

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

**BEFORE BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5627/MUM/2010
Assessment Year: 2006-07**

M/s. Purple Developers Cloud-9, Survey No. 46/1+2, Next to Sunshree Woods, NIBM Road, Kondhwa, Pune-411048. (PAN: AAGFP4055J)	Vs.	Commissioner of Income Tax(Appeals)-26, Mumbai.
(Appellant)		(Respondent)

**ITA No. 2210/MUM/2024
Assessment Year: 2006-07**

Income Tax Officer ITO Ward 3(1), B Wing, 1 st Floor, PMT Building, Income Tax Department, Swargate, Pune, 411037.	Vs.	M/s. Purple Developers Cloud-9, Survey No. 46/1+2, Next to Sunshree Woods, NIBM Road, Kondhwa, Pune-411048. (PAN: AAGFP4055J)
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Rakesh Joshi, CA
Revenue : Shri. Soumendu Kumar Dash, Sr. DR

Date of Hearing : 10.03.2025
Date of Pronouncement : 27.05.2025

ORDER**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These two cross appeals filed by assessee and Revenue are against the order of Ld. CIT(A)-26, Mumbai, vide order no. CIT(A)-26/IT-84/Addl.15(1)/08-09, dated 04.05.2010, passed against the assessment order by Additional Commissioner of Income Tax, Range 15(1), Mumbai u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 29.12.2008 for Assessment Year 2006-07.

2. Grounds taken by the assessee in ITA No. 5627/MUM/2010 are reproduced as under:

1. The learned CIT (Appeal), erred in law and on facts in confirming disallowance of Rs. 3615733/-being labour charges U/sec. 40(a)(ia) of the Income Tax Act, 1961.

2 The learned CIT (Appeal), erred in confirming addition of Rs. 1749890/- on alleged ground of suppression of sale.

3. The appellant prays that -

a) disallowance of Rs. 3615733/-U/sec. 40(a)(ia) may be deleted,

b) addition of Rs. 1749890/- on alleged ground of suppression on sale may be

c) deleted, recovery of demand in dispute may be stayed,

d) personal hearing may be granted,

e) any other relief Your Honour may deem fit.

4. The appellant may kindly be permitted to add to or alter any of grounds of appeal, if deemed necessary.

2.1. Grounds taken by the Revenue ITA No. 2210/MUM/2024 are reproduced as under:

1. The order of the learned Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.

2. *The learned Commissioner of Income-tax (Appeals) grossly erred in deleting the interest disallowance of Rs. 9,33,261/- made by the Assessing Officer instead of confirming such disallowance.*

3. *The learned Commissioner of Income-tax (Appeals) grossly erred in holding that the assessee had sufficient interest-free fund of its own from out of which interest-free advances had been given to the partners, associate concerns and others and also in holding that no interest-bearing funds had been diverted towards interest-free advances without appreciating that out of the so-called interest-free funds, while the credit balances in the partner's capital account were not actually available at any point of time during the year, the business receipts like advances for houses were also not available for being given as interest-free advances in as much as the same were utilized by the assessee to meet business expenses.*

4. *The learned Commissioner of Income-tax (Appeals) grossly erred in failing to appreciate that the assessee had in any case not furnished any relevant details, as had been called for, in respect of the so-called trade advances of Rs.78,38,238/; and, consequently in not confirming the disallowance of interest with reference to the aforesaid trade advances and deposits.*

5. *The learned Commissioner of Income-tax (Appeals) grossly erred in deleting the addition of Rs.3,10,17,186/- made in the assessment on account of income on the advances received for row houses by laying undue emphasis on the assessee's claim as regards following the project completion method and in completely ignoring the fact that out of the alleged advances in as much as in five cases, the entire sale consideration had been received from the parties and brokerage too had been paid, as in the remaining cases, the assessee had received nearly 90% to 93% of the agreed prices.*

6. *The learned Commissioner of Income-tax (Appeals) grossly erred in failing to appreciate that in view of the above facts and circumstances of the case, the impugned advances could only be treated as sale proceeds and that the accrual thereof as income could by no means be allowed to be deferred by permitting the assessee to take shelter in untenable excuses such as relating to handing over of possession etc.*

7. *The learned Commissioner of Income-tax (Appeals) grossly erred in allowing deduction of Rs.50,62,074/ out of the disallowance of Rs.86,76,807/- made in the assessment on account of labour expenses merely on the ground that the taxes deducted at source (TDS) on the aforesaid sum of Rs.50,62,074/- had been remitted into the government account within the prescribed due dates and without appreciating that as the assessee had failed to furnish any relevant details in support of the expenses in question, the same could not be considered as genuine at all.*

8. *The learned Commissioner of Income-tax (Appeals) grossly erred in deleting the disallowance on account of labour expenses of Rs.50,16,074/ without taking cognizance of the various facts brought out in the assessment order including the facts clearly indicating the improbability of huge labour charges having remained unpaid for too long.*

9. *The learned Commissioner of Income-tax (Appeals) grossly erred in restricting the addition of Rs.67,89,982/- made in the assessment on account of suppressed sales to a sum of Rs.17,49,890/- instead of confirming the entire addition.*

10. *The learned Commissioner of Income-tax (Appeals) grossly erred in deleting the balance addition of Rs.50,40,092/- notwithstanding that the assessee had failed to substantiate the reasons cited by it for effecting sales at highly concessional rates, such as, locational disadvantage of the concerned houses, receipt of agreed prices within short span etc.*

11. *The learned Commissioner of Income-tax (Appeals) grossly erred in failing to take due cognizance of the facts brought out in this matter by the Assessing Officer which would clearly establish the improbability of the alleged sales having been made at highly concessional rates, particularly in a boom period.*

12. *For these and such other grounds as may be urged at the time of the hearing, the order of the learned CIT(A) may be vacated and that of the Assessing Officer be restored.*

3. These two appeals are cross appeals. Assessee had contested on the two addition/disallowance made whereas Department is in appeal against the relief granted by ld. CIT(A) on various issues.

4. Brief facts of the case are that assessee filed its return of income on 27.10.2006 reporting a total income at Rs.2,74,95,678/-. Assessment was completed u/s. 143(3) after making various additions/disallowances on the returned income, determining total assessed income at Rs.7,79,13,910/-. Additions made to the returned income are detailed as below:

- | | | | |
|------|---|---|------------------|
| i) | Disallowance of proportionate interest expenses | - | Rs.9,33,261/- |
| ii) | Addition on account of advances towards 22 row houses considered as sale as discussed in the order | - | Rs.3,10,17,186/- |
| iii) | Disallowance from labour expenses for entering bills issued earlier in month of March 2006, u/s.40(a)(ia) | - | Rs.86,77,807/- |

iv) Addition on account of suppression of - sale price of some row houses	Rs.67,89,982/-
Total	Rs. 4,74,18,236/-

5. Ground No.1 raised by the assessee and corresponding ground No.7 and 8 in the appeal by the Department are taken together since the issue involved is common. Facts in brief relating to the issue covered by the aforesaid grounds are that disallowance of Rs.86,77,807/- was made towards labour charges on the ground that the bills for labour expenses pertaining to the period April 2005 to February 2006 amounting to Rs.36,15,733/- were reported in the books of accounts in the month of March, 2006. According to the ld. Assessing Officer, these expenses were disallowable u/s.40(a)(ia) since tax at source was not deducted and paid in accordance with section 194C of the Act. Ld. Assessing Officer also held that these labour charges were not commensurate with the value of the material purchased and thus genuineness of such expenditure was not established to his satisfaction.

5.1. In this respect, factual position noted by ld. CIT(A) is that out of total amount of bills of Rs.86,77,807/-, bill of Rs.22,57,064/- issued by Shri Jaideep M. Kolte was dated 29.11.2005 which was entered into ledger account by the assessee on 10.03.2006. Similarly, another bill of Rs.13,58,669/- issued by Shri Raj Kishor Bari, dated 27.07.2005 was entered in the books of accounts by the assessee on 31.03.2006. Ld. Assessing Officer noted that actual credits for these expenses were much earlier than recording of the transactions in March, 2006 for which TDS was to be made and deposited in Government account on or

before 31.03.2006 but was not done resulting in violation of the provisions of section 40(a)(ia). Other bills were recorded in the month of March for which the TDS was to be done on or before the due date of filing of return of income u/s. 139(1).

5.2. In the course of assessment proceedings, on queries raised by ld. Assessing Officer for justifying the labour expenses, assessee furnished its reply vide letter dated 28.11.2008. Through this letter, assessee furnished copy of ledger account of labour expenses along with statement containing names, address and type of work of labour and copies of bills. Another detailed submission was made vide letter dated 24.12.2008 seeking explanation as to why the bills of the contractors are not accounted in the books as per the date of bill instead, they are recorded at a later date. In this regard assessee furnished its submission stating that it is in the business of construction and has maintained books of accounts on accrual system. Assessee followed the practice for accounting of site expenses only after the bills are verified and certified by the site engineer. According to it, these transactions are recorded in the books on the date of verification and certification by the site engineer since the amount at which the bills are to be recorded is crystallised only on the date of verification of site engineer. In view of this practice followed by the assessee, it was submitted that deduction of tax at source was correctly done as per the provisions of section 194C which was deposited within the prescribed dated, i.e., in April 2006, before the due date of filing of return and thus no disallowance is called for u/s. 40(a)(ia).

6. From the perusal of the order of ld. Assessing Officer, we note the finding given by him that all such bills of contractors amounting to

Rs.86,87,807/- were debited in March, 2006 by the assessee, although bills date were prior to March, 2006. On such bills, deduction and payment of TDS of Rs.1,96,974/- was made after 31.03.2006. There is no dispute on deposit of TDS of Rs.1,96.974/- which was done before the due date of filing of return u/s. 139(1) which according to the Id. Assessing Officer ought to have been done or before 31.03.2006 in terms of provisions contained in section 40(a)(ia). He thus, disallowed the entire amount to make the addition thereof.

6,1, Ld. CIT(A) has taken note of the amendment brought to section 40(a)(ia) by Finance Act, 2008. Considering the said amendment and on the undisputed fact that assessee had deposited the required TDS on or before the due date of filing of return u/s. 139(1), he allowed the expense of Rs.50,62,074/- but sustained the amount of Rs.36,15,733/- pertaining to the bills of Shri Jaideep N. Kolte and Shri Rajdeep Bari which were, according to him, are in violation to provisions of Section 40(a)(ia).

7. We have heard both the parties and perused the material on record. We find that the amendment brought in section 40(a)(ia) has been held to be applicable with retrospectivity by the Hon'ble Supreme Court in the case of CIT Vs. Calcutta Export Company [2018] 404 ITR 654 (SC). It was held that amendment made by Finance Act, 2010 to the provisions of Section 40(a)(ia) is curative in nature and it should be given retrospective operation from the date of insertion of said provision, i.e., w.e.f. Assessment Year, i.e., 2005-06. Thus, considering the principles of law laid down by Hon'ble Supreme Court, the deletion of Rs.50,62,074/- does not call for any interference.

7.1. In respect of disallowance sustained of Rs.36,15,733/-, we note that assessee has explained the reasons and the practice followed it while recording the bills in its books of accounts which are subject to examination, verification and certification by the site engineers, after which only the expenses are crystallised and liability arises. Considering this fact on record, when there is no dispute on deposit of TDS on this amount also, which was done in April, 2006, i.e., before filing of return by the assessee, we hold that no disallowance is called for by taking into account the practice followed by the assessee and decision of Hon'ble Supreme Court in the case of Calcutta Export Company (supra). Thus, ground No.7 and 8 raised by the Revenue are dismissed and ground No.1 raised by the assessee is allowed.

8. Ground No.2 raised by the assessee is on account of addition made for suppression of sale. In the cross appeal, Department has also raised similar grounds vide ground No.9,10 and 11, for the part relief granted by ld. CIT(A) on the same issue. Thus, we take up these together. In this respect, the observations made by ld. Assessing Officer are that sale price per sq. ft. of row house is much lower than the sale price of other row houses sold in the same month and for some it was even lower than the rate of the cost of construction of the project shown by the assessee in its working progress, indicating that some flats were sold at loss which according to him is an impossible proposition. Based on these observations, enquiries were made and explanations were called. Ld. Assessing Officer identified the list of flats/ row houses which were sold for low/suppressed prices. Ld. Assessing Officer also imputed interest cost by adopting a rate of 12% for the purpose of arriving at a rate of Rs.1206/- per sq. ft. of WIP. By taking the yardstick of this rate of Rs.1206/- per sq.ft, he calculated the difference between the total

sale price of 10 units as shown by the assessee and that which is worked out by the ld. Assessing Officer, to make an addition of Rs.67,89,982/, by treating it as suppressed sale price of units sold by the assessee.

8.1. Before the ld. CIT(A), detailed submissions were made, corroborated by documentary evidences by filing confirmation letters from the customers, giving justification for difference in sale rate of row houses, sales in the earlier years and the accounting and reporting done by the assessee for the sales made by it, as well as cost of construction per sq.ft worked out by the assessee. Ld. CIT(A) has elaborately dealt with the facts and explanations submitted by the assessee. Assessee also strongly contended that additions have been made on presumptions and surmises without any concrete evidence that assessee had earned extra consideration over and above the amount shown in the books of accounts. The per sq. ft. rate of Rs.1206/- arrived at by ld. Assessing Officer is a notional figure without any basis. Assessee had furnished the details about cost being Rs.875.63 per sq.ft.

8.2. Ld. CIT(A) dealt with the issue in para-11 and observed that an estimation has been made by the ld. Assessing Officer for alleging suppression of sale price on some of the row houses which is without making any enquiries from the purchasers. Ld. CIT(A) observed that even if the cost price of the row house is taken as Rs.962/- per sq. ft., which ld. Assessing Officer noted by taking the figures furnished by the assessee then also, the selling price of certain units was more than the figure of Rs.962/- per sq. ft., leaving no room for making the alleged addition for suppression of selling price. According to him, no presumption can be made in respect of such units, for estimation of suppressed price. He further noted about various other visible and

invisible factors which affects the pricing of the units. Some of these factors discussed by him are in respect of size of the project, benefits for long association or social obligations with the prospective buyers, availability of funds at disposal with the buyers as well as benefits of purchasing raw material at lower prices, etc. There are locational advantages also for each of the unit depending upon how the prospective buyer perceives its value. Thus, after analysing the factual details submitted by the assessee, except for the four houses having No.138, 6, 106 and 1, Id. CIT(A) accepted the submissions made by the assessee and deleted the addition made by the Id. Assessing Officer.

8.3. For the remaining four units, Id. CIT(A) observed that the selling price per sq.ft. was lesser than the cost per sq.ft calculated by the assessee of Rs.875.63 per sq. ft and hence he was not convinced with the submissions by the assessee in this respect. By considering the normal net profit ratio of 5 to 10% and also considering the urgent payment within seven days and three months, he adopted the selling price by making an estimate at the rate of Rs.1000/- per sq. ft., being the most reasonable and possible selling price. Accordingly, the selling price for these four units were worked out as under:

Unit No.	Area per sq. ft.	Unit value shown by the assessee	Unit value estimated by Id. CIT(A)
138	2770	Rs.23,69,020/-	Rs.27,70,000/-
6	4402	Rs.39,25,000/-	Rs.44,02,000/-
103	2311	Rs.19,50,090/-	Rs.23,11,000/-
1	4011	Rs.35,00,000/-	Rs.40,11,000/-
		Rs.1,17,44,110/-	Rs.1,34,94,000/-

8.4. Thus, in respect of these four units, by adopting an estimate of selling price of Rs.1000/- per sq.ft, addition to the extent of Rs.17,49,890/-, being the difference between value shown by the assessee and value estimated by the ld. CIT(A) was sustained, out of the total addition of Rs.67,89,982/- made by the ld. Assessing Officer. Thus, assessee is in appeal for the addition sustained of Rs.17,49,890/- and Revenue is in appeal for the relief granted of Rs.50,44,092/-.

9. From the perusal of the order of ld. Assessing Officer, we note that the approach adopted by ld. Assessing Officer is based on the preponderance of human probabilities by referring to decision of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More [82] ITR 540 (SC). There is nothing cogent and positive brought on record to demonstrate the stand taken by the ld. Assessing Officer. Assessee has maintained its books of accounts and all the sales are duly accounted and reported, the method followed by the assessee is of project completion method. In the business in which assessee is engaged, there cannot be a uniformity of selling price, which depends upon several direct and indirect factors, some of which are already discussed by ld. CIT(A), as stated above. Assessee has evidently demonstrated the working of per sq. ft. cost of Rs.875.63, against which ld. Assessing Officer arrived at initially for Rs.962/- per sq. ft. from the valuation of work in progress. Ld. Assessing Officer further imputed interest cost by taking an ad-hoc interest at 12% to estimate the selling price per sq. ft. at Rs.1206/-.

9.1. Assessee has also evidently demonstrated each of its sales are evidenced by registered sale deed and stamp duty has been paid on such conveyancing of the units which is based on market rate. Relevant

documents in this respect are placed on record in the paper book. Assessee has also placed on record confirmation letters from the buyers of the units who have confirmed the sale rate at which the respective units were sold to them. Further, assessee submitted that for the subsequent Assessment Year 2007-08, similar sales were made of the units and no such adverse view was taken when the assessment was completed u/s.143(3) vide order dated 22.12.2009. Copy of the said order is placed in the paper book at page-79.

9.2. For the four units Id. CIT(A) has adopted the ad-hoc rate of Rs.1000/- per sq.ft. disregarding the submissions made by the assessee. Reference was made to the registered sale deed for each of the four flats, which records the consideration at which they were sold, duly supported by confirmation letters from the respective buyers. The said sale is also duly accounted for in the books of accounts of the assessee. For these four flats, assessee furnished the explanation for rate difference which were primarily linked to the expeditious payments made by the respective buyers. The explanation so furnished is tabulated below for these four units.

Sr. No.	Unit	Area	Name & Address of the Buyer	Unit Value	Rate Per Sq. Ft.	Booking Date	Explanation for Rate Diff.
1	1	4011	Mr. Sanjay Gupta Row House No.1, Cloud-9 NIBM Rd. Kondhawa Pune	35,00,000	873	21-Mar-05	FULL PAYMENT RECD. WITHIN 1.50 MONTHS
2	6	4402	S. Bandopadhyay H. No.1, Green Ekers, Kondhwa Salunke vihar road, pune-48 ABAPB16190	39,25,000	892	18-Sep-04	Rs. 38.45 Lacs received within 3 months

3.	103	2311	Mrs. Vidyut Mehta 46, Mohammad-wadi Pune AALPS7234F	19,50,090	844	20-Dec-04	FULL PAYMENT RECD. WITHIN 3 MONTHS
4.	138	2770	Mr.Sandeep Singh Saigal 19. Neharu Park, Kondhawa, pune ACHPS9051J	23,69,020 855	855	7-Jul-04	RS. 17,45,000/- RECD. WITHIN 2.50 MONTHS

9.3. Considering the facts on record and the perusal of the orders of the authorities below, we find that the approach adopted by ld. Assessing Officer is based on presumption, surmises and conjectures. The doctrine of preponderance of human probabilities has driven him to adopt such an approach and make an addition by adopting ad-hoc rate of selling price applied uniformly to all the units which is far from reality in the business in which the assessee is engaged in. Ld. CIT(A) after analysing facts relating to each of the units and also considering the factors which affects the commercial transactions in the real world, gave partial relief to the assessee. However, at the same time, he also adopted similar approach that of the ld. Assessing Officer for four units to sustain part of the addition by taking an ad-hoc rate of Rs.1000/- per sq.ft. for these specific four units. Again, there is no basis explained to adopt such an ad-hoc rate of Rs.1000/- per sq. ft. to sustain the partial addition. Contrary to this, assessee has evidently demonstrated through documentary evidences in the form of registered sale deed and confirmation letters as well as explanation for the rate difference, driven by commercial factors that there is no suppression of sale as alleged by the authorities below.

9.4. Considering the overall factual matrix and the observations and findings of the authorities below, we are in agreement with the findings of Id. CIT(A) for the deletion made by him for certain units and find no reason to interfere with the same. Similarly, in respect of the partial addition sustained by him for the four units, we do not find any justifiable reason for adoption of the ad-hoc rate of Rs.1000/- per sq. ft. against the similar rate adopted by Id. Assessing Officer of Rs.1206/- per sq. ft. Thus, we delete the addition so sustained by Id. CIT(A), so as to bring consistency in the view taken for all the units taken together. Accordingly, grounds raised by the Revenue are dismissed and that by the assessee is allowed.

10. Ground number 3 and 4 by the Revenue are in respect of addition made towards disallowance of interest expense of Rs. 9,33,261/-. Ld. Assessing Officer, in the balance sheet of the assessee noted that loans and advances shown are of Rs. 3,46,94,303/- which after exclusion of payment of taxes of Rs. 89,00,000/- and deposits of Rs. 79,810/- comes to Rs. 2,57,14,493/-. Assessee has claimed deduction of interest totalling to Rs. 9,33,261/- which comprises of bank interest of Rs. 5,09,171/-, interest to partners of Rs.1,99,760/- and other interest of Rs. 2,24,330/-. This other interest is in respect of delayed payments to creditors. Ld. Assessing Officer is of the view that assessee has diverted its interest bearing funds for advancing to associate concerns on interest free basis. Explanations were called for and were considered. Ld. Assessing Officer concluded that interest free loans and advances were given, out of the borrowed funds and thus a proportionate interest disallowance was made. He computed proportionate interest by taking a rate of 10% on the loans and advances of Rs. 2,57,14,493/- to arrive at a figure of Rs. 25,71,449/-. Based on this amount arrived at by

adopting a rate of 10%, he restricted the proportionate disallowance of interest to Rs. 9,33,261/-. Aggrieved by the addition, assessee went in appeal before the Id. CIT(A) reiterating the detailed submissions made before the Id. Assessing Officer.

10.1. Assessee asserted that total interest free advances comprised of –

i)	Advance to partners	-	Rs.70,89,900/-
ii)	Advance to associated concerns of the partners	-	Rs.1,07,86,355/-
iii)	Trade advances and deposits	-	Rs.78,38,238/-

	Total	-	Rs.2,57,14,493/-

10.2. It was demonstrated by the assessee that the advances for trade was related to its ordinary business and were therefore considered as interest free advances. Further, it was submitted that the opening balance in the partner's capital account having credit balance was Rs.1,92,12,531/-. Addition to the capital during the year is Rs.1,27,51,200/- and remuneration and profits for the year is Rs.1,84,05,860/-. Against these accretions, the total drawings in the year is Rs.1,31,50,900/-. Thus, the net credit balance at the end of the year is Rs. 3,72,18,691/-. The interest free advances which include advance to partners and associate concerns totals to Rs.1,78,76,255/- which is much less than the aforesaid net credit balance of the capital accounts of the partners.

10.2. Assessee also established that all the funds of the firm are deposited in common bank account. There is no nexus between the amount given to the partners and associates and the amount borrowed. Assessee also furnished its cash flow statement and monthly balance of overdraft account and the bank account to demonstrate availability of interest free funds and utilisation of borrowed funds. According to the assessee, considering its profitability by pointing out the total income of Rs.2,74,95,678/- reported in its return, it was asserted that there is no nexus between the funds given to partners and the funds borrowed. Thus, the conclusion drawn by the ld. Assessing Officer that borrowed funds have been utilised for the purpose of giving non-business advances or deposits is incorrect.

10.3. Reliance was placed on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Reliance Utilities and Power Ltd. [221] CTR 435 (Bom), which held that where the assessee has sufficient interest free funds of its own, which was generated in the course of the relevant financial year, apart from the credit balances to the capital accounts, the presumption stands established that in such cases, advances made to sister concerns or others are made by the assessee out of own interest free funds and in that case, no part of interest on borrowings can be disallowed. Reliance was also placed on the decision of Hon'ble High Court of Calcutta in the case of CIT vs. Britannia Industries Ltd. [198] CTR 426 (Calcutta). After considering all these factual submissions, fortified by the judicial precedents of Jurisdictional High Court, ld. CIT(A) deleted the addition, so made.

11. Having perused the material placed on record and having gone through the orders of the authorities below, in the given set of facts and

circumstances as narrated above, we do not find any reason to interfere with the fact based finding arrived at by the ld. CIT(A). Accordingly, Ground Nos. 3 and 4 raised by the revenue are dismissed.

12. For ground No.5 and 6 by the Revenue, ld. Assessing Officer observed that assessee had shown sale of row houses of Rs.17,22,63,543/-. In the balance sheet, assessee had shown other liabilities of Rs.16.45 crores out of which row house advances are shown at Rs.15,78,89,364/-. Ld. Assessing Officer raised a question on the nature of these advances of Rs.15.78 crores, as to whether it is merely an advance or is a part of sales which has been deferred by the assessee to subsequent years. Details and explanations were called for which were duly complied with. Assessee had strongly submitted that it followed completed contract method and recognised its sales when the possession was handed over and substantial risk and rewards were transferred to the buyer. Assessee also demonstrated that these advances were recognised as sales in the subsequent assessment years and were duly offered to tax. Thus, making addition of these advances in the impugned year would tantamount to taxing the same income twice.

12.1. After considering detailed submissions made by the assessee, ld. Assessing Officer arrived at a view by observing that out of the advance shown by assessee of Rs.15,78,81,364/- assessee had received 100% amount on sale of five row houses aggregating to Rs.2,33,97,815/-. In respect of advances received in the range of 85% to less than 100%, there were 17 row houses, which totalled up to Rs.8,25,01,369/-. Thus, he treated all these advances totalling to Rs.10,58,99,184/- as part of sales. The balance of Rs.5,19,82,182/- remained to be treated as

advance against sale of row houses. While treating advances of Rs.10,58,99,184/- as sales, ld. Assessing Officer allowed a deduction of construction expense Rs.57,86,911/-. Further, he reduced the closing stock by the amount of sale embedded therein by figure of Rs.6,90,95,087/-. Interestingly, this figure was arrived at by adopting the rate of Rs.875.63 per sq.ft which was submitted by the assessee to be its actual cost of construction per sq.ft which was negated by the ld. Assessing Officer while dealing with the issue relating to suppression of sale for which an addition was made. He thus, arrived at a net addition of Rs.3,10,17,186/-.

12.2. Before the ld. CIT(A), detailed submissions were made corroborated by documentary evidences to demonstrate that these advances got converted into sales in the subsequent years and were duly offered to tax as and when the sales were recorded in that respect. Entire factual position was analysed by the ld. CIT(A) and a fact-based finding was arrived at to delete the addition so made. Ld. CIT(A) took note of the date of possession of all the 22 row houses which is subsequent to the impugned assessment year and has been duly confirmed by the buyers of these 22 row houses. Details of the same is extracted below:

Sl.No.	Row House No.	Date of Possession
1.	101	11.06.2006
2.	112	11.04.2006
3.	114	05.04.2006
4.	115	29.03.2007
5.	125	19.05.2006
6.	127	27.04.2006
7.	128	28.07.2006

8.	148	18.06.2006
9.	150	14.12.2006
10.	155	18.12.2006
11.	156	29.12.2006
12.	157	28.01.2007
13.	29	01.12.2006
14.	32	18.05.2006
15.	36	28.12.2006
16.	41	14.05.2006
17.	12	26.05.2007
18.	159	10.04.2007
19.	15	19.12.2007
20.	160	23.04.2007
21.	16	27.09.2007
22.	4	07.06.2007

12.3. Thus, considering these facts, it was noted that none of the row house was possessed by any of the buyer on or before 31.03.2006. It is unreasonable to prepone the realisation of revenue to tax the same in the year under consideration, when the same has already been reflected in the income of the relevant year when the possession was given. Thus, considering the facts of the case, genuineness of the method of accounting, regularity of the accounting system and various decisions on the issue, the addition was deleted.

13. We have considered the material placed on record and have gone through the orders of the authorities below, considering the discussions made above on the factual position on the issue before us, we do not

find any reason to interfere with the fact-based findings arrived at by ld. CIT(A). Ground No.5 and 6 raised by the revenue are dismissed.

14. In the result, appeal of the revenue is dismissed and that of the assessee is allowed.

Order is pronounced in the open court on 27th May, 2025

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27th May, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai