

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3856/MUM/2023  
Assessment Year: 2016-17**

Unique Shanti Developers LLP,  
103/104, Rajshree Apartment,  
Royal Compex, Eksar Road,  
Borivali (W),  
Mumbai-400092.

**PAN NO. AAUFU 1254 E  
Appellant**

ACIT Circle 32(3), Now ACIT  
Circle 1 Thane,  
A Wing, 6<sup>th</sup> floor, Asher IT Park,  
16Z, Wagle Industrial Estate,  
Thane (West)-400604.

**Respondent**

**ITA No. 3902/MUM/2023  
Assessment Year: 2016-17**

DCIT, Thane,  
Room No. 210, A Wing, 6<sup>th</sup> floor,  
Ashar IT Park, Road No. 16Z,  
Thane West-400604.

**Appellant**

Unique Shanti Developers LLP,  
Harish Plaza, 100 Road, 1<sup>st</sup>  
floor, Opp Sector-2,  
Mira Road (E),  
Thane-400604.

**PAN NO. AAUFU 1254 E  
Respondent**

Assessee by : Mr. Hitesh Shah  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 28/05/2024  
Date of pronouncement : 14/08/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross-appeals by the assessee and Revenue are directed against order dated 30.08.2023, passed by the Ld. Commissioner of Income-tax (Appeals), Pune-11 [in short 'the Ld. CIT(A)'] for assessment year 2016-17.

2. The grounds raised by the assessee are reproduced as under:

*On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) - 11 PUNE has erred in confirming the addition of Rs. 5,75,00,000/- being income declared under the IDS Scheme 2016 as reduced from the opening WIP,*

*The Appellant therefore prays that the addition of Rs. 5,75,00,000/- on account difference in opening WIP being unwarranted, illegal, bad-in-law be deleted.*

2.1 The grounds raised by the Revenue are reproduced as under:

*On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition of Rs.20,15,94,392/- holding that the Assessing Officer has accepted the method of accounting in earlier years without appreciating: (i)*

*The fact that the assessee maintained two set of balance sheets having different figures of inventory and advance, audited by two different auditors, which raises significant doubts regarding the credibility of the books of accounts of the company. (ii) The fact that the Guidance Note on Accounting for Real Estate Transactions-2012 issued by ICAI does not provide for including indirect expenses as cost of construction/cost of project, but still the assessee has included admin expenses, selling and distribution expenses, employees cost and other expenses in WIP of the projects namely Skyline and Aurum-1. 2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting addition of Rs.2,62,17,851/- made.*



3. Briefly stated facts of the case are that during the year under consideration, the assessee was engaged in the business of building and developing real estate properties. The assessee filed return of income for relevant assessment year on 17.10.2016 declaring total income at Rs.11,58,65,380/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment order passed u/s 143(3) of the Act dated 31.12.2018, the Assessing Officer made two additions aggregating to **Rs.28,53,12,234/-**. The **first** addition of **Rs.25,90,93,383/-** was made for under reported profit in relation to two old real estate projects namely 'Skyline' and 'Unique Aurum-I', which were commenced prior to 1.4.2012. The **second** addition of **Rs.2,62,17,851/-** was made for under reported profit in respect of projects commenced from 01.04.2012 namely 'Unique Aurum-II', 'Unique Castle', 'Unique Signature' and 'Unique Homes'.

3.1 On further appeal, the Ld. CIT(A) allowed part relief in respect of first addition, whereas allowed entire relief in respect of second addition.

3.2 Aggrieved, both the assessee and the Revenue are in appeal before the Tribunal by way of raising grounds as reproduced above.

4. Before us, the Ld. counsel for the assessee has filed a Paper Book in two volume containing pages 100 and 144.



5. The ground No. 1 of the appeal of the assessee and ground No. 1 of the appeal of the Revenue are interconnected and therefore, both these grounds are taken up together for adjudication.

5.1 Briefly stated, facts qua the issue in dispute are that a company namely “M/s Unique Shanti Developers p ltd” commenced two real estate projects namely ‘Skyline’ and ‘Unique Aurum-I’ (herein after referred as ‘old projects’) for construction and development of flats in Mumbai in financial year 2010-11. Later on w.e.f. 25/11/2014, the company was converted into a ‘Limited Liability Partnership’ (LLP) i.e. present assessee before us. In respect of those two old projects namely ‘Skyline’ and ‘Unique Aurum-I’, which were commenced in financial year 2010-11 by predecessor company, the assessee followed a unique method of accounting for declaring the profit. It is the contention of the assessee that Institute of chartered Accountants of India(ICAI) Guidelines, 2012 issued in respect of builder and developer for following ‘percentage completion method’ for computation of profit from real estate project are effective only from 01.04.2012 , therefore, the assessee did not follow said method for recognizing profit from those old projects and followed ‘project completion method’ . But, we find that the method followed by the assessee in respect of those two projects is neither ‘project completion method’ nor ‘percentage completion method’ and it is a unique method, which is combination of both methods. According to the method



followed, a certain percentage of profit was estimated on expenses incurred on the projects including sales and administrative expenses for any particular year and offered to tax. Thereafter, closing work in progress (WIP) has been worked out by adding all the expenses along with estimated profit and carried over to subsequent year. Further, advances received by the assessee against sale of flats/shops, have been also carried forward to subsequent year under the head “current liabilities”. The final profit from the projects was declared in the year of completion of projects after deducting estimated profit declared in earlier years. According to the assessee this method of accounting was accepted by the AO in all earlier assessment years from assessment year 2010-11 to assessment year 2015-16.

5.2 For other projects namely ‘Unique Aurum-II’, ‘Unique Castle’, ‘Unique Homes’ and ‘Unique Signature’ ( herein after referred as ‘new projects’) , which were commenced by the assessee on or after March, 2012, the assessee adopted ‘percentage completion method’ of accounting as per ICAI Guidelines, 2012 for real estate transactions for revenue recognition. Accordingly, the assessee submitted that revenue was recognized for the above projects as per ICAI Guidelines and profit was offered for taxation after assessment year 2012-13, which has been duly accepted in the assessment order passed by the Assessing Officer. The relevant schedule of notes on account (i.e. part of financial statement for year under



consideration), available on paper book page 67 is reproduced as under:

*“3. Revenue Recognition: a) During the year the assessee has completed Projects namely Skyline and Unique Aurum-I. Revenue is recognised for all the Flats/Shops sold upto 31st March 2016 by accounting for Sales. Accordingly balance Profit is offered for taxation by adjusting Profits already offered for tax purpose in earlier years on estimated basis b) The Assesse is following ICAI Guidelines on Accounting for Real Estate Transactions 2012 for under construction projects namely Unique Aurum II, Unique Castle and Unique Signature and accordingly proportionate Revenue is recognised on percentage completion Method of ® accounting as per ICAI guidelines in respect of Flats/Shops sold upto 31st March 2016 and which are secured by Contracts as on reporting date as reasonable level of development of the Project is already achieved during the year for above mentioned Projects.”*

5.3 As far as the projects namely ‘Unique Aurum-I’ and ‘Skyline’ are concerned, same were completed during the year under consideration and revenue amounting to Rs.204,06,97,400/- was recognized during the year from those two projects. Against said revenue, the assessee recorded opening work in progress (WIP) as on 1.04.2015 for financial year 2015-16 ( i.e. for the assessment year under consideration) at Rs.208,25,66,949/- as against the closing WIP as on 31.03.2015 for financial year 2014-15 at Rs.202,50,66,949/-. The assessee explained that difference between these two figures of Rs.5,75,00,000/- was on account of income declared for financial year 2015-16 by the assessee under the Income Disclosure scheme, 2016 (IDS) and therefore, the opening WIP for financial year 2015-16 was increased by an amount of Rs.5,75,00,000/-. The opening WIP of Rs.202,50,66,949/- for



financial year 2015-16 includes construction and development expenses incurred on the projects for the period since financial year 2010-11 to financial year 2014-15; administration and selling/employee cost expenses since financial year 2010-11 to financial year 2014-15 amounting to Rs.20,15,94,393/- and amount of net profit declared from financial year 2010-11 to financial year 2014-15. The Assessing Officer has not disputed amount of net profit and amount of construction and development expenses for working out closing WIP as on 31.03.2015 or opening WIP as on 1.04.2015 but he rejected, **firstly**, claim of the assessee of inclusion of administration/ selling/ employee cost expenses amounting to Rs. 20,15,94,393/- to closing WIP, and **secondly**, inclusion of undisclosed income of Rs.5,75,00,000/- offered under income disclosure scheme to opening WIP for FY 2015-16, corresponding to assessment year under consideration.

5.4 On further appeal, the Ld. CIT(A) allowed the claim of the assessee of including admin/selling/employee cost expenses of Rs. 20,15,94,393/- to closing WIP as on 31.03.2015 but rejected inclusion of Rs.5,75,00,000/- which was declared under IDS scheme. The assessee is aggrieved with rejection of Rs.5,75,00,000/- added to opening WIP and subsequent deduction against the revenue offered in respect of two old projects.

5.5 As far as **issue of Rs.5,75,00,000/-** raised by the assessee in its sole ground is concerned, the assessee contended that a survey



action u/s 133A of the Act was conducted on the assessee LLP on 22.09.2016 , wherein the assessee made declaration of undisclosed income of Rs.5,75,00,000/- under IDS for assessment year 2015-16. The assessee submitted that since this income was declared prior to completion of projects, therefore, a suitable accounting treatment was given in the accounts of financial year 2015-16 and accordingly, the opening WIP was increased by an amount of Rs.5,75,00,000/-.

5.6 Before the Ld. CIT(A), the assessee submitted that declaration for extra profit to the extent of Rs.5,75,00,000/- was made during the survey operation on the assurance of the survey team that same can be adjusted in WIP and can be reduced from the profits declared in AY 2016-17. The assessee further claimed that it had already paid taxes at the rate of 45% and if same is not allowed to be reduced from the profits of the assessment year under consideration, then it would amount to double taxation and assessee would be liable to pay taxes at the rate of 75% on such income of Rs.5,75,00,000/-. The Assessing Officer in response to remand report called for by the Ld. CIT(A) , submitted that under the provisions of IDS-2016, no deduction in respect of any expenditure or allowance could be allowed against the income in respect of which declaration was made.



5.7 After considering the submission of the assessee and objection of the Assessing Officer, the Ld. CIT(A) rejected the contention of the assessee observing as under:

*“33. I have considered the facts of the case and the submissions made by the appellant. It is not under dispute that the declaration of Rs. 5,75,00,000/- was made by the appellant under IDS-2016 as undisclosed income earned from the projects developed by it. Since the declaration is made as undisclosed income earned from the projects developed by it, the appellant cannot increase WIP in its books of accounts, by adding the said declared income and cannot reduce this undisclosed profit from the actual profit worked out on the basis of books of accounts. I also tend to agree with the comments of the Assessing Officer in the remand report that if the appellant is allowed to reduce the undisclosed income declared under IDS-2016, same will defeat the very purpose of the IDS scheme because the appellant will be able to set-off his income worked on the basis of books of accounts by the income disclosed in the IDS-2016 scheme. In my opinion, the declaration of undisclosed income made under IDS-2016 scheme is required to be kept separate from the income computed on the basis of regular books of accounts and therefore the action of the Assessing Officer of reducing the opening WIP by Rs. 5,75,00,000/- corresponding to declaration made under IDS-2016 is upheld.”*

5.8 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is the contention of the assessee that Rs.5,75,00,000/- was declared under IDS -2016 in the form of undisclosed income in respect of those two old projects. The assessee further contended that rate of net profit shown from projects in earlier years was less and therefore, assessee computed higher percentage of the profit on the expenses and the difference amount was offered as income during the survey year. The assessee submitted that it was following consistent method of including net profit declared to the work in progress (WIP) and therefore, this additional income declared also constituted part of work in progress, which was to be reduced from



the total revenue of those two projects for computing profit from those projects. The assessee contended that the additional profit declared is also from those two projects, therefore same is liable to be included in the work in progress and to be reduced from the revenue of those two projects for working out the profit or loss from those two projects.

5.9 The contentions of the assessee have been examined in the light of Income disclosure scheme announced under the Finance Act, 2016. The income declaration scheme, 2016 was an amnesty scheme introduced by the Government of India as a part of the 2016 Union budget to unearth black money and bring it back into the system. Lasting from 1st June to 30th September, 2016 the scheme provided an opportunity to income tax and wealth tax defaulters to avoid litigation and become compliant by declaring their assets, thereafter paying the tax/penalty on them at the rate of 45%. The scheme guaranteed immunity from prosecution under the Income-Tax Act, Wealth-Tax Act, 1957, and the Benami Transactions (Prohibition) Act, 1988 and also ensured that declarations under it would not be subjected to any scrutiny or inquiry. But the scheme prohibited claim of further expenditure or allowance as deduction against the income declared under the scheme. For ready reference, a relevant provision i.e. section 180(4) of scheme, is reproduced as under:



180. (1) Subject to the provisions of this Scheme, any person may make, on or after the date of 10 commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017-

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of sub-section (1).

(3) The fair market value of any asset shall be determined in such manner, as may be prescribed.

**(4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made.”**

*(emphasis supplied by us)*

5.10 . On perusal of prescribed form-I filed by the assessee for availing the scheme, which is available on paper book page 87 to 100 , it is seen that assessee declared an amount of Rs. 5,75,00,000/- under the scheme for difference in income as per ICAI guidelines on WIP and income declared for AY 2015-16 for skyline and Aurum-II project. The relevant statement of undisclosed income, which is an Annexure appended to prescribed form-I, available on paper book page 89 is reproduced as under:



Annexure to Form 1

**STATEMENT OF UNDISCLOSED INCOME**

Description of undisclosed income and income declared in the form of investment in assets (use separate sheet in case of multiple assets in the same category)

I. Total undisclosed income

S.No.	Assessment year to which the undisclosed income pertains	Amount of undisclosed income (in Rs.)	Nature of undisclosed income
1	2015-16	5,75,00,000/-	Diff. in Income As Per ICAI Guidelines on WIP & Income Returned by us for AY 2015-16 for Skyline Album-II, Unique Homes of Castle
<b>Total (to be taken to item 7 of the Form)</b>		<b>5,75,00,000/-</b>	

II. Whether any part of income referred in (I) above is in form of investment in asset  Yes  No

III. If reply to (II) above is Yes, furnish description of undisclosed income declared in the form of investment in assets (Use separate sheet in case of multiple assets in the same category)

1. Immovable property (attach valuation report)

- (i) Nature of property (land/building/flat etc) \_\_\_\_\_
- (ii) Address of the property \_\_\_\_\_
- (iii) Name(s) under which held \_\_\_\_\_
- (iv) Date of acquisition \_\_\_\_\_
- (v) Total acquisition cost \_\_\_\_\_
- (vi) Value as estimated by the registered valuer on 1<sup>st</sup> June, 2016 \_\_\_\_\_
- (vii) Fair Market value as per Rule 3 \_\_\_\_\_

2. Jewellery (attach valuation report)

- (a) Gold
  - (I) Purity \_\_\_\_\_ Weight \_\_\_\_\_ Value \_\_\_\_\_
  - (II) Purity \_\_\_\_\_ Weight \_\_\_\_\_ Value \_\_\_\_\_
- (b) Diamond (1 carat or more)
  - (I) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_
  - (II) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_
- (c) Diamond (less than 1 carat) and other precious stones \_\_\_\_\_
- (d) Other precious metals \_\_\_\_\_

3. Artistic work (attach valuation report)

- (i) Nature of artistic work \_\_\_\_\_
- (ii) Name(s) under which held \_\_\_\_\_
- (iii) Date of acquisition \_\_\_\_\_
- (iv) Cost of acquisition \_\_\_\_\_
- (v) Value of artistic work as estimated by the registered valuer \_\_\_\_\_
- (vi) Fair Market value as per Rule 3 \_\_\_\_\_

CHARTERED ACCOUNTANTS  
TRUE COPY  
CHARTERED ACCOUNTANT

5.11 Further, on paper book page 92, the assessee has provided complete detail of calculation of the amount of Rs. 5,75,00,000/-, which is reproduced as under:



UNIQUE SHANTI DEVELOPERS PVT. LTD./UNIQUE SHANTI DEVELOPERS LLP  
[ UNIQUE SHANTI DEVELOPERS PVT.LTD. WAS CONVERTED IN TO LLP W.E.F 24.11.14 ]

PROJECTS	PVT. LTD.	PVT. LTD.	PVT. LTD.	PVT. LTD.	PVT. LTD.	LLP	Total	Completion	W.I.P.	15% of W.I.P.
	F.Y. 2010-11	F.Y. 2011-12	F.Y. 2012-13	F.Y. 2013-14	F.Y. 2014-2015	Nov-'14 To Mar-'15				
SKYLINE	15,614,216.00	163,082,248.00	176,910,625.00	107,156,949.00	97,454,545.00	88,008,399.00	648,232,987.00	100%	648,232,982.00	97,234,947.30
UA-I	20,103,494.00	140,457,181.00	356,557,352.00	136,388,218.00	144,815,249.00	103,779,480.00	902,102,176.00	100%	902,102,174.00	135,315,176.10
SUB TOTAL	35,717,710.00	303,545,429.00	533,468,177.00	243,545,167.00	242,269,794.00	191,787,879.00	1,550,334,156.00			
UA-II	-	-	46,481,860.00	11,340,911.00	6,653,426.00	1,238,356.00	65,714,553.00	50%	32,857,276.50	4,928,591.48
UH	-	-	6,749,270.00	14,854,660.00	8,097,481.00	3,026,986.00	32,728,397.00	50%	16,364,198.50	2,454,629.78
UC	-	-	17,287,799.00	10,902,519.00	1,390,041.00	1,810,537.00	31,390,896.00	50%	15,695,448.00	2,354,317.20
US	-	-	-	-	-	145,300,847.00	145,300,847.00			
TOTAL	35,717,710.00	303,545,429.00	609,987,106.00	280,643,257.00	258,410,742.00	343,164,605.00	1,825,468,849.00		1,615,251,079.00	242,287,661.85
Profit already offered		31,017,981.00	46,849,109.00	42,488,665.00	36,922,936.00	28511960				185,790,651.00
		10.00	9.00	17.50	15.00	15.00				
									Balance Profit	56,497,010.85
									R/mt.	57,500,000.00

[ Note : Balance undisclosed Profit Disclosed under (DS 2016 )

5.12 On perusal of above, it is clear that amount of Rs. 5,75,00,000/- has been computed as difference in profit in respect of all the projects including 'old' and 'new' projects. Thus, the claim of the assessee that amount pertains to only old projects is false, wrong and misleading. Further, sh Dilesh C shah, during the course of survey explained as how profit in respect of projects was under reported in returns filed. The relevant question and answers recorded during survey proceedings available on paper book page 98, are reproduced as under:

*Q.12. Please justify your offer of income under Income Disclosure Scheme, 2016.*

*Ans. As per my knowledge, a declaration under the aforesaid scheme may be made in respect of any income or income in the form of investment in any assets located in India and acquired from income chargeable to tax under the Income Tax Act for any assessment year prior to the assessment year 2017-18. The above declaration has been made as per the market value of the undisclosed assets as on 1st June, 2016. Hence, my case is fit for availing this opportunity for disclosure of the company's undisclosed income of Rs.5.75 crores. Accordingly, we have filed prescribed Form-I for*



*income Declaration Scheme-2016 and the same will be submitted to the Pr. Commissioner of Income-tax-13, Mumbai on or before 26.09.2016.*

5.13 In view of above discussion, the contentions of the assessee seeking deduction of income declared under IDS-2016 are not acceptable for the reason that **firstly**, the assessee is not entitled for claim of Rs. 5,75,00,000/- as deduction as per section 180(4) of Finance Act, 2016, as no deduction in respect of any expenditure or allowance is permitted against the income under the normal provisions of the Income-tax in respect of income declaration made under scheme, **Secondly**, without prejudice, only part amount out of Rs. 5,75,00,000/- pertains to old projects and not the whole of amount. Thus, we concur with the finding of the Ld. CIT(A) that declaration of the undisclosed income made under IDS-2016 is required to be treated separately from the income calculation on the basis of regular books of accounts. Accordingly, we uphold finding of ld CIT(A) on the issue in dispute. Therefore, the sole ground of appeal of assessee is accordingly dismissed.

6. The ground No. 1 of the appeal of Revenue comprises of two parts. In first part , the Revenue has challenged finding of ld CIT(A) on the issue of maintenance of two sets of balance sheet dated 31/03/2014 by assessee and having variation in amount of inventory and long term loans and advances in those balance sheets, raising significant doubts regarding the credibility of the books of accounts of the company. In this regard, the Ld. CIT(A) has



given a detailed finding. For ready reference, said finding of the Ld. CIT(A) is reproduced as under:

*“16.1 First observation of the Assessing Officer is that M/s Unique Shanti Developers Pvt. Limited (the predecessor of the appellant) has filed two different balance sheets as on 31/03/2014, one before Registrar of Companies and another during the assessment proceedings. The Assessing Officer has scanned both these balance sheets at page 36 and 37 of the assessment order and has pointed out that there are variations in the figures of long term advances' and inventories.*

*16.2 During the appellate proceedings, the appellant has submitted that the financials dated 16.06.2014 was uploaded by the predecessor company on MCA portal since it was in the process of getting the entity converted into a limited liability partnership firm. Accordingly, the private limited company got converted into LLP on 25.11.2014. In the month of October 2014, when Tax audit of M/s Unique Shanti Developers Pvt Ltd was in the process, the auditor observed that Rs. 4,48,6,000/- paid to Ferreira family for S. No. 479/2 at Mira Road on behalf of Mrs Madhu H. Doshi was wrongly treated as cost of land purchase/land development rights and also a refundable deposit of Rs.1,50,00,000 paid to land owners of Unique Castle Project at Mira Road Was wrongly debited as cost of land purchased and included in closing inventory in the audited balance sheet 16.06.2014 showing total inventory at Rs 141,40,65,600/-. Hence while finalising Tax Audit report, both the entries were corrected appropriately in the books of accounts. At the time of assessment proceedings, it had clarified this fact to the assessing officer vide letter dated 24.12.2018. It is submitted that apart from differences in figures of inventory and long-term loans and advances in schedule 12 of the balance sheet. there is no change in any other item line of the balance sheet.*

<i>Particulars as head of item line</i>	<i>Financial as filed with RoC MCA</i>	<i>Financials as submitted by the appellant</i>	<i>Variance</i>
<i>Long Term Loans &amp; advances</i>	<i>36,11,46,896</i>	<i>42,09,62,896</i>	<i>5,98,16,000</i>
<i>Inventories</i>	<i>141,40,65,600</i>	<i>135,42,49,600</i>	<i>(5,98,16,000)</i>
	<i>16 June, 2014</i>	<i>31<sup>st</sup> October, 2014</i>	

*16.3 The Assessing Officer in the remand report has not commented adversely on the above explanation of the appellant, however, the Assessing Officer has stated that the fact that two set of balance sheets having different figures of inventory and advance, raises significant doubts regarding the credibility of the books of accounts of the company. In the rejoinder to the remand report, the appellant has submitted that this discrepancy was explained during the assessment proceedings and a written submission along with copies of documentary evidences and copy of agreements to clear the doubts of*



*the Assessing Officer was filed. The appellant has further submitted that these observations correspond to AY 2015-16 and the assessment u/s 143(3) of the Act, for the relevant. A.Y. 2015-16 is already completed in the case of LLP, without making any addition.*

*16.4 I have considered the above submissions. Although the Assessing Officer has raised doubts regarding the correctness of books of accounts of the appellant for A.Y. 2015-16, however, it is seen that the assessment u/s 143(3) of the Act for A.Y. 2015-16 has already been completed by the Assessing Officer on the basis of corrected balance sheet and the tax audit report without rejecting the books of accounts for A. Y. 2015-16. Moreover, the assessee has explained the reasons and circumstances for which the error was committed which was subsequently corrected while completing the tax audit and the Assessing Officer has not found any defect in the said explanation of the appellant either in the assessment proceeding or during the remand proceedings. Moreover, in the assessment order, the Assessing Officer has also not pointed out as to how the variation noted by him will adversely impact the taxable income for the year under consideration. Since the corrected balance-sheet for earlier year is finally adopted by the appellant for working the cost of closing WIP, the error committed in first balance-sheet will not have any impact on the taxable income for the year under consideration. Moreover, the assessment for A. Y. 2015-16 has already been completed both u/s 143(3) on 12/12/2017 as well as u/s 143(3) r.w.s. 153A dated 30/05/2022 and in none of the assessments, the Assessing Officer has made any addition on this account, therefore, in my opinion the observations of the Assessing Officer made regarding the revised balance-sheet for AY 2015-16 are adequately clarified by the appellant and no adverse view on same should be taken for the year under consideration.”*

6.1 In view of perusal of the submission of the Assessing Officer in the remand report and finding of the Ld. CIT(A), we find that the Assessing Officer has not commented adversely on the explanation of the assessee regarding variation amounting to Rs.5,98,16,000/- which was mutually adjusted against two items. The assessee has explained this variance because of particular one entry in respect of amount paid to 'Ferreira family' which was the reason of difference in two sets of the accounts. Moreover, this adjustment doesn't pertain to year under consideration and it was carried out in immediately preceding year, wherein the Assessing Officer accepted



the claim of the assessee. In our opinion, once, the Assessing Officer himself has not commented adversely in the remand report, we do not find any reason for agitating this issue by the Assessing Officer in the appeal filed before us unless any malafide in his action is brought before us. Accordingly, we dismiss this ground of the appeal of the Revenue.

6.2 Further, in second part of the ground No. 1 of the appeal, the Revenue has contested the relief granted by the Ld. CIT(A) in respect of deduction of admin expenses, selling and distribution, employee cost and other expenses in WIP of the projects namely 'Skyline' and 'Aurum-I' out of revenue while computing the profit/loss from those two projects.

6.3 The Ld. CIT(A) has allowed relief of the amount of Rs.20,15,94,392/- observing as under:

*"28.5 There is no dispute that the expenses amounting to Rs. 20,15,9450 not incurred by the appellant in earlier years are genuine expenses. It is also not under dispute that no deduction for these expenses have been claimed by the appellant or its predecessor company in any of the earlier assessment years. The appellant has argued that if the Assessing Officer is of the view that these expenses cannot be included in WIP, in that case he should have reworked the P/L Account of earlier assessment years and should have allowed corresponding losses of those years to be carry forward to present assessment year and to set-off the income of present year against such losses. I have considered this argument of the appellant and I am of the opinion that the genuine expenses incurred for the project and recorded in the books of accounts, are eligible for deduction against the sale consideration especially when capitalization of such expenses in WIP has been allowed by the assessing officer in earlier years. The action of Assessing Officer of disturbing the opening WIP by excluding indirect expenses amounts to unsettling of already completed assessments u/s 143(3) of the Act without any meaningful gain because the whole exercise is revenue neutral.*



*28.6 The appellant has not claimed the indirect expenses under question twice but included the same in WIP every year. The disallowance of these expenses in the year under consideration is unwarranted because it is not the case of the Assessing Officer that the appellant has claimed these expenses twice. In such a situation, not allowing deduction for the genuine expenses incurred by the appellant in any year would be against the principle of natural justice. If the Assessing Officer believed that these indirect expenses cannot be included in WIP, in that case he should have reduced the WIP by corresponding amounts in each of earlier assessment years and should have allowed deduction for these genuine expenses in respective assessment years.*

*29. In view of the above discussion, I am of considered opinion that action of the assessing officer in accepting the method of accounting in earlier assessment years and allowing it to capitalize the indirect expenses in WIP in earlier years and then suddenly excluding the indirect expenses from the opening WIP in the year when the sales considerations are booked in the P/L Account, is against the principle of natural justice especially when genuineness of these expenses is not under doubt. The action of the assessing officer has resulted in not allowing deduction for genuine expenses in any of the assessment years which cannot be upheld. Therefore, considering the totality of facts of the case, I am of the opinion that the aggregate amount of Rs. 20,15,94,392/- incurred towards employees' cost, admin expenses, selling & distribution expenses and other expenses in earlier years cannot be excluded from the opening WIP as on 01/04/2015 and therefore this addition is directed to be deleted."*

6.4 We have heard rival submission of the parties and perused the relevant material on record. The Assessing Officer held that administrative expenses, employee cost etc. are allowable in the respective years of incurring and cannot be allowed in the assessment year under consideration. According to the Assessing Officer in percentage completion method, the profit proportionate to the stage of construction has to be recognized in respect of project but the employee cost, administrative expenses etc. are to be allowed in year in which same are incurred. But the contention of the assessee that those expenses have not been claimed in relevant assessment years and same have been carried forward as work in progress to be reduced from the revenue or the sales at the time of



completion of the entire projects. In our opinion, whatever be the method of the assessee, whether project completion or percentage completion or a unique method, which is combination of both, but same has been accepted by the Revenue in earlier years and said indirect expenses have been allowed to be carried forward as part of WIP. We find that the Ld. CIT(A) has mentioned that assessee has not claimed those expenses in relevant assessment years. If that is so, then in principle, those carried forward indirect expenses are to be allowed in the year of completion of project, but, from the details of indirect expenses filed by the assessee, it is not clear whether the administrative expenses, selling expenses, employee cost and other expenses etc. carried forward to WIP of old projects pertain to projects initiated prior to March, 2012 or project commenced post March, 2012. The administrative expenses, employee cost etc. in relation to two projects namely Skyline and Unique Aurum-1 could only be allowed to be carried forward as work in progress following the unique method of accounting of the assessee subject to same has not been claimed in earlier years. In the circumstances, we feel it appropriate to restore this issue back to the file of the Assessing Officer for verification of total cost on account of administrative, selling, employee cost and other expenses and identify those indirect expenses pertaining to the two projects namely 'Skyline' and 'Unique Aurum-1', incurred upto 31.03.2015, for to be added to the closing WIP as on 31.03.2015. Further, we note from paper book page 99 that the profit declared in earlier years also include



profit from sale of development right certificates and interest, which can't be added to WIP as profit of the old projects and consequently can't be reduced from the revenue in the year of completion of the project, as same is not part of profit from project. The ground No. 1 of the Revenue is accordingly allowed partly for statistical purposes.

7. The ground No. 2 of the appeal of the Revenue relates to addition of Rs.2,62,17,851/- (sic) in relation to non-recognition of the revenue pertaining to three new projects, which has been deleted by the Ld. CIT(A).

7.1 The issue in dispute involved in ground No. 2 is that the Assessing Officer for the purpose of recognizing revenue from three projects namely 'Unique Signature', 'Unique Aurum-II' and 'Unique Homes', under the 'percentage completion method', considered recognition of revenue from sale of flats at the stage of allotment of flats by the assessee, whereas the assessee recognised revenue from those flats at the stage when registered sale agreement was entered into with the buyers. During appellate proceedings before the Ld. CIT(A) assessee made detailed submissions and relied upon various decisions of the Co-ordinate Bench. It is settled law that under the 'percentage completion method', the revenue should be recognised from the sale of the real estate, at the point when significant risk and reward of the ownership can be considered to be transferred to the buyers or otherwise when the seller enter into an agreement with the buyers, which has effect of transferring legal title of the



ownership to the buyer provided that the agreement is legally enforceable although possession of the real estate unit may not have been given. In the decisions cited by the assessee before the Ld. CIT(A), it is held that significant risk and reward are transferred only in the event of registration of real estate property with the stamp duty authority and not at the stage of issue of allotment letter by the developer against certain payments. Following the decisions of the Co-ordinate Bench, the Ld. CIT(A) verified all the sales agreement and allotment letters and correspondingly observed that in some cases registered agreement were entered into, however the assessee did not consider the same for the purpose for recognizing revenue. The Ld. CIT(A) accordingly sustained the addition to the extent of Rs.6,23,553/- out of addition made by the Assessing Officer of Rs.2,62,17,851/-. The relevant finding of the Ld. CIT(A) is reproduced as under:

*Findings*

*43. I have considered the facts of the case and the submissions made by the appellant from time to time. The issue under dispute is regarding the incorrect recognition of revenue from the projects namely Unique Aurum-II, Unique Signature and Unique Homes. Since all these three projects are separate and are at different stages of development, therefore, it will be appropriate if the issues involved in each of these projects are dealt separately.*

**Unique Aurum-II**

*44. There is no dispute that 25.24% of the project was completed during the year and accordingly, the appellant recognized the revenue to the extent of 25% of the total sale consideration for the flats for which, sale agreements were registered. The Assessing Officer did not agree with the appellant and had recognized the revenue for all flats booked by the customers. Thus, the dispute is regarding the point at which the revenues is to be recognized for a particular flat. As per the appellant, the date of*



registration of sale agreement should be considered, however, the Assessing Officer is of the opinion that the execution or registration of sale agreement does not matter while recognizing the revenue as per AS-7 of Accounting Standards laid down by ICAI. The Assessing Officer is of the view that whenever, all critical approvals for the project are in place, 25% of project is completed and at least 25% of saleable project area is booked, in such situations, the revenue on those flats in which 10% of sale value is realized, should be recognized. The Assessing Officer also considered the booking application/allotment letter as valid contract and has held that these are legally enforceable documents. Thus, although the appellant has recognized revenue amounting to Rs. 5,01,50,250/- (25% of Rs. 20,06,01,000/-) which is corresponding to the flats for which sale agreement were registered before 31/03/2016, the Assessing Officer recognized the revenue for all flats booked by the customers. In this manner, the Assessing Officer has recognized the revenue to the extent of Rs. 8,87,06,935/- (25.24% of sale value of Rs. 35, 14,30,000/- for all flats).

45. On the other hand, the appellant has submitted that Accounting Standard AS-7 is to be read along with Accounting Standard AS-9 because para 3.3 of AS-7 clearly provides that revenue is to be recognized when the conditions specified in paragraph 10 & 11 of AS-9 are fulfilled. As per AS-9, one of the most important requirements is transfer of all significant risks and reward of ownership' which is required to be determined on the basis of terms and conditions of the agreement for sale. As per para 3.3 of AS-7, this agreement for sale is considered of having the effect of transferring all significant risk and reward of ownership to the buyer, provided the agreement is legally enforceable. The AS-7 further provides that once such legally enforceable agreement is entered with the buyer, the revenue is to be recognized subject to fulfillment of other conditions, irrespective of the fact whether legal title is transferred or not or possession is given or not. So, one of the important conditions is presence of a legally enforceable agreement to sell.

46.1 The appellant has contended that Assessing Officer has erroneously considered the booking form as letter of acceptance and has equated the same to an enforceable contract/agreement to sell. A perusal of specimen booking form filed before the Assessing Officer suggests that this is an application form by the buyer to the appellant wherein, the buyer had agreed to book a specific flat for a specified consideration. Clause 11 of this form reads as under:-

"11. I/We have clearly understood that this application does not constitute an agreement to sell and I/We do not become entitled to the provisional allotment of a residential flat notwithstanding the fact that the company may have issued a receipt in acknowledgement of the money tendered with this application. I/We undertake to execute the agreement. Allotment letter on the company's standard format agreeing to abide & agree by the terms and condition of the same. I/We agree to abide by the terms and conditions of this application and of allotment letter."



46.2 Thus, the clause 11 clearly provides that this is a booking application and it does not constitute an agreement to sell. It has also been clearly mentioned that through this application, the proposed buyer does not become entitled to provisional allotment of the said residential flat. Also, this application cannot be considered as allotment letter because it is clearly provided in clause 11 that the allotment letter on the company's standard format shall be executed separately.

46.3 I have also perused the specimen allotment letter filed by the appellant. The clause-10 and clause-13 of this allotment letter read as under:-

"10. Detailed terms and conditions of sale shall be incorporated in a standard agreement for sale, copy whereof, shall be handed over to you in due course. The agreement for sale will inter-alla includes conditions/covenants not limiting to...

13. This writing is merely a letter of intent and is not and does not purport to be an agreement for sale/purchase of the said flat. Your rights shall become effective only on execution of the agreement for sale though your obligation to pay the consideration amount as per Annexure "A" shall be liable to be discharged, irrespective of whether the agreement for sale has been executed or not."

46.4 Thus clause-13 of the allotment letter clearly provides that the allotment letter should not be considered as agreement for sale. It further provides that the buyer's right shall become effective only on execution of the agreement for sale.

47. As discussed earlier in this order, that as per AS-7 read with AS-9, revenue is required to be recognized on those projects, where at least 10% of the total revenue as per the agreements of sale or any other legally enforceable documents are realized. In the present case, the booking form as well as the allotment letter clearly provides that buyer's rights are not effective unless agreement for sale is executed. Thus, it cannot be said that all significant risk and reward of ownership have been transferred to the buyer. Therefore, the booking letter as well as allotment letter cannot be said to be a legally enforceable agreement to sale.

48. It may also be mentioned that a similar issue has been considered by the Hon'ble ITAT Mumbai in the case of M/s Shankala Realtors Pvt Ltd Vs. ITO ITA No.3827/MUM/2017 dated 28/8/2019. Shankala Realtors was in the business of real estate development and was following the percentage completion method and offered the income only in respect of those flats for which agreements were registered. The Assessing Officer observed that in many cases, the assessee had received considerable portion of advance, still it had not offered the income for taxation on the pretext that no agreement has been made with the prospective buyer. The Assessing Officer after considering the AS-9 noted that when a prospective buyer approached the appellant, allotment letter is issued on receipt of advance money and in some cases, the assessee has taken almost 90% of the total



*value. Accordingly, the Assessing Officer held that entering into an agreement and its registration is not necessary for recognition of revenue on advances and worked out the profit. The Ld. CIT(A), agreed with the reasons given by the Assessing Officer and upheld the addition. When matter reached to Hon'ble ITAT Mumbai, the Bench observed as under:*

*"7.3 In the instant case as recorded by the AO when a prospective buyer approaches the assessee for booking the flat, allotment letter is issued to the buyer on receipt of the advance money.*

*The appellant filed a written submission dated 26.03.2015 before the AO stating that the degree of work completed and certified by architect till 31.03.2009 is 73% and the assessee-company has recognized the revenue by applying 73% to the value of agreements executed till 31.03.2009. It was further stated before the AO that the revenue in respect of balance advances could not be recognized as passing of risks and rewards by virtue of ownership is an essential condition for revenue recognition as per AS-9, which has not been fulfilled in the instant case, as no agreement is executed and no possession have been given to the buyer.*

*The case laws relied on by the Ld. counsel and Ld. DR have been narrated at length hereinbefore. One principle which emerges from the above case laws is the role of agreement executed. Immovable property is not conveyed by delivery of possession, but by a duly registered deed. Further, it is the date of execution of registered document, not the date of delivery of possession or the date of registration of document which is relevant. Once the executed documents are registered, the transfer will take place on the date of execution of documents and not on the date of registration of documents as held in *Alapati Venkataramiah v. CIT* (1965) 57 ITR 185 (SC).*

*As per the ingredients of AS-7 and AS-9, 'revenue' be recognized even though legal title of the property is not transferred and possession is not given. Once seller transfers significant risks and rewards of ownership to buyer, seller thereafter acts like a contractor. Accordingly, revenue recognition will have to be as in Percentage Completion Method' (AS-7).*

*We are concerned here with the execution of agreements and not with the registration of agreements.*

*Having considered the application of principles of AS-9 in respect of sale of goods to a real estate project and the case laws relied on by both sides in the back drop of the facts of the case, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make an addition, bringing to tax by percentage completion method, the revenue out of the remaining executed agreements, if any, during the impugned assessment year. The assessee is directed to file the documents/evidence in respect of agreements*



*executed during the impugned assessment year. Needless to say, the AO would provide reasonable opportunity of being heard to the assessee before finalizing the order."*

49. Thus, in the case of Shankala Realtors (*supra*), the jurisdictional ITAT after considering AS-7 and AS-9 has held that while applying the percentage completion method, the date of execution of 'agreement to sell' is the point which determines the point of recognition of revenue because passing of risks and rewards by virtue of ownership is an essential condition for revenue recognition. The Hon'ble ITAT has further held that it is the date of execution of agreement which is important and not the date of registration of agreement, as canvassed by the assessee. Accordingly, the ITAT directed the assessing officer to bring to tax, the revenue out of the remaining executed agreements, if any, during the impugned assessment year, by applying the percentage completion method. It is seen that the facts of the present case are similar to the case of Shankala Realtors (*supra*).

50. An identical issue was raised by the Assessing Officer in the case of a group concern namely M/s Unique Shanti Neminath Developers LLP wherein similar additions were made by the Assessing Officer while completing assessment for A.Y. 2016-17. The said issue was decided in favour of the tax payer by CIT(A). Against the said order, the revenue filed an appeal before Hon. ITAT in ITA No. 1733/Mum/2022. Vide order dated 24/11/2022, the Hon. ITAT has dismissed the revenue's appeal by observing as under:-

*"12. Aforesaid findings returned by the Ld. CIT(A) need no interference on the grounds inter-alia that the entire revenue has been recognized by the assessee as per accepted percentage completion method; that the flats for which no doubt assessee has received more than 10% of the sale consideration but cannot be taken for revenue recognition because enforceable contract qua all sale consideration, the revenue cannot be recognized for taxing the income; that moreover the Ld. CIT(A) has returned factual findings that there is no flat for which revenue is required to be recognized over and above the revenue recognized in the books of account and; that moreover the assessee has already offered the corresponding revenue in the subsequent years for A.Y. 2017-18, 2018-19 and 2019-20."*

Since, the issue under consideration stands decided by Jurisdictional ITAT in assessee's favour in the case of sister concern of the appellant, it is incumbent upon me to follow the said decision.

51. One of the contentions of the appellant is that even though it is following the consistent policy regarding the recognition of revenue, the Assessing Officer has been inconsistent in this regard. A perusal of the assessment order for A.Y. 2017-18 suggests that while completing the assessment, the Assessing Officer did not stick to the accounting policy adopted by him for A.Y. 2016-17 (assessment year under consideration)



and accepted the revenue recognized by the appellant in the P/L Account and no addition was made on this issue in A.Y. 2017-18 while completing assessment u/s 143(3) of the Act or any other subsequent assessment years. The copies of assessment orders for A.Ys. 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 completed u/s 143(3)/143(3) r.w.s. 153A of the Act have also been filed. Thus, the contention of the appellant that the Assessing Officer has not been consistent in the method adopted by him, has merits.

52. Another contention of the appellant is that the method of revenue recognition adopted by the Assessing Officer has resulted in pre-ponment of the revenue from subsequent assessment years to the assessment year under consideration. It has been submitted that by following the accounting policy, the appellant itself has recognized revenue in subsequent assessment years. As a result, same revenue and same income stands taxed in two assessment years resulting in double taxation. A chart giving the year-wise details in which the said revenue was recognized for each of three projects along with corresponding audited financial statements have been filed by the appellant. The consolidated amount is tabulated as under for all the three projects:

A.Y.	Sale recognized in P/L Account					
	Unique Aurum-II (UA-II)		Unique Signature (US)		Unique Homes (UH)	
	Total revenue from UA-II	Additional Revenue from those UA-II flats on which AO recognized revenue during AY16-17	Total revenue from US	Additional Revenue from those US flats on which AO recognized revenue during AY 16-1 7	Total revenue from UH	Additional Revenue from those UH flats on which AO recognized revenue during AY 16-1 7
2017-18	9,05,68,000	2,59,78,000	18,52,13,797	3,63,92,298	1,25,57,611	1,25,57,611
2018-19	24,91,24,920	9,42,43,020	18,40,64,001	5,37,79,842	37,05,701	37,05,701
2019-20	24,87,10,330	2,62,47,980	4,05,02,487	51,76,837	5,58,85,358	1,90,47,108
2020-21	2,27,74,000	13,60,000	7,89,25,340	1,94,13,138	11,37,38,423	5,40,77,819
2020-21	-	-	9,40,74,339	1,42,36,298	2,49,94,074	78,87,212
<b>Total</b>	<b>52,96,77,250</b>	<b>15,08,29,000</b>	<b>58,27,79,964</b>	<b>12,89,98,410</b>	<b>21,08,81,167</b>	<b>13,15,90,350</b>

The above chart suggests that the appellant has offered the corresponding revenues in subsequent assessment years i.e. A. Ys. 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

53. Considering the totality of facts of the case and the decisions of the jurisdictional ITAT in the case of Shankala Realtors (supra) and M/s Unique Shanti Neminath LLP (supra), I am of the opinion that the assessing officer has erred in recognizing the revenue for all flats ignoring the fact that in many cases, there was no legally enforceable agreement in the form of agreement to sell. In the case of Shankala Realtors (supra), Hon'ble ITAT has held that revenue is required to be recognized at the time of



*execution of agreements and the date of registration of agreements is immaterial. Accordingly, the Hon'ble ITAT had directed to bring to tax the revenue out of the agreements which were executed but remained to be registered. In the present case, the Assessing Officer has considered the total sale for Unique Aurum-II till 31/03/2016 at Rs. 35,14,30,000/-. Against this amount, the assessee has considered the sale value at Rs. 20,06,01,000/- for the purpose of computation of profit as per ICAI guidelines 2012. The appellant has submitted complete details of remaining flats having sale value of Rs. 15,08,29,000/- such as date of booking, date of agreement and year of revenue recognized in respect of the flats for which no revenue was recognized during the year under consideration even though the flats were booked by the customers. The said details are as under:*

**[Statement of Flats Booked before 3103.2016 but Revenue recognized In subsequent years as per Percentage Completion on the basis of date of agreement**

Flat No.	Name	Agreement Value	Date of Booking	Date of Agreement	Revenue Recognition			
					A.Y.2017-18	A.Y.2018-19	A.Y.2019-20	A.Y.2020-21
Unique Aurum-II								
203	Ritesh Gangwal & Jt.	28,80,000	08.09.11	14.08.18		23,61,60	5,18,400	
205	Hemlata R. Singh & Jt.	49,05,000	10.04.14	20.06.19		40,22,100	8,82,900	
208	Rachika Samaiya & Jt.	28,80,000	31.07.12	06.09.17	14,40,000	9,21,600	5,18,400	
301	Prakash S Gadade & Jt	47,00,000	17.02.14	09.08.18	-	38,54,000	8,46,000	
302	Nalin Chandra Pant	43,60,000	14.02.12	28.08.18	-	35,75,200	7,84,800	
303	Bhamini J. Thakkar & Jt	28,80,000	31.07.12	28.05.18	-	23,61,600	5,18,400	
401	Anil Fernandes	43,60,000	27.12.12	26.07.17	21,80,000	13,95,200	7,84,800	
402	Vandana Tiwari & Jt.	43,60,000	01.11.12	24.04.17	26.07.17	13,95,200	7,84,800	
508	Dinesha Achuita Shetty	30,24,000	10.08.13	29.11.18	-	24,79,680	5,44,320	
602	Gupta Vishal & J	54,50,000	30.10.15	14.12.18	-	44,69,000	9,81,000	
708	Jugal C. Mascarenhas	32,80,000	17.02.14	20.06.14	16,40,000	10,43,600	5,90,400	
902	Rajani B. Ranchooddas	43,60,000	07.08.12	06.11.17	-	35,75,200	7,84,800	
904	Rambha Rakesh Singh	28,80,000	21.01.13	21.12.16	14,40,000	9,21,600	5,18,400	
1003	Ajay Kumar Pandey & Jt.	36,00,000	03.11.13	18.08.18	-	29,52,000	6,48,000	
1006	Nitin Palan & Jt.	43,60,000	27.06.17	29.06.17	-	35,75,200	7,84,800	
1008	Sanjay Kulshrestha & Jt.	30,00,000	05.05.13	13.09.17	15,00,000	9,60,000	5,40,000	
1104	Sheela R. Kalokh	29,54,000	13.09.13	23.12.14	15,48,000	9,90,720	4,15,280	
1105	Rukmani J. Nadar	43,60,000	25.07.11	12.12.18			-	43,60,000
1201	Amit Jha & Jt	43,60,000	08.06.12	21.03.17	21,80,000	13,95,200	7,84,800	
1202	Amit Jha & Jt.	43,60,000	08.06.12	21.03.17	21,80,000	13,95,200	7,84,800	
1205	Mr. Amit Saha & Jt.	53,30,000	17.04.15	07.03.18	-	43,70,600	9,59,400	
1206	Deepati R. Jaiswal & JT	49,50,000	01.10.15	31.07.18	-		8,91,000	
1207	Miss. Rithisha J. Shetty & Jt.	28,00,000	23.12.11	30.06.18	-	22,96,000	5,04,000	
1208	Khushboo A. Dharadhar	28,00,000	16.08.12	20.02.18		22,96,000	5,04,000	
1304	Bandhna Rangu & Jt.	28,80,000	12.09.11	29.06.17	14,40,000	9,21,600	5,18,400	
1308	Rakesh V. Shetty & t	34,20,000	20.01.14	19.06.17	17,10,000	10,94,400	6,15,600	



1401	HrushikeshR.Deo& Jt.	43,60,000	12.08.11	29.09.18		35,75,200	7,84,800	
1402	ShaileshKotadia&J	43,60,000	08.06.12	21.03.17	21,80,000	13,95,200	7,84,800	
1405	Mr.UmeshH Pathak & Jt	43,60,000	01.03.12	13.03.18	21,80,000	13,95,200	7,84,800	
1502	HarishKarande	43,60,000	07.02.12	07.03.17	21,80,000	13,95,200	7,84,800	
1504	MaheshkumareMaurya &Jt.	28,80,000	23.08.11	06.03.18		23,61,600	5,18,400	
1505	NishantraiH Pandey&Jt	43,60,000	21.09.11	11.04.18		35,75,200	7,84,800	
1508	ShardaR Thakur&Jt.	34,56,000	25.06.14	13.10.17		28,33,920	6,22,080	
1605	MeenaK Ashar&Jt.	43,60,000	21.12.12	27.09.17		35,75,200	7,84,800	
1701	PratimaR, Chavan&Jt	43,60,000	24.02.13	18.03.19		35,75,200	7,84,800	
1703	AnushriA.Bandekar	28,80,000	08.08.11	19.08.19		23,61,600	5,18,400	
1707	BhanuprasadNMewada&Jt.	28,80,000	25.05.12	14.11.17		23,61,600	5,18,400	
1805	RampratapMistry	43,60,000	13.10.11	13.11.17		35,75,200	7,84,800	
1806	DurgadeviMistry	43,60,000	13.10.11	13.11.17		35,75,200	7,84,800	
	TotalotUniqueAurum-ll	15,08,29,000			2,59,78,000	9,42,43,020	2,62,47,980	43,60,000

54. A perusal of above chart suggests that out of 39 flats on which revenue has not been recognized by the appellant during the year, the agreement to sale was executed beyond 31/03/2016 in 37 cases. In case of flat no. 708 and flat no. 1104, agreement to sell was executed on 20/06/2014 and 23/12/2014. Since the agreement to sell in these two cases has been executed before 31/03/2016, therefore, in terms of the directions of Hon'ble ITAT in the case of Shankala Realtors, the revenue corresponding to these two flats is required to be recognized during the year under consideration. As per the details submitted by the appellant the sale consideration for these two flats is Rs. 62,34,000/- (32,80,000 + 29,54,000). Since the project has been completed to the extent of 25.24%, therefore, the revenue to the extent of Rs. 15,73,460/- (25.25% of 62,34,000) is required to be recognized during the year under consideration. For the project Unique Aurum-ll, the profit ratio as per computation chart filed by the appellant comes to 21.34% (10703140/50150250), therefore, the profit on such under reported revenue comes to Rs. 3,35,810/- (21.34% of 15,73,460).

55. Considering the totality facts of the case as discussed above and the decision of the jurisdictional ITAT in the case of Shankala Realtors (supra) and Unique Shanti Neminath Developers LLP (supra), I am of the opinion that the assessing officer has erred in recognizing the revenue for all flats ignoring the fact that in many cases, there was no legally enforceable document in the form of agreement to sell. Moreover, the assessing officer has not been consistent in the method adopted by him in AY 2016-17. However, as discussed above, the appellant was required to recognize revenue corresponding to flat no. 708 and 1104 during the year under consideration because the agreement to sell for these flats have been executed before 31/03/2016. As discussed above, the profit on the



revenue to be recognized for these two flats comes to Rs. 3,35,810/-. Therefore, the addition to the extent of Rs. 3,35,810/- is upheld.

**Unique Signature**

56. This project was completed to the extent of 40.81%. the appellant has recognized revenue to the extent of 41% of sale value amounting to Rs. 14,71,66,310/- which is corresponding to the flats for which sale agreement were registered before 31/03/2016. The Assessing Officer did not agree with the appellant and had recognized the revenue for all flats booked by the customers. In this manner, the Assessing Officer has recognized the revenue to the extent of 40.81% of Rs. 27,61,64,720/- (sale value of all flats booked by customers).

57. The reasons given by the Assessing Officer for recognizing the revenue on all flats booked by the customer for project namely Unique Signature, are identical to the reasons given for the project namely Unique Aurum-II. During the assessment proceedings, as well as appellate proceedings, the appellant has given common contentions for all the three projects which have been discussed earlier in this order. Therefore, following my findings given for the project namely Unique Aurum-II, it is held that the revenue should be recognized only for those flats where legally enforceable document in the form of agreement to sell has been entered into before 31/03/2016.

58. For this project, the Assessing Officer has considered the total sale for Unique Signature till 31/03/2016 at Rs. 27,61,64,720/- against the amount of Rs. 14,71,66,310/- considered by the assessee, for the purpose of computation of profit as per ICAI guidelines 2012. The appellant has submitted complete details of remaining flats having sale value of Rs. 12,89,98,410/- such as date of booking, date of agreement and year of revenue recognized in respect of the flats for which no revenue was recognized during the year under consideration even though the flats were booked by the customers. The said details are as under:

Flat No.	Name	Agreement Value	Date of Booking	Date of Agreement	Revenue Recognition				
					A.Y.2017-18	A.Y.2018-19	A.Y.2019-20	A.Y.2020-21	AY 2021-22
Unique Signature									
104	Harpal Singh Gulati	47,30,000	19.06.14	20.02.17	25,06,900	8,04,100	1,89,200	7,09,500	5,20,300
105	Mr. Harpal Singh Gulati	47,30,000	19.06.14	13.12.17	-	33,11,000	1,89,200	7,09,500	5,20,300
201	Mrs. Naseem Bano Shaikh	49,21,800	07.11.14	10.07.18	-	34,45,260	12,96,872	7,38,270	5,41,398
304	Mrs. Kamini Kaur & Jt.	46,26,150	06.08.14	28.05.18	-	32,38,305	1,85,046	6,93,923	5,08,876
305	Mrs. Kamini Kaur & Jt.	46,26,150	06.08.14	28.05.18	-	32,38,305	1,85,046	6,93,923	5,08,876
306	Mrs. Shabbana Aamir Chikte & Jt.	70,45,100	12.07.15	23.11.16	37,33,903	11,97,667	2,81,804	10,56,765	7,74,961



404	Mr. Ayaz Abdul Kadar Shaikh & Jt.	49,94,070	13.11.14	16.02.18	-	34,95,849	1,99,763	7,49,110	5,49,348
405	Mr. Azam Hussain Qazi Syed	49,13,840	20.05.14	23.01.18	-	34,39,688	1,96,554	7,37,076	5,40,522
505	Mr. Aabid Husain Patrawala	45,56,800	20.12.14	30.12.21	-	31,89,760	1,82,272	6,83,520	5,01,248
601	Mr. Ashif T. Sorathiya & Jt.	49,28,370	05.09.14	24.04.18	-	34,49,859	1,97,135	7,39,255	5,42,121
602	Mr. Terry D'souza & Jt.	63,68,660	27.06.14	07.02.23	-	44,58,062	2,54,746	9,55,299	7,00,553
701	Mr. Deepak Singh & Jt.	5,20,350	31.10.14	12.07.17	26,60,786	8,53,460	2,00,814	7,53,053	5,52,238
706	Mr. Mohammed Taiyeb Bhoira	44,95,000	15.09.11	13.01.17	23,82,350	7,64,150	1,79,800	6,74,250	4,94,450
805	Mr. Tarashankar Singh	31,16,750	09.07.11	22.04.12	16,51,878	5,29,848	1,24,670	4,67,513	3,42,842
906	Mr. Shaikh Rafique Ahmed & Jt.	70,56,000	01.02.16	30.06.17	37,39,680	11,99,520	2,82,240	10,58,400	7,76,160
1001	Smt. Sapna O. Pandit & Jt.	50,59,770	09.12.14	14.02.18	-	35,41,839	2,02,391	7,58,965	5,65,575
1005	Mrs. Rajeshwari N. Singh	50,79,480	31.10.14	17.06.17	26,92,124	8,63,512	2,03,179	7,61,922	5,58,743
1101	Farha Abdul Hameed Shaikh	51,20,360	28.07.14	28.07.17	27,13,791	8,70,461	2,04,814	7,68,054	5,63,240
1104	Mr. Iqbal Ahmed Abdul Lateef & Jtd.	51,18,000	23.12.15	21.09.16	27,12,540	8,70,060	2,04,720	7,67,700	5,62,980
1205	Miss. Sarah Melital Lobo	51,14,520	28.05.14	07.11.17	-	35,80,164	2,04,581	7,67,178	5,62,597
1304	Mr. Rakesh Sequeira & Jt.	51,78,030	28.07.14	24.07.17	27,44,356	8,80,265	2,07,121	7,76,705	5,69,583
1305	Mohamad Abdul Rehman	45,38,720	25.05.15	10.08.16	22,06,947	8,43,407	1,98,449	7,44,183	5,45,734
1404	Mr. Faizanl. Choudhry	51,18,900	01.07.14	27.04.17	-	35,83,230	2,04,756	7,67,835	5,63,079
1405	Mr. Raj Kumar & Jt.	51,53,940	22.03.16	27.04.17	27,31,588	8,76,170	2,06,158	7,73,091	5,66,933
1505	Mr. Sajid Kachhi	47,35,650	12.09.14	23.03.17	25,09,895	8,05,061	1,89,426	7,10,348	5,20,921
Shop No. 5	Mohammed Khajamohd Haji & Jt.	26,52,000	26.02.16	28.03.17	14,05,560	4,50,840	1,06,080		2,91,720
	Total of Unique Signature	12,89,98,410			3,63,92,298	53779842	51,76,837	1,94,13,138	1,42,36298

59. A perusal of above chart suggests that out of 26 flats on which revenue has not been recognized during the year, the agreement to sale was executed beyond 31/03/2016 in 25 cases. In case of flat no. 805, agreement to sell was executed on 22/04/2012. Since the agreement to sell has been executed before 31/03/2016, therefore, in terms of the directions of Hon'ble ITAT in the case of Shankala Realtors (supra), the revenue corresponding to flat no. 805, is required to be recognized during the year under consideration. As per the details submitted by the appellant, the sale consideration for this flat is Rs. 31,16,750/-. Since the project has been completed to the extent of 40.81%, therefore, the revenue to the extent of Rs. 12,71,945/- (40.81% of 31,16,750) is required to be recognized during the year under consideration.

For the project Unique Signature, the profit ratio as per computation chart filed by the appellant comes to 22.62% (1,36,49,858/6,03,38, 187),



therefore, the profit on such under-reported revenue comes to Rs. 2,87,743/- (22.62% of 12,71,945).

60. Considering the totality of facts of the case as discussed above and the decision of the jurisdictional ITAT in the case of Shankala Realtors (supra) and Unique Shanti Neminath Developers LLP (supra), I am of the opinion that the assessing officer has erred in recognizing the revenue for all flats ignoring the fact that in many cases, there was no legally enforceable document in the form of agreement to sell. Moreover, the assessing officer has not been consistent in the method adopted by him in AY 2016-17. However, as discussed above, the appellant was required to recognize revenue corresponding to flat no. 805 of Unique Signature project during the year under consideration because the agreement to sell for this flat has been executed before 31/03/2016. As discussed above, the profit on the revenue to be recognized for this flat comes to Rs. 2,87,743/-. Therefore, the addition to the extent of Rs. 2,87,743/- is upheld.

#### **Unique Homes**

61. For the project namely Unique Homes, there is no dispute that the project was completed to the extent of 28%. The appellant has however claimed that only 13.13% of total area is secured by legally enforceable agreements. The appellant, therefore, did not recognize any revenue from this project because the condition that at least 25% of project area should be secured by legally enforceable agreements, is not fulfilled. Against this, the Assessing Officer has held that percentage of total area sold by the appellant comes to 36.62%. While computing this percentage, the Assessing Officer has considered all the flats in which more than 10% of sale consideration has been received irrespective of execution of agreement to sell. The Assessing Officer has considered the booking form/allotment letter as legally enforceable agreement.

62. The reasons given by the Assessing Officer for holding booking/allotment letter as legally enforceable agreement and for recognizing the revenue on all flats booked by the customer for project namely Unique Homes, are identical to the reasons given for the project namely Unique Aurum-II. During the assessment proceedings, as well as appellate proceedings, the appellant has given common contentions for all the three projects which have been discussed earlier in this order. Therefore, following my findings given for the project namely Unique Aurum-II, it is held that the only area for those flats can be considered as secured by legally enforceable agreement where document in the form of agreement to sell has been entered into before 31/03/2016.

63. For this project, the Assessing Officer has considered the total sale for Unique Homes till 31/03/2016 at Rs. 16,14,10,860/- against the amount of Rs. Nil considered by the assessee, for the purpose of computation of profit as per ICAI guidelines 2012. The appellant has submitted complete details of these flats having sale value of Rs. 16,14,10,860/- such as date of booking, date of agreement and year of revenue recognized in respect of these flats for which no revenue was



*recognized during the year under consideration even though the flats were booked by the customers. The said details are as under:-*

Flat No.	Name	Agreement Value	Date of Booking	Date of Agreement	Revenue Recognition				
					A.Y.2017-18	A.Y.2018-19	A.Y.2019-20	A.Y.2020-21	AY 2021-22
Unique Signature									
A-103	Sheela O. Balmiki & Jt.	33,48,810	11.04.13	01.03.19	-	-	13,39,524	9,37,667	2,00,928
A-104	Shambuling B. Badegar	22,23,000	14.02.13	12.10.20	-	-	-	15,11,640	1,33,380
A-105	Rita Singh w/o Amit Kumar	23,42,925	15.01.13	14.10.19	-	-	9,37,170	6,56,019	1,40,576
A-302	Jyoti A. Bataviya & Jt.	35,64,450	16.01.13	13.11.18	-	-	14,25,780	9,98,046	2,13,867
A-306	Mrs. Neeta S. Dave	33,04,375	21.09.13		-	-	-	23,82,975	2,10,263
A-502	Chetan S. Gadoya & Jt	35,64,450	12.04.13	20.04.19	-	-	14,25,780	9,98,046	2,13,867
A-503	Nikita U. Thakkar & Jt.	31,43,925	24.12.12	11.06.14	9,74,617	1,88,636	94,317	8,80,299	1,88,636
A-504	Morris John D'souza	23,42,925	21.01.13	13.10.14	7,26,307	1,40,576	70,287	6,56,019	1,40,576
A-505	Praveen Kumar Yadav & Jt.	23,42,925	24.01.13	09.10.19	-	-	-	15,93,189	1,40,576
A-506	Laila N. Pirani	35,04,375	15.02.14	16.05.15	10,86,356	2,10,263	1,05,131	9,81,225	2,10,263
A-705	Priya M. Gupa	21,06,000	27.12.12.	18.02.19	-	-	8,42,400	8,89,680	1,26,360
A-706	Hiteshree V. Shrimakar	35,04,375	12.01.13	05.07.19	-	-	14,01,750	9,81,225	2,10,263
A-707	Mamta Ashwin Parikh	35,04,375	12.01.13		-	-	-	23,82,975	2,10,263
A-901	Kulsum Akbar Somani	35,64,450	05.02.13		-	-	-	24,23,826	2,13,867
A-902	Rafiq Vazirbhai Lagadia & Jt.	35,64,450	28.01.13	02.05.16	11,04,980	2,13,867	1,06,933	9,98,046	2,13,867
A-903	Sachin H. Savla	31,43,925	27.03.14	26.10.18	-	-	12,57,570	8,80,299	1,88,636
A-904	Dwarka Swarup Simlot	22,42,925	08.01.13	17.02.21	-	-	-	15,93,189	1,40,576
A-905	Rajesh Jain	23,42,925	08.01.13	26.06.14	7,26,307	1,40,576	70,287	6,56,019	1,40,576
A-1102	Veena Ashok Gala	25,64,450	09.10.14	15.10.19	-	-	-	24,23,826	2,13,867
A-1103	Mr. Bhupinder Singh Sethi & Jt.	31,43,925	04.02.13	18.06.14	9,74,617	1,88,636	94,317	8,80,299	1,88,636
A-1104	Mr. Akbar R. Somani	23,42,925	05.02.13		-	-	-	15,93,189	1,40,576
A-1105	Jayshree Atul Mehta	23,42,925	18.01.13	11.01.19	-	-	9,37,170	6,56,019	1,40,576
A-1106	Ranjan Satish Gala & Jt.	35,04,375	12.02.16	27.05.19	-	-	14,01,750	9,81,225	2,10,263
A-1107	Mrs. Sandhya Anand Kumar Gautam	35,04,375	05.01.13	20.01.017	-	12,96,619	1,05,131	9,81,225	2,10,263
Unique Homes – B									
B-101	Pawan Kumar Mishra & Jt.	24,00,840	07.02.14	13.11.14	7,44,260	(7,44,260)	9,60,336	6,72,325	1,44,051
B-102	Rizwan Bahuali Zamindar	23,42,925	04.09.13	08.02.17	7,26,307	1,40,576	70,287	6,56,019	1,40,576
B-104	Mr. Virendra Kandari	23,42,925	09.10.13	25.11.20	-	-	-	15,93,189	1,40,576
B-106	Mr. Imran Irfan Khan	34,44,300	04.09.13	20.02.17	10,67,733	2,06,658	1,03,329	9,64,404	2,06,658
B-303	Mr. Saroj D. Tripathi	23,42,925	15.09.13	20.12.14	7,26,307	1,40,576	70,287	6,56,019	1,40,576
B-305	Mr. Chandra Bhanjadhvani	25,63,200	14.10.13	15.12.18	-	-	10,25,280	7,17,696	1,53,792
B-306	Mr. Kundan Mal Goyal	34,44,300	08.10.13		-	-	-	23,42,124	2,06,658
B-501	Mr. Rajesh I. Yadav	23,42,925	30.08.13	02.03.16	7,26,307	1,40,576	70,287	6,56,019	1,40,576



B-502	Mr. Imran Irfan Khan	23,42,925	04.09.13	08.02.17	7,26,307	1,40,576	70,287	6,56,019	1,40,576
B-503	Mrs. Neha Jigish Chiniwala & Jt.	23,42,925	30.08.13	13.11.18	-	-	9,37,170	6,56,019	1,40,576
B-504	Trupti A. Ghelani & Jt.	23,42,925	30.08.13	06.09.18	-	8,66,882	70,288	6,56,019	1,40,576
B-506	Mrs. Renu Gupta	34,44,300	01.09.13		-	-	-	23,42,124	2,06,658
B-701	Mr. Rajiv Kishore Gadda	23,42,925	30.12.14		-	-	-	15,93,189	1,40,576
B-702	Mr. Shivkumar K. Pal	23,42,925	30.08.13	18.10.18	-	-	9,37,170	6,56,019	1,40,576
B-703	Mr. Harish Koliyar	23,42,925	19.09.13	12.11.18	-	-	9,37,170	6,56,019	1,40,576
B-704	Jasmine C. Rathod & Jt.	23,42,925	17.09.13	27.06.19	-	-	9,37,170	6,56,019	1,40,576
B-705	Mr. Rajiv B. Bhandari & Jt.	25,63,200	30.08.13	06.10.18	-	-	10,25,280	7,17,696	1,53,792
B-901	Mr. Uday Kantilal Somani & Jt.	23,42,925	17.09.13		-	-	-	15,93,189	1,40,576
B-905	Rekha Deepak Patel & Jt.	25,63,200	17.09.13	26.06.14	7,94,592	1,53,792	76,896	7,17,696	1,53,792
B-1101	Mr. Arun Kumar Agarwal	23,42,925	14.09.13	05.07.14	7,26,307	1,40,576	70,287	6,56,019	1,40,576
B-1102	Mr. Arun Kumar Agarwal	23,42,925	14.09.13	05.07.14	7,26,307	1,40,576	70,287	6,56,019	1,40,576
B-1105	Jaykumar R. Patel & Jt.	25,63,200	19.09.13	09.10.20	-	-	-	17,42,976	1,53,792
	13,15,90,350								
Cancelled Flats UH									
A-501	Mr. Puriben Devabhai Patel & Jt.	35,64,450	02.02.13	Not Done					
A-906	Sanjeeva Shetty	35,04,375	02.05.13	Not Done					
A-105	Hema Jitendra Desai & Jt.	26,26,560	12.02.14	Not Done					
B-301	Mrs. Raminder A Sablok	23,42,560	14.09.13	Not Done					
B-302	Mr. Rajesh Vijay Dubey	23,42,925	30.08.13	Not Done					
B-304	Mr. Sanjeev J. Parker & Jt.	23,42,925	30.08.13	Not Done					
B-505	Mr. Yatin Manani & Jt.	25,63,200	19.09.13	Not Done					
B-902	Mr. Vipul G. Belani	23,42,925	08.09.13	Not Done					
B-1202	Mr. Ajay R. Verma & Jt.	23,42,925	04.09.13	Not Done					
B-1204	Mrs. Aarti R. Verma & Jt.	23,42,925	04.09.13	Not Done					
	Value of Cancelled flats	2,98,20,510							
	Total of Unique Homes A&B	16,14,10,860			12557611	37,05,701	1,90,47,108	54077819	78,87,212

*It can be seen from the above chart that bookings for 11 flats having sale value of Rs. 2,98,20,510/- were subsequently cancelled.*

*64. It is further seen that out of remaining 47 flats, agreement to sell in 12 cases were entered into before 31/03/2016. The details of area for these flats were furnished by the appellant during the assessment proceedings*



*along with reply dated 15.12.2018 which is 8070 sq. ft. Since the carpet area of the project secured by legally enforceable agreement to sell is less than 25% of the total area of the project, therefore, the condition (c) of para 5.3 of guidance note is not fulfilled. Hence, as per the guidance note issued by ICAI, no revenue for the project namely Unique Homes is required to be recognized during the year under consideration. Therefore, the action of the Assessing Officer in recognizing the revenue amounting to Rs. 4,50,60,551/- for the project Unique Homes is erroneous. It is not out of place to mention that the appellant has recognized revenue from this project in subsequent assessment year as tabulated above which have been accepted by the assessing officer in assessments for subsequent years.*

*65. To sum up, out of the addition of Rs. 2,62,17,851/- made by the Assessing Officer by treating the booking forms/allotment letters as legally enforceable agreement, addition to the extent of Rs. 6,23,553/- (3,35,810 + 2,87,743) is confirmed. The remaining addition is directed to be deleted. The ground no. 3 raised by the appellant is PARTLY ALLOWED.”*

7.2 We have heard rival submissions and perused the finding of Id CIT(A) reproduced above. We concur with the finding of the Ld. CIT(A) for considering the transfer of risk and reward and revenue to the buyer at the stage of entering into a registered sale agreement as held by the Co-ordinate Bench of the Tribunal in the case of Sankalp Realtors Pvt. Ltd. (supra). We find that the Ld. CIT(A) has thoroughly examined all the allotment letters and sale agreements and thereafter, he upheld the addition to the extent of Rs.3,35,180/- (paragraph 55) in respect of project namely 'Unique Aurum-II'. Similarly, in respect of project namely 'Unique Signature' also the Ld. CIT(A) verified the allotment/sale agreements entered into with the buyers and upheld the addition to the extent of Rs.2,87,743/-. In this manner Ld. CIT(A) has upheld the disallowance to the extent of Rs.6,23,553/- (Rs.3,35,810/- + 2,87,743/-). In our opinion, the finding of the Id CIT(A) on the issue in dispute is well reasoned and we don't find any infirmity in the



finding of Id CIT(A) on the issue in dispute. Accordingly, we uphold the finding of the Ld. CIT(A). The ground No. 2 of the appeal of the Revenue is accordingly dismissed.

8. In the result, the appeal of the assessee is dismissed whereas the appeal of Revenue is partly allowed for statistical purpose.

**Order pronounced in the open Court on 14/08/2024.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 14/08/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**