

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.5072/Mum/2024  
(Assessment Year :2017-18)**

Milan Theatres P. Limited Milan Theatres Subway Road Santacruz West Maharashtra-400054	Vs.	DCIT Circle 12(3)(2) Mumbai
<b>PAN/GIR No.AAFCM6714R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Simran Dhawan
Revenue by	Shri Annavaran Kosuri, Sr. AR
<b>Date of Hearing</b>	<b>24/12/2025</b>
<b>Date of Pronouncement</b>	<b>22/01/2026</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

This appeal has been filed by the assessee (hereinafter referred to as “the assessee”) against the order dated 31.07.2024 passed by the National Faceless Appeal Centre, Delhi (“NFAC”) for the assessment year 2017–18, arising out of the assessment framed under section 143(3) of the Income-tax Act, 1961 (“the Act”). The assessee has assailed the impugned appellate order on multiple grounds, inter alia, challenging the rejection of the Project Completion Method of accounting, the proportionate disallowance of interest

expenditure, the reworking of capital gains on conversion of capital asset into stock-in-trade under section 45(2) of the Act, the denial of proportionate indexed cost of acquisition, the non-allowance of cost of other capital assets forming part of the mall, the denial of TDS credit of Rs. 24,96,716/-, and the upholding of the Assessing Officer's action in disturbing the settled method of accounting and revenue recognition consistently followed by the assessee over the years.

2. The assessee is engaged in the business of real estate development. It had constructed a shopping complex with a cinema theatre known as "Milan Mall". As per the original occupation certificate dated 05.05.2007, the mall comprised 24 units, including shops and a theatre with a projector room. Subsequently, pursuant to a project for internal additions and alterations, plans were submitted to the Municipal Corporation of Greater Mumbai ("MCGM") on 21.06.2014 through Nirmeeek Associates, engineers and licensed surveyors, for conversion of the mall into commercial premises divided into a substantially larger number of units. As per the said plans, approval was sought for 180 units, comprising 44 shops on the third floor along with the theatre and projector room. Vide letter dated 07.08.2014, MCGM granted approval for the proposal submitted on 21.06.2014. Ultimately, upon completion of the project, the total number of units stood increased from 24 units to 179 units plus one theatre.

3. In the year ended 31.03.2015, the assessee decided to convert the mall, which was hitherto held as a capital asset,

into stock-in-trade, with the intention of selling the individual commercial units. Accordingly, in its accounts for the year ended 31.03.2015, non-current investments comprising land, building and other assets were reclassified as inventory (project work-in-progress). On conversion of the mall into commercial premises, the assessee treated the entire mall as stock-in-trade and adopted the Project Completion Method of accounting for revenue recognition, which method had been consistently followed by it in earlier years as well.

4. The assessee submitted that the construction of the new shops commenced in the year ended 31.03.2015 and was completed in the year ended 31.03.2017. In support thereof, the assessee produced before the Assessing Officer, inter alia, the occupation certificate dated 05.05.2007 along with approved plans for the ground floor to third floor, evidencing the erstwhile occupation certificate prior to the proposed conversion; the letter dated 21.06.2014 submitted by Nirmeeek Associates to MCGM on behalf of the assessee submitting proposals for internal additions and alterations; the plans submitted along with the said letter seeking approval for 180 units; the approval letter dated 07.08.2014 issued by MCGM; the application dated 23.05.2016 seeking approval under section 342 of the Mumbai Municipal Corporation Act, 1888 upon project completion; the approval letter dated 27.07.2017 issued by MCGM; and relevant extracts of the financial statements of the assessee for the years ended 31.03.2016 and 31.03.2018 evidencing the project expenses incurred for conversion of the mall into commercial premises.

5. As per the Project Completion Method regularly adopted by the assessee, revenue was to be recognized only upon completion of construction of the project. The assessee submitted that the project was completed during the year ended 31.03.2017, and therefore, revenue was recognized in assessment year 2017-18, which is the impugned year. It was further submitted that although sale agreements of some shops were executed earlier, starting from assessment year 2016-17 onwards, the amounts received till project completion were taken to the balance sheet as advances, and upon completion of the project in assessment year 2017-18, the receipts as per sale agreements executed till that year were credited to the Profit and Loss Account and offered to tax under the head "Business Income". Similarly, the capital gains relating to conversion of the capital asset into stock-in-trade were also offered to tax in the year of recognition of sale, i.e., assessment year 2017-18 onwards, in accordance with the provisions of section 45(2) of the Act.

6. In this context, the assessee placed reliance upon section 45(2) of the Act, which provides that notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion of a capital asset into stock-in-trade shall be chargeable to income-tax as income of the previous year in which such stock-in-trade is sold or otherwise transferred, and for the purposes of section 48, the fair market value of the asset on the date of such conversion shall be deemed to be the full value of the

consideration received or accruing as a result of the transfer of the capital asset.

7. It was further submitted that the assessment for the preceding assessment year 2015-16 had reached finality in view of the order of the Hon'ble Tribunal dated 31.03.2022 in ITA No. 76/Mum/2019, and the method of accounting as well as the treatment of the conversion of the capital asset into stock-in-trade stood accepted therein.

8. For the assessment year 2017-18, the assessee filed its original return of income declaring a loss. Subsequently, it filed a revised return and thereafter a second revised return. During the course of the assessment proceedings, the assessee also furnished a revised computation of income dated 30.11.2019. The Assessing Officer recorded that the total income returned in the second revised return stood increased to Rs. 7,18,10,920/- and was thereafter further increased to Rs. 15,99,97,178/- during the course of assessment proceedings by filing a revised computation of income on 30.11.2019.

9. Vide letter dated 30.11.2019, the assessee furnished a revised computation of income along with an annexure, wherein, in the concluding paragraph, it stated that apart from adopting the percentage completion method, the Assessing Officer had disallowed certain expenses, and keeping in view the said aspect and the fact that the project was completed during the year ended 31.03.2017, it had furnished vide Annexure-5 a statement working out the

adjusted total income for the year under reference based on the stand taken in assessing the income for the immediately preceding assessment year, i.e., year ended 31.03.2016, and requested the Assessing Officer to consider the said working in passing the order of assessment.

10. From the above, the Assessing Officer observed that it appeared that the assessee company had voluntarily offered a total income of Rs. 15,99,97,178/-, on which tax had been worked out at Rs. 2,53,37,713/-. The assessee was accordingly asked to confirm the same. However, the assessee subsequently clarified vide letter that the working submitted vide Annexure-5 of its letter dated 30.11.2019 was without prejudice to the contentions of the assessee submitted vide the said letter as well as the stand taken while filing its return of income, and accordingly the said working did not represent the stand of the assessee.

11. Notwithstanding the aforesaid clarification, the Assessing Officer proceeded to hold that "be that as it may", for the sake of brevity, the working given by the assessee was in confirmation with the possible stand which otherwise would have been taken. He thus concluded that, without disturbing the concept of computation, the assessee's total income was assessed at Rs. 15,99,97,178/- as had been worked out by the assessee.

12. The Assessing Officer further noted that the assessee had claimed TDS on sale of properties at Rs. 92,45,764/- in the original return filed on 31.10.2017 and in the revised

return filed on 06.10.2018. However, in the second revised return it had claimed TDS of Rs. 1,17,56,970/- on sale of properties. It was observed that the excess TDS claim in the second revised return, as well as in the amended computation of income of Rs. 24,96,716/-, pertained to income offered on the sale of property in the subsequent year. The Assessing Officer thus concluded that TDS credit to that extent could not be allowed in the impugned assessment year and, accordingly, disallowed the same, restricting the TDS credit to Rs. 92,45,764/-.

13. The assessment was thus framed under section 143(3) of the Act at the income of Rs. 15,99,97,178/-, after giving credit for taxes paid after due verification and charging interest under sections 234A, 234B, 234C and 234D, as applicable.

14. In substance, the Assessing Officer rested his conclusions, inter alia, on the footing that the assessee had, during the course of assessment proceedings, furnished a revised computation of income adopting, without prejudice, the methodology applied by the Assessing Officer in the immediately preceding assessment year, that such computation resulted in a total income of Rs. 15,99,97,178/-, and that notwithstanding the assessee's subsequent clarification that the said working did not represent its stand, the said figure represented a "possible stand" which otherwise would have been taken. On this basis, the Assessing Officer proceeded to assess the income at Rs. 15,99,97,178/-, deny TDS credit of Rs. 24,96,716/- pertaining to income offered in

a subsequent year, and rework the business income and capital gains.

15. The Assessing Officer rejected the Project Completion Method adopted by the assessee and sought to tax the income under both heads, namely, "Business Income" as well as "Capital Gains", based on the date of sale agreements, irrespective of project completion. He relied upon his own interpretation of and reliance upon accounting standards, notwithstanding the fact that the Tax Audit Reports reflected no change in the method of accounting followed by the assessee throughout the intervening period and there was no deviation with reference to the accounting standards prescribed under section 145 of the Act.

16. The Assessing Officer disallowed proportionate interest expenses of Rs. 3,13,30,672/-, which were part of the interest cost of Rs. 13,57,00,000/- incurred and allocated to the value of project work-in-progress, including years in which the assessment was made under section 143(3). He did so on an estimated basis, without establishing any nexus to non-business purposes and without invoking the provisions of section 145(3) of the Act.

17. The Assessing Officer further disturbed the computation of long-term capital gains on conversion of the capital asset into stock-in-trade by not fully allowing the costs capitalized in the books of account and used in the working of indexed cost of acquisition. In particular, he did not allow proportionate indexed cost attributed to Rs. 2,39,84,659/-,

being interest capitalized during the financial year 2008-09 forming part of the capital asset, and proportionate indexed cost of Rs. 2,58,91,486/- in respect of the cost of other assets aggregating to Rs. 6,03,41,869/-, which were forming part of the mall.

18. The Assessing Officer also considered the fair market value of the mall, being the deemed cost by virtue of section 45(2) of the Act, in respect of only 47 units instead of 114 units as considered by the assessee based on its accounting policy for revenue recognition under the Project Completion Method.

19. The assessee carried the matter in appeal before the learned CIT(A), NFAC, Delhi. It was submitted before the learned CIT(A) that the Assessing Officer had unlawfully disturbed the method of accounting without invoking section 145(3) of the Act and without recording any finding that the accounts were incorrect or incomplete or that true profits could not be deduced therefrom; that the Project Completion Method had been consistently followed by the assessee and accepted by the Department in earlier years, and therefore, in the absence of any finding that such method resulted in distortion of profits, the same could not be rejected; that the interest expenditure had a direct nexus with the business of the assessee, had been consistently allowed in earlier years, and there was no justification for disallowing the same on an estimated basis; that the costs of other assets forming part of the mall and the interest capitalized during the financial year 2008-09 formed part of the cost of acquisition of the capital

asset and were required to be included in the indexed cost of acquisition under section 48 of the Act; that the income under both heads, i.e., “Business Income” and “Capital Gains”, had been correctly offered to tax in assessment year 2017-18 being the year of project completion, in accordance with section 45(2) of the Act; and that the TDS credit of Rs. 24,96,716/- was deductible by prospective buyers at the time of execution of sale agreements and was reflected in the balance sheet, and therefore, the same ought to have been allowed in the impugned year.

20. The learned CIT(A), however, upheld the action of the Assessing Officer. He observed that the contentions of the assessee were not acceptable and that similar issues had been adjudicated in preceding assessment years wherein the stand of the Assessing Officer was found to be correct. He thus held that there was no reason to deviate from the same. With respect to the denial of TDS credit, the learned CIT(A) recorded that the assessee had merely raised the ground and had not filed any submission towards the same. He further held that since the income pertaining to the TDS was not offered to tax in the year under consideration, the disallowance of TDS credit was correct and being upheld.

21. Accordingly, the learned CIT(A) disposed of Grounds 1 to 4 of the appeal on merits and based on the information and documents available on record, and similarly disposed of Ground 5 relating to TDS credit.

22. Before us, the learned counsel for the assessee reiterated the submissions advanced before the lower authorities. He submitted that the entire edifice of the impugned assessment order was vitiated by the Assessing Officer's failure to invoke section 145(3) of the Act while rejecting the Project Completion Method, and by his unilateral substitution of the assessee's regularly followed method of accounting with his own perceived methodology. She submitted that the assessee is engaged in real estate development and had constructed a shopping complex with cinema theatre known as "Milan Mall", which originally comprised 24 units as per occupation certificate dated 05.05.2007, and pursuant to the sanctioned plan/alteration approvals obtained from MCGM (plans submitted on 21.06.2014 and approval issued on 07.08.2014, followed by completion/approval correspondences culminating in approval letter dated 27.07.2017), the mall was structurally reorganised into commercial premises consisting of substantially larger number of units (179 units plus one theatre). It was emphasised that such conversion is not disputed as a fact; the dispute is only with regard to the timing and manner of revenue recognition and consequential computations adopted by the Assessing Officer.

23. The learned counsel submitted that the assessee has, as a matter of regular accounting policy, been following the Project Completion Method, under which revenue is recognised upon completion of the project. She submitted that although certain sale agreements were executed starting

from A.Y. 2016-17 onwards, the receipts prior to completion were carried to the balance sheet, and only upon completion of the project in A.Y. 2017-18, the receipts relating to agreements executed up to that year were credited to the Profit and Loss Account and offered to tax as business income. She pointed out that, consistent with the statutory scheme, the capital gains relating to conversion of the capital asset into stock-in-trade were also offered to tax in the year of recognition of sale, i.e., A.Y. 2017-18 onwards, strictly in accordance with section 45(2) of the Act, which deems such gains chargeable in the previous year in which the stock-in-trade is sold or otherwise transferred, and further provides that for the purposes of section 48 the fair market value on the date of conversion shall be deemed to be the full value of consideration. It was thus urged that the assessee's offering of income under both heads in the impugned year is not an artificial deferral but is the direct consequence of the statutory command under section 45(2) coupled with its consistently followed method of accounting for project revenue.

24. The learned counsel then assailed the very jurisdictional foundation of the Assessing Officer's action in disturbing the method of accounting. She submitted that the Assessing Officer has not invoked section 145(3) of the Act at all; has not recorded any categorical satisfaction that the accounts are incorrect or incomplete; has not recorded any finding that the method of accounting has not been regularly followed; and has not identified any notified accounting standard which

has been violated so as to justify departure. It was argued that the law places the burden on the Assessing Officer to demonstrate that true profits cannot be deduced from the regularly employed method; absent such a finding, the Assessing Officer cannot reject the method merely by asserting that another method should have been adopted.

25. She further submitted that the assessee's case is fortified by the doctrine of consistency, because the method had been followed uniformly, and in fact the assessment for A.Y. 2015-16 has reached finality pursuant to the order of the Tribunal dated 31.03.2022 in ITA No. 76/Mum/2019. It was urged that once the Department has accepted the fundamental approach in earlier years, it cannot, on identical facts, unsettle the method for the impugned year without demonstrating any change in facts or any distortion of profits.

26. Coming to the disallowance of proportionate interest of Rs. 3,13,30,672/-, the learned counsel submitted that the borrowed funds were utilised for the business purpose of the project and the interest cost formed part of project work-in-progress, having been incurred in the earlier period(s) as well, and the same was consistently accepted/allowed in earlier years. She submitted that the Assessing Officer has made an ad hoc or estimated disallowance without any rational working, and without establishing any diversion of borrowed funds for non-business purposes. It was argued that once nexus between borrowing and business purpose is established, the Revenue cannot put itself in the armchair of a businessman to second-guess the commercial expediency.

27. On the issue of computation of capital gains under section 45(2), the learned counsel submitted that the Assessing Officer has disturbed the computation of long-term capital gains by not allowing, on a proportionate basis, (i) the indexed cost pertaining to interest capitalised during F.Y. 2008-09 of Rs. 2,39,84,659/- forming part of the cost of the capital asset, and (ii) the indexed cost pertaining to other assets aggregating to Rs. 6,03,41,869/- (such as common assets like elevators, escalators, air-conditioning installations, etc.) which formed part of the mall and were capitalised in the audited accounts. It was submitted that these are not notional claims but are embedded in the capitalised cost of the asset and therefore must travel into the indexed cost of acquisition while computing capital gains.

28. She further submitted that the Assessing Officer's treatment of the assessee's revised computation/workings dated 30.11.2019 is misconceived. The assessee had furnished Annexure-5 workings only as an alternate "without prejudice" exercise, and had categorically clarified that such working does not represent its stand. Hence, to treat such without-prejudice working as a voluntary offering or admission and to fasten assessment solely on that basis is contrary to the record and to settled principles governing appreciation of pleadings and alternate computations.

29. Lastly, on the issue of TDS credit of Rs. 24,96,716/-, the learned counsel submitted that the TDS was deducted by the prospective purchasers at the time of execution of sale agreements and reflected in the balance sheet, and the

Assessing Officer ought to have directed verification and grant of credit in accordance with law, rather than denying it on a broad assumption that the corresponding income pertains to a subsequent year.

30. Per contra, the learned Departmental Representative relied upon the orders of the Assessing Officer and the learned CIT(A). He submitted that the Assessing Officer was fully justified in rejecting the Project Completion Method in the peculiar facts of the present case and in bringing to tax the income on the basis of sale agreements executed during the year, irrespective of the date of project completion. He contended that the revised computation of income furnished by the assessee on 30.11.2019 clearly demonstrated that the assessee itself had accepted the methodology adopted by the Assessing Officer and had voluntarily offered the income of Rs. 15,99,97,178/-, and therefore, the assessment at that figure cannot be faulted. He further submitted that the proportionate disallowance of interest expenditure, the reworking of capital gains under section 45(2) of the Act, the denial of proportionate indexed cost of acquisition, and the non-allowance of TDS credit of Rs. 24,96,716/- were all in consonance with the findings recorded by the Assessing Officer and duly upheld by the learned CIT(A). He submitted that there was no infirmity in the impugned orders warranting interference by the Tribunal.

31. We have carefully considered the rival submissions, perused the orders of the lower authorities, and examined the entire material placed on record, including the sanctioned

plans, occupation certificates, municipal approvals, correspondence exchanged with the Municipal Corporation of Greater Mumbai, financial statements, revised returns and computations, and the judicial precedents cited and reproduced in the record. The controversy before us essentially arises from the Assessing Officer's unilateral rejection of the method of accounting consistently followed by the assessee and the consequential reworking of income under both the heads, viz., "Profits and gains of business" and "Capital gains", accompanied by proportionate disallowance of interest, disturbance of indexed cost computation, selective application of section 45(2), and denial of TDS credit. All these adjustments trace their genesis to a single foundational premise adopted by the Assessing Officer, namely, that revenue ought to have been recognised on the basis of dates of sale agreements, irrespective of the completion of the project, and that the Project Completion Method followed by the assessee deserved to be discarded.

32. At the threshold, it is not in dispute that the assessee is engaged in real estate development and had constructed a shopping complex with a cinema theatre known as "Milan Mall". It is equally undisputed that as per the original occupation certificate dated 05.05.2007, the mall comprised 24 units, and that pursuant to the sanctioned plans submitted to the Municipal Corporation of Greater Mumbai on 21.06.2014 through Nirmeeek Associates and the approval granted on 07.08.2014, the mall was structurally reorganised into substantially larger number of commercial units,

culminating in 179 units plus one theatre. It is also not in dispute that upon completion of the project, the assessee applied for approval under section 342 of the Mumbai Municipal Corporation Act, 1888 on 23.05.2016, and the final approval was granted by MCGM vide letter dated 27.07.2017. These factual milestones, reflected in statutory approvals and municipal correspondence, stand corroborated by the audited financial statements placed on record.

33. It is further an admitted position that in the year ended 31.03.2015, the assessee converted the mall, hitherto held as a capital asset, into stock-in-trade, and in its books of account reclassified non-current investments comprising land, building and other assets as inventory or project work-in-progress. The conversion of the capital asset into stock-in-trade is not disputed by the Revenue. The dispute is confined to the timing and manner of revenue recognition and the consequential tax treatment flowing therefrom.

34. The assessee has consistently followed the Project Completion Method of accounting. Under this method, revenue is recognised upon completion of construction of the project. The factual record demonstrates that although sale agreements of certain shops were executed starting from assessment year 2016-17 onwards, the receipts prior to completion were carried to the balance sheet as advances. Upon completion of the project during the year ended 31.03.2017, the receipts relatable to agreements executed up to that year were credited to the Profit and Loss Account and offered to tax as business income in assessment year 2017-

18, which is the impugned year. Simultaneously, the capital gains relating to conversion of the capital asset into stock-in-trade were also offered to tax in the same year, strictly in conformity with section 45(2) of the Act. This factual treatment is borne out from the financial statements, the computation of income, and the detailed workings placed before the Assessing Officer.

35. Section 45(2) of the Act embodies a specific statutory sequencing. It provides that notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion of a capital asset into stock-in-trade shall be chargeable to income-tax as income of the previous year in which such stock-in-trade is sold or otherwise transferred, and for the purposes of section 48, the fair market value of the asset on the date of such conversion shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. The assessee has scrupulously adhered to this statutory scheme. The conversion took place in the year ended 31.03.2015. The stock-in-trade was sold in stages. The capital gains were offered to tax in the year of recognition of sale, i.e., assessment year 2017-18 onwards. Thus, the timing of capital gains offered by the assessee is not a matter of discretion or convenience; it is the direct consequence of the statutory command embedded in section 45(2).

36. Against this factual and statutory backdrop, the Assessing Officer has rejected the Project Completion Method and sought to tax income on the basis of the dates of sale

agreements, irrespective of project completion. This approach is fundamentally flawed in law. Section 145(1) of the Act mandates that income chargeable under the heads “Profits and gains of business or profession” and “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee. Section 145(3) confers jurisdiction upon the Assessing Officer to disregard such method only upon recording a categorical satisfaction that the accounts are incorrect or incomplete, or that the method of accounting has not been regularly followed, or that income has not been computed in accordance with the notified accounting standards. Only thereafter may the Assessing Officer proceed to make an assessment in the manner provided in section 144.

37. In the present case, the Assessing Officer has not invoked section 145(3) at all. He has not recorded any satisfaction that the accounts of the assessee are incorrect or incomplete. He has not recorded any finding that the Project Completion Method has not been regularly followed. He has not identified any notified accounting standard which has been violated. He has not demonstrated that true profits cannot be deduced from the method regularly employed by the assessee. In the absence of compliance with the statutory pre-conditions embedded in section 145(3), the Assessing Officer lacked jurisdiction to reject the assessee’s method of accounting. The rejection of the Project Completion Method, therefore, is not merely erroneous; it is jurisdictionally infirm.

38. The legal position on this aspect is too well-settled to admit of any debate. The Hon'ble Supreme Court in *United Commercial Bank v. CIT* [1999] 240 ITR 355 (SC) held that the choice of method of accounting is with the assessee and that profits shall be computed in accordance with the method of accounting regularly followed by the assessee, and that unless the Assessing Officer demonstrates that the method followed does not reflect true profits, he cannot substitute the method merely because he prefers a different method. This principle was reiterated in *CIT v. Bilahari Investment (P.) Ltd.* [2008] 299 ITR 1 (SC), wherein the Apex Court held that once a method of accounting has been accepted in the past and is consistently followed, the Department cannot insist on substitution of the existing method unless it records a finding that the method results in distortion of profits.

39. The Hon'ble Punjab and Haryana High Court in *CIT v. Punjab Information & Communication Technology Corporation Ltd.* [2023] 152 taxmann.com 518 (P&H), in a case where the assessee, engaged in the business of development and sale of industrial plots, was consistently following the Project Completion Method, held that in the absence of any observation by the Assessing Officer that the said method would result in deferment of payment of taxes which were to be assessed annually under the Act, the Project Completion Method followed by the assessee was to be accepted. It was further held that the assessee could follow either the Project Completion Method or the Percentage Completion Method for accounting, and that in the absence of

any finding that the method followed would result in distortion of profits, no interference was warranted. The ratio laid down therein squarely applies to the facts of the present case.

40. The Hon'ble Jurisdictional Bombay High Court in *Aroni Commercials Ltd. v. DCIT* [2014] 44 taxmann.com 304 (Bom.) held that though the principle of *res judicata* does not apply to income-tax proceedings, nevertheless, where the facts are identical from year to year, there has to be uniformity and consistency in treatment. It was observed that in view of the fact that the Revenue had been treating the profit on sale of shares as taxable under the head "Capital gains" in earlier years, the same treatment ought to be followed in the subsequent year as well in the absence of different facts. This judgment fortifies the doctrine of consistency which the Assessing Officer has flagrantly disregarded in the present case.

41. In the present case, not only has the Assessing Officer failed to record any finding of distortion of profits, but the factual record also demonstrates that the Department has accepted the Project Completion Method in earlier years. The assessment for assessment year 2015-16 has reached finality in view of the order of the Tribunal dated 31.03.2022 in ITA No. 76/Mum/2019. There is no allegation of any change in facts for the impugned year. The doctrine of consistency, therefore, squarely applies. The Assessing Officer's departure from the accepted method in the impugned year, without any

change in facts or any recorded distortion of profits, is thus legally unsustainable.

42. The Assessing Officer has sought to fortify his action by placing reliance upon a revised computation of income furnished by the assessee on 30.11.2019, wherein, in Annexure-5, the assessee had worked out an adjusted total income based on the methodology adopted by the Assessing Officer in the immediately preceding year. However, the record unequivocally demonstrates that the said working was furnished strictly “without prejudice” to the assessee’s contentions and was accompanied by a categorical clarification that such working does not represent the stand of the assessee. Notwithstanding this, the Assessing Officer has treated the said working as a voluntary offering of income and assessed the total income at Rs. 15,99,97,178/- on the footing that it represents a “possible stand” which otherwise would have been taken.

43. This approach is wholly misconceived. A without-prejudice computation furnished as an alternate working cannot be elevated to the status of an admission or a voluntary surrender, particularly when the assessee has expressly clarified that it does not represent its stand. To do so is to conflate a hypothetical alternate computation with a binding concession, which is impermissible in law. The Assessing Officer’s reliance on such a without-prejudice working to fasten an assessment is contrary to the record and contrary to settled principles governing appreciation of pleadings and alternate submissions.

44. Coming to the proportionate disallowance of interest of Rs. 3,13,30,672/–, the record reveals that the interest cost formed part of the project work-in-progress and had been incurred in earlier period(s) as well. The same had been consistently accepted and allowed in earlier years, including years in which assessments were framed under section 143(3) of the Act. The Assessing Officer has disallowed the interest on an estimated basis, without any rational working, without establishing any nexus between the borrowed funds and any non-business purpose, and without demonstrating any diversion of funds. Once nexus between borrowing and business purpose is established, the Revenue cannot put itself in the armchair of a businessman to decide whether the expenditure was reasonable. This principle stands fortified by the judgment of the Hon'ble Supreme Court in *S.A. Builders Ltd. v. CIT* [2007] 158 Taxman 74 (SC). In the present case, not only has no lack of commercial expediency been demonstrated, but the Assessing Officer has also sought to disturb interest claims accepted and which had attained finality in earlier years, without lawfully reopening or revisiting those assessments. Such an approach is impermissible.

45. The Assessing Officer has also disturbed the computation of long-term capital gains on conversion of the capital asset into stock-in-trade under section 45(2) by not allowing, on a proportionate basis, the indexed cost pertaining to (i) interest capitalised during the financial year 2008-09 amounting to Rs. 2,39,84,659/–, and (ii) other assets

aggregating to Rs. 6,03,41,869/–, such as elevators, escalators, air-conditioning installations, etc., which formed part of the mall and were capitalised in the audited accounts. These are not notional or artificial claims; they are embedded in the capitalised cost of the asset and therefore must travel into the indexed cost of acquisition while computing capital gains under section 48. The Assessing Officer has not disputed the incurrance or capitalisation of these costs; he has merely declined to grant proportionate indexation without any cogent reasoning. Such an approach is contrary to the statutory scheme and cannot be sustained.

46. The Assessing Officer has further considered the fair market value of the mall, being the deemed cost under section 45(2), in respect of only 47 units instead of 114 units as considered by the assessee based on its accounting policy for revenue recognition. This selective application of section 45(2) is inherently arbitrary and lacks any statutory foundation. Once the conversion of the entire mall into stock-in-trade is accepted, the fair market value on the date of conversion must be applied consistently to the entire asset and not in a truncated or piecemeal manner.

47. The denial of TDS credit of Rs. 24,96,716/– on the ground that the corresponding income pertains to a subsequent year is equally untenable. The record demonstrates that the TDS was deducted by prospective purchasers at the time of execution of sale agreements and was reflected in the balance sheet. The Assessing Officer ought to have directed verification and grant of credit in

accordance with law, rather than denying it on a broad assumption of year-wise mismatch. Denial of credit results in an inequitable mismatch, particularly when the tax has been deducted at source and is duly reflected in the statutory system. The learned CIT(A)'s observation that the assessee had not filed submissions on this issue is also contrary to the material on record.

48. The learned CIT(A) has upheld the action of the Assessing Officer by observing that similar issues had been adjudicated in preceding assessment years wherein the stand of the Assessing Officer was found to be correct, and that there was no reason to deviate therefrom. This reasoning is internally inconsistent. If the doctrine of consistency is to be invoked, it must operate symmetrically and not selectively. The method of accounting and treatment adopted by the assessee had been accepted in earlier years, including assessment year 2015-16, which had reached finality by virtue of the Tribunal's order dated 31.03.2022. The learned CIT(A) has not demonstrated any change in facts or any distortion of profits for the impugned year so as to justify a departure. The appellate order, therefore, suffers from a fundamental legal infirmity.

49. In view of the foregoing discussion, we hold that the Assessing Officer was not justified in rejecting the Project Completion Method adopted by the assessee, in disturbing the computation of income under both heads, in disallowing proportionate interest expenditure, in denying proportionate indexed cost of acquisition, in selectively applying section

45(2), in treating a without-prejudice working as a voluntary offering of income, and in denying TDS credit of Rs. 24,96,716/-. The impugned orders of the Assessing Officer and the learned CIT(A) are vitiated by jurisdictional error, non-application of mind to statutory pre-conditions, and disregard of binding judicial precedents.

50. Accordingly, the additions and disallowances made by the Assessing Officer and sustained by the learned CIT(A) are deleted. The Assessing Officer is directed to recompute the income of the assessee in accordance with the Project Completion Method consistently followed by it, allow the interest expenditure as claimed, grant proportionate indexed cost of acquisition including the capitalised interest and other assets forming part of the mall, apply section 45(2) uniformly to the entire converted asset, and allow TDS credit of Rs. 24,96,716/- after due verification.

**51. In the result, the appeal of the assessee is allowed.**

Order pronounced on 22<sup>nd</sup> January, 2026.

**Sd/-**  
**(ARUN KHODPIA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 22/01/2026  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**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,

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