

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 7641, 7642 and 7643/MUM/2025
Assessment Years: 2016-17, 2017-18 and 2018-19**

Toughcons Realtors Private Limited 104 Ragunath Krupa Building, Aarey Road, Goregoan (East), Mumbai 400063 (PAN: AAECT5277F)	Vs.	ACIT Central Circle 4(4) Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sukhen Kundu, CA
Revenue : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 03.02.2026
Date of Pronouncement : 09.02.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are against the orders of Commissioner of Income Tax (Appeal), Mumbai, vide order nos.:

- i) ITBA/APL/S/250/2024-25/1067888129(1), dated 22.08.2024, passed against the assessment order by ACIT, Central Circle 4(4), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 31.12.2019 for Assessment Year 2016-17.
- ii) ITBA/APL/S/250/2024-25/1067888242(1), dated 22.08.2024, passed against the assessment order by ACIT,

Central Circle 4(4), Mumbai, u/s. 143(3) r.w.s 147 of the Act, dated 31.12.2019 for Assessment Year 2017-18.

- iii) ITBA/APL/S/250/2024-25/1069146981(1), dated 26/09/2024, passed against the assessment order by ACIT, Central Circle 4(4), Mumbai, u/s. 143(3) of the Act, dated 28.09.2021 for Assessment Year 2018-19.

2. Grounds taken by assessee are reproduced as under:

ITA No.7641/Mum/2025

“GROUND NO. 1: LEGAL ERROR IN DISMISSING APPEAL EX-PARTE

1.1 The learned CIT(A) has erred in law and facts by dismissing the appeal ex-parte without providing adequate opportunity of being heard and without considering the written submissions and documentary evidence that could have been provided if proper notice and reasonable time was granted.

Alternatively, it is respectfully prayed that the Honorable Income Tax Appellate Tribunal may restore the matter back to the Honorable Commissioner of Income Tax (Appeals) for fresh adjudication on merits after providing adequate opportunity of being heard to the appellant in accordance with the principles of natural justice and statutory provisions.

The CIT(A) failed to exercise judicial discretion properly and violated principles of natural justice by not granting reasonable adjournments or considering the appellant's circumstances for non-appearance.

GROUND NO. 2: FACTUAL ERROR IN EXTRAPOLATION METHODOLOGY

2.1 The learned CIT(A) erred in law and on facts in confirming the addition of Rs.2,32, 13,970/- being 16% of extrapolated gross on-money receipts of Rs. 14,50,87,308/- for redevelopment projects. The extrapolation was based on limited evidence found during search operations and cannot be applied to estimate income for the entire assessment year without concrete evidence.

2.2 The learned CIT(A) failed to appreciate that the actual on-money found during search proceedings was only Rs.2,32,13,970/-/- as per impounded documents. and the extrapolation to Rs. 14,50,87,308/- was purely presumptive and not based on any concrete evidence.

2.3 The addition was made without considering the detailed submissions made by the appellant during assessment proceedings, thereby violating principles of natural justice.

GROUND 3: INCORRECT PROFIT ESTIMATION RATE

3.1 The learned CIT(A) erred in confirming the profit estimation at 16% for redevelopment projects when the reasonable profit margin in the real estate development sector typically ranges between 5-6%, as is evident from industry practices and comparable assessments.

3.2 The profit margins in redevelopment projects typically range between 5-6% of gross receipts due to high land costs, construction expenses, approvals, and regulatory compliance costs, which the CIT(A) failed to consider.

3.3 The comparison with Oberoi Realty Ltd. was wholly inappropriate and misconceived as:

- Oberoi Realty operates in premium segments with higher margins
- The comparison was not like-to-like in terms of project types and customer segments
- No adjustment was made for different business models and operational scales
- The profit percentage shown includes gains from land appreciation and premium projects

3.4 The order fails to consider the specific nature of redevelopment projects which typically have lower profit margins compared to fresh development projects due to additional complexities and costs involved.

GROUND 4: TIMING OF INCOME RECOGNITION ERROR

4.1 Percentage Completion Method Not Considered

The learned CIT(A) erred in not accepting the appellant's consistent accounting practice of following percentage completion method for revenue recognition, which is a well-established accounting principle under AS-7 (Construction Contracts).

4.2 The addition violates the fundamental principle that income should be taxed only when it accrues, and not when it is merely received as advance against future obligations

4.3 Income should be computed based on percentage completion method as consistently followed by the appellant.

Ground 5. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Honorable Members to decide this appeal according to law.”

ITA No.7642/Mum/2025

GROUND NO. 1: LEGAL ERROR IN DISMISSING APPEAL EX-PARTE

1.1 The learned CIT(A) has erred in law and facts by dismissing the appeal ex parte without providing adequate opportunity of being heard and without

considering the written submissions and documentary evidence that could have been provided if proper notice and reasonable time was granted.

Alternatively, it is respectfully prayed that the Honorable Income Tax Appellate Tribunal may restore the matter back to the Honorable Commissioner of Income Tax (Appeals) for fresh adjudication on merits after providing adequate opportunity of being heard to the appellant in accordance with the principles of natural justice and statutory provisions.

The CIT(A) failed to exercise judicial discretion properly and violated principles of natural justice by not granting reasonable adjournments or considering the appellant's circumstances for non-appearance

GROUND NO. 2: FACTUAL ERROR IN EXTRAPOLATION METHODOLOGY

2.1 The learned CIT(A) erred in law and on facts in confirming the addition of Rs.1,06,32,896/- being 16% of extrapolated gross on-money receipts of Rs.6.64,55,599/- for redevelopment projects. The extrapolation was based on limited evidence found during search operations and cannot be applied to estimate income for the entire assessment year without concrete evidence.

2.2 The learned CIT(A) failed to appreciate that the actual on-money found during search proceedings was only Rs.1,17,11,000/- as per impounded documents, and the extrapolation to Rs.6,64,55,599/- was purely presumptive and not based on any concrete evidence.

2.3 The addition was made without considering the detailed submissions made by the appellant during assessment proceedings, thereby violating principles of natural justice.

GROUND 3: INCORRECT PROFIT ESTIMATION RATE

3.1 The learned CIT(A) erred in confirming the profit estimation at 16% for redevelopment projects when the reasonable profit margin in the real estate development sector typically ranges between 5-6%, as is evident from industry practices and comparable assessments.

3.2 The profit margins in redevelopment projects typically range between 5-6% of gross receipts due to high land costs, construction expenses, approvals, and regulatory compliance costs, which the CIT(A) failed to consider.

3.3 The comparison with Oberoi Realty Ltd. was wholly inappropriate and misconceived as:

- *Oberoi Realty operates in premium segments with higher margins*
- *The comparison was not like-to-like in terms of project types and customer segments*
- *No adjustment was made for different business models and operational Scales*

- *The profit percentage shown includes gains from land appreciation and premium projects*

3.4 The order fails to consider the specific nature of redevelopment projects which typically have lower profit margins compared to fresh development projects due to additional complexities and costs involved.

GROUND 4: TIMING OF INCOME RECOGNITION ERROR

4.1 Percentage Completion Method Not Considered The learned CIT(A) erred in not accepting the appellant's consistent accounting practice of following percentage completion method for revenue recognition, which is a well-established accounting principle under AS-7 (Construction Contracts).

4.2 The addition violates the fundamental principle that income should be taxed only when it accrues, and not when it is merely received as advance against future obligations

4.3 Income should be computed based on percentage completion method as consistently followed by the appellant.

Ground 5. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Honorable Members to decide this appeal according to law.

ITA No.7643/Mum/2025

1) The order passed by the learned CIT(A) dated 26/09/2024 is bad in law, bad in facts, and contrary to the principles of natural justice.

2) The learned CIT(A) has erred in sustaining disallowance of 13,55,696/- under Section 40(a) (ia) of the Income Tax Act, 1961. Date: 23.07.2025 Place: Mumbai

3) Alternatively, it is respectfully prayed that the Honorable Income Tax Appellate Tribunal may restore the matter back to the Honorable Commissioner of Income Tax (Appeals) for fresh adjudication on merits after providing adequate opportunity of being heard to the appellant in accordance with the principles of natural justice and statutory provisions.

4) The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Honorable Members to decide this appeal according to law.

3. At the outset, it is noted that there is a delay of 387 days in filing all the three present appeals before the Tribunal. We have considered the petition for condonation of the said delay. Upon perusal of the same

and hearing both sides, we deem it fit to condone the delay on the ground that there was sufficient cause for the said delay. Accordingly, we condone the delay to take up the matter for adjudication.

4. Ld. Counsel for the assessee submitted for withdrawal of appeal for AY 2018-19 in ITA No.7643/Mum/2025. Accordingly, the said appeal is dismissed as withdrawn.

5. In respect of the other two appeals for AY 2016-17 and 2017-18, ld. Counsel at the outset submitted that the first appellate order has been passed *ex parte* without giving reasonable opportunity of being heard to the assessee to make an effective representation on the grounds raised therein. Assessee could not make its effective representation owing to notices for hearing sent to email ID of Accountant of the assessee which remained to be communicated for appropriate actions. Ld. Counsel thus, prayed for remitting these two appeals back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds raised therein by giving an assurance that assessee would comply with the appellate proceedings by making all the submission for its effective disposal. However, ld. Sr. DR objected on the same.

6. Before considering the prayer of the ld. Counsel, factual position in respect of the issues involved in these appeals are taken note of. Briefly stated, facts are that assessee books its sales on percentage completion basis. Also, assessee receives advances/booking money, which are fully accounted for in its regular books of account and are offered to tax as and when the income accrues. However, in the reassessment proceedings, assessee inadvertently submitted the

method of accounting as project completion method. Further, buyers when booking flats and entering into agreement, negotiates for the price and therefore the flats are booked at different agreement value. It is noted that ld. AO on the basis of presumption and assumption has estimated the on-money of Rs.14,50,87,308/- using extrapolation though the impounded material revealed amount of Rs. 13,07,41,900/- only. Similarly, ld. Assessing Officer assumed profit ratio at 16% for redevelopment projects without substantiating. Assessee has also submitted that the amount received for sale of flat where no percentage of sale is booked is in the nature of advance and therefore, the same cannot be taxed in the year under consideration.

6.1. Stance of ld. CIT(A) while sustaining the additions is that assessee has not furnished any particulars including return of income, Tax Audit Report, submissions made before the AO, etc., despite specifically being called for. According to him, in situations like this, where the contentions of the assessee are not verifiable, certain guess work as to amount of disallowance / addition has to be necessarily arrived at.

6.2. Having heard both the parties and taking into consideration the orders of the authorities below as noted in the above paragraphs, in the interest of justice and fair play, we find it appropriate to consider the prayer made by the ld. Counsel and accordingly remit the appeals for the two assessment years, back to the file of ld. CIT(A) for *de novo* meritorious adjudication on the grounds raised therein. The observations made by the authorities below need meritorious consideration with corroborative evidences before any adverse view is taken against the assessee. Needless to say, assessee be given reasonable opportunity of being heard and make its submissions, as

deem fit. We also direct the assessee to be diligent in attending the hearing proceedings and not to seek adjournments unless warranted by compelling reasons so as to expedite the disposal. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

8. In the result, appeals of the assessee in ITA Nos. 7641 and 7642/Mum/2025 are allowed for statistical purposes. Appeal in ITA No. 7643/Mum/2025 is dismissed as withdrawn.

Order is pronounced in the open court on 09 February, 2026

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09 February, 2026

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai