आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'A' BENCH: CHENNAI**

**श्री एबी टी. वर्की, न्यायिक सदस्य एवं**
श्री जगदीश, लेखा सदस्य **के समक्ष**

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./**ITA Nos.1311 & 1312/Chny/2025**
निर्धारणवर्ष/**Assessment Years: 2016-17 & 2017-18**

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| BSR Builders Engineers Contractors,<br>No.28, BSR Janus, Tank Bund Road,<br>Nungambakkam, Chennai-600 034.<br>[**PAN: AAGFB 7140 N**] | **v.** | The DCIT,<br>Central Circle-2(3),<br>Chennai. |
| **(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |

आयकर अपील सं./**ITA Nos.1274 & 1561/Chny/2025**
निर्धारणवर्ष/**Assessment Years: 2017-18 & 2016-17**

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| The DCIT / ACIT,<br>Central Circle-2(3),<br>Chennai. | **v.** | BSR Builders Engineers Contractors,<br>No.28, BSR Janus,<br>Tank Bund Road,<br>Nungambakkam,<br>Chennai-600 034.<br>[**PAN: AAGFB 7140 N**] |
| **(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |

**Cross Objection Nos.39 & 47/Chny/2025**
**[in ITA Nos.1274 & 1561/Chny/2025]**
निर्धारणवर्ष/**Assessment Years: 2017-18 & 2016-17**

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| BSR Builders Engineers Contractors,<br>No.28, BSR Janus, Tank Bund Road,<br>Nungambakkam, Chennai-600 034.<br>[**PAN: AAGFB 7140 N**] | **v.** | The DCIT / ACIT,<br>Central Circle-2(3),<br>Chennai. |
| **(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |

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|---|---|---|
| Assessee by | : | Mr.G. Baskar, Advocate &<br>Mr.P.M. Kathir, Advocate |
| Department by | : | Mr.Nishanth Rao, JCIT |
| सुनवाईकीतारीख/Date of Hearing | : | 22.10.2025 |
| घोषणाकीतारीख /Date of Pronouncement | : | 14.01.2026 |

आदेश / **O R D E R**

**PER ABY T. VARKEY, JM:**

These are appeals preferred both by the assessee and Revenue and cross objections filed by the assessee against the orders of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as 'Ld.CIT(A)'), Chennai-19, dated 03.03.2025 & 06.02.2025 for the Assessment Years (hereinafter referred to as 'AYs') 2016-17 & 2017-18.

**2.** It is seen that, the assessee's appeal in ITA No.1312/Chny/2025 for AY 2017-18 has been filed belatedly by '07' days and for condoning the delay, the assessee has filed an affidavit explaining the cause for the delay. Having gone through the contents of the same, we find that cause for delay was reasonable, so we excuse the same and proceed to hear the assessee's appeal.

**3.** The Ld. DR has brought to our notice that their appeal in ITA No.1274/Chny/2025 for AY 2017-18 has also been filed belatedly by 'one day', to which, the Ld. Counsel for the assessee did not raise any objection and therefore, we proceed to hear this appeal on merits as well.

**4.** We take up the Appeal for AY 2016-17. With the consent of both the parties, we first take up the Revenue's appeal in ITA No.1561/Chny/2025. The grounds raised by the Revenue are as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts and in law.

2. The Ld CIT(A) erred in deleting the impugned addition of Rs.1,00,00,000/- as unaccounted additional income & failed to note that this was the Cash received over and above the agreement value for the sale of commercial space in Mall & it can by no means or methodology or Standards of accounting mandated, be an inclusive component of the Work-in-progress nor has the Ld.CIT(A) discussed any tagging of this receipt in cash in the Work-in-progress account to grant relief to the assessee.

3. The Ld. CIT (A) erred in deleting the addition of Rs.4.84.59.475/- unaccounted payment made to the assessee by Dr. Murugu Sundaram and Dr. Raja Sundaram without taking cognizance of the decision of the Hon'ble Madras High Court, in the case of Thiru. A. J. Ramesh Kumar v. Dy. CIT (2022) 441 ITR 495 (Mad.)(HC)/(2022) 139 taxmann.com 190 (Mad), held that the mere fact that the appellant retracted the statement could not make the statement unacceptable. The Hon'ble High Court held that "the burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion indicating that there was an element of compulsion for appellant to make such statement"

4. The Ld.CIT(A) erred in not appreciating the fact that the claims of assessee submitted in the ITR with the supporting evidences have to be substantiated by the assessee as the onus is on the assessee to prove the same and not on the Department to prove contrary to the claims made in the ITR or submissions of the assessee thereon

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of appeal proceedings, the Order of the Ld CIT(Appeals) may be set aside and that of the Assessing Officer may be restored.

**5.** Ground No. 1 is noted to be general in nature and therefore does not call for any specific adjudication, and is hence dismissed.

**6.** Ground No. 2 relates to the Ld. CIT(A)'s action of deleting the addition of Rs.1,00,00,000/- made on account of on-monies received on sale of unit. Briefly stated, the background facts as noted are that, the assessee is a partnership firm which was formed to carry on business of real estate development. The assessee is found to have promoted a

project called "OMR Road Project", Chennai on joint development with the land-owners across 2011 to 2018. On 06.07.2015, a search action u/s 132 of the Act was conducted on two doctors, Dr. Murugu Sundaram and Dr. Raja Sundram and it was found that, they had paid cash of Rs.11.20 crores to the assessee in consideration for purchase of part of commercial building in the BSR mall, out of which, Rs.1 crore was found to have been paid during FY 2015-16 relevant to AY 2016-17. As a sequel, a search action was also conducted on the assessee on 06.07.2015 wherein one folder containing signed receipts issued by the builder to the doctor brothers were found. Further, Shri. D. Raghavendra Reddy, Managing Partner of the assessee firm in the sworn statement recorded, also admitted that on-monies amounting to Rs. 11.20 crores had been received from both doctor brothers across FYs 2012-13 to 2015-16. The AO on the basis of the findings of the search initiated assessment proceedings by issuing a notice u/s 143(2) of the Act on 25.09.2017. The AO, in the course of assessment, is found to have show caused the assessee as to why the amount of Rs. 1,00,00,000/- received in cash during the FY 2015-16 should not be added as unaccounted income for the AY 2016-17. The assessee firm, in response, submitted that, the impugned cash received was purely *advance* for proposed sale of a portion of built-up area for the BSR Mall and that it would be offered to tax in the year of completion of the project, when the sale is completed.

The AO however didn't find merit in the explanation put forth by the assessee and added the impugned sum of Rs.1,00,00,000/- by way of unexplained income of the assessee. Aggrieved, the assessee preferred appeal before the Ld. CIT(A), who was pleased to delete the same. Being aggrieved with the order of Ld. CIT(A), the Revenue is now in appeal before us.

**7.** We have heard both the parties and perused the material before us. From the facts as culled out above, it is not in dispute that the assessee was in receipt of cash advances from the doctors towards sale of part of commercial building being developed, out of which Rs.1,00,00,000/- was received during the year. The issue before us is whether the advance received by the assessee in cash during the relevant AY 2016-17 is taxable in the relevant year itself or not. It is seen that, the Ld. CIT(A) had held that, the cash receipts was in the nature of '*advances*' and as per the established method of accounting, the same was required to be offered to tax, in the year in which the project was completed, as the assessee was following 'Project Completion Method'. The Ld. AR has further brought to our notice that, the project in question, was completed in AY 2019-20 and that the assessee had duly accounted and offered to tax the cash receipts from the two doctors by way of revenues in AY 2019-20 and that the same had also been accepted and assessed to tax

by the Revenue. According to Ld. AR therefore, the impugned addition tantamounted to effectively taxing the same amount twice viz., once in the year of receipt [AY 2016-17] and again in the year of accrual/credit [AY 2019-20], which we agree, is not permissible in law. Having gone through the order of the Ld. CIT(A), we countenance his reasoning for holding that, the impugned sum was in the nature of 'advance' and therefore, could not be taxed in the relevant AY 2016-17 but, only in the year in which project was completed. The Ld. CIT(A) is found to have relied on the decisions rendered by the coordinate Benches of this Tribunal in the cases of Dhanvarsha Builders & Developers Pvt. Ltd. v. DCIT (2006) 102 ITD 375 and Fort Projects Pvt. Ltd. v. DCIT (2012) 145 TTJ 340 to arrive at his conclusion. The relevant findings of the Ld. CIT(A) taken note of by us, are as follows:-

> "6.3.8 The undersigned has carefully considered the issue under consideration. On examination of the submission of the appellant it can be seen that the appellant firm submits that it has been consistently following the "Project Completion Method" of accounting. Since the OMR Road Project was not completed during the AY 2016-17, the receipts for the sale of space in the BSR Mall should be treated as advances. As per the established method, income can only be recognized upon the completion of the project.
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> 6.3.9 The appellant cited several case laws in support of its contentions, including Dhanvarsha Builders & Developers Pvt. Ltd. vs. DCIT (2006), Fort Projects Pvt. Ltd. vs. DCIT (2012), wherein it was held that income from on-money can only be recognized in the year of completion of the project, in line with the method of accounting adopted by the taxpayer.The appellant further claimed that the cash receipt of Rs. 1,00,00,000/- was already reflected as part of the work-in-progress and the profits arising from the project were being offered for taxation in AY 2019-20. Therefore, no addition of this amount should be made in the present assessment year.

6.3.10 Now the key issue before the undersigned is whether the cash payment of Rs. 1,00,00,000/- received by the appellant firm during the Financial Year 2015-16 should be added to the total income of the appellant for the AY 2016-17.

6.3.11 The contention of the appellant is that the amount of Rs. 1 Crore received by way of cash have been duly considered in the books of accounts of the appellant firm and was shown as a flat advance under current liabilities in the return of income filed on 18.10.2016 and the revised return filed on 09.05.2017 and not offered to tax as its has been claimed as current liability being in the nature of advance. It is significant to note that the appellant firm has consistently followed the "Project Completion Method" for recognizing income from its real estate business. Under this method, revenue is recognized only when the project is completed, and not before. This method is well-recognized under the Income Tax Act, 1961 and is routinely followed by developers in the real estate sector. The appellant has clearly stated that for the OMR Road Project, the construction was not completed during the AY 2016-17. Therefore, the amount received in relation to the project, including the on-money or advances, cannot be treated as income for that year. The receipts should only be accounted for as income once the project is completed.

6.3.12 There exists no dispute about the receipt of Rs. 11.20 crores in cash from Dr. Murugu Sundaram and Dr. Raja Sundram by the appellant towards the sale of space in the BSR Mall. The AO, based on the statements recorded during the course of search u/s 132 of the Act, concluded that this amount represented on-money received over and above the registered sale price and added Rs. 1,00,00,000/- to the appellant's income for the AY 2016-17, corresponding to the cash received during the relevant period. However, the appellant has consistently maintained that the amounts received as cash were advances for the sale of space in the BSR Mall and were treated as such in the books of the appellant firm. The appellant further explained that these receipts would be recognized as income only when the project reaches completion, in line with the accounting method followed.

6.3.13 It is a well-established principle in accounting and taxation that advances or amounts received in respect of incomplete projects should not be recognized as income until the project is completed. In the present case, the OMR Road Project was ongoing during the period in question. Thus, the appellant's treatment of the Rs. 1,00,00,000/- received as part of the Rs. 11.20 crores cash payment as an advance was in accordance with the method of accounting followed by the appellant firm.

6.3.14 The appellant cited judicial precedents in support of its position, including decisions in rendered by the Hon'ble Pune tribunal in the case of Dhanvarsha Builders & Developers Pvt. Ltd. v. DCIT (2006) and by the Hon'ble Kolkata tribunal in the case of Fort Projects Pvt. Ltd. v. DCIT (2012), wherein both the tribunal(s) emphasized that income from on-money or advance payments should be recognized in accordance with the method of accounting followed by the taxpayer, and in this case, only upon completion of the project. These decisions confirm that the receipt of cash or on-money in earlier years

should not be considered income until the project is completed, and no immediate recognition of the income is warranted.

6.3.15 The appellant submitted that the cash receipt of Rs. 1,00,00,000/- had already been accounted for as part of the work-in-progress for the project, and the profits arising from the project, including this advance, would be offered for taxation in AY 2019-20 when the project is completed. In light of this, the appellant suggested that in the event, if the addition of Rs. 1,00,00,000/- is sustained in the present assessment year, suitable adjustments should be made to ensure that this amount is not taxed again in the subsequent year.

6.3.16 On examination of assessment order, it can be seen that the AO, while making the addition on the basis of the statements made by the appellant firm's representatives and the seized documents, did not adequately consider the appellant's consistent application of the "Project Completion Method" of accounting even though the books were accepted in total. The undersigned is of the view that the AO's approach of taxing the on-money in the AY 2016-17, despite the project being incomplete, is not aligned with the recognized accounting method, nor does it follow the judicial precedents cited by the appellant. Further, the AO did not consider the fact that the cash receipt was already treated as part of the work-in-progress, and income arising from such receipts would only be realized in the year the project is completed. This underscores that the addition of Rs. 1,00,00,000/- to the appellant's income for the AY 2016-17 is premature and does not accurately reflect the accounting method followed by the appellant.

6.3.17 The appellant has rightly placed reliance on several judicial decisions that deal with the treatment of on-money and advances under the "Project Completion Method." These precedents affirm the appellant's contention that advances received for a project, including cash payments, are not to be treated as income until the project is completed. The above cited precedence(s), particularly M/s.Dhanvarsha Builders & Developers Pvt. Ltd. v. DCIT and Fort Projects Pvt. Ltd. v. DCIT, explicitly clarify that income from on-money or advances received is to be recognized only in the year of project completion.

6.3.18 In light of the above discussion, the undersigned is of the view that the addition of Rs. 1,00,00,000/- made by the AO to the appellant's total income for the AY 2016-17 is not warranted. The appellant firm has correctly accounted for the receipt as an advance under the "Project Completion Method," and no income from this receipt can be recognized in the assessment year under consideration. Moreover, as the amount is already accounted for in the work-in-progress, any income arising from the project will be recognized in the future assessment years when the project is completed. Therefore, the ground raised by the appellant upon this issue are here by treated as allowed and the AO is directed to delete the addition of Rs. 1,00,00,000/- made by the AO as unaccounted additional income for the AY 2016-17."

**8.** The Ld. DR was unable to controvert the above findings of the Ld. CIT(A) or point out any specific infirmity therein. We thus see no reason to interfere with the same. Hence, we give our imprimatur to the reasoned action of Ld CIT(A), and accordingly dismiss this ground of the Revenue.

**9.** Ground No. 3 taken by the Revenue relates to the deletion of addition of Rs.4,84,59,475/- made by way of unaccounted payment by Dr. Murugu Sundaram and Dr. Raja Sundaram for purchase of property. It is observed that, the impugned issue stems from the statement recorded from Dr. Murugu Sundaram recorded on 06.07.2015. The AO in the course of assessment, observed that, Dr. Murugu Sundaram in his statement, had averred that he along with Dr. Raja Sundaram had paid Rs.944.14 lacs by way of demand-drafts towards purchase of share in the assessee's mall from 2012 and onwards. However, Dr. Raja Sundaram had admitted to have paid Rs.459.55 lacs by way of cheque and this amount was also found to have been recorded in the books of the assessee. However, since Dr. Murugu Sundaram had admitted to payment of Rs.944.14 lacs, out of which only Rs.459.55 lacs was found to be by way of cheque payment disclosed in books of accounts, the difference of Rs.4,84,59,475/- [Rs. 9,44,14,475 - Rs.4,59,55,000] could not be explained by Dr. Murugu Sundaram. The AO treated the difference as

unaccounted receipt of the assessee and added it to the total income. It was also brought to our notice that identical corresponding addition was also made by the AO of both the doctors in their respective assessments on the basis of the statement of Dr. Murugu Sundaram. Aggrieved by the order of the AO, the assessee carried the matter in appeal. The Ld. CIT(A) is found to have deleted the impugned addition, by holding as under:-

> "6.4.3 The undersigned has carefully examined the issue under consideration. The appellant's case revolves around the addition of an unexplained difference of Rs. 4,84,59,475/- to the total income for the AY 2016-17. This addition was made by the AO based on statements recorded during the search proceedings, where it was stated by Dr. Murugu Sundaram and Dr. Raja Sundaram that an amount of Rs. 9,44,14,475/- was paid by demand draft to the appellant for the purchase of commercial space, while Dr. Raja Sundaram had confirmed a cheque payment of Rs. 4,59,55,000/-It is noted that there is a discrepancy between the sworn statements of Dr. Murugu Sundaram and Dr. Raja Sundaram regarding the payments made for the purchase of commercial space, Dr. Murugu Sundaram mentioned a total payment of Rs. 9,44,14,475/-, while Dr. Raja Sundaram, in his statement, confirmed a cheque payment of Rs. 4,59,55,000/-. This results in an unexplained difference of Rs. 4,84,59,475/-, which the AO considered as unaccounted income of the appellant for the relevant assessment year.
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> On examination of the submission made by the assessee upon this issue it can be seen that the appellant pointed out that the statements of Dr. Murugu Sundaram and Dr. Raja Sundaram were not furnished to the appellant. The appellant relied on the judgment of the Hon'ble Supreme Court in Andaman Timber Industries vs. CCE (62 taxmann.com 3), *which held that in the absence of providing the statements recorded during the investigation, the addition based solely on such statements cannot be sustained.* The appellant further pointed out that the additions made in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram, based on the same facts, were deleted by the Commissioner of Income Tax (Appeals)-18, as per the order in ITA Nos. 152 & 153/2017-18 dated 19.07.2018. The appellant also apprised that the revenue had appealed against these orders before the Hon'ble ITAT, Chennai Bench, and the Hon'ble ITAT, vide its order in ITA Nos. 3085 &

3086/Chny/2018dated 02.11.2022, upheld the CIT(A)'s decision to delete the additions. The appellant submitted a copy of the ITAT's order in support of its claim.

6.4.4 As evident in the assessment, the addition was made on the basis of the statements recorded from Dr. Murugu Sundaram and Dr. Raja Sundaram only rather than unearthing of any corroborative evidences during the course of search. The AO on the basis of the same facts and circumstances has contemplated a similar addition amounting Rs. 2,42,29,375/- each in the hands of the doctor brothers. The CIT (A)-18, Chennai has deleted the addition. The Hon'ble ITAT Chennai upheld the decision of CIT (A)-18, Chennai by dismissing the appeal of the revenue. On account of the decision of the jurisdictional, this issue has reached its finality. Given the findings and the fact that the addition has already been addressed by higher appellate authorities, any further discussion or deliberation on the facts of the issue would be superfluous. Therefore, all the grounds raised by the appellant upon this issue are hereby treated as allowed and the AO is directed to delete the addition of Rs. 4,84,59,475/- as un accounted undisclosed income for the AY 2016-17."

**10.** Being aggrieved by the above order, the Revenue is now in appeal before us.

**11.** Heard both the parties, it is noted that, the impugned addition stems from the statement recorded from Dr. Murugu Sundaram recorded on 06.07.2015. The AO in the course of assessment, observed that, Dr. Murugu Sundaram in his statement, had averred that he along with Dr. Raja Sundaram had paid Rs.944.14 lacs by way of demand-drafts towards purchase of share in the assessee's mall from 2012 and onwards, whereas, Dr. Raja Sundaram admitted to have paid Rs.459.55 lacs by way of cheque and this amount was also found to have been recorded in the books of the assessee. However, since Dr. Murugu Sundaram had

admitted to payment of Rs.944.14 lacs, out of which only Rs.459.55 lacs was found to be by way of cheque payment disclosed in books of accounts, the difference of Rs.4,84,59,475/- [Rs. 9,44,14,475 - Rs.4,59,55,000] could not be explained by Dr. Murugu Sundaram. The AO treated the difference as unaccounted receipt of the assessee and added it to the total income. It was also brought to our notice that identical corresponding addition was also made by the AO of both the doctors in their respective assessments on the basis of the statement of Dr. Murugu Sundaram, which action of AO was carried in appeal before the First Appellate Authority, who was pleased to delete the additions in the hands of both Doctors [Dr. Murugu Sundaram & Dr. Raja Sundaram]. The Revenue carried the matter in appeal before this Tribunal, wherein the Tribunal upheld the action of the First Appellate Authority deleting the addition as made by AO in the hands of the doctors as unexplained payments aggregating to Rs.4,84,59,475/- [Refer Tribunal order in ITA Nos.3085-3086/Chny/2018 dated 02.11.2022]. The relevant findings of Tribunal in the hands of Doctors taken note of by us, is as under:-

> "5. From the facts, it emerges that the assessee and his brother Dr. Murugu Sundaram were subjected to search action u/s 132 on 06.07.2015 and statement u/s 132(4) was recorded from both of them. One of the seized documents includes an agreement entered into by the assessee jointly with his brother with M/s BSR Builders for purchase of 25% share in the proposed mall in OMR, Thoraipakkam. As per the agreement, the assessee has his brother agreed to pay on-money of Rs.11.20 Crores to the builders. This was apart from payment in Cheque

to builders. Accepting the same, the assessee and his brother offered unaccounted income of Rs.5.60 Crores each and declared this income in the returns of income for various years. It could thus be seen that whatever on-money was mentioned in the agreement, the same was admitted as well as honored by the assessee and his brother and due taxes were paid on the same. According to terms of the agreement, no other on-money was to be paid. The payment made through cheques has obviously been paid through banking channels and the payment so made could not be held to be unaccounted money. There is no such allegation by Ld. AO also that the money paid through banking channel is out of undisclosed sources.

