

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1891/MUM/2025
Assessment Year: 2022-23**

ACIT Circle-22(1),
Room No. 322, Piramal
Chambers, Income-tax
Office, Parel
Mumbai-400012.

Appellant

Vs. Supreme Mega Construction LLP,
301 Everest Classic, Linking Road,
Khar West,
Mumbai-400052.

**PAN NO. ABSFS 7343 H
Respondent**

Assessee by : Ms. Dhara Sheth (Virtually
appeared)

Revenue by : Mr. Leyaqt Ali Aafaqui, Sr. DR

Date of Hearing : 25/11/2025
Date of pronouncement : 19/01/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 29.01.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2022-23, raising following grounds:

1. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.



6,33,30,063/- made on account of excess claim of expenses without appreciating the facts of the case.

2. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 6,33,30,063/- made on account of excess claim of expenses without appreciating the fact that the actual amount of cost incurred for 36 flats comes to Rs.31,08,96,400/-, however the total expense claimed by the assessee for the year under consideration is Rs. 37,42,26,463/-.

2. Briefly stated, the assessee is a limited liability partnership firm engaged in the business of construction and development of real estate projects. For the assessment year under consideration, the assessee filed its return of income on 19.10.2022 declaring a total income of ₹5,93,86,830/-. The return was selected for scrutiny on account of, inter alia, large investment in properties, substantial other expenses claimed, significant variation between the opening stock of the current year and the closing stock of the preceding year, and a considerable increase in capital during the year.

2.1 The Assessing Officer issued statutory notices under the Income-tax Act, 1961 (in short 'the Act') on 01.06.2023 and duly served upon the assessee. In the scrutiny assessment order completed u/s 143(3) of the Act on 28.03.2024, the Assessing Officer disallowed (i) cost of construction amounting to Rs.6,33,30,063/- holding it to be excess than legitimate cost, (ii) penalty of TDS of Rs.5,600/-, (iii) claim of donation of Rs.1,68,500/- and (iv) provident fund deduction of Rs.58,119/-.



The assessee filed further appeal before the Ld. CIT(A), who allowed the appeal of the assessee deleting all the additions.

3. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal on the first issue of alleged excess claim of the cost construction amounting to Rs.6,33,30,063/-.

4. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 29.

5. The sole issue arising in the present appeal of the Revenue is whether the learned Commissioner of Income-tax (Appeals) was justified in deleting the addition of ₹6,33,30,063/- made by the Assessing Officer on account of the alleged excess claim of cost of construction.

5.1 The relevant facts, in brief, are that during the year under consideration the assessee was engaged in execution of a real estate project known as "Supreme Elenor", comprising construction of 75 residential flats. The assessee followed the percentage completion method for recognition of revenue and profits from the project, in accordance with the revised Guidance Note on Accounting for Real Estate Transactions issued by the Institute of Chartered Accountants of India. It was explained that, as on 31.03.2022, the total cost incurred on the said project aggregated to ₹64,77,00,833/-. Reference was drawn to the audited financial statements placed in the paper book (PB-87), which disclosed



opening work-in-progress of ₹35,19,92,728/- and direct construction expenditure incurred during the year amounting to ₹29,57,08,105/-, cumulatively forming the aforesaid project cost.

5.2 It was further submitted that the total saleable area of the project was 61,346 sq. ft. Out of 75 flats, agreements for sale had been executed in respect of 36 flats up to the end of the financial year 2021-22, covering an area of 29,479 sq. ft. On the basis of total project cost of ₹64,77,00,833/-, the assessee for computing profit from the project under the percentage completion method, allocated the cost of project in proportionate to the area sold and unsold in following manner.:

<i>Particulars</i>	<i>Computation</i>	<i>Amount</i>
Cost of 29,479 Sq. Ft. for 36 Flats sold Debited to Trading Account	64,77,00,833 / 61,346 X 29,479	31,12,43,974
<i>Cost in respect of unsold stock of 31,867 Sq. Fts. (39 flats unsold) Shown as closing balance of Work-in-Progress.</i>	<i>64,77,00,833 / 61,346 X 31,867</i>	<i>33,64,56,859</i>

5.3 Accordingly, cost attributable to the area sold was worked out at ₹31,12,43,974/-, which was debited to the trading account, while the balance cost of ₹33,64,56,859/- relating to the unsold area was carried forward as closing work-in-progress. It was thus contended that the cost attributable to the sold area had been correctly computed and accounted for.

5.4 The learned counsel for the assessee submitted that the Assessing Officer, however, proceeded on an erroneous premise that



the assessee had claimed total cost of ₹37,42,26,463/- during the year. This figure was arrived at by aggregating construction expenses of ₹29,57,08,105/-, indirect expenses of ₹1,73,91,900/- and project selling and marketing expenses of ₹6,11,26,458/- in the following manner:

<i>Construction expenses incurred during the F.Y. 2021-22:</i>	Rs. 29,57,08,105
<i>Indirect Expenses:</i>	Rs. 1,73,91,900
<i>Project Sales & Marketing Expenses:</i>	Rs. 6,11,26,458
Total:	Rs.37,42,26,463

5.5 The Assessing Officer further apportioned the total project cost on the basis of number of units sold, instead of area sold, and computed the proportionate cost at ₹31,08,96,400/- by applying the ratio of 36 units sold out of 75 units i.e. $(64,77,00,833/75 \times 36)$. The assessment unit further compared the cost of Rs.37,42,26,463/- which was wrongly believed as the cost claimed by the assessee, with the amount of Rs.31,08,96,400/- and the difference of Rs.6,33,30,063/- was accordingly computed for addition on account of alleged excess cost claimed by the assessee.

5.6 On appeal, the assessee reiterated before the learned Commissioner of Income-tax (Appeals) that the Assessing Officer had fundamentally erred both in identifying the cost claimed and in the method of apportionment. It was explained that indirect expenses and selling and marketing expenses were not part of construction cost under the applicable accounting guidance and were rightly charged to the profit and loss account. It was also



contended that allocation of project cost had necessarily to be made on the basis of area sold and not merely on the number of units sold. The learned Commissioner of Income-tax (Appeals), after examining the accounting method consistently followed by the assessee, the guidance notes issued by the Institute of Chartered Accountants of India, and the judicial precedents relied upon, accepted the assessee's explanation and held that there was no excess claim of cost as alleged by the Assessing Officer. Consequently, the addition of ₹6,33,30,063/- was deleted. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6. Upon perusal of all the details submitted by the appellant it is noticed that the only difference between the AO and the appellant firm is that the AO has not allowed the indirect cost of Rs. 6,33,30,063/ while computing the revenue and also the net profit. The appellant claimed that they have given a detailed submissions before the AO by contending that they have been following percentage completion method for revenue recognition consistently. In para 3.3.1 of the assessment order, the appellant has furnished the direct cost details incurred in the relevant AY 2022-23 as Rs. 29,57,08,105/. The opening WIP was Rs. 35,19,92,728/. As per the appellant, the total project cost / estimated cost for Supreme Elenor was Rs. 114,26,21,684. Out of the total estimated cost, the cost incurred by them up to 31.03.2022 was Rs. 64,77,00,833/ (Rs. 35,19,92,728 + Rs. 29,57,08,105). This is estimated into 56.69%. Accordingly, the revenue recognised against each unit sold in the relevant AY is given by the appellant is as under:

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7. In the relevant AY, the appellant recognized revenue of Rs. 45,88,90,759/ out of total sale value (bocking) of Rs. 80,95,38,147/. Till this point, there is no dispute. Tire AO has noticed that, out of total 75 units, in the relevant AY the appellant actually sold only 36 units and hence he recomputed the direct cost into Rs. 31,08,96,400/. The working given by the AO is as under:

64,77,00,833 x 36 (units sold)/ 75 (total units) = Rs.31,08,96,400



As the appellant claimed the expenditure of Rs. 37,42,26,463/, the excess claim of expenditure of Rs. 6,33,30,063/ was not allowed by the AO. However, the appellant submitted that, in addition to this direct cost, the AO failed to allow various indirect expenditures of Rs. 1,73,91,900/ and selling and marketing cost of Rs. 6,11,20,458/. The AO in paragraph 3.3.5 of the assessment order recorded that claim of this expenditure against the total area sold in the relevant AY is not allowable as it is only an afterthought.

8. The contention of the AO is not correct. The appellant relied upon guidance notes issued by ICAI and submitted that the indirect cost like "general administrative cost" and "selling cost" shall not be considered as a part of construction cost, rather that has to be separately claimed in the P & L account. As the AC failed to allow those indirect cost, that has resulted into incorrect computation of revenue and disallowance of expenditure of Rs. 6,33,30,063/. Further, in addition to this submission the appellant also placed their reliance on the decision of Jurisdictional ITAT In the case of Trident Estates Pvt Ltd. vs. ITO that has approved the Guidance Notes issued by ICAI. As per the appellant, even if the expenditure has to be differed, that will reduce only the subsequent AY profit and at the end of the project, there will not be any difference in the net profit ultimately. The appellant placed their reliance on the jurisdictional ITAT decision and contended that it was a revenue neutral exercise. Upon perusal of all these details, it is noticed that the AO computed the cost without allowing the indirect cost debited into the P&L account as well as the opening WIP. There is no such afterthought as recorded by the AO as the indirect expenditure were already debited into the P&L Account. The method followed by the AO is not in accordance with the Guidance Notes issued by ICAI. By respectfully following the decision of Hon'ble ITAT, the AO is directed to delete the disallowance of expenditure of Rs. 6,33,30,063/ as there was no such excess claim of expenditure as observed by the AO in the assessment order.

*9. Accordingly, the grounds of appeal from **Gr.No.1 to 4 are allowed.**"*

6. Before us the Ld. Departmental Representative (DR) relied on the order of the Assessing Officer and submitted that the assesses incorrectly claimed excess cost of the project. Per contra, the ld Counsel relied on the order of ld CIT(A).



7. We have carefully considered the rival submissions and perused the material placed on record. It is undisputed that the assessee is engaged in the business of real estate development and has consistently followed the percentage completion method for recognition of revenue and profits. Under this method, profit for a particular year is determined by allocating the project cost proportionate to the revenue recognised during that year. In the present case, there is no controversy with regard to the quantum of revenue recognised; the dispute is confined solely to the manner of allocation of the project cost relatable to such revenue.

7.1 The Assessing Officer proceeded on the premise that the assessee had claimed a cost of ₹37,42,26,463/- against the revenue recognised during the year, whereas, according to him, the admissible cost was only ₹31,12,43,974/-, resulting in an alleged excess claim of ₹6,33,30,063/-.

7.2 Upon a careful examination of the record, we find ourselves unable to concur with this approach due to following reasons:

7.3 Firstly, we note that the Assessing Officer proceeded on an incorrect factual assumption. The assessee had not claimed a cost of ₹37,42,26,463/- in respect of the area sold. As is evident from the audited profit and loss account, the assessee computed the cost attributable to the sold area of 29,479 sq. ft. at ₹31,12,43,974/-.



This is clear from the profit and loss account (Refer Page No. 87 of the paper book). The cost claimed is as under:

Opening Work in Progress	Rs. 35,19,92,728
Add: Expenses during the year	Rs. 29,57,08,105
Total Expenses incurred	Rs. 64,77,00,833
Less: Closing Work in Progress	Rs. 33,64,56,895
Net cost for 29479 Sq. Ft	Rs. 31,12,43,974

7.3.1 The computation was made by aggregating the opening work-in-progress of ₹35,19,92,728/- with the construction expenditure incurred during the year of ₹29,57,08,105/-, resulting in a total project cost incurred of ₹64,77,00,833/-, and thereafter allocating the same between the sold and unsold area on the basis of area under construction. The balance cost of ₹33,64,56,859/- was rightly carried forward as closing work-in-progress. Thus, the very foundation of the addition, namely that the assessee had claimed cost of ₹37,42,26,463/-, is factually erroneous.

7.4 Secondly, we find merit in the assessee's contention, accepted by the learned Commissioner of Income-tax (Appeals), that allocation of project cost under the percentage completion method has to be made on the basis of area sold and not merely on the number of units sold. In our opinion the correct method is to



calculate on the basis of sq. ft and not on the basis of number of flats for the reason that the record clearly shows that the flats in the project were of varying sizes and not of uniform size. In such circumstances, apportionment of cost on the basis of the number of flats would lead to distorted results, whereas allocation on the basis of area sold reflects the true and correct cost attributable to the revenue recognised during the year.

7.5 Thirdly, we are in agreement with the finding of the learned Commissioner of Income-tax (Appeals) that the Assessing Officer committed a fundamental error in ignoring the opening work-in-progress while computing the cost attributable to the units sold of Rs. 31,08,96,400/-. As can be seen from computation of cost by the ld the assessment unit i.e. AO as reproduced above, the assessment unit has considered only (a) the expenses incurred during the year; (b) Indirect Expenses and (c) Project Sales and Marketing Expenses to arrive at the figure of Rs. 37,42,26,463/-. This figure was then divided on the basis of the number of units sold and the amount of Rs. 31,08,96,400/- was arrived at. Real estate projects ordinarily span over more than one financial year, and the expenditure incurred in earlier years, duly capitalised as work-in-progress, necessarily forms an integral part of the total construction cost. Exclusion of opening work-in-progress from the computation is wholly inconsistent with the principles underlying the percentage completion method.



7.6 Lastly, the Assessing Officer erred in treating indirect expenses of Rs. 1,73,91,900/- and selling and marketing expenses of Rs. 6,11,26,458/- as part of construction cost for the purpose of reworking the allocation. The revised Guidance Note on Accounting for Construction Contracts issued by the Institute of Chartered Accountants of India expressly excludes general administrative expenses and selling costs from construction cost. The paragraph 2.4 of the guidance note, available on Page No. 103 of the paper book, specifically excludes general administration costs and selling costs from cost of construction . Such expenses are required to be charged separately to the profit and loss account. The method adopted by the assessee is thus in consonance with the recognised accounting principles, whereas the approach of the Assessing Officer is contrary thereto.

7.7 In view of the foregoing discussion, we find no infirmity in the well-reasoned order of the learned Commissioner of Income-tax (Appeals) deleting the addition of ₹6,33,30,063/-. The same is accordingly upheld. The grounds raised by the Revenue are dismissed.



8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 19/01/2026.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 19/01/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai