

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 4043, 4044, 4045 and 4064/MUM/2025
Assessment Years: 2019-20, 2021-22, 2020-21 and 2022-23**

Overseas Infrastructure Alliance(India) Private Limited 501-502,OIA House 470, Cardinal Gracias Road, Andheri (E), Mumbai - 400099 (PAN: AABCS5629R)	Vs.	ACIT Central Circle 6(2) Mumbai
(assessee)		(Respondent)

**ITA Nos. 3995, 3996, 4321, 4090, 3998, 4319, 4320 and
4318/MUM/2025
Assessment Years: 2011-12, 2015-16, 2016-17, 2017-18, 2019-20,
2020-21 and 2022-23**

ACIT Central Circle 6(2) Mumbai	Vs.	Overseas Infrastructure Alliance(India) Private Limited 501-502,OIA House 470, Cardinal Gracias Road, Andheri (E), Mumbai - 400099 (PAN: AABCS5629R)
(assessee)		(Respondent)

Present for:

Assessee : Shri Harsh Kothari and
Shri Ronak Vasavada, CAs

Revenue : Shri R. A. Dhyani, CIT DR and
Shri Virabhadra S. Mahajan, Sr. DR

Date of Hearing : 24.11.2025

Date of Pronouncement : 20.02.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

All these 12 appeals filed by both, assessee and Revenue comprising of 8 Assessment Years are against the orders of Ld. CIT(A)-54, Mumbai passed against the assessment orders by ACIT/DCIT, Mumbai/ NFAC, Delhi. Consolidated details of these appeals are tabulated below:

Sr. No.	ITA No.	Order of CIT(A)		Assessment order			Assessment year	Appeal by
		No.	Date	Passed by	Date	Passed u/s.		
1.	4043/Mum/2025	ITBA/APL/S/250/2025-26/1075583600(1)	10.04.2025	ACIT, CC 6(2), Mumbai	31.03.2024	143(3) r.w.s. 147	2019-20	Assessee
2.	4044/Mum/2025	ITBA/APL/S/250/2025-26/1075583701(1)	10.04.2025	ACIT, CC 6(2), Mumbai	30.03.2024	143(3) r.w.s. 147	2021-22	Assessee
3.	4045/Mum/2025	ITBA/APL/S/250/2025-26/1075612447(1)	14.04.2025	ACIT, CC 6(2), Mumbai	30.03.2024	143(3) r.w.s. 147	2020-21	Assessee
4.	4064/Mum/2025	ITBA/APL/S/250/2025-26/1075612487(1)	14.04.2025	DCIT, CC 6(2), Mumbai	30.03.2024	143(3) r.w.s. 147	2022-23	Assessee
5.	3995/Mum/2025	ITBA/APL/S/250/2024-25/1074770002(1)	20.03.2025	ACIT-10(3)(1), Mumbai.	31.12.2016	143(3) r.w.s. 147	2011-12	Revenue
6.	3996/Mum/2025	ITBA/APL/S/250/2025-26/1075447597(1)	03.04.2025	NFAC, Delhi	29.03.2022	147 r.w.s. 144B	2015-16	Revenue
7.	4321/Mum/2025	ITBA/APL/S/250/2025-26/1075403964(1)	01.04.2025	NFAC, Delhi	29.03.2022	143(3) r.w.s.147	2016- 17	Revenue
8.	4090/Mum/2025	ITBA/APL/S/250/2024-25/1075024609(1)	25.03.2025	ACIT-10(3)(1), Mumbai	30.12.2017	143(3)	2015-16	Revenue
9.	3998/Mum/2025	ITBA/APL/S/250/2024-25/1075024868(1)	25.03.2025	ACIT -10(3)(1), Mumbai	30.12.2017	143(3)	2015-16	Revenue
10.	4319/Mum/2025	ITBA/APL/S/250/2025-26/1075583600(1)	10.04.2025	ACIT CC -6(2), Mumbai	31.03.2024	143(3) r.w.s 147	2019-20	Revenue
11.	4320/Mum/2025	ITBA/APL/S/250/2025-26/1075612447(1)	14.04.2025	ACIT CC -6(2), Mumbai	30.03.2024	143(3) r.w.s 147	2020-21	Revenue
12.	4318/Mum/2025	ITBA/APL/S/250/2025-26/1075612487(1)	14.04.2025	DCIT, CC-6(2), Mumbai	30.03.2024	143(3)	2022-23	Revenue

2. There being commonality in the grounds raised in the appeals filed both by assessee and Revenue, we find it appropriate to take up all the appeals together for adjudication by passing this consolidated order. Since, similar issues are arising in several years, before dealing with each of the issues, reference is made in a tabular form to the ground nos. where the said issue is arising in all the concerned assessment years.