6. We find that the impugned addition stem from the observation of Ld. AO that there were inconsistencies in the payment made through demand drafts. The assessee admitted to have paid Rs.459.55 Lacs through cheques till the date of search. Dr. Murugu Sundaram admitted to have paid amount of Rs.944.14 Lacs through demand drafts. Accordingly, the difference of the two i.e., Rs.484.59 Lacs was further added as undisclosed income of the two brothers. However, the statement made by the brother is stated to have been retracted on 29.12.2017 wherein the brother clearly explained the modalities of the payments of the agreement amount. It could also be seen that except for retracted statement of brother, there is not material before Ld. AO to support this addition. No independent investigation is shown to have been carried out to bring on record any concrete material to show that further money flowed to M/s BSR Builders apart from the amounts mentioned in the agreement.

7. The reply to Question No.6 as given by the assessee was as follows: -

Q. No.6 During the course of search proceedings conducted at the First Floor, No.49/20, Perianna Maistry Street, Periamedu, Chennai - 600 003 some loose sheets were found and seized vide ANN/KVK/SPS/LS/S-1 (pages 1-22) in which BSR Builder Engineers and Contractors received a sum of Rs.11.20 Crores from you and your brother Mr. Murugu Sundaram from July 2012 to May 2015. Please explain for what purpose it has to be given?

Ans. I along with my brother Dr. S. Murugusundaram purchased a property with equal share from BSR Builders, Engineers and Contractors admeasuring UDS share about 9191 Sq. Ft. at Okkiam, Thoraipakkam, OMR Road, Chennai for a sum of Rs.4,59,55,000/- by way of cheque. Apart from the cheque payment, we paid a cash portion of Rs.11.20 Crores to BSR Builders on various dates, for which the receipts were given by BSR Builders.

From the statement, it is quite clear that the assessee and his brother agreed to purchase the property for a sum of Rs.459.55 Lacs by way of cheque. Apart from Cheque payment, cash payment of Rs.11.20 Crores was paid. The payment made by Dr. Murugu Sundaram has been clarified by him in reply to question no.5 in subsequent statement recorded from him on 27.12.2017 as under: -

Ans. I submit that apart from cash component of Rs.5.60 Crores paid to BSR, the balance amount was paid only way of cheques. I shall furnish details of cheque payments.....

The same has further been clarified in statement dated 28.12.2017 as under: -

Q.No.4 Kindly tell how much payment you are supposed to make to M/s BSR builders for the purchase of part of the portion in the BSR OMR mall? In the F.Y.2015-16 and 14-15 how much payment you have made through cheque. Also how much you have paid in cheque till date.

Ans. The agreed portion of the total payment to BSR for the purchase of our share of the property in BSR OMR mall is Rs.8,17,33,509/- (for both). In the F.Y.2014-15 the payment made by cheque by each of us is Rs.1,32,57,500/- in F.Y. 2015-16 relevant to A.Y.16-17, no payment was made. Total payment till date by Cheque is Rs.3,47,27,500/- for myself and Rs.3,57,27,500/- for my brother Dr. Raja Sundaram thus totalling to Rs.7,04,55,000/-.

Q. No.5 During the search action u/s 132 of the I.T. Act, you have deposed in the sworn statement recorded on 06.07.2015 that you and your brother together paid Rs.9,44,40,475/- in the form of demand draft from the year 2012 onwards. kindly explain

Ans. In this regard I submit that the total price to be paid to M/s BSR was under negotiation at that time. I had not stated the revised cost arrived at after negotiations. The total consideration after negotiation with BSR was fixed at Rs.19,37,33,509/- as against the amount stated in the statement dated 06.07.2015. Due to this reduced amount, the payment by Cheque was finally accepted at Rs.8,17,33,509/-. The total area purchased was 27,421 Sq. Ft. for which the original cost per Sq. Ft. was Rs.7,527/- which was negotiated to Rs.7065/- per Sq. Ft. This rate is inclusive of the cash portion to be paid. Further I state that as there was a cash portion to be paid out of the total consideration accepted, I could negotiate and pay the balance amount.

The above clarification makes it clear that besides cash payment of Rs.11.20 Crores, there was no other unaccounted payment by the

assessee or his brother. There was no payment through demand drafts. The payment through Cheques, as already noted, was duly accounted for and there is no allegation that the same were sourced out of unaccounted sources.

8. Therefore, in the background of above facts, the impugned order could not be faulted with. The impugned additions have rightly been deleted by Ld. CIT(A) in the impugned order. The appeal stands dismissed.

Appeal of Dr. Murugu Sundaram, ITA No.3086/Chny/2018

9. This assessee has been assessed in similar manner on 31.12.2017. The Ld. AO made further addition of Rs.242.29 Lacs on similar lines which was deleted by Ld. CIT(A). Aggrieved, the revenue is in further appeal before us. Facts being pari-materia the same as in mutandis apply to this appeal also. The ground urged by the revenue stand dismissed."

**12.** The Ld. DR appearing for the Revenue was neither able to dislodge the above findings of the Tribunal nor was he able to show that the same had been reversed by the Hon'ble High Court. Having regard to the above decision (supra), we agree with the Ld. AR that, when the addition on account of unexplained payments has been deleted in the hands of the purchasers, then the consequential corresponding addition made by the AO in the hands of the assessee-seller had no legs to stand on. Moreover, it is noted that AO relied on the statements of Doctors to saddle the addition in the hands of assessee, without giving a copy of the same to assessee, which omission was found by Ld CIT(A) to have vitiated the impugned addition by relying on judicial precedent that such an action would violate Natural Justice [Refer Mari Gold Papers (P) Ltd vs CCE 1995 (79) ELT 241]. We find that in the grounds of appeal, the Revenue has

not assailed such a finding of Ld CIT(A), hence such a finding of First Appellate Authority crystallizes and the observation made in the impugned order *that in the absence of providing the statements recorded during the investigation, the addition based solely on such statements cannot be sustained,* cannot be faulted and we give our imprimatur to it. We thus see no reason to interfere with the order of Ld. CIT(A) deleting the impugned addition and thus dismiss this ground of the Revenue.

**13.** Ground No. 4 taken by the Revenue relates to the disallowance of proportionate interest expenditure of Rs.7,84,110/- in relation to interest free advances given by the assessee firm. The AO is found to have observed that, the assessee had advanced interest free loans to five (5) parties aggregating to Rs.86,00,000/-. It was further noted by the AO that, the assessee had borrowings on which it had paid interest of Rs.67,77,802/- and that the effective interest rate worked out to 8.85%. The AO was of the view that the interest bearing funds were utilized to advance interest-free loans and therefore disallowed the interest proportionate to the quantum of interest-free advances which worked out to Rs.7,84,110/-. On appeal, the Ld. CIT(A) after considering the submissions of the assessee found that the assessee had sufficient own funds to cover the interest-free advances and therefore held the interest

disallowance to be unwarranted. The relevant findings of the Ld. CIT(A) are as follows:-

> "6.5.4 The undersigned upon examination of the submissions and the facts of the case, finds that the AO has failed to establish a direct and specific nexus between the interest-bearing borrowed funds and the advances given to the various parties. The mere fact that unsecured loans were obtained and interest was paid on them does not automatically lead to the conclusion that these funds were diverted for non-business purposes, particularly without any evidence to establish that the borrowed funds were specifically used for the interest-free advances.Further, the appellant has highlighted that it had sufficient non-interest-bearing capital (as reflected in the Partner's Capital Account of Rs. 9,89,24,909/-) to cover the advances made. Therefore, there was no necessity to assume that the advances were funded from the interest-bearing borrowed funds.
>
> 6.5.5 It is a well-settled principle in taxation that where an assessee possesses sufficient interest-free funds, the presumption is that its lending or advances are out of such funds, unless there is evidence to prove otherwise. This principle has been upheld by various judicial pronouncements, viz..
>
> 6.5.6 In the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bombay HC), the Hon'ble Bombay High Court held that where an assessee has both interest-free funds and borrowed funds, a presumption must be drawn that advances were made from interest-free funds unless the AO proves otherwise.
>
> 6.5.7 In the case of CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. (2014) 361 ITR 192 (Gujarat HC) the Hon'ble High Court held that disallowance of interest is unwarranted when the assessee has demonstrated sufficient interest-free funds available to cover advances given to third parties.
>
> 6.5.8 In the case of Hero Cycles (P) Ltd. vs. CIT (2015) 379 ITR 347 (SC) the Hon'ble Supreme Court held that in the absence of any nexus between borrowed funds and advances made, the disallowance of interest expenditure is unjustified.
>
> 6.5.9 Therefore, the claim that the appellant firm has advanced loans were out of its partner's capital amounting Rs. 9,89,24,909/-is acceptable. Thus,it is clear that the disallowance of Rs. 7,84,110/- made

> by the AO on the grounds of diversion of interest-bearing funds is not justified. The appellant has demonstrated that there was no nexus between the borrowed funds and the advances made, and further, the appellant had sufficient non-interest-bearing funds to make these advances. Accordingly all the grounds raised by the appellant upon this issue are hereby treated as allowed and the AO is hereby directed to delete the disallowance of Rs. 7,84,110/- made for the AY 2016-17."

**14.** Aggrieved by the above order of Ld. CIT(A), the Revenue is now in appeal before us.

**15.** Heard both the parties. It is seen that the assessee's own capital of Rs.9,89,24,909/- was far in excess of the interest-free advances of Rs.86,00,000/- and therefore it could be safely presumed that the interest-free advances were made out of own funds and not the borrowings of the assessee. We do not agree with the Ld. DR that the assessee was required to demonstrate direct nexus between the deployment of own funds towards interest-free advances. As long as the amount of interest-free advances is sufficiently covered by the non-interest bearing funds of the assessee, the question of disallowance of interest paid on borrowings does not arise. The case of the assessee finds support from the decision of the Hon'ble Supreme Court in the case of **CIT Vs Reliance Industries Ltd [2019] (102 taxmann.com 52)** wherein on similar facts, it was held as under:-

> "7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments

were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.

8. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question."

**16.** Having regard to the position of own surplus funds and interest-free advances, we agree with the Ld. AR that the presumption is that the interest-free advances were given out of own funds and therefore the Ld. CIT(A) had rightly deleted the impugned disallowance of interest by the AO. This ground is accordingly dismissed.

**17.** We now take up the appeal of the assessee in ITA No.1311/Chny/2025. The relevant grounds raised by the assessee in AY 2016-17 are as under:

1 The order of the CIT(A) is bad in law to the extent it dismisses the grounds raised by the appellant.

2 The CIT(A) erred in upholding the addition of notional rent made by the AO of Rs. 8,73,315/-u/s 22 of the Act

3. Assessment of notional rent as income not being applicable for the A.Y.2016-17, the CIT(A) ought to have deleted the addition in full

4 In any case, the properties being occupied by the appellant in course of its business, house property income does not arise from the same and thus the CIT(A) erred in confirming the addition.

5 The CIT(A) erred in upholding the addition without considering the appellant's submissions and cases relied on

6 The CIT(A) erred in upholding the interest levied by the AO u/s. 234B of the Act

7 Any other ground raised at the time of hearing.

**18.** Ground Nos. 1 is general in nature and is therefore not being separately adjudicated upon.

**19.** Ground Nos. 2 to 5 relates to the addition of Rs.8,73,315/- made by way of deemed rental income on the unsold units lying in closing stock of the assessee. It is seen that, the AO relying on the decision of Hon'ble High Court of Delhi in the case of Ansal Properties Infrastructure Ltd vs DCIT [354] ITR 180 (Del) held that Annual Letting Value (ALV) of the unsold flats is to be taxed. The AO is found to have estimated the notional rent at Rs.8,73,515/- and taxed the same u/s 22 of the Act. The action of the AO was confirmed by the Ld. CIT(A). Aggrieved, the assessee is now in appeal before us.

**20.** The Ld. AR of the assessee has claimed that, the addition has been made by ignoring the amendment brought in section 23 by way of sub-section (5) which is effective from Assessment Year 2018-19 and therefore the provisions of Section 22 & 23 of the Act does not apply to unsold flats lying in stock-in-trade, for the year under consideration. Per contra, the Ld. DR supported the order of the lower authorities.

**21.** Heard both the parties. Considered the rival submissions and material placed on record, we observe that the facts in the present case is exactly similar to the facts in the case of **DCIT v. M/s. Inorbit Malls**

**Pvt., Ltd., in ITA No. 2220/Mum/2021 dated 11.10.2022** and the relevant findings of the Coordinate Bench are reproduced below:-

> "15. Now, coming to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Ansal Housing Finance & Leasing Company Ltd (Supra), one of the question of law referred before the Hon'ble High Court was as under:
>
> > "Whether the assessee was liable to pay income tax on the annual letting value of unsold flats owned by it under the head "income from house property"?
>
> 15.1. There the facts relevant to the issue raised relate to the addition on account of annual letting value (ALV) of flats, added on notional basis are that the assessee-company engages itself in the business of development of mini-townships, construction of house property, commercial and shop complexes etc. In the assessment completed for the year under consideration, the AO assessed the ALV of flats which the assessee had constructed, but were lying unsold under the head "Income from house property". The assessee however, contended that the said flats were its stock-in trade and therefore the ALV of the flats could not be brought to tax under the head "Income from house property". The AO however did not accept the stand of the assessee and therefore, added the notional value of unsold flats to the total income of the assessee. On appeal by the assessee, the CIT(A) however set aside the addition made by the AO. The revenue's appeal to the Tribunal was unsuccessful.
>
> 16. Hon'ble Delhi High Court after referring to various judgments of Hon'ble Supreme Court, finally observed as held in under:
>
> > "In the present case, the assessee is engaged in building activities. It argues that flats are held as part of its inventory of stock-intrade, and are not let out. The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive cannot be accepted. As repeatedly held, in East India, Housing & Land Development Trust's case (supra) Sultan Bros's case (supra) and Karan Pura Development Co. Ltd.'s case (supra) the levy of income tax in the case of one holding

house property is premised not on whether the assessee carries on business, as landlord, but on the ownership. The incidence of charge is because of the fact of ownership. Undoubtedly, the decision in Vikram Cotton Mills Ltd. case (supra) indicates that in every case, the Court has to discern the intention of the assessee; in this case the intention of the assessee was to hold the properties till they were sold. The capacity of being an owner was not diminished one whit, because the assessee carried on business of developing, building and selling flats in housing estates. The argument that income tax is levied not on the actual receipt (which never arose in this case) but on a notional basis, i.e. ALV and that it is therefore not sanctioned by law, in the opinion of the Court is meritless. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The existence of an artificial method itself would not mean that levy is impermissible. Parliament has resorted to several other presumptive methods, for the purpose of calculation of income and collection of tax. Furthermore, application of ALV to determine the tax is regardless of whether actual income is received; it is premised on what constitutes a reasonable letting value, if the property were to be leased out in the marketplace. If the Assessee's contention were to be accepted, the levy of income tax on unoccupied houses and flats would be impermissible which clearly not the case is".

17. Though, the judgment which has been referred by the Hon'ble Delhi High Court in the case in "East India Housing & Land Development Trust (Supra)", "Sultan Bros" and "Karan Pura Development Company Ltd". (Supra) wherein, in all the cases the issue whether the rental income received from the property is to be assessed as business income or income of house property. No where, the Hon'ble Supreme Court in any of the cases which has been referred by the Hon'ble Delhi High Court dealt with issue of notional rental income when the property held as stock-in-trade or closing stock which has not been actually let out, is liable to be taxed as income from house property. However, be that as maybe, there is no contrary decision of any other High Court and therefore, this decision Hon'ble Delhi High Court will have both binding and persuasive value. No direct contrary decision has been brought to our knowledge of any other High Court and we have already noted above that the decision of Hon'ble Gujarat High Court in the case of Neha Builder (supra) was not on the issue on notional rent from unsold stock. Therefore, it cannot be held that on this issue the judgment of Hon'ble Gujarat High Court is in favor of the Assessee and therefore, the

judgment of Delhi High Court in the case of Ansal Housing Finance Leasing Company Ltd (Supra) should not be followed. Thus, in our opinion this Tribunal in the case of Dimple Enterprises vs. DCIT (Supra) as cited and relied upon by the Ld. DR has correctly appreciated this distinction.

18. One very important development took place post these judgments, that an amendment has been brought in the statute in section 23(5) which is applicable from AY 2018-2019 which reads as under, "*Where the property consisting of any building or land appurtenant there to is held as stock-in trade and the property of any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year form the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil."* It is trite that the said amendment has to be given effect prospectively from 01.04.2018 as mentioned in the Explanatory Notes to the provisions of the Finance Act, 2017. It is a cardinal principle of the interpretation that the normal presumption which respect to an amendment is that is applicable prospectively unless and until specifically stated otherwise. The logic behind such as interpretation is that the law should govern current activities; i.e. to say "lex prospicit non respicit", which means that "The Law looks forward and not backward."

19. Now, that specific provision has been brought in the statute which provides that, if building or land held as stock in trade and the property has not been let out during the whole or any part of the previous year, then annual value of such property after the period of one year (which was increased 2 years), shall be computed as income from house property and up to period of one year/two years income shall be taken to be nil". Thus, when specific provision has been brought with the effect from 01.04.2018 which cannot be applied retrospectively, then in our humble opinion it cannot be imputed that ALV of the flats held as stock in trade should be taxed on notional basis prior to AY 2018-19. Without any legislative intent or specific provision under the Act, such notional or deeming income should not be taxed as cardinal principle, because assessee is not aware that any hypothetical income is to be shown when he has not received any real or actual income. In our view of Hon'ble Delhi High Court is too harsh an interpretation.

20. Since, even prior to the amendment, there is one High Court judgment of Hon'ble Delhi High Court which is directly on this issue and against the Assessee, therefore same needs to be followed. Accordingly,

> we hold that Assessing Officer is correct in computing ALV on notional rent on unsold stock…."

**22.** Respectfully following the above decision, we see no reason to interfere with the order of Ld. CIT(A) holding that the AO was correct in applying Section 22 of the Act and adding deemed rent for the unsold properties of the assessee in the relevant AY 2017-18. We thus dismiss these grounds of the assessee.

**23.** Ground No. 6 relates to levy of interest u/s 234B of the Act. This ground is found to be consequential in nature. The levy of interest is mandatory. The AO is directed to re-compute and levy the same, if applicable, in accordance with law. This ground is therefore allowed for statistical purposes.

**24.** Coming to the cross-objections filed by the assessee in AY 2016-17 in CO No.47/Chny/2025. We find that the grounds raised therein were *inter alia* repetition of the grounds raised separately in the appeal filed in ITA No.1311/Chny/2025 for AY 2016-17 and included grounds in support of Ld. CIT(A)'s finding deleting the disallowance(s) impugned by the Revenue in their appeal in ITA No.1561/Chny/2025. Since we have disposed of the appeals of the assessee and revenue on merits, the cross-objections filed by the assessee have been rendered academic and is therefore dismissed as infructuous.

**25.** We now take up AY 2017-18. The grounds of appeal raised by the assessee in their appeal in ITA No.1312/Chny/2025 for AY 2017-18 are as under:

> "1. The order of the CIT(A) is bad in law to the extent it dismisses the grounds raised by the appellant.
>
> **2. Re-opening of assessment**:
>
> 2.1. The assessment having been reopened by the AO in the absence of any escapement of taxable income, the CIT(A) erred in upholding the same.
>
> 2.2. The assessment having been reopened by the AO on the basis of borrowed satisfaction, the CIT(A) erred in failing to quash the reopening.
>
> 2.3. The AO having reopened the assessment on the basis of material already on record, without any fresh tangible material, amounts to mere change of opinion, the CIT(A) ought to have quashed the same as illegal.
>
> 2.4. The AO having conducted the reassessment proceedings in violation of the law laid down by the Hon'ble Supreme Court, the CIT(A) erred in not quashing the reopening and the order of reassessment.
>
> **3. Disallowance of Rs. 11,49,997/-u/s.40(a)(ia):**
>
> 3.1. The disallowance of Rs. 11,49,997/- u/s.40(a)(ia) of the Act by the AO being contrary to the facts of the case and provisions of law, the CIT(A) erred in upholding the same.
>
> 3.2. The appellant not being an assessee in default, the CIT(A) erred in confirming the disallowance made by the AO.
>
> **4. Addition of Rs. 15,00,000/- u/s.68:**
>
> 4.1. The addition of lease advance of Rs. 15,00,000/- by the AO being contrary to the provisions of law, the CIT(A) erred in upholding the same.
>
> 4.2. The addition not being sustainable under the provisions of section 68 of the Act, as it is only a opening balance, the CIT(A) erred in failing to delete it.
>
> 4.3. In any event, the addition having been incorrectly taxed at 60% by the AO, the CIT(A) ought not to have confirmed the action of the action in applying Sec. 115BEE
>
> 5. Any other ground raised at the time of hearing."

**26.** Ground No. 1 of the assessee's appeal is stated by the Ld. AR to be general in nature and is therefore not being separately adjudicated upon.

**27.** Ground No. 2 raised by the assessee in their appeal relates to the legal validity of the reassessment initiated u/s 147 of the Act. It is seen that, the re-assessment was initiated on the basis of audit objection raised by the Revenue audit and the AO is found to have independently examined the same and thereafter recorded his reasons to believe that income chargeable to tax in AY 2017-18 had escaped assessment. The Ld. CIT(A) further observed that, the AO had followed the prescribed procedure by furnishing reasons for reopening and considered the appellant's objections before proceeding with the reassessment and therefore there is no legal infirmity in the action of the AO which would render the reassessment order invalid. Since, no infirmity could be pointed out in the impugned action, we see no reason to interfere with the impugned action of Ld. CIT(A) dismissing this legal plea of the assessee. Accordingly, Ground No. 2 is dismissed.

**28.** Ground No. 3 raised by the assessee is against the Ld. CIT(A)'s action of confirming the disallowance made by the AO for Rs.11,49,997/- on account of non-deduction of TDS under the provisions of section 194A read with section 40(a)(ia) of the Act. The facts relating to this issue are that, the assessee in the year under consideration has paid interest of Rs.38,33,324/- to M/s India Infoline Housing Finance Ltd. (IIFL-HFC) but no TDS was deducted thereon under the provisions of section 194A of the

Act, due to which the AO disallowed 30% of the expenditure i.e. Rs.11,49,997/- u/s 40(a)(ia) of the Act. Aggrieved, assessee preferred an appeal to the Ld CIT (A) who confirmed the order of the AO.

**29.** Heard both the parties. The Ld. AR, relying on the first proviso to Section 201(1) of the Act and second proviso to Section 40(a)(ia) of the Act, has argued that, the payee was a regular income-tax filer who had included the interest income in their income-tax return and paid taxes thereon, and therefore there could be no disallowance u/s.40(a)(ia) of the Act. Though in principle we agree with the submission of the assessee, but we find that the Ld. AR was unable to furnish any evidence or requisite form to substantiate this claim. In the fitness of the matters and fair play, we consider it fit to set aside the issue back to the file of the AO to verify whether the payee i.e. IIFL-HFC had included interest income received from the assessee, in their return of income for AY 2017-18 and paid taxes thereon, which fact may be verified by the AO from the payee IIFL-HFC or the assessee may furnish the prescribed Form 26A from the payee. Needless to say, the assessee shall be afforded sufficient opportunity of hearing to provide the requisite details / evidences before the AO. This ground of appeal is therefore allowed for statistical purposes.

**30.** Ground No. 4 of the assessee relates to the addition of Rs.15,00,000/- u/s 68 of the Act. The AO in the course of assessment

observed that a liability of Rs.15,00,000/- was reflected in the balance-sheet by way of interest free security deposit received for leasing the property for a hotel business. The AO was of the view that the assessee was unable to substantiate the low rent received or the genuineness of the deposit and therefore added the outstanding liability by way of unexplained cash credit u/s 68 of the Act. On appeal, the Ld. CIT(A) was pleased to confirm the action of the AO. Aggrieved, the assessee is now in appeal before us.

**31.** We have heard both the parties and perused the relevant provisions of law and the material placed before us. The Ld. AR, at the outset, pointed out that, the impugned sum had been received and credited in the books from tenant in Bangalore long back and that the amount of Rs.15,00,000/- represented opening balance of liability brought forward from earlier years. He invited our attention to Page 11 of the PB, which we find to evidence the fact that the impugned sum represented credit relating to earlier year and not the relevant year. Having regard to this contemporaneous fact, there is merit in the assessee's plea that, the rigors of section 68 can be applied only to sums found credited in the books of accounts in that particular year, and not those which were credited in earlier years. Hence, according to us, the lower authorities had erred in invoking and applying the provisions of Section 68 to the opening

balance of liabilities brought forward from earlier years. The case of the assessee is found to be supported by the decision of the Hon'ble Bombay High Court in the case of **Ivan Singh v. Asstt. CIT [2020] 116 taxmann.com 499/272 Taxman 36/422 ITR 128** rendered on same set of facts as involved in the present case. In the decided case, the Hon'ble High Court is noted to have deleted the addition made u/s 68 of the Act on account of sums which were credited in earlier years and had been brought forward in balance-sheet in the relevant year. The relevant findings of the Hon'ble High Court are as follows:

> "3. Insofar as the first substantial question of law is concerned, Dr. Daniel has pointed out that section 68 of the Income-tax Act, 1961 (IT Act), is very clear in providing that where any sum is found to be credited in the books of the assessee for the previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to the income tax as the income of the assessee of that previous year. Relying upon several decisions, Dr Daniel submits that since, it is the case of Revenue that some amounts were found credited in the book of account for the financial year 2006-07, there was no question of taking cognizance of such amounts for the assessment year 2009-10 and the corresponding previous year 2008-09. He submits that on this short ground, the first substantial question of law, is liable to be answered in favour of the appellant-assessee and against the respondent-Revenue.
>
> ** ** **
>
> 9. From the plain reading of the provisions of section 68 of the IT Act, it does appear that where any sum is found to be credited in the books of Account maintained for any previous year and there is no proper explanation for such credit, the sum so credited can be charged to the income tax as the income of the assessee of "that previous year".

10. In the present case, the material on record indicates that the Assessing Officer has relied upon the credits for the financial year 2006-07. However, the sum so credited, in terms of such credit, is sought to be brought to tax as the income of the appellant-assessee, for the assessment year 2009-10, which means for the previous year 2008-09, in terms of the definition under section 3 of the IT Act. Dr. Daniel is justified in submitting that this is not permissible.

11. The view taken by this Court in CIT v. Bhaichand H. Gandhi [1982] 11 Taxman 59/[1983] 141 ITR 67 and by Rajasthan High Court in CIT v. Lakshman Swaroop Gupta & Brothers [1975] 100 ITR 222, supports the contentions raised by Dr. Daniel. Similarly, we find that in Bhor Industries Ltd. v. CIT [1961] 42 ITR 57 (SC), the Hon'ble Apex Court in the context of provisions of the Merged States (Taxation Concessions) Order (1949) has interpreted the expression "any previous year" to mean as not referring to all the previous years but, the previous year in relation to the assessment year concerned Again, this decisions also, to some extent supports the contentions of Dr. Daniel.

12. The crucial phrase in section 68 of the IT Act, which provides that the sum so credited in the books and which is not sufficiently explained may be charged to the income tax as income of the assessee of "that previous year " also lends support to the contentions of Dr. Daniel.

13. For all the aforesaid reasons, we answer the first substantial question of law in favour of the appellant-assessee and against the respondent-Revenue."

**32.** We also gainfully refer to the decision of Hon'ble Delhi High Court in the case of **CIT Vs Usha Stud Agricultural Farms Ltd [2009] 183 Taxman 277 (Delhi)** wherein also, the addition of credit entries pertaining to earlier years u/s 68 of the Act was held to be unjustified. The relevant excerpts from the judgment are as under:-

"7. Here, the CIT(A) has deleted the addition of Rs. 15 lakhs mainly on the ground that this credit balance of Rs. 15 lakhs is being reflected in the accounts of the assessee over the past four to five years or so and hence this was not a fresh credit entry of the previous year under consideration and these credit entries were already made and accounted for in the assessment years 1995-96 and 1997-98 which were

> introduced in the form of advance against breeding stallions owned by the assessee and thus these credit entries did not relate to the year under consideration for being considered under section 68 of the Act.
>
> 8. Since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the assessee, does not pertain to the year under consideration, under these circumstances, the Assessing Officer was not justified in making the impugned addition under section 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).
>
> 9. The above being the position, no fault can be found with the view taken by the Tribunal."

**33.** Following the above decisions (supra), we direct the AO to delete the addition of Rs.15,00,000/- made u/s 68 of the Act. This ground is therefore allowed.

**34.** In so far as the assessee's cross objections in CO No.39/Chny/2025 are concerned, we find that the grounds raised therein are repetitive and reproduction of the grounds raised in the appeal filed by the assessee in ITA No.1312/Chny/2025. Since we have already decided the assessee's appeal above, the cross objections filed by the assessee are found to have become academic and is therefore dismissed as infructuous.

**35.** We now take up the appeal of the Revenue relating to AY 2017-18 in ITA No.1274/Chny/2025 and the relevant grounds raised therein, are as under:

> 1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts and in law.

2. The fal.CIT(A) erred in not observing that the contracts were entered by the assessee before 01.04.2016 which clam has not been substantiated by the assessee by producing contract agreements signed during commencement for the ongoing projects entered into by the assessee to substantiate the projects commenced before 31 March 2016.

3. The Lid. CIT (A) erred in observing that appellant had already offered the profit from the projects in question during the AY 2018-19 without taking cognizance of the fact that the assessee has not submitted any details substantiating that the profits from the projects have been offered during AY 2018-19.

4. For these grounds and any other ground including amendment of grounds that may be raised during the course of appeal proceedings, the Order of the Ld CIT(Appeals) may be set aside and that of the Assessing Officer may be restored.

**36.** The sole and substantive ground raised by the Revenue in their appeal relates to the Ld. CIT(A)'s action of deleting the addition made by the AO of Rs.4,19,97,354/- by re-computing the income of the assessee from the real-estate project by applying the percentage completion method as against the plea of the assessee that it has been regularly following project completion method. The AO, in the course of assessment, noted that, as per Section 43CB of the Act, which was applicable in the relevant AY 2017-18, the assessee was statutorily required to disclose income from its projects under the percentage completion method, which it had not done so. In terms of the provisions of Section 43CB, the AO held that, as the assessee had completed more than 25% of the project, the profits from the project was required to be computed and offered under the percentage completion method and, he is noted to have worked out profit of Rs.4,19,97,354/- relatable to the

project for the relevant AY 2017-18 and added the same to the total income. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who was please to delete the impugned addition. Now the Revenue is in appeal before us.

**37.** We have heard the rival contentions and gone through the material placed before us. From the facts available on record, it is not in dispute that the assessee-firm since inception of its business has been consistently and regularly following project completion method of accounting, which has not been rebutted by the Revenue. It is however the Revenue's case that, there was a change in position of law in the relevant AY 2017-18 by introduction of Section 43CB along with ICDS-III and therefore the assessee henceforth was required to follow percentage completion method in respect of the real estate projects undertaken by it. The Ld. AR has rightly pointed out that, the Revenue had totally ignored the transitional provisions mentioned in ICDS III, which for the sake of ready reference, is reproduced as under:

> "Transitional Provisions
> 22. 1 Contract revenue and contract costs associated with the construction contract, which commenced on or after 1st day of April, 2016 shall be recognised in accordance with the provisions of this standard.
> 22. 2 Contract revenue and contract costs associated with the construction contract, which commenced on or after 31st day of March, 2016 but not completed by the said date, shall be recognised based on the method regularly followed by the person prior to the previous year beginning on the 1st day of April, 2016."

**38.** It is seen that, the projects in question were commenced much prior to 1st April 2016 and therefore having regard to the transitional provisions which state that for the projects, which commenced on or before 31.03.2016 but not completed by the said date, the revenue shall be recognized based on the method regularly followed by the person prior to the previous year beginning from the 1st day of April 2016. As observed earlier, the assessee since its inception has been regularly following project completion method and therefore, in view of the aforesaid transitional provisions, the AO was unjustified in changing and applying the percentage completion method. We thus countenance the Ld. CIT(A)'s findings deleting the impugned addition by holding that, the assessee was legally allowed to follow its regular method i.e. project completion method, in respect of projects which had commenced prior to 1st April 2016. The relevant portion of the Ld. CIT(A)'s order taken note of by us, is as follows:-

> "6.2.6 The AO's assertion that the appellant should have applied the PCM as per the provisions of ICDS 2016 is not appropriate. ICDS 2016, specifically under its transitional provisions, allows entities to continue using their previously adopted method for contracts that were entered into on or before March 31, 2016. The appellant's contracts were entered into before this date, and thus, it was entirely within the appellant's domain to follow the project completion method, as per the ICDS 2016 guidelines. The AO's decision to adopt the PCM for AY 2017-18, despite the appellant's consistent approach of using the PCM, was not supported by any substantial change in facts. It constitutes a wrongful reversal of the accounting method that had been accepted in prior assessments. This decision fails to appreciate the transitional provisions of the ICDS and does not take into account the appellant's consistent accounting practice…."

**39.** Our above view is further aided by the admitted fact that the assessee had subsequently offered the entire profits from the project(s) under the completed contract method in the immediately subsequent AY 2018-19 i.e., the year in which the project was completed, and the same was accepted and assessed by the same AO. It is seen that, the same AO also did not adjust the purported income brought to tax in AY 2017-18 by applying percentage completion method in that year. This subsequent action of the AO, according to us, corroborates the assessee's case that, the AO's approach of making addition by following percentage completion method in AY 2017-18 was erroneous and effectively led to double taxation of the same profits, which is not permissible in law. We thus also countenance the following findings of the Ld. CIT(A) :-

> "6.2.6 ...Moreover, it is important to note that the appellant had already offered the profit from the projects in question during the AY 2018-19. This is a crucial point, as it demonstrates that the profit in question has not escaped from taxation or left out of the tax computation but was merely recognized in a different assessment year.The AO, after making the addition in AY 2017-18, failed to adjust the corresponding income in AY 2018-19, effectively leading to double taxation of the same income. This approach violates the fundamental principles of taxation. Since the assessee has already disclosed the income in the subsequent year and paid taxes accordingly, the overall impact is revenue-neutral. This further reinforces the argument that the addition of Rs. 4,19,97,354/- to the income for AY 2017-18 was erroneous and redundant. It is significant to bring on record the fact that the same AO has accepted the income admitted as per Project Completion Method by the appellant firm from the same project for the AY 2018-19."

**40.** There is also merit in the alternate plea of the assessee that Section 43CB read with ICDS-III as notified u/s 145 of the Act is applicable only to construction contracts and not joint development agreements. The Ld.

AR explained that, the assessee was a real estate developer and not a contractor and therefore Section 43CB had no application to their case. In this regard, he invited our attention to the Circular No. 10/2017 dated 23.03.2017 issued by the CBDT clarifying various issues surrounding applicability of ICDS. In their Answer to Question No. 12, it was clarified that, at present, there is no specific ICDS notified for real estate developers and in that view of the matter, ICDS-III is not applicable to them. He further submitted that, the non-applicability of ICDS III in case of real-estate developers is also substantiated by the fact that, the CBDT has issued "draft" ICDS on determination of income from real estate transactions which is pending to be notified. According to him therefore, the intention of the CBDT to issue separate ICDS for real-estate transactions, makes it clear that it is neither its purpose nor objective to apply Section 43CB read with ICDS-III on real estate developers. Having taken note of the foregoing, we find sufficient force in the assessee's alternate plea as well, that the provisions of Section 43CB read with ICDS-III were applicable to contractors and not developers and therefore the assessee being a developer was under no obligation to apply percentage completion method.

**41.** For the various reasons set out above, the impugned addition made by the Assessing Officer for the year under consideration by applying

percentage completion method of accounting is held to be unjustified and we therefore uphold the order of Ld. CIT(A) deleting the same. Hence, all the grounds raised by Revenue are dismissed.

**42.** In the result, the appeal of the assessee for AYs 2016-17 & 2017-18 are partly allowed and the appeals of the Revenue for AYs 2016-17 & 2017-18 are dismissed and the cross objections of the assessee for both AYs 2016-17 & 2017-18 are dismissed as infructuous.

Order pronounced on the 14th day of January, 2026, in Chennai.

| **Sd/-** | **Sd/-** |
|---|---|
| **(जगदीश)** | **(एबी टी. वर्की)** |
| **(JAGADISH)** | **(ABY T. VARKEY)** |
| लेखा सदस्य**/ACCOUNTANT MEMBER** | न्यायिक सदस्य**/JUDICIAL MEMBER** |

चेन्नई/Chennai,
दिनांक/Dated: 14th January, 2026.
***TLN***

<u>आदेश की प्रतिलिपि अग्रेषित</u>**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF