

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.5469/Mum/2024 - A.Y. 2018-19
ITA No.5470/Mum/2024 - A.Y. 2017-18

Kavya KCD Developers 3, Rughani Palace III, Sarojini Naidu Road Kandivali (W), Mumbai PAN: AAKFK9427B	vs	National e-Assessment Centre, Mumbai
APPELLANT		RESPONDENT

ITA No.5456/Mum/2024
(Assessment Year 2018-19)

Income-tax Officer-33(2)(2), Mumbai, 846, 8 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400 051	vs	Kavya KCD Developers 3, Rughani Palace III, Sarojini Naidu Road Kandivali (W), Mumbai PAN: AAKFK9427B
APPELLANT		RESPONDENT

Assessee by : Shri Satish Mody
Respondent by : Shri Hemanshu Joshi (SR. DR.)

Date of hearing : 09/07/2025
Date of pronouncement : 15/07/2025

ORDER

Per Anikesh Banerjee (JM):

These three appeals are filed by the assessee and revenue against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [in short, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 for Assessment Years 2017-18 and 2018-19, date of both the orders is 21/08/2024. The impugned orders are emanated from the orders of the Learned Income-tax Officer, Ward 33(2)(2), Mumbai [for brevity the "Ld. AO"], passed under section 143(3), date of order 27/12/2019 for A.Y. 2017-18 and order passed by National e-Assessment Centre, Delhi passed under section 143(3) read with section 144B of the Act, date of order 22/04/2021 for A.Y. 2018-19.

2. All the appeals have same nature of facts and have a common issue. Therefore, all the appeals were heard together, and are disposed of by this common order. Appeals for A.Y. 2018-19 in ITA No.5456/Mum/2024 and ITA No.5469/Mum/2024 are taken as lead case.

ITA No.5456/Mum/2024 (Revenue's Appeal)

2.1 The revenue has raised the following grounds: -

"In respect of the Appellate Order No. ITBA/NFAC/S/250/2024-25/1067836963(1) dated 21.08.2024 in the case of KAVYA KCD DEVELOPERS, PAN AAKFK9427B for the AY 2018-19. I hereby authorize ITO, Ward-42(1)(3), Mumbai to file an appeal to the INCOME TAX APPELLATE TRIBUNAL, Mumbai, on the following grounds: -

- 1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the profit in the hands of the assessee to 10% of balance amount of Rs. (3,77,09,150 - 2,56,30,626) 1,20,78,524/-against the 30% of Rs. 3,77,09,150/-, done by AO, which represented WIP added during the year while following percentage completion method.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of Rs. 2,32,46,520/-made on account of interest paid to*

partner M/s Kavya Buildcon Pvt. Ltd. on capital introduced without appreciating that the assessee had failed to substantiate the claim.

3. The appellant craves leave to amend or alter or add a new ground which may be necessary.”

2.2 The assessee has taken the following grounds: -

“1. The Learned CIT(A) of National Faceless Appeal Centre (NFAC), Delhi has erred in estimating the profit of the project of the appellant for F.Y 2016-17 at 10% of the incremental cost to closing WIP of Rs 1,20,78,524/- and thus made an addition of Rs 12,07,852/- based on assumptions & surmises which is incorrect and not based on facts.

2. The appellant reserves the right to add, delete or amend any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee is engaged in real estate development and filed the return of income declaring Nil income. The case of the assessee was taken for regular scrutiny and accordingly, Ld.AO framed the assessment under section 143(3) with additions to the closing stock to the extent of 30% of the construction cost of Rs.3,77,09,150/- which comes to Rs.1,13,12,745/- which is added back with the total income of the assessee. It is argued that one of the partners of the firm M/s Kavya Buildcon Pvt Ltd introduced huge capital in the firm. As on 31.03.2018 there was capital of Rs. 26,43,43,966/- standing in the name of its partner M/s Kavya Buildcon Pvt Ltd. The assessee submits that he has been paying interest at the rate of 10.7% amount to Rs.2,32,46,520/- on the above capital which is actually debited to the P&L account but the Ld. AO did not consider the assessee's submissions and rejected the interest amount to Rs.2,32,46,520/- and added back with the total income of the assessee. The assessee is recognised its revenue under project-completion method. During

the impugned assessment year, the assessee had not booked any revenue in the P&L Account, so entire expenses is booked in WIP, and the return of income was declared nil. On the other hand, the Ld.AO in assessment proceedings, changed the method of revenue recognition and calculated the revenue under percentage completion method. Accordingly, the Ld.AO rejected the 30% of the cost project and added back with the total income. Similarly, the interest on the loan is also rejected by the Ld.AO. The aggrieved assessee filed an appeal before the CIT(A). The Ld.CIT(A) has reduced the percentage from @10% on the balance amount to Rs.1,20,78,524/- (Rs.3,77,09,100/- - Rs.2,56,30,626/-) which comes 12,07,852/- was added upheld the addition. Further, related to payment of interest to Kavya Builcon Pvt Ltd, the Ld.CIT(A) allowed the ground of the assessee. The appeal was partly allowed. Being aggrieved, both assessee and revenue filed appeal before us.

4. The Ld.AR, in argument stated that the assessee is continuing with project completion method and still, the assessee is incurring loss on the project as the assessee has not been able to sell the project. The Ld.AR submitted the paper book which is containing pages 1 to 56, which is kept on record. The Ld. AR in argument stated that both the issues are explained before the Ld. AO by the letter dated 15/03/2021 which is annexed in APB pages 47 to 49. The Ld. AR invited our attention in the relevant paragraphs of the submission which are reproduced as follows:-

“With reference to above said Notice and under instruction from our above-named client, we have to submit the following details:

“1) In the instant case, completion contract method to determine the profits and gains has been adopted in contravention of the method mandated of Percentage Completion Method. You are required to explain as to why the income be not computed according to the Percentage completion method as mandatory for the activities of real estate which have same economic substance as construction contracts:-

Assessee follows mercantile system of accounting with profits being accrued on basis of percentage of work completed at the site. However, in view of recessionary trends in the construction industry, and assessee suffering from financial crises resulting in projects being stalled. As a result, there are losses in all its projects arising from interest cost due to debts not being serviced in absence of sales/customer collections. Thus for financial year 2017-18 as in last few years, the assessee is following completion contract method so that:

No losses are booked at the end of the year and all expenses incurred during the year are capitalized to WORK IN PROGRESS shown as inventory as on 31/03/2018.

2.1 Please state as to when the project was commenced?:-Commencement Certificate attached herewith as ANNEXURE-1

2.1 to 2.8) The total costs as shown in C.A. certificate include only those expenses allowed as per RERA to be shown in the certificate. The CA certificate is attached herewith as ANNEXURE-2.

The percentage of work completed as per RERA-Architect Certificate (ANNEXURE-10) cannot be derived from shown in RERA-CA certificate. They are different as the basis for calculations differ.

3) Please furnish the nature of contract including sharing cost for the F.Y. 2017-18 with Kavya Buildcon Pvt. Ltd. for payment of interest of Rs.2,32,46,520/-. Please furnish the Audited Financial Statements of Kavya Buildcon Pvt. Ltd. along with Annexures and Notes depicting the receipt of interest from Kavya KCD Developer:-Kavya Buildcon Pvt. Ltd., has taken a secure loan by mortgaging various projects including Project in Kavya KCD Developers, the payment of interest is part of this mortgage. (Attached herewith mortgage deed with ECL Finance Ltd., and Edelweiss Housing Finance Ltd., as ANNEXURE 3 & 4. Thus the assessee has to share the cost of interest charged by ECL Finance Ltd., and Edelweiss Housing Finance Ltd.”

5. The Ld.AR further respectfully relied on the order of the Ld. CIT(A) and the relevant paragraphs 4 (a) & 4(b) are reproduced below: -

“4(a) Ground no, 1:

In this ground, the appellant contested the addition made by the AO on the basis of percentage completion method.

I have considered the facts and circumstances of the case and I have also gone through the assessee's submissions. As per facts of the case, opening work in progress at the beginning of the year was at Rs. 19.94.44.802 and there was addition to the work in progress during the year to the extent of Rs 3.77.09/150/After this addition, final work in progress as on year end stands at Rs23.715392 The assessee submits in the above work in progress interest component was also

included which was payable to one of the partner M/s Kavya Buildcon Pvt. Ltd amounting to Rs. 2,56,30,626/-. Accordingly, the assessee submits that substantial portion of incremental work in progress is only interest component, therefore there is no reason to make any addition on percentage completion method. From the verification of facts, it is seen that the AO erred in estimating profit at the rate of 30 on incremental work in progress. The AO did not bring any material on record to show the determination of percentage of the project completed by the end of the year. The AO did not bring any facts with regard to what is the total built up area to be constructed and the estimated cost of the project and estimated revenue of the project. The AO also did not examine what were the total advances received towards this project till the end of the year. Thus, without bringing any relevant facts the AO simply proceeded to estimate 30% of profits on incremental work in progress. This is highly absurd and unwarranted. If at all the AO has to make addition on account of percentage completion method the AO has to determine the percentage of project completed during the year and then should proceed to recognize estimated revenue on the actual cost incurred

Moreover, during the year work in progress was increased mainly because of interest cost debited towards partner's account. Thus, there was no much other works as carried out during the year. However, to safeguard the interest of mine the AO should consider 10% as revenue on incremental cost incurred during the year excluding interest cost. The AO is directed to compute income of 10% on the balance amount (Rs.3,77,09,150 - Rs. 2,56,30,626) of Rs. 1,20,78,524/-accordingly. This ground of appeal is partly allowed.

4(b) Ground no. 2:

In this ground, the appellant contested the addition made by the AO on account of disallowing interest of Rs. 2,32,46,520/- payable to one of its partner.

I have considered the facts and circumstances of the case and I have also gone through the assessee's submissions. From the facts, it is understood that one of the partner of the firm M/s Kavya Buildcon Pvt. Ltd introduced huge capital in the firm, As on 31.03.2018 there was capital of Rs. 26,43,43,966/-standing in the name of its partner M/s Kavya Buildcon Pvt Ltd. The assessee submits that he has been paying interest at the rate of 10.7% on the above capital which is actually debited to the P account but the AO did not consider the assessee's submissions from the verification of facts, it is understood that it's a clear case of capital introduction by the partner and interest payable on the capital introduced. Therefore, there is no reason to disallow this interest. As per facts it is seen that the assessee debited interest at the rate of 10.7% per annum and submits that it is eligible as per provision of section 400. The assessee is rightly debited the eligible interest as per provision of section 40b of the IT Act, therefore, the addition made by the AO is not warranted Accordingly addition is hereby deleted.

In the result, the appeal is partly allowed.”

6. The Ld. DR contended that the assessee has not incurred any revenue, as evident from the Profit and Loss Account. It was further submitted that the assessee has been consistently recognizing work-in-progress related to expenses. Therefore, the Ld. Assessing Officer has rightly adopted the percentage completion method and, accordingly, justifiably disallowed the claimed amount. The Ld. DR supported the impugned assessment order.

7. We have heard the rival submissions and carefully perused the material available on record. During the course of proceedings, the assessee clearly stated and furnished a certificate issued by a Chartered Accountant regarding the estimated and incurred costs (refer to **APB pages 50–51**) and asserted that it is following the Project Completion Method of accounting. The Ld. AR submitted that the revenue does not have the authority to alter the method of accounting adopted by the assessee without finding any lacuna, particularly when both the Project Completion Method and the Percentage Completion Method are duly recognised under the applicable Accounting Standards.

It was further submitted that the assessee is incurring continuous losses, and the project in question remains non-functional. Upon perusal, we observe that the Ld. CIT(A) has correctly recorded his findings in the impugned appellate order. Thus, the reduction of the disallowance to 10% by the Ld. CIT(A) appears prima facie justified.

However, we also note that the Ld. CIT(A)'s confirmation of 10% of the WIP cost as disallowance is not supported by any objective or comparative data related to other projects. The adoption of such percentage is arbitrary and lacks a rational

basis in the appellate order. It is impermissible for the revenue to suo motu adopt an ad hoc percentage of 10% for the purpose of disallowance without any cogent reasoning or supporting material.

Accordingly, the ground raised by the revenue is dismissed, and the ground of the assessee stands allowed.

8. With respect to Ground No. 2 raised by the revenue, we observe that the assessee has availed a loan from its partner, M/s Kavya Buildcon Pvt. Ltd., which introduced substantial capital into the firm amounting to Rs.26,43,43,966/- as on 31.03.2018. The assessee was paying interest at the rate of 10.7%, amounting to Rs.2,32,46,520/-. The Ld. AO failed to produce any comparable data or benchmark analysis to demonstrate that the interest paid was excessive or unreasonable.

The addition made was not substantiated by any reliable basis. The assessee submitted detailed replies dated 05.01.2021, 15.03.2021, and 08.04.2021, along with a certificate as per RERA norms (refer to **APB pages 41 to 56**), explaining that the interest was paid on the loan obtained from the partner. The creditor's balance is duly reflected in the books of account, and the interest rate of 10.7% was never disputed by the Ld. AO.

It is evident that the interest component forms part of the financial cost necessary for the sustenance of the project. In view of the above, we find no infirmity in the order passed by the Ld. CIT(A).

Therefore, the ground raised by the revenue is rejected.

ITA No.5470/Mum/2024

9. For the Assessment Year 2017–18, the Ld. AO made additions under Sections 68, 41(1), 37(1), and 28 of the Act, which were subsequently upheld by the Ld.

CIT(A). The total amount of addition stood at Rs.2,28,64,937/-. The assessee was unable to furnish the relevant supporting documents either during the assessment proceedings or at the appellate stage. The assessee has now sought permission to file additional evidence before this Bench under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1962. A paper book comprising pages 1 to 33 has been submitted and is placed on record.

The Ld. DR has not raised any serious objection to the admission of the additional evidence.

It has been brought to our attention that the said evidence has not been subjected to verification by the Ld. AO. Accordingly, in the interest of justice, we deem it appropriate to remand the matter to the file of the Ld. Jurisdictional AO (in short "JAO") for de novo verification. The assessee shall be afforded a reasonable opportunity to furnish any documents or explanations necessary during the set aside assessment proceedings, which shall be conducted in accordance with law.

At the same time, the assessee is expected to act with due diligence and extend full cooperation to the Ld. AO to facilitate expeditious disposal of the proceedings.

10. In the result, **ITA No.5456/Mum/2024** is dismissed; **ITA No.5469/Mum/2024** is allowed; and **ITA No.5470/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 15th day of July 2025.

Sd/-

(SMT. RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 15/07/2025

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**