

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE**

**SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**

**AND**

**SHRI MANJUNATHA G. HON'BLE ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.250/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2006-07)

Emaar Hills Township Private Limited, Hyderabad.  PAN : AABCE2557N.	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.424/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2007-08)

The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.	Vs.	Emaar Hills Township Private Limited, Hyderabad.  PAN : AABCE2557N.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.251 to 253/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2009-10 to 2011-12)

Emaar Hills Township Private Limited, Hyderabad.  PAN : AABCE2557N.	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA Nos.426 to 428/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2009-10 to 2011-12)

The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.	Vs.	Emaar Hills Township Private Limited, Hyderabad.  PAN : AABCE2557N.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, C.A. and  
Shri CP Ranka, C.A.

राजस्व द्वारा/Revenue by: Shri B. Bala Krishna, CIT-DR.  
Shri Gudimella, V.P.Pavan  
Kumar. Sr.DR.

सुनवाई की तारीख/Date of hearing: 13/11/2024  
घोषणा की तारीख/Pronouncement on: 18/12/2024

### **ORDER**

**Per MANJUNATHA G. :**

These cross appeals filed by the assessee, as well as the Revenue are directed against, the common order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 14.03.2023 and pertains to the captioned assessment years 2006-07, 2007-08, 2009-10, 2010-11 and 2011-12. Since, the facts are identical and issues are

common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The grounds raised by the assessee in ITA No.251/Hyd/2023 for A.Y. 2009-10 read as under :

“Ground No.1

*“1. On the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeal) (the 'CIT(A)' in short) has erred in directing the learned Assessing Officer (the 'AO in short) to tax advances of Rs. 10,69,32,063, ignoring the facts and the law that the Appellant and Emaar MGF Land Limited, the Co-developer, are following the Percentage of Completion Method ('POCM' in short) to recognize revenue from sale of developed villa plots and hence, revenue thereon gets recognised only on meeting the prescribed conditions.*

Ground No. 1.2

*In law and in the facts and circumstances of the Appellant's case, the CIT(A) has erred in directing the AO to tax Rs. 10,69,32,063 representing 25% of the advances of Rs. 42,77,28,250 received towards the sale of villa plots by Emaar MGF Land Limited during the year ended 31 March, 2009 in terms of the Development Agreement dated 03.11.2006 and/or Development Agreement-cum-General Power of Attorney dated 25.07.2007 and an Addendum dated 23.07.2008 entered into between the Appellant and Emaar MGF Land Limited, New Delhi even though no milestones of revenue recognition as per POCM have been achieved.*

Ground No. 2

*On the facts and circumstances of the case as well as in law, CIT(A) has erred in confirming the action of the AO in dis-allowing a sum of Rs. 46,78,657 being Service Tax Written off without appreciating the fact that no service tax would be payable by the Appellant as the Appellant had entered into Development Agreement with Emaar MGF Land Limited and thus, service tax credit availed by the Appellant cannot be utilized and hence, was rightly written off and claimed as an expense by the Appellant.*

Ground No. 3

*On the facts and circumstances of the case as well as in law, the CIT(A) has erred in confirming the action of the AO in disallowing estimated expenses of Rs.2,09,288 by invoking Rule 8D of Income Tax Rules, 1962 read with Section 14A of the Income Tax Act, 1961 without appreciating the fact that no expenditure was incurred by the Appellant to earn exempt income i.e. dividend income.”*

3. The brief facts of the case are that the appellant company, M/s. Emaar Hills Township Private Limited (EHTPL) is engaged in the business of integrated township development, filed its return of income for the A.Y. 2009-10 on 30.09.2009, declaring total income of Rs.3,47,01,037/- and the said return has been subsequently, revised on 31.03.2011, declaring total income of Rs.12,86,09,326/-. The appellant company is a Special Purpose Vehicle (SPV) in the form of Joint Venture between Andhra Pradesh Industrial Infrastructure Company Ltd (APIIC) and Emaar Holding, Mauritius (a fully owned subsidiary of Emaar Properties, PJSC, Dubai). The appellant company was incorporated on 20.08.2003, as a wholly owned subsidiary of Emaar Holding, Mauritius, which in turn is a wholly owned subsidiary of Emaar Properties, PJSC (Dubai). A Collaboration Agreement was entered into on 19.08.2003 between APIIC and Emaar Properties, PJSC for the development and implementation of an integrated project consisting of an International Convention Centre Complex, Business Hotel, 18 Hole Championship Golf Course, Club House, Township consisting of residential development having various plots for villa, town homes and apartments, commercial, office and IT infrastructure and other infrastructure facilities, in terms of Government Order i.e.,

G.O.Ms.No.359 dated 04.09.2002 of the Industries and Commerce Department of Government of Andhra Pradesh. As per the aforesaid Government Order, two Special Purpose Vehicles (SPVs) were to be incorporated to implement the Integrated Housing Project. Subsequently, vide G.O.Ms.No.14 dated 11.01.2005, the formation of three SPVs and a revised equity structure of Emaar Properties PJSC and APIIC having 74% and 26%, respectively, in all the three SPVs were approved. In terms of above Collaboration Agreement and Government Order, the appellant company was incorporated as a wholly owned subsidiary of Emaar Holding, Mauritius. Thereafter, a Supplementary Agreement was executed with Emaar Properties PJSC, Dubai on 19.04.2005. In terms of Collaboration Agreement and the Supplementary Agreement, Emaar Properties PJSC had brought in 74% equity in both the SPVs and the APIIC has transferred land admeasuring 258.36 acres by execution of the registered Conveyance Deed dt.28.12.2005 to the appellant company. Since there was no scope for bringing additional investment for development of the project without distributing 26% shareholding of APIIC, the Board of Directors of two SPVs in the Board Meeting dt.21.09.2006 has decided to bring in a developer, who can finance and develop the project as its own on revenue sharing basis. Accordingly, the appellant company vide Agreement dt.03.11.2006 entered into a development agreement with Emaar MGF Land Private Limited, New Delhi (hereinafter referred to as "Emaar MGF"). As per the agreement, Emaar MGF would develop the company's land as per the Collaboration Agreement dt.19.08.2003 entered between

Emaar Properties PJSC, Dubai and APIIC, along with subsequent amendments to the agreement from time to time. Pursuant to the development agreement, Emaar MGF undertook to complete the entire development of the township project and was entitled to 75% of the gross revenue derived through sale / lease proceeds from building and structures proposed to be constructed on appellant company's land. The appellant company's consideration being covered in the remaining 25% of the gross revenue.

4. Pursuant to the development agreement, Emaar MGF has been developing both township and golf course projects, which are part of the Integrated Project since November 2006. Further, the development agreement dt.03.11.2006 was later substituted by a Development Agreement cum General Power of Attorney dt.25.07.2007 and an Addendum was also executed to the said DA-cum-GPA. As per the development agreement, Emaar MGF undertook to develop the concerned project component of the Integrated Project at its own cost and expenses by means of its own resources or through debts raised by it. In terms of Collaboration Agreement and subsequent development agreement cum general power of attorney, Emaar MGF has invested substantial amount for development of the project. The developer of the project Emaar MGF has received advances from customers towards sale of villa plots up to 31.03.2009 and the same has been shown as advances from customers under "Schedule 9 of Current Liabilities" in the audited financial statements for the year ended 31.03.2009. Thereafter, the APIIC sent a legal notice

dt.17.06.2010, alleging that its consent was not obtained for the aforesaid development agreement, and the said development agreement is illegal and void and does not bind on APIIC in any manner. The appellant company through its various correspondences, including the letter dt.15.07.2010 has responded that APIIC's approval, has been obtained through its nominee directors in the Board meeting held on 21.09.2006. The appellant company has requested APIIC to recall the legal notice. Further, the APIIC had issued a further legal notice dt.29.10.2010 addressed to Emaar PJSC and Emaar Holdings to terminate the Collaboration Agreement entered between APIIC and Emaar PJSC. Emaar PJSC has replied to the legal notices by two letters dt.08.12.2010 and 03.01.2011 to address the concerns raised by APIIC, in respect of Joint Development Agreement cum General Power of Attorney. In the meantime, based on a letter written by an MLA, which was taken up as a Writ Petition, the Hon'ble High Court of Andhra Pradesh ordered a preliminary enquiry by Central Bureau of Investigation (CBI) into the allegations, on 11.07.2011 with a direction to submit its report to the High Court. Emaar MGF, inter alia, represented that the issue with APIIC is a civil dispute, which can be resolved under any of the methods, as mentioned in its replies to the termination notice, and there is no criminality involved therein to warrant any probe. Subsequently, a full-fledged investigation by CBI was also ordered by the Hon'ble High Court of Andhra Pradesh, which is currently under progress. Emaar MGF has approached the Hon'ble Supreme Court, challenging the order of Hon'ble High Court of Andhra Pradesh

for ordering CBI investigation. One of the allegations raised by APIIC was that Agency Agreement dt.29.01.2005 entered by the appellant company with M/s. Stylish Homes Real Estates Private Limited (hereinafter referred to as 'SHREPL') for sale of plots was not approved by it. Subsequently, a petition has been filed by APIIC under Sections 397 and 398 of the Companies Act, 1956 with Company Law Board for oppression and mismanagement of the affairs of the appellant company and the Bench has passed interim order, stating that the appellant company has to take permission of the Board before creating any third-party interest in its remaining property. APIIC has issued letters to the Joint Sub Registrar to stop the registration of plots, villas and apartments in project being developed by the aforesaid development agreement which has been contested by the appellant company vide Writ Petition before the Hon'ble High Court of Andhra Pradesh. Subsequently, a Government Order was issued prohibiting registrations of properties owned by the appellant company, which was suspended by the Hon'ble High Court of Andhra Pradesh on an application filed by Excelsior Apartment Owners Welfare Association. The appellant company has filed Writ Petition before the Hon'ble High Court of Andhra Pradesh against the search and seizure conducted by Vigilance Department. A criminal complaint was filed by an advocate before Special Judge, ACB cases, Hyderabad in which, various companies having operations in Hi-Tech City of Hyderabad during various periods were made accused parties, including Emaar PJSC. A petition has been filed by Emaar MGF against the appellant company and APIIC seeking to

restrain the appellant company from giving effect to the demands raised in APIIC's legal notice dt.17.06.2010. The action of APIIC in proposing to terminate the Collaboration Agreement vide its letter dt.29.10.2010 was also stayed by the Hon'ble High Court of Andhra Pradesh.

5. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that during the financial year relevant to assessment year under consideration, the assessee stated that Emaar MGF, New Delhi received an amount of Rs.45,07,64,461/- from 85 customers for sale of 87 villa plots to an extent of 1,16,748 sq. yds of land. The details of advances collected from various customers have been listed in para 10 of the assessment order. In this regard, vide order sheet noting dt.27.12.2011, the assessee was asked to show cause as to why the amounts received by it from villa plot purchasers should not be treated as its income, as the land agreement between EHTPL (appellant company) and Emaar MGF is not valid, as per the stand taken by the Government of Andhra Pradesh. According to the Assessing Officer, the appellant company by entering into Joint Development Agreement cum General Power of Attorney with Emaar MGF, Delhi has diluted the share of APIIC and therefore, the said Joint Development Agreement cum General Power of Attorney is invalid and illegal. Therefore, action of any person germinating from the said agreement is also have no validity in the eyes of law. The Assessing Officer has also discussed the issue in light of

Collaboration Agreement between APIIC and Emaar Properties, PJSC and also subsequent development agreement between the appellant company and Emaar MGF and observed that in order to dilute the stake / share of APIIC, the appellant company has brought in a developer for development of the property and in that process, the appellant's share to the revenue from the project was being reduced to 11% from 26%. The Assessing Officer had also discussed the subsequent agreement between the appellant company and M/s. SHREPL for marketing and selling the properties and observed that as per the Agency Agreement between the parties, the appellant company has authorized M/s. SHREPL, as a sole selling agent of plots @ Rs.5,000/- per sq. yd for first 100 plots available for sale, in addition to 4% commission on sale value. However, the market rate as per Registration Department was Rs.10,000/- per sq.yd from 2007 onwards. Therefore, the AO observed that the Agency Agreement between the appellant company and M/s. SHREPL is a sham. Therefore, called upon the assessee to show cause as to why the same basis cannot be applied to other villa buyers and also to show cause as to why the amount received by Emaar MGF from customers for sale of villa plots shall not be treated as income of the assessee.

6. In response, the assessee vide its letter dt.29.12.2011 submitted that the APIIC has issued legal notice for termination of Collaboration Agreement and Joint Development Agreement cum General Power of Attorney. Further, the appellant company

has not received any advances from customers and the advances received by Emaar MGF is not for the assessee. Further, since the project is under litigation, the advances received from customers have been treated as liability in the books of accounts of the appellant company and further, in case, the project is terminated by order of any Court, then the amount of advances received either by the company or by Emaar MGF become refundable to the customers, as same cannot be forfeited in the event of cancellation of allotment of villa plots due to the various litigations. Therefore, the advances received from customers for sale of villa plots cannot be treated as income of the assessee.

7. The Assessing Officer after considering the relevant facts and also taking note of various developments, including ongoing litigation between APIIC and the appellant company, observed that although, the appellant claims that there is a pending litigation between APIIC and the appellant company and further, the appellant company has issued a notice for termination of Collaboration Agreement, but as on date of passing the order also, the assessee could not produce any such copy of proposal of APIIC to cancel the agreement made by it through official channels. Even if that happen so, the refund of entire sale consideration as claimed by the assessee may or may not happen. Therefore, the submission of the assessee that the advances received from the customers is a liability and the same needs to be refunded to the customers in the event of cancellation of agreement, is not tenable and cannot be accepted. The Assessing Officer further noted that

the assessee has not brought out anything relevant with respect to the treatment of said advances received by Emaar MGF and the treatment it has given in its books of accounts, inspite of several opportunities provided during the course of hearing. The assessee except stating that as per the Joint Development Agreement cum General Power of Attorney, it has only authorized to get only 26% of the revenue recognized by Emaar MGF and that as per Percentage of Completion Method, it is not required to recognize the revenue for the impugned assessment year. Therefore, Assessing Officer opined that since the development agreement between the appellant company and Emaar MGF is disputed by 26% stake holder APIIC, the entire advances received from prospective villa / plot buyers, in whatever form has to be treated as the receipt of the appellant company and therefore, entire advances received at Rs.45,07,64,461/- by Emaar MGF or any other intermediary, is nothing but the income of the assessee and therefore, treated as income of the assessee and added back to the total income of the assessee.

8. Relevant findings of the AO arising as under :

*“10.4 This observation of the assessee is bereft of any substance and will not be tenable as it is trying to present something which is non-existent. As on date of passing the order also, the Assessee could not produce any such copy of proposal of APIIC to cancel the agreement made by It through official channels. Even If that happen so, the refund of entire sale consideration as submitted by the assessee may or may not happen. The entire submission of the assessee in para 10.3.b is a conjecture and about the future event which cannot be considered by any means for the purpose of assessment.*”

10.5 Further, as seen from the assessee's own submissions, the assessee has not brought out any thing relevant with respect to the treatment of the said advances received by the Emaar MGF and the treatment it has given in its books in spite of several opportunities provided during the course of hearing. The assessee kept on harping through out the assessment proceedings, that since it has entered into 'Development cum GPA agreement', it is only authorized to get only 25% of the revenue recognized by the Emaar MGF and relied that as per percentage of completion method, it is proceeding. Hence, vide order sheet noting dated 16-12- 2011 duly countersigned by its AR, the assessee was asked to at least produce basis for arriving at such income from operations being based on percentage of completion method i.e a certificate of authorized person (chartered engineer) on the basis of which revenue is recognized. However, the assessee in spite of many opportunities could not produce the details of treatment and recognition of revenue of the said amount in the books of Emaar MGF as this becomes crucial to analyse the Income booked by the assessee. Further, the assessee executed an agreement with Emaar MGF illegally and the said agreement is disputed by the "26% stake holder" APIIC. As per the information, the APIIC, representative of the Government of Andhra Pradesh has already filed a suit in the Hon'ble High Court of Andhra Pradesh in this regard. Thus, the disputed Development Agreement cum General Power of Attorney executed between the assessee company and Emaar MGF is questionable and the same is under dispute between the APIIC and the assessee company which is pending dispute before the judiciary.

10.6 Hence, it was clearly understood that the entire amount received from the prospective villa plot buyers, is nothing but the amount, in whatever form it is colored/named by the assessee, has to be treated as the receipts of the assessee company. Therefore, the entire amount of advances received of Rs.45,07,64,461/- by Emaar MGF or any other Intermediary, EHTPL, is nothing but income of the assessee and therefore, added back to the total income of the assessee.

10.7 Apart from this also, as per the elaborate discussion already made in para to 9, the entire advances of Rs.45,07,64,461/- received from the prospective villa plot buyers needs to be related as EHTPL's own income."

9. Being aggrieved by the assessment order, the assessee preferred appeal before the LD.CIT(A).

10. Before the LD.CIT(A), the assessee has submitted that it is following Percentage of Completion (PoC) method for recognition of revenue in terms of Accounting Standards – 7 recommended by ICAI, which is applicable for construction contracts and the assessee being in the business of development of integrated housing project and the period of contracts spreads over more than a year, it needs to follow percentage of completion method. Since the progress of construction work has not reached the threshold limit of recognition of revenue as per Accounting Standards - 7, whatever the advances received from customers for sale of villa plots have been treated as advances and shown under the head Current Liabilities for the year ending up to 31-03-2009. Further, after entering into development agreement dt.03.11.2016 with Emaar MGF, the advances were transferred to Emaar MGF account and the same was reflected in the financials of Emaar MGF also. Since the appellant is a party to development agreement cum general power of attorney with Emaar MGF and sharing revenue from the project, it has only awarded 26% of revenue from the project and accordingly, the method of accounting followed by the appellant is in accordance with the accounting standards prescribed for construction contracts. The assessee had also countered the allegations of the Assessing Officer, in light of collaboration agreement and subsequent SPVs formed with APIIC and submitted that the allegation of the AO that because of development agreement-cum general power of attorney with Emaar MGF, the share of APIIC was reduced to 6.5% is only a suspicion and without backed by any evidence. In fact, APIIC is

only one of the shareholders in the appellant company and therefore, whatever the revenue received by the appellant company from the JV company, APIIC will get its share of 26%. Therefore, the allegation of Assessing Officer, in light of subsequent development agreement cum general power of attorney, is only an allegation but not a fact borne out from the record. The AO has also exceeded his authority in questioning the legality of arguments between the two commercial entities, even though, the said agreements are entered into after deliberations from the board meeting, and thus, the allegation that the subsequent joint development agreement with Emaar MGF is without the knowledge of APIIC is incorrect. Therefore, submitted that the AO has erred in making addition towards advances received from customers for sale of villa plots, even though the appellant has not recognized revenue because of not satisfying the conditions as per Accounting Standards - 7.

11. LD.CIT(A) forwarded the submissions of the assessee to the AO for his comments and remand report. The AO vide letter dated 14.06.2013 filed written submissions and further evidence, in the form of CBI Charge Sheet. Referring to the contents of the CBI Charge Sheet and the legal notice issued by the APIIC on the issue of entering into development agreement with Emaar MGF, the AO stated that the appellant has diverted the share of APIIC by entering into development agreement with Emaar MGF without the consent of APIIC. Further, the appellant had also entered into a marketing agreement with SHREPL even before the land was

handed over by Government of Andhra Pradesh to the assessee. From the above, it is clear that the appellant has systematically created a multi-level layer of entities to reduce the share of APIIC. Therefore, it is submitted that the entire account of advances received by Emaar MGF is nothing, but the amount received by the appellant for sale of land and needs to be assessed in the hands of the assessee. LD.CIT(A) has also directed the AO to conduct verification on the issue of recognizing revenue for assessment years 2007-08 to 2010-11 and submit a report and in response, the ACIT, Range-2, Hyderabad vide letter dated 13-01-2014 submitted a report which inter alia states that as per the agreement with Government of Andhra Pradesh, the assessee has developed integrated township and there is no provision for sale of plots. However, in complete disregard of the agreement, the assessee sold villa plots. A co-developer in the form of Emaar MGF was also brought in only with a view to avail advance finance by showing the actual cost of land to the bank, whereas the cost shown for sale of plots by buyers is low and unaccounted cash was collected for the balance advances, therefore the introduction of Emaar MGF is with an ulterior motive and the employees are also common to both the employers, therefore, submitted that the arguments of the assessee that as per the terms and conditions of agreement with APIIC, the appellant can bring in a developer for the development of the project is incorrect.

12. In response to the remand report of the AO, the assessee, vide letter dated 06-02-2014, submitted its counter comments,

which inter alia referred to Accounting Standards 7 and 9, as well as the provisions of Section 145 of the Act, and sought to justify its revenue recognition policy. On merit, the appellant submitted that although the appellant has justified the method of accounting followed for recognition of revenue and the same is in accordance with Accounting Standards - 7, but the AO in the remand report did not focus on the issue of revenue recognition, however went on to discuss in the light of agreements and alleged that the said agreements are sham and entered into only for the purpose of misleading APIIC. Therefore, submitted that since the AO could not controvert the submissions of the assessee in light of relevant evidence in so far as the accounting method followed for revenue recognition from the project, requested the LD.CIT(A) to delete the addition made towards advances received from customers for sale of villa plots.

13. The Id.CIT(A), after considering the relevant submissions of the assessee and taking note of various facts brought on record by the AO, including the arguments between the parties and the development agreement with Emaar MGF, observed that the arguments of the assessee, in light of Accounting Standards 7 and 9 and the method followed for revenue recognition, is not in accordance with Accounting Standard - 7. This is because Accounting Standard - 7 is applicable only to construction contracts and not to real estate developers. Furthermore, Accounting Standard - 9 is also not applicable to the appellant, as it applies only to cases where an enterprise derives revenue from

the sale of goods, rendering of services, or other income streams. As such, Accounting Standards 7 and 9 were held to be inapplicable to the appellant's case. The Id.CIT(A) further observed that, in the case of the appellant company, being a developer, revenue recognition should be based on buyer's agreement and on the transfer of significant risks to the buyers as regards the property in question, along with reasonable certainty that the money received by the developer is not likely to be refunded. In the present case, the appellant entered into agreements with buyers, received 95% of the actual cost of the villa plots, and there is no possibility of a refund of the advances received from the customers. Therefore, it was observed that the conditions for revenue recognition were satisfied in the present case. Consequently, the advances received by the appellant and Emaar MGF are assessable on a receipt basis for the respective assessment years. The Id.CIT(A) also discussed the issue of the appellant's share in the revenue received from the sale of villa plots and held that, as per the development agreement dated 03.11.2006, the appellant agreed to share the revenue in the ratio of 75% for the developer, Emaar MGF, and 25% for the appellant. Further, all development expenses were to be borne by the developer. Therefore, considering the DA-cum-GPA, it was observed that the appellant is liable to offer income on the receipt of 25% of the revenue from the construction of apartments and flats. By taking note of the total advances received by Emaar MGF, amounting to Rs.45,07,64,461, the AO was directed to tax 25% of the total receipts in the hands of the assessee towards the sale of

villa plots collected by Emaar MGF for the respective financial years. The relevant findings of LD.CIT(A) are as under.

*“FINDING ON GROUND OF APPEAL No. 3*

*6.1 I have gone through the assessment order, statement of facts, grounds raised therein, remand reports submitted, the report on revenue recognition by the Addl. CIT, counter-comments of the appellant and the submissions made thereafter. It is noted that there are two issues for consideration while deciding the matter:*

*1. Whether the amount received by the appellant and its development partner EMAAR MGF on sale of Villa plots is a taxable receipt in the financial year concerned, or is it only an advance pending recognition of appropriate revenue as per the relevant accounting standards; and*

*2. If it is indeed a taxable receipt, then how much of it ought to be brought to tax in the hands of the appellant in the year under consideration.*

*These issues are examined herein below.*

**TAXABILITY OF AMOUNT RECEIVED ON SALE OF VILLA PLOTS**

*6.2 As brought out above, the issue relates to taxability of an amount of Rs. 45,07,64,461 being advances received during the year from prospective villa plot buyers by Emaar MGF, as the income of appellant Company. While the appellant is of the view that the same is not a taxable receipt in terms of the application of Percentage of Completion Method (POCM) as per AS-7 and AS-9 which it claims that it and its development partner EMGF are consistently following, the AO is of the view that the money received against the sale of villa plots is taxable keeping in view the facts of the case.*

*Applicability of POCM*

*6.3 During the year, the development partner of the appellant, EMAAR MGF. received an amount of Rs. 45.07,64,461 on account of sale of villa plots. However. no revenue was recognised by it or the appellant, whose share as per the development agreement dated 03.11.2006 was 25% out of the gross receipt by citing the percentage of completion method (POCM).*

*6.4 It is undisputed that the appellant and its development partner, EMAAR MGF. both, are developers, and not contractors. It is also noted that AS-7 cannot be applied in case of real estate developers as AS-7 is applicable only in respect of construction contractor wherein the estimated cost of project can be estimated with reasonable certainty even*

*at the start of construction. Also, in such cases, revenue of the construction is also predetermined at the very start of the construction activity. On the other hand, in the case of real estate developer, both these components cannot be determined till the unit is ultimately sold to the customer.*

6.5 Further, AS-7 defines the contract revenue as under:

*10. Contract revenue should comprise:*

- 1. (a) the initial amount of revenue agreed in the contract and*
- 2. (b) variations in contract work, claims and incentive payments: (1) to the extent that it is probable that they will result in revenue; and (i) they are capable of being reliably measured.*

*In the case of real estate developer, contract revenue cannot be determined with a significant degree of accuracy at the start of development of real estate project. As such, in the case of real estate developer, neither the outcome of a units/spaces nor the cost associated with the same can be estimated with reasonable certainty. That being the case, contract revenue and contract costs associated with the construction contract cannot be recognized as revenue and expenses, respectively, by reference to the stage of completion of the contract activity at the reporting date.*

6.6 Considering the above, the reliance of the appellant over applicability of POCM is rather misplaced.

6.7 While the appellant has been relying on applicability of POCM for not offering the income for taxation, it is noted that in the Statement of Facts filed along with Form no. 35 while filing this appeal, the appellant had following to say as regards the policy of revenue recognition being followed by it:

**A. Real Estate Projects**

*(1) Revenue is recognized, in relation to the sold area only, upon transfer of all significant risks and rewards of ownership of such property as per the terms of the contract entered into with the buyers, which generally coincides with firming up of the buyers' agreement, on the basis of percentage of completion as and when all of the following conditions are met:*

*In case of developed plots:*

- a) The buyers' agreement is signed;*

*b) The buyer's investment is adequate to demonstrate a commitment to pay for the property, and*

*c) The actual cost incurred on the project under execution, including cost of land/ land development rights, is 2/3 or more of the total estimated cost of the project.*

*In view of what is stated above, it appears that the execution of final Sale Deed is subject of many conditions and more so it is a conditional sale subject of fulfilment of stipulated terms and conditions, compliance whereof will be known only after construction of villa and before execution of final Sale Deed and also there is no reasonable certainty at this point of time of ultimate revenue. Due to such peculiarities involved, advances of Rs. 5,32,48,250 received from customers towards sale of villa plots up to 31.03.2009 should not be treated as income in the hand of the Company. It will only amount to disturbing the method consistently followed by the Company in revenue recognition"*

*6.8 As held above, POCM is not a method which can be applied in the case of a developer. Further, the reliance of the appellant on AS-9 for revenue recognition is intriguing as AS-9 is not at all applicable for recognition of revenue of a developer. Article 1 of AS-9 which lays down the scope of its application is reproduced below:*

*1. This Standard deals with the bases for recognition of revenue in the statement of profit and loss of an enterprise. The Standard is concerned with the recognition of revenue arising in the course of the ordinary activities of the enterprise from*

*....the sale of goods,*

*....the rendering of services, and*

*....the use by others of enterprise resources yielding interest, royalties and dividends*

*As such, with AS-7 and AS-9, both, held to be inapplicable in the present case, it is reasonable to hold that if following conditions are satisfied, the revenue must be recognised:*

*a) The buyers' agreement is signed,*

*b) The buyer's investment is adequate to demonstrate a commitment to pay for the property, and*

*c) Significant risks have been transferred to the buyer as regards the property in question along with a reasonable certainty that the money received by the developer is not likely to be refunded.*

*6.9 It is pointed out here that the first two conditions above are the same as that quoted by the appellant, while the third is a standard condition for revenue recognition ensuring prudence. If these three conditions are taken to determine whether the money received can be recognised as revenue or not, it is noted that:*

*(i) in respect of first two conditions, viz. signing of buyer's agreement and buyer's investment being adequate to demonstrate a commitment (It already stood at 95% of the total price), there is no dispute that these conditions are fulfilled. The buyer's agreement is signed, while commitment of a buyer who has already paid 95% of the total cost cannot possibly be doubted.*

*(ii) As regards the risks inherent in the transaction of sale of property and receipt of money, it is clear that significant risks had already stood transferred during the year. What more proof of the same is required than the fact that even after a stay has been imposed by the state government for further development of the property rendering the project inhabitable for more than a decade now, not a single penny has been returned by the appellant or its development partner to the buyers of villa plots till date. This clearly shows that with the signing of buyer's agreement and transfer of 95% of the sale proceed from the buyer to the developer, all significant risks stood transferred. This being so, there is no justification for the development partner and the appellant for not recognising the revenue.*

*6.10 Moreover, the appellant has contended that the sale is complete only when EHTPL /EMAAR MGF discharges its obligation to carry out the developmental work. However, a plain reading of the agreement to sell does not support this contention. Article 3 of the agreement which lays down do's and don'ts does not place any such restriction on the developer.*

*As pointed out by the AO in his remand report, article 7.2 states that even after conveyance of plot, developmental activity would be carried out. For the sake of convenience, the article 7.2 is quoted below:*

*"7.2 The Purchaser acknowledges that even after the subsequent conveyance of the Plot in its favour by the Owner, the Master Community may be incomplete and developmental activity will be carried on in various parts of the Master Community and that inconvenience may be suffered as a result of such developmental*

*activity. The Purchaser shall have no claim-against the Owner and/or the Developer for such inconvenience.”*

*If, as per the agreement, the developer can carry out the development activities even after the conveyance of property in question, there cannot be any relation between the development obligation of the developer and completion of sale. For, if the contention of the appellant is accepted, then the developer will be free to not recognise the revenue as long as even minor development activities are carried out, though the sale deed might be registered and all transactions are complete. Accepting such interpretation would be amounting to hand over a sort of carte blanche to the developer in so far as recognition of revenue is concerned, which cannot be allowed. The conclusion that the consideration received by the assessee through the registered agreement is only for conveyance of plot and hence there is no component of development included in the same to enable assessee to postpone the recognition of revenue is inescapable.*

*6.11 The AO, in his remand report, has also correctly pointed out that even if it were to be conceded that the development activity is an obligation for the assessee, at best the buyer can file a suit for specific performance under the Indian Contract Act at a later date, if the assessee fails to discharge his obligations.*

14. The Learned Counsel for the assessee, Shri K.C. Devdas, C.A. submitted that the LD.CIT(A) erred in sustaining additions made by the AO towards advances received from customers for sale of villa plots, even though the appellant has not recognized revenue on account of not satisfying the conditions for revenue recognition as per Accounting Standards - 7 and 9 issued by ICAI. The Id. Counsel, further referring to the provisions of Section 145 of the Act, submitted that the appellant, being a company, is required to follow the accounting standards and guidance note issued by ICAI for the method of accounting, etc. As per Accounting Standard - 7, which is applicable for construction contracts, the revenue can be recognized only after satisfying the condition of progress in construction of the project. In the present case, the construction

of project has not been completed to an extent which is required for revenue recognition. Therefore, whatever advances were received by the appellant company and the developer Emaar MGF has been shown as advances from customers under the head "Current Liabilities". Learned counsel for the assessee, further referring to the reasons given by the AO and LD.CIT(A) to treat advances as income of the appellant for the relevant assessment year, submitted that the appellant company was incorporated in pursuant to collaboration agreement between APIIC and Emaar Properties, PJSC, Dubai and as per Collaboration Agreement, the appellant is entrusted with the work of developing of housing project, house and commercial projects in about 258.36 acres of land awarded by APIIC. In pursuant to collaboration agreement dated 19.08.2003, the land has been transferred to the appellant company as share capital contribution from APIIC. Further, as per the collaboration agreement, the appellant needs to bring 74% of the equity capital in the form of liquid funds, and APIIC needs to bring in 258.36 acres of land. Further, a Special Purpose Vehicle must be incorporated for the development of the project. As per the agreement, the appellant company was incorporated with the object of developing an integrated housing project. Furthermore, because of further equity requirements for the development of the project and also in terms of clauses of the collaboration agreement, the appellant had entered into development agreement with Emaar MGF and agreed to share the revenue from the project at 25% for the appellant company and at 75% for the developer. The said development agreement was

entered into after taking necessary approval from the Board of Directors in their meeting held on 21.09.2006, when the nominated Board of Directors of APIIC were also present. Further, the fact of entering into development agreement has also been informed to Government of Andhra Pradesh. Therefore, the allegation of the Assessing Officer that the appellant company entered into a development agreement with Emaar MGF to dilute the share of APIIC from 24% to 6.5% is devoid of merit and cannot be accepted.

15. The learned counsel for the assessee, further referring to various documents and clauses of agreement between the parties, submitted that initially, the appellant has received advances from customers for sale of villa plots. Once the development agreement dt.03.11.2006 was entered into with Emaar MGF, the developer has collected advances from the customers, and the appellant has not received any advances. Therefore, the advances received from a different entity cannot be construed as income of the assessee, even though the said advances do not constitute income for the relevant assessment years. The learned counsel for the assessee, referring to certain judicial precedents on the concept of 'real income theory,' submitted that income cannot be assessed on a hypothetical basis, and only real income needs to be assessed, even in a case where the assessee follows the mercantile method of accounting, whether the income assessed forms part of the assessment year or not has to be seen. In the present case, the assessee has been following mercantile system of accounting but

recognizing revenue only when the income accruing in the relevant assessment year. Therefore, assessing total advances as income of the appellant, even though the said advances do not accrue to the assessee for the relevant assessment year, is contrary to the settled principles of law by various decisions and also the concept of 'real income theory'. The learned counsel for the assessee further submitted that the stand of the Assessing Officer, that the development agreement entered into with Emaar MGF is not valid in respect of sale of villa plots, which is otherwise is valid for sale of apartments / villas, cannot be accepted going by the method of accounting standard followed by appellant. Further, it is not a case of the Assessing Officer and LD.CIT(A) that the assessee is not receiving the revenue from the project at all. In fact, the assessee has recognized the revenue in respect of sale of villa and the same has been accepted by the Assessing Officer in the case of the appellant as well as in the case of the developer, Emaar MGF. Therefore, merely because the revenue on account of sale of villa has been recognized, this cannot be ground to say that the revenue on sale of villa plots should also be recognized, as both are not comparable. Since the appellant is developing an integrated project which consists of development of a golf course, commercial projects like hospital, apartments and villa plots, the revenue from different segments has to be recognized on the basis of nature of revenue derived from each segment. In case of sale of apartments / villas, the appellant has to recognize the revenue on the basis of PCM taking into account, the advances received from the customers, in light of accounting standard - 7. However,

in the case of sale of villa plots unless the sale is completed by way of registered conveyance deed by transferring the title and interest in the property to the buyers, it cannot be said that the sale is complete. Therefore, the appellant has rightly not recognized the revenue from sale of villa plots because the project is not reached the stage of recognition of revenue as per Accounting Standard - 7.

16. The learned counsel for the assessee, further referring to the allegation of the Assessing Officer in light of various documents and also the charge-sheet filed by CBI to support his arguments that the appellant has diluted the share of APIIC by entering into development agreement, submitted that it is totally baseless and devoid of merit for the simple reason that the development agreement entered into with Emaar MGF was in the knowledge of APIIC because the nominated Board of Directors of the APIIC were present in the board meeting of the company held on 21.09.2006 for deciding the issue of entering into development agreement with Emaar MGF. Further, the conducting of the board meeting has also been informed to the Government of Andhra Pradesh through various authorities and also taken their consent. Therefore, the allegation of the Assessing Officer that the appellant has brought in developer only to dilute the shares is totally incorrect and further, the discussion of the Assessing Officer on this issue is totally no longer relevant to decide the assessment of income from the project. The learned counsel for the assessee further, negated the arguments of the Assessing Officer and also

distinguished certain case laws relied upon by the Assessing Officer, including the decision of Hon'ble Apex Court in the case of Suraj Lamps and Industries Pvt. Ltd., Vs. State of Haryana in SLP No.13917 of 2009 and submitted that the issue before the Hon'ble Apex Court in the above case pertained to the transfer of title in the property without a valid Conveyance Deed and registration of said deed. Therefore, merely for the reason that agreement between the authorities is not registered, it cannot be said that the development agreement with Emaar MGF is a sham document, and that the assessee is the beneficiary of the advances received by the developer. The learned counsel for the assessee further referring to financial statements of the appellant company and the developer, Emaar MGF, submitted that the amounts collected from customers for sale of villa plots were never accounted for in the books of accounts of the appellant. The appellant is a different corporate entity with its separate legal existence. Further, the show-cause notice issued by APIIC for cancellation of collaboration agreement has been stayed by Hon'ble High Court of Andhra Pradesh. Therefore, till the Development Agreement cum General Power of Attorney is cancelled, its validity cannot be questioned by any one much less the Assessing Officer. Even otherwise, the receipt of one independent legal entity cannot be taxed in the hands of another legal entity. Therefore, he submitted that the addition made by the Assessing Officer towards advances received from customers for sale of villa plots in the hands of the appellant, is totally contrary to the relevant evidence and accounting method followed

by the assessee. Therefore, the learned counsel for the assessee submitted that the addition made by the Assessing Officer should be deleted.

17. Per contra, Shri B. Bala Krishna, CIT-DR, supporting the order of LD.CIT(A) submitted that the appellant company is a Special Purpose Vehicle incorporated in pursuant to collaboration agreement between APIIC, the Government of Andhra Pradesh undertaking, and Emaar Properties, PJSC, Dubai. As per the collaboration agreement, land held by APIIC has been developed through a Special Purpose Vehicle and the appellant company is having 74% shareholding in the Special Purpose Vehicle and APIIC is having 26% shareholding. The APIIC has brought in 258.36 acres of land as capital contribution in the Special Purpose Vehicle. The appellant needs to bring 74% capital in the form of liquid funds for the development of the project. The revenue from the project is shared by 24% for APIIC and 76% for the appellant company. However, in defiance to the collaboration agreement and subsequent correspondence between the Government of Andhra Pradesh and appellant company, the appellant company brought in a developer, Emaar MGF, and has entered into development agreement cum general power of attorney for the integrated housing project and shared revenue in the ratio of 75% for developer and 25% for appellant. From the development agreement, the share of APIIC has reduced from 24% to 6.5% and this was not in the knowledge of APIIC. Therefore, APIIC issued a legal notice for termination of

collaboration agreement and the same has been challenged by the appellant and claimed that it has been stayed by the Hon'ble High Court of Andhra Pradesh. Further, based on directions from Hon'ble High Court of Andhra Pradesh, a criminal complaint was filed in the jurisdictional court for CBI cases and CBI has filed a charge-sheet. The Assessing Officer, based on these documents concluded that the development agreement entered into by appellant company with Emaar MGF is a sham transaction for diluting the share of APIIC and therefore, rejected the development agreement and has assessed entire amount of advances received from Emaar MGF as the income of the assessee.

18. The CIT-DR further submitted that although the appellant claims that the sale transaction is not completed and because of this, advances were still shown as liabilities, but the fact remains that even after the lapse of 10 years, the amount collected from the customers is only enjoyed by the appellant without any refund. From the above, it is very clear that the appellant has received income from sales of villa plots and the Assessing Officer has rightly taxed advances as the income of the assessee. The CIT-DR, further referring to various clauses of sale agreement with prospective buyers submitted that as per the agreement, the appellant has allowed prospective buyers to construct villa in the land. From the above, it is undisputedly clear that the appellant has transferred possession of the land to the villa buyers and conditions recognizing the revenue have been satisfied. The CIT-DR, further referring to the sale agreement with prospective

buyers submitted that the appellant company has sold only the land in the project. As per development agreement, the appellant is sharing only the revenue from sale of apartments and villas. Therefore, when the land is held by an appellant company, the question of sharing revenue with the developer does not arise. Even going by the terms and conditions of the development agreement, the appellant company and the developer are only sharing revenue from the construction project, but not from sale of land. Therefore, CIT-DR submitted that the Assessing Officer has rightly assessed income in the hands of the appellant towards advances received from customers for sale of villa plots and therefore, the order of the LD.CIT(A) needs to be upheld.

19. The learned counsel for the assessee, in the rejoinder to the arguments of the CIT-DR submitted that even going by the collaboration agreement between APIIC and Emaar Properties PJSC, Dubai, the entire land has to be developed as an Integrated Township, which consists of golf course, commercial properties, residential apartments / villas and residential flats. The project must be undertaken as a whole and not as argued by CIT-DR. Further, going by the development agreement between the appellant and Emaar MGF, the entire development work is undertaken by the developer at their cost. The appellant is only sharing the revenue from the project. Further, the entire advances are collected by Emaar MGF. The assessment of the developer's case was completed by the Income Tax Department, where the advances collected from the customers were shown under the

'Liability' and accepted by the Assessing Officer. Further, the APIIC has issued legal notice for termination of collaboration agreement. Although the said legal notice has been stayed by the Hon'ble High Court of Andhra Pradesh, but the litigation between the parties is continuing. Further, the Government of Andhra Pradesh has issued prohibitory orders to the Joint Sub-Registrar for registration of the property in the project. Therefore, unless the prohibitory order is removed by the Government of Andhra Pradesh, the property in the project cannot be registered in the name of the prospective buyers. Unless the property is transferred to the buyers by way of registered deed, it cannot be said that the sale is complete. Therefore, the arguments of the CIT-DR that the revenue from sale of villa plots should be accounted for by the assessee in its entirety, and that the assessee is liable to be accounted for the entire advances received from the customers, are totally contrary to the arrangement between the parties and facts of the case. Therefore, he submitted that there is no merit in the arguments of the CIT-DR and the same needs to be rejected.

20. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have carefully considered the relevant documents relied upon by both sides, in support of their contentions, and also various case laws considered by the learned Assessing Officer, the LD.CIT(A) and also the assessee. There is no dispute with regard to the fact that the appellant company is a Special Purpose Vehicle in the form of a Joint Venture Company between APIIC and Emaar MGF

Holdings, Mauritius, a wholly-owned subsidiary of Emaar Properties PJSC, Dubai. The appellant company was incorporated on 20.08.2003 in pursuant to the collaboration agreement dt.19.08.2003 between APIIC and Emaar Properties, PJSC. In terms of collaboration agreement dt.19.08.2003, the Government of Andhra Pradesh issued G.O.Ms.No.359 dt.04.09.2002 for incorporation of Special Purpose Vehicle and as per the said G.O., Emaar PJSC is having 74% share capital and APIIC is having 26% share capital in the SPV. Further, as per the collaboration agreement, APIIC has brought in equity capital in the form of land admeasuring 258.36 acres to the appellant company. M/s. Emaar Properties, PJSC, Dubai will contribute 74% in the form of liquid funds for development of the project. The purpose of Special Purpose Vehicle is to construct a township project in the integrated housing project promoted by APIIC. In pursuant to collaboration agreement, the appellant had entered into Development Agreement cum General Power of Attorney with Emaar MGF Land and agreed to share revenue at 75% for the developer and 25% for the appellant. Further, as per the development agreement, the entire cost of development of the project will be borne by the developer and the gross revenue from the project is shared by both the appellant company and Emaar MGF. The Assessing Officer made an addition of Rs.45,07,64,461/- towards advances received by Emaar MGF from customers for sale of villa plots which were treated as 'Current Liability' in their books of accounts, considering them as income of the appellant for the relevant assessment years. The

Assessing Officer discussed the said issue at length in light of collaboration agreement dated 19.08.2003, subsequent communication between the appellant company and Government of Andhra Pradesh, the development agreement cum general power of attorney between the appellant company and Emaar MGF and also Marketing Agreement between appellant company and SHREPL and held that the subsequent development agreement and marketing agreement between appellant company and Emaar MGF were sham transactions and because of this, the share of APIIC has come down from 26% to 6.5%. Therefore, it is alleged that the assessee, through multi layered entities, received revenue from the project, however not offered it to tax. Therefore, the Assessing Officer opined that advance received by the appellant company and the subsequent transfer to Emaar MGF and also advances received by Emaar MGF from customers from sale of villa plots constituted the income of the assessee for the relevant assessment years.

21. In light of the above factual position and arguments advanced by the learned counsel for the assessee and the revenue, the sole issue that came up for our consideration is, whether the amount received by the appellant and its developing partner, Emaar MGF, for sale of villa plots is a taxable receipt for the financial year concerned, or it is only an advance pending recognition of revenue, as per the accounting standards, etc. If it is taxable receipt, then how much ought to be brought to tax in the hands of the appellant for the year under consideration. The

appellant, right from the beginning, argued that it has followed Percentage of Completion of Method (PoCM) as per Accounting Standard – 7 for revenue recognition for the development of the project and based on percentage of completion method and taking into account the advances received from customers, the revenue has been recognized. In fact, the appellant has followed PoCM method for recognizing the revenue from sale of apartments/ villas, and the same has been accepted by the Assessing Officer. The appellant had also followed PoCM method for recognizing the revenue in respect of sale of villa plots, but the Assessing Officer did not accept the method followed by the assessee and assessed the entire advances received from customers for sale of villa plots by Emaar MGF, as income of the assessee. Therefore, to decide whether it is an advance, as claimed by the assessee, or income, as assessed by the Assessing Officer, it is necessary to examine the applicability of PoCM method and relevant accounting standards, AS-7 and AS-9,- issued by ICAI. Accounting Standard – 7 deals with recognition of revenue from construction contracts and it allowed both Percentage of Completion Method (PoCM) and Project Completion Method (PCM) for revenue recognition in construction contracts. The method of revenue recognition for real estate developers, whether to follow Percentage of Completion Method or Project Completion Method, with significant accounting and far reaching tax implications, the ICAI has also issued a Guidance Note on accounting for real estate transactions and as per the said Guidance Note which suggested application of POCM for all real estate transactions, irrespective of whether the

duration of such projects is beyond 12 months and the project commencement and project completion date fall into different accounting periods. This method is applied when the outcome of a real estate project can be estimated reliably, and when total project revenue can be estimated reliably, and further it is probable that the economic benefits associated with the project will flow to the enterprise. The Guidance Note also specifies the timing of the revenue recognition and as per the said Guidance Note, when the stage of completion of a project reaches a reasonable level of development, revenue needs to be recognized. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25% of the total construction and development cost of the project. Further, at least 25% of the saleable project area is secured by contracts or agreements with buyers. Further, at least 10% of the total revenue, as per the agreement of sale or any other legally enforceable documents are realized at the reporting date in respect of each of the contracts. If the above 3 conditions are satisfied, then the percentage of completion method can be followed for revenue recognition. Further, there is another school of thought as per which for real estate projects, Project Completion Method is also suitable where the project involves short term, straightforward transactions, revenue recognition upon transfer of significant risks and rewards and further, the control of the plot typically transfers at the point of sale.

22. Admittedly, in the present case, the appellant is a real estate developer engaged in the business of developing an integrated housing project, which consists of residential apartments, villas, malls etc. As per the agreement with buyers of the villa plots, the assessee has an option to construct villas for the buyers. From the nature of project undertaken by the assessee, it is exactly in the nature of construction contracts and, therefore, in our considered view, AS-7 is applicable and as recommended by ICAI by way of Guidance Note on accounting of real estate transactions, PoCM method is suitable for recognizing the revenue. Therefore, the findings given by the LD.CIT(A), in light of A.S-7 and AS-9, that these two accounting standards are not applicable to the appellant's case and further because of two conditions satisfied as per A.S-7 i.e., buyer's agreement is signed and significant risks have been transferred to the buyers as regards the property in question along with a reasonable certainty that the money received by the developer is not likely to be refunded, revenue must be recognized as and when advances are received from customers, is incorrect because as per the sale agreement with buyers itself, the assessee has allowed possession of the flats for the limited purpose of entering and construction of the villas therein. Even otherwise, the control on entire procession of the property rests with the appellant company till execution of the final sale deed. Further, as noted by the Assessing Officer and LD.CIT(A), the appellant has not received 100% of sale consideration receivable on sale of flats but only advances. Although, the Assessing Officer and LD.CIT(A) noted that the

appellant has already received 95% of the sale consideration, but fact remains that even if 5% sale consideration remains unpaid, the title and interest in the property will not pass on to the buyer, unless the entire consideration accrued as per the terms and conditions of the contract is paid and also the title and interest in the property has been transferred to the buyer by way of registered conveyance deed. In the present case, going by the findings of LD.CIT(A) itself, the appellant has only received advances and has not executed sale deed transferring the interest and title in the property to the buyers. Since the title and interest in the property have not been passed to the buyers and further, the physical possession of the property lies with the appellant company or the developer, in our view, the point of sale for recognizing the revenue as per Accounting Standard – 9 and as per Accounting Standard - 7, has not taken place and accordingly, the appellant has rightly treated the advances received from customers for sale of villa plots as ‘liabilities’.

23. Coming back to various observations of the Assessing Officer while making addition towards advances received from customers for sale of villa plots by developer Emaar MGF. The Assessing Officer has challenged the validity of the agreement between Emaar MGF and the appellant company. The Assessing Officer has also challenged the Development Agreement cum General Power of Attorney dt.25.07.2007 and alleged that as per the legal notice issued by APIIC, the development agreement was nothing but a sham document for depriving the revenue of APIIC.

Therefore, observed that the said development agreement cum general power of attorney is invalid and illegal. We find no merit in the reasons given by the Assessing Officer to make addition towards advances as income of the assessee on the basis of his observations on the validity of the agreement between the parties. First of all, the Assessing Officer has arrived at the conclusion that the said agreement between the parties is a sham is only on the basis of surmises without there being any supporting evidence. Although the Assessing Officer has given his own interpretation of reasons to allege that the share of APIIC has come down from 26% to 6.5%, but in our considered view, the Assessing Officer has grossly misunderstood the concept of Joint Venture company and the subsequent development agreement. Admittedly, APIIC is a JV Partner of an appellant company and is having 26% of share capital and the same has been contributed in the form of transferring possession of land held by APIIC in favour of the appellant company. Further, the JV Partner, Emaar Properties PJSC, Dubai has contributed 74% share capital in the form of financial contribution. Subsequently, the appellant company with the approval of the Board of Directors in their meeting held on 21.09.2006 entered into a development agreement cum general power of attorney with Emaar MGF for the joint development of the project, considering the requirement of additional capital for the project and this arrangement has been intimated from time to time to APIIC and the Government of Andhra Pradesh, which is evident from various documents furnished by the assessee. As per the said development agreement, the cost for the development

of the project is fully borne by the developer, Emaar MGF, and the gross revenue from the project has been shared by the parties in the ratio of 75% for the developer and 25% for the appellant. If we go by the development agreement, the assessee earns 25% of gross revenue without incurring any expenditure. In other words, if we go by the terms of collaboration agreement, the appellant shall develop the project on its own and the profit or loss, if any, from the project is 100% for the appellant company, in which Emaar Properties PJSC, Dubai is having 74% share and APIIC is having 26% share. Although we do not have the relevant figures to compare which option is best for APIIC in terms of revenue, going by the terms and conditions of the agreement, it is undisputedly clear that, as per the subsequent development agreement, the appellant company is receiving 25% of the gross revenue without incurring any expenditure. Therefore, in our considered view even after considering the revised revenue-sharing arrangements as per JDA, there seems to be no adverse impact on the revenue received by the appellant company and its JV Partner APIIC. Be that as it may. The AO, without understanding the purpose of collaboration agreement, and the subsequent development agreement, misunderstood both agreements and arrived at a conclusion that, because of the subsequent development agreement with Emaar MGF, the share of APIIC has come down to 6.5%. In our considered view, in a JV company, the partners to the JV contribute capital according to their terms of agreement and the profit or loss, if any, from the JV is shared according to their capital contributions. Therefore, the

allegation of the AO that, because of subsequent development agreement, there is a revenue loss to APIIC and the same has been systematically carried out by the appellant, is totally devoid of merit and not borne out from the records. Therefore, the conclusion drawn by the Assessing Officer on the basis of these agreements to draw an adverse inference against the assessee, and to assess advances received by another legal entity is in the hands of the appellant, is totally incorrect and against the principles of taxation.

24. Coming back to another aspect of the issue considered by the Assessing Officer, admittedly, before entering into development agreement with Emaar MGF on 03.11.2006, the appellant company has collected Rs.5,32,48,250/- as advance from customers towards sale of villa plots up to 31.03.2009 and the same has been shown in Schedule - 9 as Current Liabilities. Subsequent to development agreement, the entire amount received as advances from customers for sale of villa plots has been collected by Emaar MGF and accounted for in their books of accounts as advances pending revenue recognition. As per the development agreement, the appellant's share of income is only 25% and 75% goes to the developer. Therefore, in our considered view, assessing the total advances received by a third party, although some portion of it belongs to the assessee, as entire income of the assessee for the relevant assessment year, even when the conditions for recognizing the revenue have not been satisfied, is incorrect and against the principles of taxation.

We further noted that the Assessing Officer never disputed the fact that the amount has been collected by Emaar MGF. the Emaar MGF was subjected to search assessment u/s 143(3) r.w.s. 153A of the Act, for all these assessment years and during the search assessment, the Assessing Officer never disputed the accounting method followed by the company for recognizing the revenue from the project and also advances received from the customers as current liabilities. Therefore, once the developer itself has not recognized the revenue from the project on being satisfied with the conditions for recognizing revenue have not been satisfied, and the same has been accepted by the department, in our considered view, there is no question of taking a different view in the case of the appellant because the appellant is also a part of the said development agreement and whatever the decision taken by the department in the case of one partner of the development agreement is equally applicable to other partner of the development agreement. Therefore, on this count also, the addition made by the Assessing Officer towards advances received from customers for the sale of villa plots, cannot be sustained.

25. We, further noted that there is no dispute with regard to the fact that appellant is following the Percentage of Completion method for recognizing the revenue for the development of the project. In our considered view, although the Project Completion method is suitable for recognizing the revenue for this kind of project, but yet the Percentage of Completion method is more

accurate when it comes to the timing of revenue recognition. Therefore, when the assessee itself following Percentage of Completion method, the Assessing Officer ought to have accepted the PoC method followed by the assessee for revenue recognition. Further, for the taxation purposes, it is the real income which can be brought to tax and not notional income. Under the real income theory, income never accrued nor received cannot be brought to tax. Therefore, taxing the advance before the sale maturity will lead to double taxation of the same receipt twice as this amount will again be subjected to tax when revenue is recognized as per the accepted accounting principles which in itself makes this addition bad in law. Moreover, the Assessing Officer never disregarded the method followed by the appellant. Further, the Assessing Officer has not adhered to the matching concept of accounting principles. Therefore, in our considered view, when the appellant is following the Percentage of Completion method for revenue recognition and the same is based on the real income theory, the Assessing Officer ought not to have made addition towards advances received from customers for sale of villa plots, especially when the facts brought on record clearly show that the sale never took place for recognizing the revenue either in terms of AS-9 or AS-7. Although the LD.CIT(A) has not followed both the accounting standards for revenue recognition but has cherry picked one or two conditions specified in AS-7 and conclude that conditions for recognizing revenue are satisfied. Therefore, the method followed by the LD.CIT(A), in our considered

view, is not a recognized accounting method for recognizing the revenue for this kind of contracts and cannot be upheld.

26. Further, the LD.CIT(A) took a view from two clauses of accounting standard - 7 and held that the appellant and developer has entered into agreements with buyers and also received 95% advances from customers and further, significant risks and rewards in the project have been transferred to the buyers and therefore, observed that the conditions for recognizing the revenue have been satisfied. In our considered view, for recognizing the revenue as per accounting standard - 7, all the conditions need to be cumulatively satisfied. In the present case, going by the facts on record and also subsequent legal dispute that arose between the parties, including the show cause notice issued by APIIC for cancellation of collaboration agreement and subsequent stay order from the court clearly show that the litigation on the said property is ongoing and until such litigation is resolved, the question of transferring rights in the property to any person, including the buyer does not arise. Further, as brought out by the learned counsel for the assessee, the State Government has issued prohibitory orders to the Joint Sub-Registrar for registration of the property in the project and from the above, it is very clear that unless the legal dispute between the parties is resolved, the question of transferring of property to any person does not arise. Therefore, it cannot be held that the point of sale has taken place for recognizing the revenue. Insofar as the arguments of the CIT-DR that even after 10 years, the amount

collected from the customers has been enjoyed by the appellant and there is no evidence of refunds being made to the customers, in our considered view, these arguments do not hold good for deciding the present dispute because the appellant all along has claimed that its developer is also willing to develop the project as per collaboration agreement and the project has not progressed because of legal dispute between the parties. Therefore, when the parties itself have not made any claim for refund of the amounts paid by them towards advances for sale of villa plots, in our considered view, the arguments advanced by the CIT-DR that the appellant is enjoying the amount collected from customers for sale of villa plots to assessee the income of the appellant is devoid of merit and is, therefore, rejected.

27. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the Assessing Officer has erred in making addition of Rs.45,07,64,461/- towards advance from customers for sale of villa plots by Emaar MGF in hands of the assessee. The LD.CIT(A), without appreciating the relevant facts, simply sustained the addition made by the Assessing Officer to the extent of the assessee's share of 25% as per development agreement. Thus, we set aside the findings of the LD.CIT(A) on this issue and direct the Assessing Officer to delete the addition made towards advances received from customers for sale of villa plots by Emaar MGF as income of the appellant for all assessment years.

28. The next issue that came up for our consideration from grounds of appeal of the Revenue for A.Ys. 2009-10 and 2010-11 is addition on account of 'On money' / additional money / cash receipts over and above the documented value of Rs.5,000/- per sq. yard. received from six buyers and further addition based on extrapolation of average 'On money' for remaining flats sold in the project. This issue is also the offshoot of the earlier issue discussed and considered by us. In pursuant to collaboration agreement dated 19.08.2003 between APIIC and subsequent development agreement between appellant company and Emaar MGF, the appellant company had entered into Agency Agreement with SHREPL for sale of 100 villa plots @ Rs.5000/- per sq. yard. As per the Agency Agreement, the agent M/s. SHREPL was also allowed to charge a commission of 4% over and above the fixed price in lieu of its services.

29. During the assessment proceedings, the Assessing Officer noted that the assessee and the developer had sold or entered into agreements with several customers numbering about 134 for sale of villa plots. The Assessing Officer further noted that the assessee or developer has collected advances from about 85 customers towards sales of 87 flats to the extent of 1,16,748 sq. yards during the financial year 2008-09 relevant to assessment year 2009-10. The Department has gathered information from various plot owners by issuing letters u/s 133(6) of the Act and recorded their statements. From the information gathered with regard to additional money received from prospective villa plot buyers, it

was found from the information that they have paid an additional amount ranging from Rs.5,000/- to Rs.17,000 for sq. yard apart from the selling price of Rs.5,000 per sq. yard. It was further noted that one of the villa plot buyers had even filed a revised return and paid taxes, admitting to the amount paid for purchase of flat from Emaar Properties. Based on the statements recorded from six people, the Assessing Officer computed the total cash receipts as 'On money' received for sale of flats at Rs.9,58,81,270/- (from Rs.5000/- to Rs.17,000/- per sq. yard) by taking into average price of Rs.8550.28 per sq. yard. For the rest of the villa plots admeasuring 107,170 sq. yards, the Assessing Officer extrapolated 'On money' received at Rs.8550.28 per sq. yard and made further addition of Rs.91,63,33,507/-, leading to total addition of Rs.101,22,14,777/-. The Assessing Officer while making addition towards 'On money' has pointed out various inconsistencies such as the Agency Agreement for sale of 100 villa plots between M/s. Emaar Properties PJSC, Dubai (holding company of the appellant) and SHREPL was not signed by the appellant nor was the APIIC informed of this arrangement. Further, the impugned agreement was not registered and was entered into on plain white paper. The Assessing Officer had also took support from the charge sheet filed by the CBI during the remand proceedings and stated that the Managing Director of SHREPL, the selling agent, had collected cash in excess of Rs.5000/- per sq. yard, as per agreement and the same has been immediately handed over to Shri K. Rajendra Prasad, the Director of appellant company or to a person of his choice etc. Therefore,

opined that 'On money' collected by the appellant or the developer through selling agent SHREPL was for the ultimate benefit of the assessee and therefore, accessible as income of the appellant.

30. Being aggrieved by the assessment order, the appellant preferred appeal before the LD.CIT(A).

31. Before the LD.CIT(A), the assessee submitted that the agreement between the appellant company and the selling agent is a valid agreement and as per the agreement between the parties and also keeping in mind the total cost incurred for the project, estimated revenue and also marketing of the property at that point of time for the initial 100 flats, the selling rate of Rs.5000/- per sq. yard was fixed and the same has been approved by the Board of Directors. Therefore, the Assessing Officer based on the Agency Agreement and its contents cannot allege that the appellant has collected 'On money' for sale of villa plots and the same has not been accounted for. The appellant further justified the selling rate of Rs.5000/- per sq. yard, keeping in view the prevailing market price at Rs.5,000/- per sq. yard at that time in Jubilee Hills and the prices ranged from Rs.900/- to Rs.400/- per sq. yard in Gachibowli area during the year 2004 to 2006 and also in surrounding areas and further the cost of land and development expenses required to be incurred for developing the project. The assessee further submitted that it has received only sale consideration as per the rate specified in Agency Agreement and whatever excess, if any, collected as alleged by the Assessing

Officer, is neither reached to the appellant nor any of its Board of Directors. Although the Assessing Officer referred to the statement recorded by Shri T. Ranga Rao, the Managing Director of M/s. SHREPL, but nowhere, he established the direct link to the appellant, however stated that as per the instructions of K. Rajendra Prasad, he collected an amount over and above stated price and handed over the same to him or his nominee. Apart from the above submissions, the appellant vides letter dt.29.05.2012 filed certain additional evidence under Rule 46-A of Income Tax Rules, 1962 such as charge sheet and supplementary charge-sheet filed by the CBI before the Judge of CBI cases, Hyderabad against certain people.

32. The additional evidence filed by the assessee was forwarded to the Assessing Officer for his comments. At the outset, the Assessing Officer contended that additional evidence does not fit into the circumstances enumerated in Rule 46A of the Income Tax Rules, 1962 and that the additional evidence submitted by the appellant is not tenable and may not be admitted. In the alternative, the Assessing Officer assailing the version of the appellant on the cost of the villa plot fixed at Rs.5000/- per sq. yard, contended that the appellant deprived APIIC their share of revenue by appointing SHREPL and fixing the villa plot rate at Rs.5000/- per sq. yard. Therefore, submitted that the appellant has arranged a transaction in such a way to deprive the revenue to APIIC and in that process, collected excess money from the buyers, which is not accounted for in the books of accounts for

the relevant assessment year. Therefore, submitted that the addition made towards 'On money' should be upheld.

33. The appellant in a rejoinder to the remand report, submitted that the allegation of the AO in light of Agency Agreement, and that SHREPL acted prior to the Conveyance Deed, does not align with the facts on record. The said observations of the AO is neither supported by the acts of APIIC nor substantiated by any valid evidence. Furthermore, the findings of the AO in the remand report are nothing to do with the facts on record in respect of alleged 'On money' received by the appellant. Although the AO refers to charge-sheet filed by CBI, in fact, the report is actually supporting the contention of the assessee because nowhere in the charge sheet is there any reference to the appellant or the developer for collection of 'On money'. The entire charge sheet submitted by the CBI clearly shows that Shri T. Ranga Rao has collected excess money from plot buyers on the instructions of Shri K. Rajendra Prasad and handed over money to him. Further, K. Rajendra Prasad has denied receiving any 'On money' from the customers and also denied the statement of T. Ranga Rao. Therefore, the conclusion drawn by the Assessing Officer on the basis of the statements of T. Ranga Rao and few plot buyers is incorrect.

34. The LD.CIT(A,) after considering the submissions of the assessee and also taken note of the remand report by the Assessing Officer and the counter submissions of the assessee on

this issue, has observed that the allegation of the Assessing Officer on the basis of Agency Agreement with SHREPL and subsequent statements recorded from Shri T. Ranga Rao, Managing Director of the said company, does not hold good for the simple reason that the allegation of the Assessing Officer on the basis of certain discrepancies in the Agency Agreement and its contents is devoid of merit because, in the subsequent modified agreement, the signature of the authorized person has been obtained and further the agreement between the parties is a commercial document and acted upon by both the parties and therefore, no adverse can be drawn on the genuineness of the Agency Agreement. The LD.CIT(A) further on the issue raised by the Assessing Officer in respect of not informing APIIC about the Agency Agreement with SHREPL, observed that APIIC has become a shareholder in the appellant company after conveying land towards their share of 26% vide Conveyance Deed dt.28.12.2005 which is much after the date of Agency Agreement. Therefore, the question of prior intimation to APIIC with regard to entering into Agency Agreement with SHREPL for marketing 100 villa plots could not possibly arise. However, it is seen from the letter dated 26.12.2005 written to the Vice Chairman and Managing Director of APIIC forwarding the details of Board Meetings and gist of the business transacted, including the appointment of SHREPL on 29.01.2005 and as such it cannot be surmised that APIIC was kept in dark about the Agency Agreement. Further, the fact that there was not even a whisper of the opposition from APIIC for at least 5 years after they were informed of existence of such agreement in December,

2005 clearly indicates that APIIC was also on the same page as the other shareholder on this issue. The Assessing Officer in his remand report dated 22.06.2012 has raised the issue of entering into Agency Agreement for sale of 100 villa plots prior to the Conveyance Deed through which the land admeasuring 258.36 acres was brought into the books of appellant company. In this regard, the appellant referring to the MoU dated 06.11.2012 with APIIC, later collaboration agreement dt.19.08.2003 and clauses and sub-clauses therein, has contended that it could have entered into any agreement or arrangement with any person for carrying out its business. It is also the claim of the appellant that as per G.O.Ms.No.359 dated 04.09.2002 and MoU dated 06.11.2002 and Collaboration Agreement dt.19.08.2003, the developer had the freedom to assign its development rights without any consent from APIIC and there are no restrictions on the appellant from assigning development rights and marketing rights. Therefore, the allegation of the Assessing Officer is devoid of merit.

35. The learned CIT(A) had also discussed the information gathered from third parties under Section 133(6) of the Act and observed that, based on a few cases of confessional statements from plot buyers, it cannot be alleged that appellant has received excess money from all plot buyers. Further, as per the information gathered by the Assessing Officer himself, Shri T. Ranga Rao, in his statement recorded during the proceedings, admitted having collected additional money from buyers at the instructions of Shri K. Rajendra Prasad and the same has been handed over to him or

his nominee. Further, the charge-sheet filed by CBI also supports the contention of the assessee and in the entire charge-sheet, there is no reference of the appellant or the developer in respect of alleged excess money collected from the plot buyers. In fact, as per the CBI charge-sheet, it is evident that Shri T. Ranga Rao, the Managing Director of the SHREPL handed over the amount to Shri K. Rajendra Prasad, and the majority of the amount has gone to the benefit of Shri N. Sunil Reddy, who is an unconnected person to the appellant and the developer, as mentioned in the report. Therefore, from the above, it is clear that although, there is a possibility of collection of additional money from customers over and above the agreed price as per Agency Agreement, but said 'On money' is not collected on behalf of the assessee or developer and hence, the ultimate benefit cannot be assessed in the hands of the appellant and thus, directed the Assessing Officer to delete the addition made towards 'On money' and further, addition on the basis of extrapolation for the remaining flats sold during the relevant assessment year. The relevant findings of the LD.CIT(A) are as under :

*“10.4 A conjoint reading of the assessment order, remand report and contents of various CBI charge sheets, the relevant extracts of which are reproduced above, gives a coherent picture. What is indisputable is that*

*(i) On-money was received by Sh. T. Ranga Rao and/or his manager on the instructions of Sh. K. Rajendra Prasad;*

*(ii) Sh. K. Rajendra Prasad not only determined the quantum of cash to be recovered from the plot buyers, it was he only who decided as to whom this cash would be handed over by Sh. T. Ranga Rao,*

(iii) while the AO restricted his findings to that Sh. T. Ranga Rao used to hand over the cash to Sh. K. Rajendra Prasad or his nominee, CBI unearthed one of the beneficiaries as Sh. N. Sunil Reddy who used to receive cash on the instructions of Sh. K. Rajendra Prasad;

(iv) CBI, in its chargesheets, pegged the amount received by Sh. N. Sunil Reddy at Rs. 45.21 crore. There is no material available on record to link the appellant, howsoever remotely, with Sh. N. Sunil Reddy,

(v) Sh. Madhu Koneru, son of Sh. K. Rajendra Prasad received, through banking channel, a sum of US\$ 390,000 from two villa plot buyers. These two transactions prove beyond any shade of doubt that Sh. K. Rajendra Prasad was indeed one of the beneficiaries in this whole affair of collection remains to be ascertained is only the quantum of benefits, of on-money- what

(vi) None of the parties involved-t -the plot buyers, Sh. T. Ranga Rao, Sh. K. Rajendra Prasad or anyone else examined by the investigating agencies and the AO has pointed a finger towards the appellant in this whole affair of collection of on- money. There is not even one direct evidence or testimony implicating the appellant in any manner,

(vii) Sh. T. Ranga Rao, in his statement recorded under section 164 of Cr. PC, has implicated Sh. K. Rajendra Prasad on whose instructions the collection, and subsequent distribution of on-money took place. Though Sh. K. Rajendra Prasad has denied receiving any money, the onus is on him to negate the statement recorded by Sh. T. Ranga Rao in front of Metropolitan Magistrate. On the contrary, the amounts received by his son from a couple of villa plot buyers do prima-facie strengthen the case against him. As such, while there is no ambiguity of involvement of Sh. T. Ranga Rao, Sh. K. Rajendra Prasad, and Sh. N. Sunil Reddy in this affair, there is nothing on record to extend this chain to the appellant company while fixing the tax liability. The AO has not carried out any investigation or relied up on any evidence or testimony to prove the involvement of the appellant even remotely,

(viii) The least the AO could have done to implicate the appellant is to fink it either with the scheme of collection of on-money or its subsequent distribution/disposal, especially in relation with Sh. N. Sunil Reddy. However, the AO could not even remotely Ink Sh. N. Sunil Reddy with the appellant, nor could he Indicate any motive as to why the appellant would have desired to handover such a significant amount of money (at least Rs. 45.21 crore as per CBI chargesheet) to an unknown, unrelated individual or entity:

(ix) The reference to Sh. G. Vijay Raghav is irrelevant for the limited issue of fixing tax liability on the appellant as at the time of the purported action

*by Vigilance Department, he was on the pay-rolls of EMAAR MGF as its Finance Head (South) which is a separate company, and had nothing to do with the working of the appellant company,*

*(x) During the appellate proceedings the appellant contended that, the AO has not proved the deployment/utilization/accretion to the value of inventory or fixed assets of the Appellant by the amount of alleged on-money while passing the impugned assessment orders for the captioned assessment years thereby making the allegation of the AO bogus, baseless and arbitrary. This fact is also evident from the audited financial statements of the Appellant for the year ended 31 March, 2009, 31st March, 2010 and 31 March, 2010 that there is no deployment/utilization/accretion to the value of inventory or fixed assets of the Appellant. The Appellant has already submitted the said audited financial statements vide an earlier submission. The audited financial statements of the appellant for the relevant years (FY 2008-09, 2009-10, 2010-11) have been perused, and it is noted that in all these years, there has not been any deployment of funds either in inventory or fixed assets which could have accommodated any out of books money by way of undervaluation of assets etc. The AO, either in assessment order or various remand report, has not made any comment on this aspect either.*

*10.5 Based on the above, though it is not possible to give an unambiguous finding on who was (were) the end beneficiary (ies) of the total amount of on-money collected by Shri T. Ranga Rao, it is clear that there is nothing on record to link the appellant company with the on-money. Though Shri K. Rajendra Prasad had not admitted to have received any cash from Shri T. Ranga Rao, the investigations carried out by CBI and the admission of various villa plot buyers clearly indicate that on-money over and above the documented value was paid by the purchasers to Shri T. Ranga Rao. Accepting that Shri K. Rajendra Prasad received the said on-money and/or parted at least a part of the same with Shri N. Sunil Reddy, the reason for such an act on behalf of Shri K. Rajendra Prasad could not be unravelled till date by any of the Investigating Authorities, leave alone the Income Tax Authorities. There is nothing on record that could link Shri N. Sunil Reddy with the appellant. Also, try his own admission before the AO, Shri K. Rajendra Prasad was only a nominee director in the appellant company with no responsibility and no authority. Even if it is accepted that Shri K. Rajendra Prasad was benefited in his personal capacity to some unknown extent out of the receipt of on-money, it is not possible to link the appellant with him. On the other hand, the fact that he was benefitted in his personal capacity by collection strengthens the possibility of the scenario that the appellant company wasn't involved in the activity. Therefore, as long as the end beneficiary of on-money is not the appellant company, the actions of Shri K. Rajendra Prasad, having no role or authority in the company, do not bind the appellant company for the*

*purposes of its tax liability. The AO has failed to bring on record anything that could link the appellant with the collection of on-money or its disposal/ application subsequently. Accordingly, it is not possible to tax the on-money in the hands of the appellant company.*

*11. The above finding is limited to the issue of computation of tax liabilities of the appellant under the Income-tax Act, 1961. There may have been a number of violations, and acts of omission/commission committed by the various parties involved in the dispute, including the appellant company, for which requisite action, if deemed fit, can be taken by the appropriate authorities/ law enforcement agencies under the applicable laws. However, for the limited purposes for fastening tax liabilities on the appellant company, based on the material available on record, **it is not possible to hold that the on-money is taxable in the hands of the appellant company.***

*12. Accordingly, the Assessing Officer is directed to delete the addition on account of on-money made in the hands of the appellant. Ground of appeal no. 4 is Allowed.”*

36. The ld. CIT-DR submitted that, the LD.CIT(A) has erred in deleting the addition made towards 'On money' received towards sale of villa plots, even though he has clearly admitted that there is a possibility of collecting 'On money' based on evidence and circumstantial evidence collected by the Assessing Officer. The CIT-DR further referring to the Agency Agreement submitted that the appellant company has entered into Agency Agreement and fixed the sale price of the plot at Rs.5,000/- per sq. yard even though the prevailing market value of the land at that point of time in that locality was above Rs.10,000/- per sq. yard. Further, the investigation carried out by the Assessing Officer clearly shows receipt of 'On money' by the appellant company and the developer and the same is further strengthened by an investigation carried out by CBI, wherein they have established 'On money' received from customers. The CIT-DR further submitted that although the

appellant stated that they have received consideration as per Agency Agreement and whatever excess, if any, collected as alleged by the Assessing Officer not reached to the appellant company, but the fact remains that Managing Director of SHREPL, Selling Agent, Shri T.Ranga Rao clearly admitted that as per the instructions of Shri K. Rajendra Prasad, Director of the appellant company, has collected additional money and handed over the same to Shri K. Rajendra Prasad or his nominee and this fact has been strengthened by the findings of the CBI where it has been established that out of total money, more than 50% has gone to one Shri N.Sunil Reddy, who is an associate of K. Rajendra Prasad. Since K. Rajendra Prasad is the Director of the appellant company and the 'On money' has been collected in pursuant to Agency Agreement, is nothing, but the amount received from the appellant company and therefore, the same needs to be assessed in the hands of appellant company only. Although the Assessing Officer has given valid reasons for making the addition in the hands of the appellant company, but the LD.CIT(A) has deleted addition by accepting the arguments of the appellant company. Therefore, he submitted that the addition made by the AO should be sustained.

37. The learned counsel for the assessee, on the other hand, supporting the order of the LD.CIT(A) submitted that the LD.CIT(A) has given valid reasons for deletion of the addition towards 'On money', after considering relevant facts, including the agreement between the appellant company and SHREPL and subsequent

evidence like charge-sheet filed by CBI etc. The learned counsel for the assessee submitted that the Assessing Officer made adverse inference against the assessee only on the basis of agreement between SHREPL and Emaar Properties PJSC and argued that none of the representatives signed on the agreement with selling agent and further, there was no representative from the APIIC nor it was informed to the Government of Andhra Pradesh. The allegations made by the AO with regard to discrepancies in the Agency Agreement have been subsequently rectified and the same has been approved by the Board of Directors of the appellant company. Further, merely because of the APIIC is a shareholder, it does not mean that it should be made as a party of the agreement. The Agency Agreement was acted upon by parties and this agreement was brought to the notice of APIIC vide letter dt.26.12.2005 which was duly acknowledged by the APIIC. Although, the Assessing Officer taken adverse comments in light of registration of agreement, but fact remains that there is no legal requirement that the agreements needs to be registered or stamped as per the provisions of Indian Contract Act, 1872. Further, an agreement can be verbal contract also and there is no mandatory requirement that every agreement should be duly stamped or registered.

38. The learned counsel for the assessee further submitted that, if we accept the allegation of the Assessing Officer that the appellant has received 'On money' on the basis of selling price for Rs.5,000/- per sq. yard fixed for selling the initial 100 flats as per

marketing agreement and observing that when the market price of the property was about Rs.10,000/- as per stamp duty authorities, the appellant has sold land at Rs.5,000/- per sq. yard and this proves the collection of 'On money', however, the allegation of the Assessing Officer is unproven for the simple reason that the Agency Agreement dated 29.01.2005 was entered into for selling of 100 villa plots at Rs.5,000/- per sq. yard, and the said rate has been fixed after considering the prevailing market rate for that locality in the years 2004 to 2006 along with subsequent development cost etc., The learned counsel for the assessee further contended that pre-launch schemes are common / accepted practice in the real estate industry where developers offer pre-launch price which is much lessor when compared to market rate. Therefore, a general business practice in commercial terms between the parties cannot be questioned by the Assessing Officer, merely for the reason that during the subsequent period, the price of the project is increased. The learned counsel for the assessee further submitted that the Assessing Officer unnecessarily has given weightage to information gathered under Section 133(6) of the Act from six buyers and stated that the said six persons have paid 'On money' for buying flats, but fact remains that out of those six persons, one person claimed to have even filed revised return admitting 'On money' paid for purchase of villa plot. but said return is non-est in the eye of law, and therefore, the admission of the said person on the basis of return of income cannot be a basis for drawing an adverse inference against the assessee. The learned counsel for the assessee further

submitted that assuming for a moment that few people have admitted paying 'On money', but the fact remains that Assessing Officer never confronted the statements of those people and not also provided evidences to the assessee, nor provided an opportunity for cross-examination which is contrary to the principles of natural justice. Although, the Assessing Officer has given opportunity to the assessee, he has given only one day time for cross-examination of the parties which is totally impossible and therefore, it cannot be said that the Assessing Officer has given the opportunity for cross-examination, as required by law and therefore, on this count also, the addition made by the Assessing Officer cannot be sustained.

39. The learned counsel for the assessee further referring to the observations of the Assessing Officer in light of statement of Shri T. Ranga Rao given on 09.01.2012 before the Metropolitan Magistrate submitted that, although shri. T Ranga Rao admitted alleged amount collected from villa buyers at the behest of Shri. K. Rajendra Prasad or his representative, but he never indicated the name of the developer or the appellant. Further, Shri K. Rajendra Prasad has denied receipt of 'On money' and also denied the statement of Shri T. Ranga Rao. This fact has further strengthened by the charge-sheet filed by the C.B.I., where there is no reference to the appellant or the developer or collection of 'On money' on behalf of the Emaar MGF. In fact, the CBI charge-sheet is solely in the name of Shri K. Rajendra Prasad and Shri N.Sunil Reddy and the money trail has been established to an

extent of 50% of the alleged money and it has stated that the benefit of the amount went to Shri N. Sunil Reddy and in respect of the remaining 50%, the money trail could not be established. Therefore, the Counsel for the assessee submitted that the Assessing Officer has erred in making the addition on the said basis and extrapolating the said evidence for the entire villa plots sold during two financial years. Therefore, he submitted that LD.CIT(A) after considering relevant facts has rightly deleted addition and the order of the LD.CIT(A) should be upheld.

40. We have heard both parties, perused the material on record and gone through orders of the authorities below. The Assessing Officer made additions towards the alleged 'On money' received regarding the sale of villa plots on the ground that the appellant was the ultimate beneficiary of 'On money' collected by Shri T. Ranga Rao, Managing Director of SHREPL and therefore, needs to be assessed in the hands of the appellant, as income for the relevant assessment year. The Assessing Officer has extensively discussed the issue at length in light of agency agreement between SHREPL and Emaar, PJSC and its contents, information gathered from a few villa plot buyers u/s 133(6) of the Act, and their confessional statements, the statement recorded from Shri T. Ranga Rao, Managing Director of SHREPL, cross-examination of T. Ranga Rao and Shri K. Rajendra Prasad and also the charge-sheet filed by investigation agencies and came to conclusion that there is sufficient evidence to prove the collection of 'On money' and that the appellant is the ultimate beneficiary of 'On money'

received from villa plot buyers. Therefore, to decide the issue, it is necessary to refer to the undisputed facts of the issue and subsequent development agreement, and the Agency Agreement between the parties.

41. The appellant has become owner of the land in pursuant to collaboration agreement between APIIC and Emaar Properties PJSC. In terms of collaboration agreement, the appellant company had entered into JDA cum GPA with Emaar MGF. As per the development agreement cum general power of attorney, Emaar MGF is developing the project, and the appellant company is sharing the revenue from the project in the ratio of 75% for the developer and 25% for the appellant. In fact, the Assessing Officer never disputed the fact that the entire development of the project has been undertaken by Emaar MGF and also the advances received from customers have been collected by Emaar MGF. Therefore, the alleged 'On money', if any, collected, then the same needs to be discussed in light of development agreement and subsequent receipts accounted by Emaar MGF and also the revenue sharing model of the appellant. In fact, we have decided the issue of taxability of advances received by Emaar MGF and held that since the appellant and the developer are following Percentage of Completion method for recognition of revenue, the point of recognition of revenue does not arise and consequently, income does not accrue to the appellant for these assessment years towards advances received from customers for sale of villa plots. Therefore, assuming for a moment, 'On money', if any,

received towards sale of villa plots is to be assessed in the hands of the appellant or the developer, even if the same needs to be assessed in their respective sharing ratio and further, it should be assessed as and when the transactions took place, or sale completed but not for the impugned assessment years. Therefore, on this count itself, additions made by the Assessing Officer cannot be sustained.

42. Be that as it may. Having said so, let us come back whether there is any evidence for collection of 'On money' and further, if at all 'On money' is collected, and in whose name, it should be assessed. The appellant entered into the Agency Agreement with SHREPL for selling 100 villa plots at Rs.5,000/- per sq. yard. As per the agreement, the appellant company has agreed to sell 100 villa plots at the rate of Rs. 5000/- per square yard and in addition, allowed 4% commission to the selling agent over and above the agreed price. In fact, as per the books of accounts of the assessee, the appellant and the developer have accounted advances from the customers as per sale agreement when the agreed price was at Rs.5,000/- per sq. yd. and this fact was not disputed by the Assessing Officer. The only dispute is with regard to the Agency Agreement between the parties in light of certain discrepancies noticed by the Assessing Officer and subsequent confessional statements recorded by Shri T. Ranga Rao, Managing Director of Selling Agent. The Assessing Officer has questioned the authenticity of the Agency Agreement on the issue of the party to the agreement and to the signatures. In fact, these observations

were negated by the assessee in light of the ratification of the Agency Agreement, wherein the parties were confirmed, and the signatures of authorized representatives have been obtained. The Assessing Officer has also raised objection with regard to keeping in dark the APIIC and alleged that the Agency Agreement with third party has not been informed to APIIC and thereby the appellant is depriving the revenue to APIIC. In our considered view, the observations of the Assessing Officer are purely on suspicion basis without there being any evidence. On the contrary, the assessee has filed evidence to prove that the Agency Agreement dt.29.01.2005 has been entered into and the same has been subsequently, ratified by the Board of Directors of the appellant company in their meeting held on 21.09.2006. Further, the copies of Board Resolution, along with copies of Agency Agreement has been forwarded to APIIC. Therefore, in our considered view, the assessee clearly proves the bonafide of the documents and subsequent acts of the parties. The allegation of the Assessing Officer that the APIIC was kept in dark and, therefore, 'On money' is assessable in the hands of the assessee, is totally misconceived and devoid of merit. Assuming for a moment, the assessee has not informed to the APIIC, that alone is not sufficient to draw an adverse inference because the APIIC itself is one of the shareholders and whatever the decision taken by the Board by the appellant company is binding on the shareholders unless the APIIC raised any objection. Although, subsequently, the APIIC has issued notice for termination of collaboration agreement, but the same has been stayed by the

Hon'ble Andhra Pradesh High Court. Therefore, until said agreement is cancelled, it cannot be said that the Agency Agreement is invalid or entered into to defraud the APIIC. Therefore, the conclusion drawn by the Assessing Officer on the basis of Agency Agreement is devoid of merit and cannot be accepted. In so far as the observations of the Assessing Officer in light of the requirement of registration of the Agency Agreement etc. in our considered view, there is no requirement of registration of Agency Agreement and also there is no requirement under the law for stamping the Agency Agreement. As per the Indian Contract Act, 1872, the agreement without stamping is also a valid contract and there is no mandatory requirement that every agreement should be duly stamped / registered etc. Therefore, on the basis of non – registration of the agreement, no adverse inference can be drawn against the assessee.

43. Coming back to another observation by the Assessing Officer in light of selling the price of the flats. Admittedly, the assessee has fixed Rs.5,000/- per sq. yard as per Agency Agreement for initial 100 flats and the agreement was entered into even before the project is commenced its operations. In fact, as observed by Assessing Officer itself, the land itself has been transferred to the assessee subsequent to the date of agency Agreement. Therefore, in the context of the above facts, if we observe the reasons given by the AO, we find that the AO is totally erred in coming to the conclusion that the appellant has received on money for sale of villa plots, because the appellant has fixed the selling rate even

before the project was started. Further, in this line of business, it is common for any businessman to give pre-launch offer to few customers for raising money required for the project and such offer price is always less when compared to market price. Further, the appellant had also proved with necessary evidence that the selling rate fixed for sale of an initial 100 villa plots is on par with the market rate in the locality and that relevant point of sale. Therefore, the conclusion drawn by the Assessing Officer on the basis of the prevailing market price of property at the time of assessment or at the time of entering into agreement is contrary to the trade practices and devoid of merits.

44. In so far as another argument of the Assessing Officer in light of information gathered u/s 133(6) of the Act from a few villa plot buyers and from their statements, we find that the appellant either sold or entered into agreement with 134 customers. Out of 134 customers, the Assessing Officer himself admitted that he has obtained information from six people and recorded their statements, and they have admitted having paid 'On money' over and above the agreed consideration as per Agency Agreement. Although the Assessing Officer referred to the statements recorded from these persons, he clearly noted that one person Shri Shyam Prasad had filed revised return for A.Y. 2007-08 to 2010-11 and admitted additional income towards 'On money' for purchase of villa plots. From the above evidence, the AO concluded that the appellant has received 'On money' towards sale of villa plots and based on said evidence made additions for six flats sold to above

parties and also extrapolated at average amount of 'On money' to remaining flats sold as per agreement entered into by the appellant. In our considered view, the information gathered from six people and the statements recorded from six people were not shared with the appellant and even the opportunity of cross-examination was also not given to the assessee by the Assessing Officer. Although the Assessing Officer provided the opportunity for cross-examination but had given only one day time to respond to the notice. From the above, we are of the considered view that the Assessing Officer has not given an opportunity of cross-examination to the appellant as per law by providing the minimum required time to respond to the opportunity given by the AO. Therefore, it cannot be said that the opportunity given by the Assessing Officer is in accordance with law and hence, it can be safely considered that the Assessing Officer has not been given an opportunity to go through the evidence used against the appellant and also the opportunity for cross-examination. Once the evidence is not shared and not provided the opportunity to examine the witnesses, the addition, if any, made based on such untested evidence becomes invalid and cannot be sustained and this legal principle is supported by the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata reported in (2015) 62 GST 355 (SC) and Kishinchand Challaram Vs. CIT (1980) 125 ITR 730. Further, the Assessing Officer relied upon the statements of six persons and the revised return filed by them to draw an adverse inference, but the fact remains that the revised return filed by the above persons

are non-est and have no evidentiary value for drawing any adverse inference against the appellant. Therefore, as held by the Hon'ble Supreme Court in the case of Shriram Investments Vs. CIT reported in (2024) 167 taxmann.com 139, the Assessing Officer has no jurisdiction to consider the claim made by the assessee in the revised return filed beyond the time prescribed under Section 139(5) of the Act, and therefore, the conclusion drawn by the Assessing Officer based on the said evidence is devoid of merit and cannot be accepted.

45. The Assessing Officer had also extrapolated the addition of 'On money' by considering the average rate of 'On money' received from six people and computed the alleged 'On money' for the remaining plot sold during the two assessment years based on sale agreements entered into with villa plot buyers. In our considered view, on the basis of untested evidence of six plot buyers statements or evidence, no extrapolation can be made for remaining 95 plots sold during the period, because even in a cases of estimation, there should be a basis for the estimation as held by the Hon'ble Supreme Court in the case of CST Vs. HM Esufali H.M. Abdulali (1973) 90 ITR 271 (SC). In the present case, the Assessing Officer on the basis of untested evidence of six plot buyers, has made extrapolation for remaining 95 flats and made addition of alleged 'On money' without there being any evidence. Further, even if you go by pattern of 'On money' alleged to have been collected by the appellant, as narrated by the Assessing Officer at page 56 and 57 of the order, there is no uniform pattern

of excess money collected from the parties and out of six cases, 'On money' was ranging from Rs.5,000/- to Rs.17,000/- per sq. yard. From the above, it is very clear that there is no uniformity in the alleged money collected by the assessee and from the above, it is undisputedly clear that the arguments of the assessee that it has not collected 'On money' is having some merit. Further, in the case of real estate transaction, the selling rate is almost fixed or uniform, except in a few cases where there is a minor difference in the price, because of various facts such as terms and conditions between the parties and their relationship with the seller, terms of payment etc., Otherwise, the selling rate is always equal or uniform for all plots. In the present case, going by the facts narrated by the Assessing Officer, there is no uniformity in 'On money' alleged to have been collected by the assessee. Therefore, in our considered view, unless there is evidence it cannot be alleged that the assessee has collected 'On money' for the remaining 95 villa plots also. Therefore, the addition made by the Assessing Officer on the basis of extrapolation of 'On money' for the remaining flats is devoid of merit and cannot be sustained.

46. Coming back to another reason given by the Assessing Officer and LD.CIT(A) in light of the statement of Shri T. Ranga Rao, Managing Director of SHREPL. Admittedly, the appellant company had entered into an Agency Agreement with SHREPL for marketing initial 100 villa plots and as per the said agreement, fixed the selling price at Rs.5,000/- per sq. yard and in addition to the agreed price of Rs. 5,000/-, commission up to 4% has to be

paid to the agent. The appellant claimed that the selling rate of villa plots has been agreed between the parties keeping in view the land cost, the development cost and profit margin of the appellant company. The appellant claimed that it had entered into an agreement for sale with buyers of villa plots as agreed in the Agency Agreement and received consideration of Rs.5,000/- per sq.yd but not more. The allegation of the Assessing Officer is that the appellant has collected 'On money' in excess of the agreed selling price of Rs.5,000/- per sq.yd, which is further supported by the evidences collected from Shri G. Vijay Raghav, Finance Head of Emaar MGF, where the reference of additional money collected was recorded in excel sheet. The Assessing Officer further took support from the statements recorded from Shri T. Ranga Rao, where he has admitted collection of additional amount in excess of Rs.5,000/- per sq.yd at the instructions of Koneru Rajendra Prasad and also handed over the additional amount to Shri K. Rajendra Prasad or his nominee. Therefore, observed that the appellant has received 'On money' for sale of villa plots and the same is not recorded in the books of accounts for the relevant assessment year. We find that there is a marketing agreement between the appellant company and SHREPL for selling initial 100 flats at Rs.5,000/- per sq.yd and the same has been approved by the Board of Directors of the appellant company in their meeting. The appellant had also received sale consideration for selling of plots, which is as per the rate fixed in Agency Agreement. In fact, the Assessing Officer has not disputed these facts. Therefore, in our considered view, once

there is a marketing agreement between the appellant and the selling agent for selling the flats at a particular rate and the appellant has received sale consideration as per said agreement, in our considered view, there cannot be any allegation on the appellant that it has collected 'On money' without there being any direct evidence to link the appellant. In the present case, except for the statement of Shri T. Ranga Rao, M.D. of SHREPL, there is no direct evidence with the Assessing Officer to allege that the appellant is the ultimate beneficiary of the additional amount collected from the flat buyers. Further, even in the statement of Shri Ranga Rao, there is no reference or link to the appellant and the 'On money'. Before the LD.CIT(A), Shri Ranga Rao submitted that he received only additional amount at the behest of Shri Koneru Rajendra Prasad, Director of the appellant company and the same has been handed over to him or to his nominee. In fact, the investigation agency had also ascertained receipts of 'On money' from customers for the sale of villa plots and also established money trail to some extent, but the said investigation report does not have any reference to the name of the assessee or receipt of the money by the appellant company over and above the agreed selling price, as per the agreement. Therefore, once the appellant has received the amount as per the price fixed for selling of villa plots, in our considered view, additional money received by individual person cannot be linked to the appellant merely because the appellant is the owner of the land. In our considered view there is every possibility that the marketing agent may misuse the agreement and collect excess money without the

authority of the appellant company. Further, the marketing agent might have charged an additional amount and received the amount from the customers based on the demand. But facts remain that whether the said additional amount received by the marketing agent is reached to the appellant or not has to be seen. Since there is no direct evidence with the Assessing Officer linking the appellant company to the additional money received by SHREPL, in our considered view, on the basis of admission of third party, the additions cannot be made in the hands of the appellant company towards alleged 'On money' received for sale of villa plots.

47. We further noted that the Assessing Officer has invoked provisions of Section 69B of the Act and made additions towards alleged 'On money'. In our considered view, Section 69B of the Act, can be invoked when the amount of money is specific and, in this regard, the burden is on the Assessing Officer to prove the extent of money not recorded in the books of accounts. When there is a doubt, and the doubt is based on suspicion, the provisions of Section 69B cannot be invoked to make any addition. In our considered view, suspicion, however, strong cannot take the place of proof. It is more so, particularly in the case of scrutiny assessment. Once the assessment is resorted to by applying the principles of extrapolation without any evidences, it leads to distorted assessment, which is not permissible under law. Therefore, in our considered view, the addition made by the Assessing Officer towards alleged 'On money' received towards

sale of villa plots on the basis of statement of Shri T.Ranga Rao and subsequent evidence in the form of extrapolation is incorrect and cannot be upheld. Moreover, the department had also assessed alleged 'On money' received from villa plot buyers in the hands of Shri K. Rajendra Prasad on a substantive basis and therefore, once again, assessing the said alleged 'On money' in the hands of the appellant company amounts to double addition, which is not permissible under the law.

48. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the addition made by the Assessing Officer towards alleged 'On money' received towards sale of villa plots in the hands of the appellant company is contrary to evidence on record. The LD.CIT(A) after considering the relevant facts, has rightly denied the addition made by the Assessing Officer. Thus, we are inclined to uphold the findings of LD.CIT(A) on this issue and reject the grounds taken by the Revenue.

49. In the result, the appeals filed by the assessee in ITA Nos.251 to 253/Hyd/2023 for A.Ys. 2009-10 to 2011-12 are allowed and appeals filed by the Revenue in ITA Nos.424 to 426/Hyd/2023 for A.Ys. 2009-10 and 2010-11 are dismissed.

ITA No.250/Hyd/2023 for A.Y. 2006-07

50. The ground raised by the assessee read as under :

*“On the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeal) has erred in directing the learned Assessing Officer to tax advances of Rs. 3,01,57,500, received towards the sale of villa plots by the Appellant during the year ended 31 March, 2006 ignoring the facts and the law that the Appellant is following the Percentage of Completion Method to recognize revenue from sale of developed villa plots and hence, revenue thereon gets recognised only on meeting the prescribed conditions.”*

51. The additional grounds raised by the assessee reads as under :

*“1. The re-opening of assessment U/s. 148 of the Income Tax Act, 1961 (the 'Act') has no nexus between the income escaping assessment and the reasons recorded and therefore, the entire assessment proceedings are bad in law, invalid, without jurisdiction and must be quashed.*

*2. The reasons recorded (Pages 489-490 of P.B) do not state that there was any omission or failure on the part of the Appellant to disclose truly and fully all the facts necessary for assessment as the assessment was re-opened after a period of four years from the date of original assessment passed U/s. 143(3) of the Act on 30/12/2008.*

*3. The learned DCIT, Circle 2(3), Hyderabad (the 'AO') failed to note that during the original assessment proceedings, the Appellant had, submitted all the details necessary for the assessment as called for by the AO and therefore, the entire assessment was re-opened on a change of opinion rendering the re-opening of assessment proceedings bad in law, invalid and without jurisdiction.*

*4. The sanction accorded by the appropriate authority is in a mechanical manner without application of mind and therefore, the re-assessment proceedings and the subsequent proceedings thereon are unsustainable in law.”*

52. The first issue that came up for our consideration from ground no.1 of assessee's appeal is the addition of Rs.3,01,57,500/- towards advance received for sale of villa plots.

53. We have considered an identical issue in assessee's own case for A.Y. 2009-10 in ITA No.252/Hyd/2023. But for figures, the facts and issue are identical to the issue which we had considered for A.Y. 2009-10. The reasons given by us in preceding paragraph Nos 20 to 27 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we set aside the order of LD.CIT(A) on this issue and direct the Assessing Officer to delete the addition made towards advances received from customers on sale of villa plots as income of the appellant company.

54. The next issue that came up for our consideration from additional ground filed by the assessee is validity of reopening of assessment u/s 147 of the Income Tax Act, 1961.

55. The appellant has challenged reopening of assessment u/s 147 of the Act on the ground that as per proviso to Section 147 of the Act, unless there is an allegation by the Assessing Officer on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year, the assessment cannot be reopened, if such assessment has been completed u/s 143(3) of the Act, 1961. The assessee has argued the issue in light of certain judicial pronouncements and

contended that reopening of assessment u/s 147 of the Act is *void abinito* and is liable to be quashed.

56. The CIT-DR, on the other hand, supporting the findings of the LD.CIT(A), submitted that the Assessing Officer has rightly reopened the assessment on the basis of reasons recorded, as per which, there is tangible material came to the possession of the Assessing Officer subsequent to original assessment and thus, the arguments of the assessee in light of proviso to Section 147 of the Act is incorrect and needs to be rejected.

57. We have heard both the parties, perused materials on record and gone through the orders of the authorities below. We find that since the issue involved in the appeal filed by the assessee has been decided on merits in favour of the assessee and against the revenue, in our considered view, the legal issue taken by the assessee challenging the validity of the reopening of assessment u/s 147 of the Act becomes academic in nature and does not require any specific adjudication. Therefore, the additional ground filed by the assessee challenging the validity of the assessment is dismissed as infructuous.

58. In the result, the appeal filed by the assessee in ITA No.250/Hyd/2023 for A.Y. 2006-07 is partly allowed.

ITA No.424/Hyd/2023 for A.Y. 2007-08

59. The grounds raised by the Revenue read as under:

*“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in quashing the assessment order passed u/s 143(3) r.w.s. 147 of the Act, by relying on the various judicial pronouncements on different contexts and deleted the additions made by the AO in the reassessment order even though the AO had passed a speaking order disposing off the objections of the assessee.*

*2. The Ld. CIT(A) failed to consider explanation 3 to section 147 of the IT Act inserted by FA 2009 w.e.f. 01.04.1989, which empowers the assessing officer to assess or re-assess the income in respect of any issue which has escaped assessment and such issue comes to his notice subsequently to the course of proceedings under this section notwithstanding that the reason for such issue have not been included in the reasons recorded u/s 148.*

*3. The CIT(A) erred in not considering the fact that if the reply submitted by the assessee was not considered by the assessing officer, the Ld. CIT(A) should have exercised his jurisdiction to verify the facts of the case by calling for remand report from the assessing officer or the Ld. CIT(A) ought to have decided the appeal on merits.*

*4. The Ld. CIT(A) failed to uphold the addition of Rs. 1,84,29,500/- made on account of advances received and not offered to tax to maintain consistency of the additions made on same ground in A.Y. 2008-09 and A.Y. 2009-10.*

*5. The Ld. CIT(A) failed to uphold the addition of Rs. 3,75,19,906/- made on account of un-substantiated expenditure.”*

60. The brief facts of the case are that the appellant company is a Special Purpose Vehicle in the form of JV Company between APIIC and Emaar Holdings, Mauritius, a wholly owned subsidiary of Emaar Properties, PJSC, Dubai. The appellant company is engaged in the business of development of township filed return of income for A.Y. 2007-08 on 29.10.2017 declaring total loss of

Rs.4,40,79,625/-. The assessment has been subsequently reopened u/s 147 of the Act for the reasons recorded, as per which the income chargeable to tax has been escaped the assessment on account of under assessment of loss by allowing deduction towards construction expenses and also excess deduction allowed towards expenditure incurred against exempt income u/s 14A of the Act. The assessment has been completed u/s 143(3) r.w.s 147 of the Act dt.31.03.2013 and determined total income of Rs.1,18,69,781/- by making addition towards advances received from customers for sale of villa plots and disallowance of expenditure.

61. On appeal, the ld. CIT(A) quashed the re-assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act.

62. Aggrieved by the order of LD.CIT(A), the Revenue is in appeal before the Tribunal.

63. Shri B. Bala Krishna, CIT-DR submitted that the LD.CIT(A) has erred in quashing the assessment order passed under Section 143(3) r.w.s. 147 of the Act without appreciating the fact that as per Explanation 3 to Section 147 inserted by the Finance (No.2) Act, 2009 with retrospective effect from 01.04.2009, the Assessing Officer is empowered to assess or re-assess the income in respect of any issue which has escaped assessment and such issue come to his notice, subsequently, in the course of the re-assessment proceedings under this section notwithstanding the

reason for such issue has not been executed for the reasons recorded under Section 148 of the Act. The CIT-DR submitted that the Assessing Officer has passed the order and rejected the objections raised by the assessee with cogent reasons, wherein he has given various reasons for re-opening the assessment. The LD.CIT(A) without appreciating the relevant facts, simply quashed the re-assessment order passed by the Assessing Officer. Therefore, submitted that the order passed by the LD.CIT(A) should be set aside and addition made by the Assessing Officer towards advances received from customers for sale of villa plots and disallowance of expenditure should be upheld.

64. The learned counsel for the assessee, Shri K.C. Devadas, on the other hand, supporting the order of LD.CIT(A) submitted that it is well settled principle of law by decision of various Hon'ble High Courts, including the decision of Hon'ble Supreme Court in the case of PCIT Vs. Lark Chemicals Pvt. Ltd. Reported in (2018) 259 Taxmann.com 365, that if the order passed consequent to re-assessment has not confirmed addition attributable to reasonable belief of Assessing Officer while issuing reopening notice, any other additions made in the proceedings cannot be sustained. The learned counsel for the assessee further relying upon the decision of Hon'ble High Court of Andhra Pradesh in the case of CIT Vs. Swarna Andhra IJMII Integrated Township Development Pvt. Ltd. in ITA No.165 of 2014 submitted that the jurisdictional High Court has considered the Explanation 3 to Section 147 and held that said explanation does not really diluted

cardinal objectives of Section 147 of the Act, for reopening. Therefore, he submitted that after considering the relevant facts, LD.CIT(A) has rightly quashed the assessment order passed by the Assessing Officer and their order should be upheld.

65. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, the Assessing Officer has reopened the assessment by recording the reasons as per which, income chargeable to tax has escaped from assessment on account of deduction allowed towards construction expenses of Rs.5.36 crores and excess deduction allowed towards expenses related to exempt income under Section 14A of the Act. It is also an admitted fact that during the re-assessment proceedings, the Assessing Officer has not made any additions on these two counts. Further, the Assessing Officer has made addition of Rs.3.75 crores towards disallowance of expenditure debited into profit and loss account for want of bills and vouchers. From the reasons recorded for reopening of the assessment and additions made in the re-assessment order passed by the Assessing Officer, it is abundantly clear that the Assessing Officer has reopened the assessment on different issues and concluded the re-assessment proceedings by making addition towards different issues, which is not at all the basis for forming reasonable belief that income chargeable to tax has escaped assessment. Therefore, we are of the considered view that once the assessment or re-assessment fails on the issue for which the re-assessment proceedings were

initiated, then the Assessing Officer cannot consider any other issue which came to his knowledge subsequently in the proceedings. In other words, if the income escaped assessment on the basis of formation of reasonable belief in issuing notice has not assessed or re-assessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of proceedings under Section 147. If upon the issuance of notice u/s 148, the Assessing Officer accepts the objections of the assessee and does not assess or re-assess the income which was the basis of the notice, it would not be open to him to assess any other income under some other issues independently. This legal position is supported by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Limited reported in (2011) 331 ITR 236. A similar view has been taken by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited Vs. CIT (2011) 336 ITR 136 (Delhi).

66. Further, although, the ld. DR took support from the Explanation 3 to Section 147 of the Act and argued that as per the Explanation – 3, the Assessing Officer is empowered to assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently, in the course of the proceedings under this section, notwithstanding the fact that the reasons for such issue on which re-assessment proceedings has been initiated is valid, and no addition is made on this count. We find that there is no merit in

the arguments of the CIT-DR for the Revenue for the simple reason that the jurisdictional High Court of Andhra Pradesh in the case of CIT Vs. Swarna Andhra IJMII Integrated Township Development Pvt. Ltd. (supra) had considered the arguments of the Revenue in light of Explanation 3 to Section 147 of the Act, and after considering the relevant arguments and also by following the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited Vs. CIT (supra) and Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd., (supra) held that Explanation 3 to Section 147 of the Act, will be applicable in the case where live issue which was subsisting at the time of relevant assessment and if such issue has escaped the determination of the Assessing Officer, can be a ground for reopening. Any new issue that has cropped up subsequently on new set of facts, the above explanation has no application. The Hon'ble Court further held that Explanation 3 has not really diluted cardinal objectives of Section 147 of the Act, for reopening of the assessment. Explanation 3 has given a retrospective effect with an idea that there are so many assessment years which were passed earlier without deciding the substituting issue at the time of original assessment. This explanation has held to be reopened in these cases. The sum and substance of the ratios laid down by various Hon'ble High Courts is that if the reasons recorded for reopening of assessment do not survive and no addition is made on that count, then the Assessing Officer does not have any power to assess any other income which has come to his knowledge subsequently in the course of the proceedings under this Section.

The LD.CIT(A) after considering the relevant facts and also by following certain judicial precedents rightly held that re-assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 is invalid and is liable to be quashed. In our considered view, there is no error in the reasons given by the LD.CIT(A) to quash the re-assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act. Thus, we are inclined to uphold the findings of LD.CIT(A) and dismiss the appeal filed by the Revenue.

67. In the result, the appeal filed by the Revenue in ITA No.424/Hyd/2023 for A.Y. 2007-08 is dismissed.

68. To sum up, the appeals of assessee in ITA Nos.251 to 253/Hyd/2023 are allowed and the appeal of assessee in ITA No.250/Hyd/2023 is partly allowed. The appeals of Revenue in ITA Nos.424 and 426 to 428/Hyd/2023 are dismissed.

Order pronounced in the Open Court on 18<sup>th</sup> December, 2024.

Sd/-

Sd/-

<b>(VIJAY PAL RAO)</b> <b>VICE PRESIDENT</b>	<b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 18.12.2024.

*TYNM/sps*

Copy to:

S.No	Addresses
1	Emaar Hills Township Private Limited, Boulders Hills, Golf & Country Club, Opp. ISB, Indian School of Business, Manikonda Village, Gachibowli, Hyderabad, 500032, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*