

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
AND  
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 7260/Mum/2025  
Assessment Year : 2017-18

Dimple Realtors Private Limited, Unit No. 210, Wing B, Western Edge II, Borivali East, Mumbai-400066. PAN : AAACD4136F	vs.	Deputy Commissioner of Income Tax, Circle-4(2)(1), Aayakar Bhavan, Marine Lines, Mumbai-400020.
(Appellant)		(Respondent)

For Assessee :	Shri J.P. Bairagra & Ms. Rupa Nanda
For Revenue :	Shri Annavarani Kosuri

Date of Hearing :	21-01-2026
Date of Pronouncement :	16-02-2026

**ORDER**

**PER VIKRAM SINGH YADAV, A.M :**

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 18-09-2025, pertaining to Assessment Year (AY) 2017-18.

2. Briefly, the facts of the case are that the assessee is a Private Limited company, engaged in the business of real estate and construction. For the year under consideration, the assessee filed its return of income on 16-10-

2017, declaring total income at Rs. 45,39,359/- under the normal provisions and book profits u/s. 115JB of the Income Tax Act, 1961 ('the Act') at Rs. 72,45,613/-. The case of the assessee was selected for complete scrutiny and notices u/s. 143(2) and 142(1) of the Act were issued. In response to the same, the assessee-company filed its submissions. Not satisfied with the explanation submitted by the assessee, the AO has finalized the assessment u/s. 143(3) of the Act, vide order dt. 28-12-2019, by making the following additions/disallowances:

Addition of flat booking income	-	Rs. 2,89,81,931/-
Addition on account of income from sale of TDR	-	Rs.3,41,36,311/-
Disallowance of excess interest u/s. 40A(2)(b) of the Act	-	Rs. 39,39,232/-
Partial disallowance of brokerage	-	Rs. 21,15,156/-

3. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since dismissed the assessee's appeal and against the said order, the assessee is in appeal before us.

4. Regarding first ground of appeal, wherein the AO has made an addition of Rs. 2,89,81,931/- towards flat booking income which has been confirmed by the Ld.CIT(A), the Ld.AR submitted that the assessee-company which is in the business of construction for the last many years was carrying out a project, namely, Project ASPIRE during the year under consideration wherein the company has offered income on an estimated basis @10% of the advance amount received. It was submitted that the same is consistently adopted by the assessee-company and which has been accepted in the earlier assessment years and there is no dispute

regarding the same. It was submitted that the income so declared was added to the work-in-progress and thereafter, other administrative expenses and indirect expenses are deducted and the Profit & Loss Account for the year has been arrived at. It was submitted that the assessee received an amount of Rs. 28,98,19,309/- till 31-03-2017 and out of that, 10% has to be booked as income at Rs. 2,89,81,931/- and out of that, Rs. 15,37,928/- has already been offered in AY. 2015-16 and Rs. 1,25,31,677/- offered in AY. 2016-17 and the remaining amount of Rs. 1,49,12,326/- has been offered during the year under consideration and in this regard, our reference was drawn to the financial statements for the year under consideration. It was submitted that the AO added the entire amount of Rs. 2,89,81,931/- without considering the fact that Rs. 15,37,928/- has already been offered in AY. 2015-16 and Rs. 1,25,31,677/- already offered to tax in AY. 2016-17 and which has been accepted in the assessment proceedings for AY. 2015-16 and 2016-17.

5. The Ld.DR has been heard, who has drawn our reference to the findings of the AO, wherein the AO has referred to the assessee's Profit & Loss Account, wherein it was noted that the assessee has offered only interest income, rental income, share of profit from partnership firm and miscellaneous income and the construction income has not been offered in the Profit & Loss Account of the assessee-company, which has rightly been confirmed by the Ld.CIT(A).

6. In his rejoinder, the Ld.AR submitted that though the assessee has not shown the construction income as separate item in the Profit & Loss Account, however, the same form part of closing work-in-progress as reflected in the financial statements and details thereof were duly submitted to the AO vide submissions dt. 16-12-2019 and 27-12-2019,

which has not been properly considered and appreciated by the AO. It was further submitted that the assessee also brought the said fact to the attention of the Ld.CIT(A) vide its submissions dt. 02-02-2021, 15-02-2021 and 12-10-2023.

7. Regarding second ground of appeal and addition of Rs. 3,41,36,311/- in respect of sale of TDR, the Ld.AR submitted that no sale of TDR from the project named CTS 1426/8 has happened during the current financial year 2016-17 and the sale was in fact done during the subsequent financial year 2017-18 for a sum of Rs. 8,01,00,000/-, which has been duly offered to tax in the return of income filed for the AY. 2018-19. It was further submitted that the AO has not even issued a show cause in this regard and has made the addition. It was further submitted that the assessee has filed the necessary documents in terms of the agreement for sale of TDR executed on 02-03-2018, copy of TDR of CTS 1426/8, ledger copy of Selva Associates to whom the TDR was sold and payment received, however, the Ld.CIT(A) has not considered the same and has summarily confirmed the findings of the AO.

8. Regarding the disallowance of interest paid u/s. 40A(2)(b) of the Act, the Ld.AR submitted that during the year under consideration, the assessee paid interest to its shareholders and Directors on loans borrowed from them. The rate of interest paid on loans from Mr. Nitin Patel and Mr. Nitin Patel (HUF) was 10% per annum, whereas interest paid to Ms. Urvashi Patel was 16.50% per annum. It was submitted that Mr. Nitin Patel and Mr. Nitin Patel (HUF) advanced loans out of their own funds, while Ms. Urvashi Patel had borrowed funds from third parties and advanced the same to the assessee company. The rate at which Ms. Urvashi Patel had borrowed such funds was 15% per annum which was advanced @16.5% to

the assessee company. Loan confirmations were also duly submitted. It was also submitted that this fact was also verified by the AO, as the case of Ms. Urvashi Patel for AY 2017-18 was assessed u/s. 143(3) of the Act. It was further submitted that the prevailing market rate for unsecured loans from banks or financial institutions ranges between 12% to 18% per annum. The loan obtained from Ms. Urvashi Patel was unsecured, and therefore the interest rate of 16.50% per annum was commercially justified, as it had to cover the interest liability payable by Ms. Urvashi Patel to her lenders and stated that Interest income & expenses working and Balance sheet of Ms. Urvashi Patel for the AY.2017-18 were also submitted. It was further submitted that in FY. 2015-16 (relevant to AY. 2016-17), due to adverse financial conditions of the assessee company, interest paid to Ms. Urvashi Patel and other two Director was restricted to 5% per annum. This fact was also examined and accepted by the AO while completing the assessment of Ms. Urvashi Patel for AY. 2016-17 u/s.143(3) of the Act and submitted that subsequently, considering the improvement in the financial position of the assessee company, the rate of interest was mutually revised to 16.50% per annum. It was submitted that despite the above facts and commercial rationale, the AO arbitrarily disallowed Rs.39,39,232/-, treating 6.5% of the interest paid to Ms. Urvashi Patel as excessive, without bringing any comparable instance or material on record to establish that the interest paid was unreasonable or excessive in terms of section 40A(2)(b) of the Act. This proves that disallowance interest expenses have been made without considering the fact that Urvashi Patel has borrowed funds @15% per annum and advance them @16.5% to the assessee-company.

9. Per contra, the Ld.DR relied on the findings of the AO as well as that of the Ld.CIT(A). It was submitted that for two shareholders, the assessee

itself paid only 10% interest which represent the bench-mark rate and no cogent reason has been given on the another shareholder from the same family group who was paid at an excessive rate of 16.5%. The plea that Ms. Urvashi Patel herself borrowed funds at 15% is not substantiated by any documentary evidence on record and the AO compared the rates within the same assessee-company and disallowed only the differential portion, which is fair and rational approach and acceptance of interest income in the hands of Ms. Urvashi Patel does not preclude disallowance in the payer's case.

10. Regarding the claim of brokerage expenses of Rs. 42,30,311/-, the Ld.AR submitted that during the AY. 2017-18, brokerage of Rs.42,30,311/- was paid, comprising brokerage on sale of flats and shops in Project ASPIRE of Rs.42,18,770/-and brokerage on purchase of steel of Rs. 11,541/-. Brokerage rates ranged from 1% to 3% on flats, up to 4.5% on shops, and 0.5% on steel purchases, which are prevailing market norms. In a prolonged slowdown in the real estate market, higher brokerage is often commercially necessary to incentivize sales through brokers. It was also submitted that a detailed brokerage statement containing names, PANs, brokerage rates, sale values, and TDS details, along with ledger accounts, was duly filed during assessment proceedings. Brokerage invoices for purchases, along with corresponding purchase bills containing broker details, were also submitted. It was further submitted that brokerage invoices for sale of flats/shops, along with the respective Index II documents, clearly evidencing the agreement value and brokerage percentage, were filed during assessment proceedings. It was submitted that the finding of the AO that no supporting documents, agreements, basis of brokerage, or values of flats were furnished is factually incorrect and contrary to the records available on the income-tax portal, where all

documents were filed in response to show cause notice dated 25-12-2019 and it was submitted that the AO had ignored these basic details and documents filed vide letter dated 27-12-2019 and submitted that this proves that both the AO and the Ld. CIT(A) had given the finding on brokerage paid, without considering the submission filed during assessment proceeding.

11. Per contra, the Ld. DR relied on the findings of the AO as well as that of the Ld.CIT(A) and it was submitted that the assessee has failed to establish the nexus between the claimed brokerage and the actual sales. While some bills have been filed, crucial details such as agreements, basis of calculation and linkage with sales were absent, which has resulted in AO making a disallowance of 50% of the commission expenses, which is reasonable in absence of reliable and conclusive evidence.

12. We have heard the rival contentions and perused the material available on record. Regarding addition of Rs 2,89,81,931/- towards income from project Aspire, it is the claim of the assessee that the same already stood offered in earlier years and in the year under consideration as part of disclosure under the head "work-in-progress" in the profit/loss account forming part of the audited financial statements and therefore, the same cannot be brought to tax again. Regarding income from sale of TDR from the project CTS 1426/8, it is the claim of the assessee that no such sale has taken place during the year and the sale has happened during the subsequent financial year and income amounting to Rs 8,01,00,000/- already stood offered and disclosed in its return of income for assessment year 2018-19 and therefore, the same cannot be brought to tax in the impugned assessment year and necessary documentation has been claimed to be available on record. We therefore find that in respect of each

of the matters under consideration, it is the claim of the assessee that though the income has been offered in year under consideration or in the subsequent year and necessary documentation has been placed on record, the same have not been considered and appreciated by the AO and the Ld. CIT(A). Regarding interest payment to directors, the Ld.AR has drawn distinction in terms of lenders lending from own funds and lending from borrowed funds resulting in higher interest payout by the assessee in the latter case. Regarding payment of brokerage expenses, it is again the claim of the assessee that necessary documentation has been submitted which has not been considered and appreciated by the AO and by the Ld.CIT(A). In light of the same, we have a situation where necessary documentation has been claimed to be available on record, however, there is no specific finding recorded by either of the authorities accepting or rebutting the documentation placed on record. We therefore deem it appropriate to set aside the matter to the file of the AO to examine the matter afresh as per law after providing reasonable opportunity to the assessee.

13. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16-02-2026

Sd/-  
[MS. KAVITHA RAJAGOPAL]  
JUDICIAL MEMBER

Sd/-  
[VIKRAM SINGH YADAV]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 16-02-2026

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai