] The learned CIT(A) was not justified in disallowing the above expenses for the following reasons -

a. The appellant had given detailed submissions for the basis of sharing the common expenses with the group entities and this basis is not challenged by the learned CIT(A).

b. As the expenses were incurred for the purposes of the appellant's business, they were allowable.

c. Some expenses were directly pertaining to the appellant and they were incurred by the appellant and there was no reason to disallow the same.

d. Apportionment of other common expenses amongst the various entities of the group was done by the head office in a bona-fide manner and thus, there was no reason to disallow any part of such expenses.

e. The expenses were properly vouched and mostly incurred through a banking channel.

f. As regards, the common expenses, the exact basis for apportionment amongst the various entities was not possible and hence, the apportionment thereof done in a bona-fide manner should have been accepted.

7] The learned CIT(A) failed to appreciate that the appellant had floated an entity called VTP Constructions for incurring the common expenses amongst the group entities and the distribution of such expenses amongst the various entities was done in a bona-fide manner and thus, there was no reason to disallow any portion of such expenses.

8] The learned CIT(A) failed to appreciate that the appellant had capitalized such common expenses to the WIP as per its system of accounting which was project completion method and thus, there was no reason to disallow these expenses just because, the appellant had followed the project completion method.

9] Accordingly, the appellant prays for deletion of the disallowance of Rs.3,27,91,602/-.

8. So far as the first issue is concerned, the same relates to the order of Ld. CIT(A) / NFAC sustaining the addition of Rs.2,29,15,350/- made by the Assessing Officer being profit @ 10% on sale of 54 flats. Ld. Counsel for the assessee

submitted that in the year under consideration the assessee was developing three projects as under:

a.	Urben Nest	-	363 flats
b.	Trade Park	-	196 shops / offices
c.	Market Place	-	84 shops / offices

9. He submitted that the assessee had started the construction of these projects in the year 2015-16 and the assessee was following the project completion method for recognizing its revenue. As per this method, the revenue is recognized by the assessee in the year in which completion certificate of the units constructed is received from the Corporation and the possession is handed over to the customers. He submitted that as per the prevailing practice where the developer enters into an agreement to sale an unit, it has to be compulsorily registered within four months of the date of agreement. He drew the attention of the Bench to a sample copy of agreement for sale entered into with flat purchasers namely Archana Amit Thorat, details of which are placed at pages 164 to 224 of paper book. Referring to the above, he submitted that the assessee developer has entered into an agreement to sell a particular unit and the consideration is also stated therein which is to be paid in stages depending upon the work completed. Referring to page 225 of the paper book, Ld. Counsel for the assessee drew the attention of the Bench to the chart in respect of 54 units considered by the Assessing Officer and submitted that substantial amount of the consideration has been received in subsequent years.

10. The Ld. Counsel for the assessee reiterated that at the time of entering into an agreement for sale the respective units were under construction and the possession has been handed over in the subsequent year. Referring to clause 10 of the sample agreement placed at page 193 of paper book, he submitted that the said clause states that the possession would be handed over for particular unit by 31.03.2020. He submitted that the agreement for sale provides for termination of agreement by both the parties which is mentioned at page 191 of paper book. Therefore, by entering into an agreement of sale, the assessee developer would be constructing the flat and thereafter would transfer the possession to the customer subject to the fact that the customer does not default on the payment terms as agreed between the parties. He submitted that the assessee, in respect of all these 54 flats has entered into an agreement for sale and no possession has been handed over to any of the customer in the year under consideration and secondly, substantial amount of the consideration has been received in the subsequent year.

11. He submitted that it is the allegation of the Assessing Officer that the assessee has entered into registration deed and therefore, sale is to be required to be recognized. Similarly, the CIT(A) / NFAC has held that registered deed is a critical document wherein the seller admits of receipt of full consideration and the possession is handed over to the purchaser. He submitted that both the lower authorities have not appreciated the fact that the assessee has entered into agreement for sale and not sale deeds wherein the consideration would be received over a period of time and the possession has not been handed over. Further, the

assessee has followed the project completion method even in the earlier years and for assessment year 2017-18 the assessment has been completed and the method followed by the assessee has not been disturbed. For the above proposition, the Ld. Counsel for the assessee drew the attention of the Bench to the copy of assessment order for assessment year 2017-18 placed at page 132 of paper book.

12. So far as the reference to provisions of section 43CB of the Act is concerned, he submitted that as per the said provision, the profits and gains from the construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the ICDS notified under sub-section (2) of section 145. He submitted that ICDS deals with the construction contract. Since the assessee has not entered into any construction contract with the flat purchaser and actually the assessee was selling a flat, therefore, the provisions of section 43CB of the Act are not applicable. He submitted that the term 'construction contract' has not been defined under the Act. However, it is defined under ICDS III. Referring to the said definition, he submitted that the construction of the project and real estate developer does not satisfy the above definition as the contract was not negotiated for the construction of asset. The real estate developer constructs the asset as per his scheme and contracts with the buyer to sell the asset. He submitted that the real estate developer purchases land, gets the plans sanctioned and starts construction on his own and later on, sells the flats to the prospective customers. On the other hand, the contractor carries out the work on the basis of instructions given by third party

who has issued the contract. Hence, a real estate developer cannot be equated with the contractor. He submitted that if the contention of the lower authorities is accepted, then there would be no real estate developer and everyone would be considered as a contractor. He accordingly submitted that since the real estate developer constructs the flats as per the plan sanctioned by him and not as per the directions of the flat owner, the lower authorities have erred in holding that the provisions of ICDS III are applicable to the assessee firm which is a real estate developer.

13. The Ld. Counsel for the assessee drew the attention of the Bench to the CBDT Circular No.10 of 2017 wherein it has been clearly mentioned that no ICDS has been notified for real estate developer. Further, there is no construction contract entered into between the assessee and the flat owner. He submitted that on the sale of flats stamp duty is required to be paid which is not the case in the case of construction contract. Referring to the decision of the Bangalore Bench of the Tribunal in the case of Corporate Leisure and Property Development Pvt. Ltd. vide ITA No.1006/Bang/2024, he submitted that the Tribunal in the said decision has held that the provisions of ICDS III are not applicable for real estate developer. Referring to the following decisions, he submitted that the project completion method is a recognized method for determining revenue:

a. *CIT vs. Hill View Infrastructure Pvt. Ltd. [81 taxmann.com 58 (P&H)]*
b. *CIT vs. Varun Developers [126 taxmann.com 235 (Kar)]*

14. So far as the decision of the Mumbai Bench of the Tribunal in the case of Trident Estate Pvt. Ltd. relied on by the CIT(A) / NFAC is concerned, he submitted that the said case relates to assessment year 2014-15 where the assessee was following the project completion method. The Tribunal accepted the contention of the assessee and held that the project completion method or completed contract method is a recognized method and there is no requirement to determine the income as per percentage completion method. In that context as a general remark, the Tribunal observed that the provisions of section 43CB of the Act are applicable w.e.f. assessment year 2017-18. He submitted that the issue whether the provisions of section 43CB of the Act and ICDS III are applicable to construction contract and not to real estate developers was not the issue before the Tribunal. Therefore, the said decision relied on by the CIT(A) / NFAC is not applicable to the facts of the present case.

15. He submitted that for assessment year 2017-18, the provisions of section 43CB of the Act were applicable and the Assessing Officer has accepted the project completion method followed by the assessee and the said method has not been disturbed in the order passed u/s 143(3). Therefore, by following the principles of consistency the Assessing Officer should not have made any addition. For the above proposition, he relied on the decision of the Pune Bench of Tribunal in the case of G.K. Wonders vide ITA No.25/PUN/2024. He submitted that since the addition has been made on adhoc basis and the Assessing Officer has not computed the profit by adopting the percentage completion method wherein the

profit is worked out depending upon the percentage of work completed, therefore, the CIT(A) / NFAC is not justified in sustaining the addition made by the Assessing Officer.

16. The Ld. DR on the other hand, heavily relied on the orders of Assessing Officer and CIT(A) / NFAC and filed the following written submission in support of his arguments:

"WRITTEN SUBMISSION

Position of Accounting Method for Real Estate Transactions as per Act:

1. It is to be noted that prior to Insertion of Sec 43CB in the Act, there was no express statute/provision in the Income Tax Act that mandated following of particular method of accounting by the assessee for real estate transactions. Different approaches were regularly followed by real estate developers. Both methods i.e. Percentage Completion Method and Project Completion method which were regularly followed by assessee were recognized by various Courts. To overcome this confusion and avoid further litigations the CBDT introduced ICDS w.e.f 1.4.2017.

2. Income Computation & Disclosure Standards ("ICDS") has been notified and it was applicable for computation of income for A.Y. 2017-18 and onwards. As per the ICDS, business income from construction contracts and service contract in specified cases shall be computed on the basis of percentage completion method. However, said action of the government by making percentage completion method compulsory for recognition of revenue was squashed by Hon'ble Delhi High Court in Chamber of Tax Consultants v. UOI [2017] 87 taxmann.com 92/[2018] 252 Taxman 77/[2018] 400 ITR 178 (Delhi). To overcome the said judgment of Hon'ble Delhi High Court, Section 43CB was specifically inserted vide Finance Act, 2018 in Income Tax Act, 1961 ("Act") w.r.e.f. 1-4-2017. As per section 43CB of the Act, business income in case of construction contract and service contracts in specified cases, shall be determined on the basis of percentage completion method.

3. Section 145 of the Act provides for method of accounting to be followed by an assessee for computation of business income. Section 145(1) of the Act provides that business income, subject to the provisions of sub-section (2) of the said section, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Section 145(2) of the Act gives power to the Central Government to notify ICDS to be followed for computation of

business income. By virtue of power given in the said section, ICDS were notified from 1.4.2017 and were required to be followed.

4. ICDS III relating to Construction Contracts and ICDS IV relating to Revenue Recognition appear to be relevant for the requisite examination as ICDS III and ICDS IV are in same line with AS 7 and AS 9 respectively and Guidance Note was issued by ICAI after considering the accounting principles laid down in AS 7 and AS 9. However, before examining ICDS III and ICDS IV, it is necessary to peruse a Circular issued by CBDT to clarify various issues raised by the stakeholders with respect to the notified ICDS. One of the issues raised in the said Circular was regarding the applicability of ICDS III and ICDS IV in case of real estate Developers. In respect of the said issue, CBDT clarified as follows:

> *Question 12: Since there is no specific scope exclusion for real estate developers and Build Operate- Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.*
>
> ***Answer: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.***

Thus the CBDT has clarified that there is no separate or specific ICDS notified for real estate developers. ***However, relevant provisions of the Act and ICDS were applicable to these transactions. Further this was clarified vide Circular 10 of 2017, subsequent to which Section 43CB was inserted vide Finance Act 2018. This means that ICDS III and ICDS IV are squarely applicable for real estate transactions and they fall under definition of "Construction Contracts".***

5. The case of Parth Developers Vs PCIT (ITA No 419/Ind/2022), at the ITAT Indore revolves around the conflicting tax accounting methods - the Project Completion Method versus the Percentage Completion Method. The Tribunal while considering the facts and circumstances of the case has noted the following:

"13. Thus, the order of the AO was held as erroneous so far as prejudicial to the interest of the revenue on the ground that the AO has not examined applicability of the Percentage Completion Method. It is pertinent to note that the method of accounting was not subject matter of limited scrutiny taken up through CASS. ***Further, the Percentage Completion Method has been made compulsory for the real estate business vide amendment by Finance Act 2018 whereby section 43CB was introduced w.e.f. 01.04.2017. Prior to the said amendment it was not mandatory for the real estate business to apply Percentage Completion Method as for the year under consideration the newly inserted section 43CB is not applicable. The Id. AR of the assessee has relied upon the decision of Coordinate Bench of ITAT, Indore in case of Ashoka Hi-tech Builders (P.) Ltd. vs. DCIT (supra)*** *on this point wherein the tribunal has specifically discussed this issue as under:*

"42. Before parting of with adjudication of this issue it would be relevant to take note of the amendment brought in statute with retrospective effect w.e.f 1.4.2017 by way of insertion of Section 43CB for the purpose of computation of income from construction and service contract. The relevant provision of Section 43CB of the Act reads as follows:

43CB. Computation of income from construction and service contracts.-

(1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under subsection (2) of section 145:

Provided that profits and gains arising from a contract for providing services: (i)with duration of not more than ninety days shall be determined on the basis of project completion method; (ii) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.

(2) For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1):- (i)the contract revenue shall include retention money; (ii) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains".

43. From the perusal of above section it is crystal clear that before the insertion of this section there was no legal obligation on the part of the assessee to follow percentage completion method only. Before insertion of this section person engaged in construction and service contracts were free to follow either the project completion/Completed project method or percentage completion method in accordance with the provisions of Section 145 of the Act. *In the instant appeal assessee even though not directly involved in the construction activity and it is merely gave its land for development and it was agreed between the assessee-company and the developer that 32% of the saleable area shall be given to the assessee. The assessee is constituency followed completed project contract/percentage completion method as recognized its revenue at the time of execution of getting the sale deed registered and before that it has to be consistently showing the advance from sale of flats as the liability in the balance sheet."*

14. Even otherwise when the legislature has specifically stated that this amendment is applicable w.e.f. 01.04.2017 then the same cannot be applied for A.Y.2015-16. Therefore, we concur with the view of the Coordinate Bench of this Tribunal on this point."

Thus the Hon'ble Tribunal has rioted that after the amendment in the Act by insertion of Section 43CB by the legislature, it is mandatory to follow the Percentage of Completion Method by the Real Estate Developers.

Position of Accounting Method for Real Estate Transactions as per Accounting Standards:

6. AS-7 in respect of construction contracts was issued in 1985. In the said AS, percentage completion method as well project completion method was permitted for recognition of revenue and expenditure. Further, it was also applicable to real estate developers.

AS-7 was revised in the year 2002, which prescribes only percentage completion method for recognition of revenue. However, said revised AS-7 was not applicable on real estate developers which were also clarified by Expert Advisory Committee (EAC) of ICAI in one of its opinions. In this opinion, it was further noted that principles laid down in paras 10 and 11 of AS 9 relating to sale of goods should be applied for recognizing revenue in case of real estate developers thereby resulting into permitting project completion method for recognizing revenue and expenditure by the said developers.

To overcome the confusion, ICAI had issued guidance note titled "Guidance Note on Recognition of Revenue by Real Estate Developers" in the year 2006. Said guidance note recommends that percentage completion method should be followed for recognition of revenue in case of real estate developers. However, detailed guidance was not provided as to how percentage completion method should be applied. Therefore, ICAI issued revised Guidance Note tilted "Guidance Note on Accounting for Real Estate Transactions" ("Guidance Note") in the year 2012 in the Guidance Note, detailed mechanism along with illustrations was provided to guide the real estate developers in respect of application of percentage of completion method to recognize revenue in case of real estate business.

7. Guidance Note on Accounting for Real Estate Transactions was published in May 2016, the copy of which has been provided to the Tribunal during hearing. Following points to be noted:

a. Scope, Para 1.2 - Mentions that all forms of transactions in real estate is covered.

b. Para 3 which deals with Accounting for Real Estate Transactions mentions that

"3.2 The typical features of most construction/development of commercial and residential units have all features of a construction contract - land development, structural engineering, architectural design and construction are all present. The nature of these activities is such that often the date when the activity is commenced and the date when the activity is completed usually fall into different accounting periods"

c. Para 3.3 states that/or recognition of revenue in case of real estate sales....In case of real estate sales, the seller usually enters into an agreement for sale with the buyer at initial stages of construction. This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of conditions which signify transferring of significant

risks and rewards even though the legal title is not transferred or the possession of the real estate is not given to the buyer. Accordingly, any acts on the real estate performed by the seller are, in substance, performed on behalf of the buyer in the manner similar to a contractor. Revenue in such cases is recognized by applying the percentage of completion method on the basis of the methodology.

d. Para 5.1 states that The percentage completion method should be applied in the accounting of all real estate transactions/activities in the situations described in paragraph 3.3 above

8. Thus even if it is considered for academic purpose that ICDS-III and ICDS-IV are not applicable, the Guidance note clearly classifies the real estate transactions especially the agreement to sell as construction contract and further goes on to clarify that even if legal title is not transferred or possession is not given, significant risks and rewards are transferred. Thus percentage of completion method needs to be followed. Even in the case in hand, the assessee has entered into agreement with customers."

17. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.2,29,15,350/- being 10% of the sale proceeds of 54 units totaling to Rs.22,29,15,353/- on the ground that registration deeds were executed by the Sub-Registrar / authorities concerned and therefore, it partakes the character of complete transaction. We find the CIT(A) / NFAC upheld the action of the Assessing Officer, the reasons of which are already reproduced in the preceding paragraphs. It is the argument of the Ld. Counsel for the assessee that the assessee is following project completion method for recognizing the revenue, according to which such revenue is recognized by the assessee in the year in which the completion certificate of the units constructed is received from the Corporation and the possession is handed over to the customers. It is also his submission that the

assessee has only entered into agreement of sale and has received certain amounts as advance and substantial amounts were received in the subsequent year and the possessions were also given in the subsequent year and not during this year. It is also his submission that although the provisions of section 43CB of the Act were applicable from assessment year 2017-18, however, the Assessing Officer in the order passed u/s 143(3) of the Act has accepted the project completion method followed by the assessee and no proceedings u/s 263 were initiated and therefore, following the principle of consistency, the Assessing Officer should not have made the addition.

18. We find some force in the arguments of the Ld. Counsel for the assessee. A perusal of the chart filed by the assessee giving the details of 54 units shows that these are only agreements to sell and not sale deeds which the lower authorities were confused. Further, substantial amounts have been received in the subsequent year, the possessions of the flats have been handed over to the purchasers in the subsequent year and no possession has been handed over to the customer in the year under consideration. Apart from the above the agreements also contain termination clauses. We find an identical issue had come up before the Tribunal in the case of DCIT Vs. G.K. Wonders. We find the Tribunal vide ITA No.25/PUN/2024 order dated 24.04.2024 for the assessment year 2020-21, while dismissing the appeal filed by the Revenue, has observed as under:

3. Mr. Murkunde next took us to the Ld. CIT(A)'s detailed discussion reversing the assessment findings invoking sec.43CB of the Act and making the impugned addition of Rs.1,97,12,000/- as under :

> *"6.1. Vide this ground of appeal the appellant contended that the AO has erred in making addition of Rs. 1,97,13,000/- without appreciating the facts of the case in proper perspective. Hence, the appellant has requested to delete the addition. In support of the grounds raised the appellant submitted as under.*
>
> > *"Submission of Appellant:-*
> >
> > *The appellant would like to submit as under:-*
> >
> > *1. During the course of assessment hearing the learned AO asked us to submit revenue calculation as per the provisions of section 43 CB of the act. In response to the said notice we explained in detail that the provisions of section 43 CB are applicable to a construction contractor and not to a builder and it was also explained to him that the appellant firm is a promoter builder and developer and not a construction contractor*
> >
> > *2. The appellant was also asked to submit a copy of agreement to sales entered into with the prospective customers which was also duly provided to the learned assessing officer*
> >
> > *3. The appellant was also asked to submit a total tentative project calculations of revenue and cost which was also submitted in reply to the notice to the learned AO*
> >
> > *4. In the show cause notice, the learned AO referring to certain clauses with respect to construction and payment plan, as mentioned in the agreement to sales, came to a conclusion that the assessee firm is a construction contractor and not builder and hence provisions of section 43 CB will be applicable to the Assessee*
> >
> > *5. This conclusion drawn by the learned AO is nothing but Travisity of justice wherein a ridiculous interpretation of a very serious statement is made by any authority making a mockery of a very serious matter*
> >
> > *6. We are still unable to understand that how a payment plan and a construction clause in any agreement to sales entered into with the prospective customer can lead to a conclusion that we are a construction contractor and not a builder. The learned AO failed to understand the difference between a construction contractor and a builder*

a. The building industry is composed of contractors and projects. It is a business with complex undertakings that employ contractors and sub-contractors, handling jobs of architects, engineers, surveyors, carpenters, plumbers, electricians, painters, and the list goes on. To make things straight, a building contractor is not a builder. The builder is the one responsible in facilitation of the home or building construction. A builder builds, sets the foundation of the home, its framing, and roofing a Construction Contractor. This view taken by you is really a surprise for us. A Builder purchases a Land on his own, Get the plans sanctioned on his own, starts construction on his own and later on the flats are offered for sales. When any prospective buyer likes the flat and the cost offered, he enters into an agreement to sales (ATS). Hence both are very different. After the said ATS, Builder continue doing construction of entire Building as per plans sanctioned and complete the construction. During this period the amounts are received from buyers as per stage of work completed. This is the modus operandi followed by all the Builders all over the world. If view of Learned AO holds good, than there are no builders in our country. All are construction contractor.

b. Even the Income Tax Department has distinguished between a Contractor and a Builder. ICDS III (Construction contract) is already made effective for a construction contractor. Further Since this ICDS was not applicable to the Builders, hence another ICDS was proposed for real estates transactions which is not yet notified. If the Builder is a construction contractor than there was no need for a separate ICDS on Real Estates transaction. This clearly shows that a clear cut distinguish is made between a construction contractor and a builder in in the Income tax Act as well.

c. The term 'Construction contract' is not defined under the Act. However, it is defined under ICDS III.

'"Construction contract" is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes:

(i) contract for the rendering of services which are directly related to the construction of the asset ,for example, those for the services of project managers and architects;

(ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.

Plain reading of the above definition clearly suggests that the construction undertaken by real estate developer does not satisfy the above definition as the contract is not negotiated for the constriction of asset. The real estate developer constructs the asset as per his scheme and contracts with the buyer to sell the asset.

d. CBDT vide Circular No. 10/2017, dated 23-3-2017 clarified as under:

"Question 12: Since there is no specific scope exclusion for real estate developers and Build - Operate - Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also whether ICDS is applicable for leases.

Answer: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable."

The CBDT has tacitly accepted that ICDS III is not applicable to Real Estate Developers.
e. ICAI in its Technical Guide on ICDS in Chapter 4 para 1.3 has made the following relevant observation /comments.

'The differentiation between a contractor and a builder has also been accepted by ICAI in interpretation to AS 7 issued earlier.

The Tax Accounting Standards committee ('TAS Committee') in the final report published during August 2012 in para 8.1.5 observed that a separate ICDS dealing with income recognition by the real estate developers would be notified.

The CBDT has clarified in the FAQ issued on 23rd March, 2017 vide Circular No 10/2017 (Reply to Question No.12) that this ICDS is not applicable to real estate developers'.

f. Proposed ICDS by CBDT

A draft ICDS on Real Estate Transactions has been published for public comment on 11th May, 2017.

The said ICDS is in sync with the guidance note for accounting for real estate transactions issued by ICAI which only permits percentage completion method as a method for a computation of business income for real estate developers.

The said ICDS is still under discussion.

g. In view of the above discussion, we submit that the provisions of section 43CB read with ICDS III and IV does not apply to Real Estate Developer

h. Since it is very clear that the provisions of section 43 CB are not applicable to a builder and appellant is a firm of promoter builder and developer therefore any addition made on the basis of provisions of section 43 CB needs to be deleted therefore it is requested that the addition made by applying section 43 CB may please be deleted.

i. Without prejudice to above, it is further submitted that the assessee since its inception is following Project Completion method and the same is accepted by the department in all earlier assessments. Following the Principle of Consistency Rule without any change in law and facts, the method consistently adopted by the assessee cannot be changed. Reliance is placed upon the following judgments

1. Decision of Gujarat High Court in the case of Manjusha Estates (P) Ltd Vs ITO reported in (2017) 393 ITR 644.

2. Decision of ITAT- Mumbai in the case of Prem Enterprises ITO reported in (2012) 25

3. Decision of High Court of Punjab & Haryana in the case of CIT Vs. Principal Officer, Hill view Infrastructure reported in (2016) 384 ITR 451- Follows CIT Vs. Bilahari Investment (P) Ltd. reported in (2008) 299 ITR 1 (SC)

4. Decision of ITAT-Mumbai in the case of Hardware Infrastructure P. Ltd

5. Decision of ITAT- Ahmedabad in the case of Unity constructions V/s ITO

6. Decision of Delhi High Court in the case of Manish Buildwell Pvt. Ltd. reported in (2016) 16 com 27 (Del)

7. Decision of Ashoka Hitech Builders Pvt Ltd Vs DCIT (Indore ITAT)

There are many such judgements wherein it is held that the Method of accounting followed by the assessee and accepted by the department is binding upon AO unless a change in Law or facts is there. In our Case even in AY 2018- 19 and earlier year assessments, the department has accepted that Project Completion method and hence it cannot be changed now.

Therefore in view of above it is submitted that the addition made may please be deleted."

Finding :

6.2. I have considered the facts of the case and the submissions made by the appellant. Briefly, the facts are that, the appellant had declared a profit of Rs. 11,70,84,960/- in its return of income in the relevant year on the basis of project completion method. During the course of assessment proceedings, the AO observed that the appellant had offered profits for taxation in respect of project 'Armada' situated at Wakad, Pune on piecemeal basis from AY 2019- 20 to AY 2021-22. The current status as on 31.03.2020 in respect of completion and the profits shown in the return of income related to the above project is tabulated as below.

is tabulated as below:

Sr. No.	Particular	Amount
1	Total Project Revenue	112 Crores
2	Total Estimated Project Cost	75 Crores
3	Total Project Cost incurred till 31.03.2020	62 Crores
4	% of Cost incurred to total Cost	62/75% = 82.00%
5	% of total Revenue Offered	(69.01 +20.86)/112 % = 80.24%
6	Total Income as shown in ITR for AY 2020-21	Rs. 11,70,84,960/-

Further, the appellant was issued notice u/s 142(1) on 25.08.2022 asking whether revenue was offered in accordance to section 43CB. In response to the same, appellant stated in its submission dated 08.09.2022 that the firm is a promoter, builder and developer and not executing any type of construction contract hence section 43CB is not applicable to it. The said section is applicable to a construction contractor. The appellant also stated that it has adopted completed contract method for recognition of revenue since last more than 15 years /beginning of the firm and was duly accepted by the department as well as in all earlier year assessment. Under the completed contract method the revenue on account of sales is recognized in P&L account on the basis of possession given to customers with undisputed amount of consideration. Vide notice u/s 142(1) issued to the appellant on 16.09.2022 the AO had asked for a sample copy of prospective buyer agreement duly signed by the buyer and to provide the details about the

project cost and project revenue. In response to the same, the appellant had submitted the reply on 19.09.2022 providing one sample buyer agreement and project details. The AO calculated profit of the said project with respect to the section 43CB of the Act as per percentage of completion method of accounting as under.

% Completion (on the basis of cost incurred actually) = actual cost incurred / total estimated cost of project	62/75% = 82.00%
% of total revenue offered	(69.01 +20.86)/112 % = 80.24%
Calculation of deferred revenue	(82% - 80.24% = 1.76% x 112 crores) = Rs. 1,97,12,000/- 13,67,96,960/-
Profit declared	Rs. 11,70,84,960/-
Difference to tax	Rs. 1,97,12,000/-

As per working in the above chart, the profit for A.Y. 2020-21 on the basis of percentage completion method is Rs. 13,67,96,960/-. Later on, the AO issued a show cause notice to the appellant on 20.09.2022, asking it as to why the difference of Rs. 1,97,12,000/- (Rs. 13,67,96,960 – Rs. 11,70,84,960) should not be made taxable. In response to the show cause notice, the appellant had filed submission. However, same was not acceptable by the AO. Accordingly, the same was added to the total income of the appellant.

6.3 During the appellate proceedings, the appellant submitted that the appellant firm since its inception is following Project Completion method and the same is accepted by the department in all earlier assessments. Following the Principle of Consistency Rule without any change in law and facts, the method consistently adopted by the appellant cannot be changed. The appellant has relied upon the following judgments.

1. Decision of Gujarat High Court in the case of Manjusha Estates (P) Ltd Vs ITO reported in (2017) 393 ITR 644.

2. Decision of ITAT- Mumbai in the case of Prem Enterprises ITO reported in (2012) 25

3. Decision of High Court of Punjab & Haryana in the case of CIT Vs. Principal Officer, Hill view Infrastructure reported in (2016) 384 ITR 451 - Follows CIT Vs. Bilahari Investment (P) Ltd. reported in (2008) 299 ITR 1 (SC)

4. Decision of ITAT-Mumbai in the case of Hardware Infrastructure P. Ltd

5. Decision of ITAT- Ahmedabad in the case of Unity constructions V/s ITO

6. Decision of Delhi High Court in the case of Manish Buildwell Pvt. Ltd. reported in (2016) 16 com27 (Del)

> *7. Decision of Ashoka Hitech Builders Pvt Ltd Vs DCIT (Indore ITAT)*
>
> *There are many such judgements wherein it is held that the method of accounting followed by the appellant and accepted by the department is binding upon the AO unless a change in law or facts is there. However, in this case, it is seen that the appellant has followed the project completion method since last 15 years and the department has also accepted the same even in AY 2018-19 and earlier year assessments and hence it cannot be changed now. Accordingly, the addition of Rs. 1,97,12,000/- made by the AO is to be deleted. Therefore, this ground raised by the appellant is hereby allowed."*

4. Mr. Murkunde vehemently argued in support of the Revenue's appeal above extracted pleadings that the CIT(A) has erred in law and on facts in deleting the impugned addition. He could hardly dispute the clinching fact that this is not the first year of the assessee having adopted Project Completion Method ["PCM"] as it has come on record that the very method of accounting stands accepted in preceding assessment years; and more particularly, in assessment year 2018-19. We wish to make it clear that this is not even the Revenue's case in it's pleadings that the relevant facts herein stand as an exception to those involved in the said preceding assessment year(s). Faced with this situation and keeping in mind the fact that the Ld. CIT(A) has already considered a catena of case law having decided the very issue in assessee's favour, we see no merit in the Revenue's instant sole substantive grievance. The same stands declined therefore. Ordered accordingly."

19. Since the addition in the instant case is made on adhoc basis and the Assessing Officer has considered the total agreements value of 54 units and estimated the profit @ 10% whereas neither sales were effected during the year nor the possession of the flats handed over to the purchasers during the year and since substantial amount has been received in the subsequent year, therefore, in view of the above discussion and in view of the decision of the Tribunal in the case of DCIT vs. G.K. Wonders (supra), we hold that the CIT(A) / NFAC is not justified in sustaining the adhoc addition of 10% of the agreed value of 54 flats. The decisions relied on by the CIT(A) / NFAC and the Ld. Addl. CIT(DR) are distinguishable and not applicable to the facts of the present case. In this view of

the matter, we set aside the order of Ld. CIT(A) / NFAC and direct the Assessing Officer to delete the addition. The grounds of appeal raised by the assessee on the first issue are accordingly allowed.

20. The second issue raised by the assessee as per grounds of appeal No.5 to 9 relates to the addition of Rs.3,27,91,602/- being 10% of the expenses debited in the Profit and Loss Account. The Ld. Counsel for the assessee submitted that the lower authorities are not justified in making such addition. Referring to the copy of Profit and Loss Account placed at page 19 of the paper book, the Ld. Counsel for the assessee submitted that the total expenditure debited to the Profit and Loss Account is Rs.32,24,11,546/- and not Rs.32,79,16,026/- as considered by the Assessing Officer which includes the profit of Rs.55,04,480/-. Further, the total expenditure which is debited to the Profit and Loss Account and capitalized to work in progress is Rs.32,21,66,747/-, out of which an amount of Rs.6,56,18,006/- has been allocated to the assessee by VTP Constructions while the balance expenditure has been incurred by the assessee. So far as the amount of Rs.6,56,18,006/- allocated to the assessee by VTP Constructions is concerned, the same consists of the following:

Sr. No.	*Particulars*	*Amount (Rs.)*
1	*Specific salary pertaining to the appellant firm*	*2,33,83,535/-*
2	*Specific marketing expenses pertaining to the firm*	*23,41,337/-*
3	*Out of common salary expenses*	*1,40,10,695/-*
4	*Out of non specific marketing expenses*	*42,87,240/-*
5	*Out of non specific admin expenses*	*2,14,15,202/-*
6	*Service Charge*	*1,80,000/-*

	Total	*6,56,18,008*

21. He submitted that the details of these expenses were provided to the lower authorities. He further submitted that the above expenditure contains the major component of Rs.2,33,83,535/- which is on account of specific salary expenses paid to various employees which were working for the assessee firm, details of which are given at pages 234 to 236 of paper book. He submitted that these employees are specifically working for the assessee firm but their salary was paid by VTP Constructions which has been charged to the assessee. He submitted that the Assessing Officer has not pointed out any discrepancies in the said details furnished by the assessee. Similarly, VTP Constructions has charged marketing expenses of Rs.23,41,337/-, the details of which are given at pages 237 to 251 of paper book, Even in respect of such expenses, the Assessing Officer has not pointed out any discrepancy. The Ld. Counsel for the assessee submitted that there are certain common expenses on account of marketing expenses, administration expenses which are allocated to the various entities on the basis of business volume, the details of which are placed at pages 232 to 233 of the paper book. He submitted that the expenses so allocated can be bifurcated into two parts i.e. actual expenses pertaining to the assessee firm only and the second part is common expenses which are allocated to the assessee firm and other concerns of the group on the basis of business volume. All these details were submitted to the lower authorities. He accordingly submitted that without pointing out any specific defect in the details furnished by the assessee, the Assessing Officer could not have made any adhoc disallowance. Further, similar expenditure was allocated in the earlier year i.e. 2017-18 and the Assessing Officer has completed the assessment u/s

143(3) of the Act without making any disallowance. He accordingly submitted that the order of CIT(A) / NFAC sustaining the adhoc disallowance made by the Assessing Officer is not justified.

22. The Ld. DR on the other hand while supporting the order of CIT(A) / NFAC drew the attention of the Bench to the following written submissions:

> *"Disallowance of expenditure 10% of certain expenses:*
>
> *14. The assessee has debited Rs.32,79,16,026/- as total expenditure in P&L account. The AO has called for details and has noted in Para 4 of the assessment order that there is no substantial basis on which apportionment of expenditure between projects were made. The AO further recorded that there is no justification on how and from which accounts the expenses are actually incurred and debited. The AO also observed that assessee is maintaining consolidated account in respect of expenditures for a number of projects.*
>
> *15. The assessee by virtue of following project completion method has not declared any sales. But has debited administration cost, marketing costs and other costs in the P&L. This cannot be accepted as these expenditures are linked to specific project carried out by assessee and needs to be capitalized. In addition to that Ld. CIT(A) and AO both have observed that ratio of apportionment has no basis. These expenses are neither linked to number of agreements registered nor linked to any sales.*
>
> *16. It is to be noted that AO has disallowed 10% of the total expenditure as no details about bifurcation and apportionment of expenses were available. The AO did not at any moment restrict to common expenses only. The Assessee however during the course of appellate proceedings (page 15-17 of CIT(A) order) brought in new argument of common expenses being only Rs.6,56,18,008/- and has listed certain ledgers of expenditure. This is not accepted by the Ld CIT(A).*
>
> *17. It is not been demonstrated by assessee as to how many projects were carried out and which project was employing project completion method. There is no material available as to if costs are capitalized in WIP, then which expenditure is being claimed against minor revenue items like interest/misc receipts etc. Thus it is prayed that disallowance of expenditure be confirmed."*

23. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made adhoc addition of Rs.3,27,91,602/- being 10% of total expenditure debited to the Profit and Loss Account of Rs.32,79,16,026/- on the ground that no substantial material was provided to justify the allocation of expenditure. We find the Ld. CIT(A) / NFAC upheld the adhoc addition made by the Assessing Officer, reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the total expenditure which is debited to the Profit and Loss Account and capitalized to the work in progress is Rs.32,21,66,747/-, out of which an amount of Rs.6,56,18,006/- has been allocated to the assessee by VTP Constructions while the balance expenditure is incurred by the assessee. The details of the above expenses of Rs.6,56,18,006/- were given to the lower authorities and no discrepancies were pointed out by the Assessing Officer. It is also his submission that certain common expenses on account of employees salaries, marketing expenses and administration expenses which are allocated to the various entities on the basis of business volume has been accepted by the department in the past.

24. We find sufficient force in the above arguments of Ld. Counsel for the assessee. Admittedly, the accounts of the assessee are audited and the assessee, during the course of assessment proceedings, had filed various details

substantiating the allocation of common expenses by the group on the basis of volume of turnover. Further, similar allocation was accepted by the Assessing Officer in the order passed u/s 143(3) of the Act in the immediately preceding assessment year and in the said order, neither any disallowance was made nor any remedial measures u/s 147 / 263 of the Act were initiated. Further, the assessee has capitalized the common expenses to the work in progress as per its system of accounting regularly followed i.e. project completion method and therefore, we find merit in the arguments of the Ld. Counsel for the assessee that there was no reason to disallow these expenses just because the assessee had followed the project completion method that too without pointing out any discrepancies in the audited accounts. In view of the above discussion, the CIT(A) / NFAC, in our opinion, is not justified in sustaining the adhoc disallowance made by the Assessing Officer. We, therefore, set aside the order of Ld. CIT(A) / NFAC on this issue and direct the Assessing Officer to delete the addition. The grounds of appeal raised by the assessee on this issue are accordingly allowed.

25. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 25th June, 2024.

Sd/-	**Sd/-**
(VINAY BHAMORE)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 25th June, 2024
GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u>:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	13.06.2024		Sr. PS/PS
2	Draft placed before author	14.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			