2.1. Facts and submission for each issue is taken from the first year in which the respective issue arose for the sake of brevity and avoiding duplicity. Our observations and findings on each of the issue arrived at for the first year shall apply *mutatis mutandis* in respect of other years wherever applicable except when there is variation on fact or applicable law, for which specific observation and finding is given for that specific year. For this, tabulation is done below, on each of the issue, spread over their respective assessment years, where the grounds have been raised on that issue and presented while dealing with each of the said issue. We have heard both the parties extensively on the issues comprised in this bunch of appeals for which each of them has placed on record their submissions. Assessee has also placed on record its paper books to corroborate its submissions. Material placed on record by both the parties has been perused including the orders of the authorities below. From the written submissions of the revenue, it is noted that these summarise and reiterates the observations and findings of the authorities below.

Assessment years	2011-12	2015-16	2016-17		2017-18	2019-20		2020-21		2021-22	2022-23	
ITA Nos.	3995/M/2025	3996/M/2025	4090/M/2025	4321/M/2025	3998/M/2025	4319/M/2025	4043/M/2025	4320/M/2025	4045/M/2025	4044/M/2025	4318/M/2025	4064/M/2025
Appeal by Department(D)/ Assessee(A)	D	D	D u/s. 143(3)	D u/s. 147	D	D	A	D	A	A	D	A
	A	B	C	D	E	F	G	H	I	J	K	L
Sr.No.	Issues/Grounds											
1.	Reopening u/s. 147 validity											
2.	Derivative loss is a business loss and not speculative											
3.	Disallowance of legal & professional fees											
4.	Disallowance of Dep. On Delhi Guest House											
5.	Disallowance of Dep. On KK Square office bldg.											
6.	Addition of deemed rent											
7.	Disallowance of office and adm expenditure of Delhi Guest House											
8.	Disallowance of electricity expenditure of Delhi Guest House											
9.	Deduction u/s.80G in respect of payments towards CSR obligations											
10.	Disallowance of interest-no direct nexus											
11.	Deduction of provision for expenditure u/s. 37(1)-contingent											
12.	Unclaimed u/s. liabilities u/s. 41(1)											
13.	Disallowance u/s.37(1)-absence of 3 rd party evidence											
14.	Addition u/s. 69C											
15.	Disallowance of STCL on depreciable asset 5% on bldg. used for office											
16.	Adhoc 30% disallowance from reimbursement of expenditure to director											
17.	Unexplained cash loan recd from Paresh Shah u/s. 69A											
18.	Adjustment in 143(1) for treatment of contingent liability											
19.	Payment in Ethiopia based on WhatsApp chat u/s. 69C											
20.	Payment to Manoj Patel based on WhatsApp chat u/s.69C											
21.	Payment to Ramesh Chand Garg and Sanjay Agarwal based on rough dumb jotting u/s.69C											
22.	Maintenance of Jorbagh property u/s.37(1)											
23.	Addition u/s. 69A based on statement on account of difference between declared profit and amount admitted in the statement											
24.	Payment to Anil Negi in Ethiopia based on WhatsApp chat u/s. 69C											

2.2. Brief facts of the case are that assessee is engaged in the business of project development and management offering end-to-end solutions in infrastructure projects in India and overseas countries. We take up the appeals for each of the assessment year, in their chronological order, both by the assessee and the Revenue, as the case may be.

A. Assessment Year 2011-12

3. In appeal for Assessment Year 2011-12, Revenue is in appeal against both the legal as well as merit of the case for which ld. CIT(A) granted relief to the assessee. On the legal issue relating to validity of reopening u/s. 147, it has been upheld by ld. CIT(A) to be bad in law, since it tantamount to ld. Assessing Officer resorting to change of opinion for the purpose of making reassessment u/s. 147. On the merits of the case, derivative loss has been held to be a business loss as against view taken by the ld. Assessing Officer treating it as speculative loss for which set-off was not allowed. Ground no.1 in the present appeal before us deals with the legal issue and ground no.2 to 6, all taken together, relate to the merits of the case.

3.1. Brief facts of the case are that assessee filed its return of income for Assessment Year 2011-12 on 28.09.2011, reporting a total loss at Rs.24,58,03,716/-. An order u/s. 143(3) was passed assessing total income at Rs.24,65,00,780/-. On perusal of the assessment records, ld. Assessing Officer found that assessee entered into Future and Option (F&O) derivative transactions through recognized stock exchange and claimed loss of Rs.6,87,08,693/-. Assessee also booked gain of Rs.21,19,78,612/- and loss of Rs.6,87,08,963/- was set off against the Foreign Exchange gain. According to the ld. Assessing Officer, loss incurred in derivative based stock and shares were speculative loss as

per section 73 of the Act. Ld. Assessing Officer recorded the reasons for reopening of the assessment and issued notice u/s.148 on 29.03.2016. Statutory compliances of filing return, supplying copy of reasons recorded, filing of objections thereon and disposal of the objections so raised were all met. After considering the submission filed by the assessee in the course of reassessment proceedings, ld. Assessing Officer passed the order, assessing total income at Rs.31,52,09,739/- and book profit at Rs.27,39,62,385/-

3.2. Contention of the assessee is that during the year under consideration it has incurred loss of Rs. 6,87,08,694/- from future and options share transactions through recognized stock exchange which was duly shown as income under the head 'Miscellaneous Income' credited to Profit & Loss account along with the gain earned on foreign exchange amounting to Rs. 21,19,78,612/-. The issue under consideration i.e. loss incurred on sale of derivatives has already been discussed in detail during the original assessment proceedings. Ld. Assessing Officer after being satisfied by the submissions of the assessee completed the assessment without making any addition on this ground. Assessee, in the course of original assessment proceedings had filed its first reply in this regard on 22.03.2013, giving detailed breakup of miscellaneous income credited to Profit and Loss account which includes complete details and documents relating to loss on sale of securities. Ld. Assessing Officer also vide his questionnaire dated 30.07.2013 raised specific query on the losses incurred on sale of future and options derivatives. Query of ld. Assessing Officer is reproduced as under:-

“22. Other Income credited to the Profit & Loss account, inter alia, includes loss on sale of securities of Rs.6,87,08,964/-. Under the provisions of the I.T. Act, this loss is not allowed to be set off against any other income and should therefore have been carried forward. Explain why the same has not been done. Also explain why interest on FDR and bank interest should not be chargeable to tax under the head ‘Income from other sources’.”

3.3. In response to the same, the assessee filed detailed reply on 22.08.2013. Reply of the assessee is reproduced below for ready reference:

“In this regard we would like to bring to your kind notice the loss on sale of securities of Rs. 6,87,08,964/- incurred on speculative transaction, wholly related to future & Option contracts covered u/s 43(5) of the Income Tax Act, 1961 and being business loss it is allowable to be set off and we have correctly done so.

(ii) The fixed deposits and interest thereon are business assets and have been accordingly disclosed under the respective heads.

Copy of our reply is enclosed as per Annexure-3 for your kind consideration

2.4 Later on, the Ld. Assessing Officer has further raised a specific query on the issue under consideration. In response to which the assessee Company has filed a reply vide letter dated 18.11.2013, copy of which is enclosed as per annexure-4. Reply of the assessee Company is reproduced for your kind consideration :

“We have gained Rs. 21,19,78,612/- under the head Gain/Loss on Foreign exchange account and have lost Rs.6,87,08,963/-under the head Profit/Loss on F&O transactions. Both these heads have been shown under the head other incomes as net figure of Rs. 14,32,69,649/- The details of loss on F & O transactions and Gain/loss on foreign exchange are already on your record. We have also brought some of the contract notes of the transactions for your kind verification and if so desired for your kind records.”

3.4. Thus, it is evident that the issue which formed the basis for impugned reopening has specifically been discussed and adjudged at length during the original assessment proceedings. Ld. Assessing Officer at the time of assessment was fully satisfied with the reply and claim of the assessee. It is only after completion of the assessment that Ld. Assessing Officer changed his opinion and issued reopening notice without having any fresh material in hand. Accordingly, it was submitted that since there has been no fresh material in hand on the basis of which the Ld. Assessing Officer have reopened the assessment

u/s 148 of the Act, but merely to review the original assessment order passed by his own office. Therefore, the same is invalid in the eyes of law.

3.5. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India 320 ITR 521, where it held that-

“Though the power to reopen under the amended s. 147 is much wider, one needs to give a schematic interpretation to the words “reason to believe” failing which s. 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of “mere change of opinion”, which cannot be per se reason to re-open. One must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re- assessment has to be based on fulfillment of certain pre-condition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of re- opening the assessment, review would take place. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1.4.1989, the Assessing Officer has power to re-open, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. This is supported by Circular No.549 dated 31.10.1989 which clarified that the words “reason to believe” did not mean a change of opinion”

3.6. Before the ld. CIT(A), assessee submitted that ld. Assessing Officer while passing the impugned reassessment order has incorrectly used the word ‘commodities’ in place of ‘future and options’. Assessee also while raising the grounds of appeal has inadvertently used the word ‘commodities’. According to the assessee the word ‘commodities’ is to be read as ‘future and options’.

3.7. It is noted that ld. Assessing Officer has reopened the assessment proceedings u/s 148 of the Act by invoking the provisions given in Explanation to section 73 which prohibits set-off of losses of speculation business except against profits and gains of another speculation

business. The Explanation to section 73 extends the meaning of speculation business for the purposes of such set-off, by deeming any part of the business of a company which consists in the purchase and sale of shares of other companies to be a speculation business. The said explanation to section 73 is applicable only in the case where the business of company consists of trading of shares of other companies and not on dealing in futures and options. Derivatives are distinct securities, separate from shares. Transactions of purchase and sale of derivatives therefore, cannot be regarded as transactions in shares, and the provisions of explanation to section 73 would therefore, not apply to a derivatives trading business. Transactions relating to derivative trading are governed by section 43(5) of the Act.

3.8. From the order of the ld. CIT(A), we note his observation and finding on the above stated lines, holding reopening of the assessment is based on change of opinion by the ld. Assessing Officer. Relevant extract is as under:

“It is also a fact that the Hon’ble Calcutta High Court in the case of Asian Financial Services Ltd. vs. CIT (supra) has not concurred with the view taken by the Delhi High Court in the case of CIT vs. DLF Commercial Dev. Pvt. Ltd.(supra). thus, in the case of the assessee company, reopening of assessment is based on change of opinion by the Assessing Officer. The reopening of the assessment based on change of opinion is bad in law. Therefore, reopening of the assessment by issue of notice u/s.148 dated 29.03.2016 is bad in law and it is quashed.”

3.9 In the given set of facts and position of law as discussed above, we do not find any reason to interfere with the findings so arrived by ld. CIT(A). Accordingly, ground no.1 raised by the Revenue is dismissed.

3.10. On the merits of the case as contested in ground no.2 to 6, it is already noted that assessee submitted in reassessment order u/s.147 that ld. Assessing Officer has incorrectly used the word ‘commodities’

instead of 'future and options'. In addition to what is discussed above, assessee further submitted that in the Finance Bill, 2005, while introducing clause (b) in section 43(5), it also simultaneously amended sub-section (4) to section 73 so as to reduce the period of carry forward of speculation loss from 8 assessment years to 4 assessment years. Thus, both, section 43(5) and section 73 are independent sections and the meaning of derivative appearing in section 43(5) could not be applied to section 73(4) of the Act. Assessee did not trade in shares of other companies but had traded in derivatives (F&O). As per provisions of section 43(5)(d) of the Act, trading in derivatives is not a speculative business.

3.11. Ld. CIT(A) by taking into account the correct factual position as submitted by the assessee whereby it had undertaken trading in derivatives (F&O) and not commodities as understood by ld. Assessing Officer and also the provisions contained in section 43(5)(d) post amendment held that the loss incurred by the assessee from trading in derivatives is not a speculative business loss and therefore, explanation to section 73 does not apply. He thus, allowed the derivative loss to be set off against the other business income of the assessee including foreign exchange fluctuation gain. Observations and findings of ld. CIT(A) in this respect is extracts below:

“As discussed above, during the year, the assessee incurred loss of Rs.6,87,08,963/- from trading in derivatives (F&O). As per provisions of section 43(5)(d) of the Act, the trading in derivatives is not a speculative business. Further, the assessee has traded into F & O, therefore, explanation to section 73 is also not applicable. Thus, the loss arising from trading in F & O is held as business loss and not speculative loss. The loss from trading in F & o being business loss is also allowed to be set off against other business income. Thus, the Assessing Officer is directed to consider the loss from trading in derivatives as business loss and also the Assessing Officer is directed to allow set off of loss from trading in derivatives against the Foreign Exchange Fluctuation gain.”

3.12. Considering the facts on record and the legal position as discussed above, we do not find any reason to interfere with the meritorious findings arrived at by Id. CIT(A). Accordingly, ground Nos. 2 to 6 raised by the Revenue are dismissed.

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

B. Assessment Year 2015-16

4. For this year, assessee filed its return of income on 07.04.2016 reporting total income at Rs.15,99,27,870/-. Assessment u/s. 143(3) was completed with total income assessed at Rs.24,18,11,348/- after making certain additions/disallowances for which assessee went in appeal before the Id. CIT(A), whereby reliefs were granted. Against the same, Revenue is in appeal before the Tribunal.

4.1. For ground no.1, relating to disallowance of provision for legal and professional expenses, facts of the case are that during the year, assessee claimed legal and professional expenses which included SAP maintenance charges of Rs. 13,34,641/- paid to SAP India Pvt. Ltd. Ld. Assessing Officer noted that this payment was made for the period from 01.01.2015 to 31.12.2015. According to him, this expense included the expenses for 9 months pertaining to next financial year. Therefore, he disallowed proportionate legal and professional expenses amounting to Rs. 10,00,980/-. Assessee submitted that SAP maintenance charges were not an advance in nature. The software provider company raised invoice for a period of 12 months. Thus, the payment made included part of the maintenance charges related to the current year as well as, subsequent year. Assessee also submitted that the services have been taken from the vendor, therefore liability in respect of payment of

maintenance charges was allowable even under the mercantile system of the accounting. Assessee further submitted that under the Act, there is no scope for apportionment for revenue expenditure and therefore entire expenses should be allowed.

4.2. The facts remain that assessee paid SAP Maintenance Charges of Rs. 13,34,641/- to SAP India Pvt. Ltd. The invoices raised by SAP Pvt. Ltd were from 01.01.2015 to 31.12.2015. Ld. Assessing Officer considered part of the payment made as pertaining to the subsequent year. We note that the alleged payment of maintenance charges was not actually an advance in nature. Assessee had no option to pay the maintenance charges in instalments, rather it had to pay both the part of maintenance charges related to the assessment year as well as subsequent year in the year in which the bill is raised. The entire amount of maintenance charges had to be paid at a time when the invoice is raised by the software company and in the event of non-payment of entire amount, support provided by them lapses. It is also noted that payment for usage of software is not charged on the basis of time period as the time period mentioned on the invoice is only for the purpose of validity/licensing period of the software. Assessee cannot get the services of usage of software for any proportionate or fractional part of the year and the amount is not supposed to be paid on installation. Thus, question of prepaid expenses on the basis of time frame of 12 months does not arise in the case in hand. An expense has to be allowed as deduction in the year it has accrued to an assessee. The benefits of such an expense may be enjoyed by the assessee over a period which may extend beyond the relevant assessment year but the expense has to be allowed in its entirety in the year of accrual unless specifically barred by any provision of the Act.

4.3. On the above factual position, ld. CIT(A) held that proportionate disallowance made by ld. Assessing Officer in respect of legal and professional expenses is not tenable and thus he deleted the same. Considering the overall factual matrix and discussion made in the above paragraphs, we do not find any reason to interfere with the findings arrived at by ld. CIT(A). Accordingly, ground no.1 raised by the Revenue is dismissed.

4.4. Ground No.2 is on account of disallowance of depreciation for the Delhi Guest House. Facts of the case are that during the year, assessee purchased a bungalow at Delhi which was claimed to be used as its Guest House. The bungalow was purchased for value of Rs. 45.737 crores on which it claimed depreciation amounting to Rs. 2,28,68,814/. Ld. Assessing Officer disallowed the said depreciation for the reasons that assessee did not provide evidences to show that the Guest House was used for the business purpose of the assessee. On the other hand, assessee submitted that the bungalow was used by the senior management as guest house when they travelled to Delhi for business purposes. Further, for various projects carried out by the assessee in Africa and other countries, the senior management of the company visited embassies of those countries and EXIM Bank, situated at Delhi. Further, the property was situated in Jor Bagh, New Delhi where embassies of various countries were located. Thus, the bungalow was used as guest house for the business purpose of the assessee. Assessee further submitted that there were no evidences with ld. Assessing Officer to establish fact of bungalow not put to use for the business. Assessee also submitted that during the assessment proceedings, ld. Assessing Officer was provided the details of electricity expenses and

the vehicle expenses incurred for the purpose of business in relation to visit of senior management of Delhi.

4.5. Fact of the matter is that a bungalow at Jor Bagh, Delhi was purchased by the assessee during the year and it formed part of its block of assets of building, on which the depreciation was claimed by assessee. The fact of addition in the block of asset in respect of the bungalow has not been disputed by ld. Assessing Officer. Further, it is not a case of ld. Assessing Officer that the bungalow was not put to use. The only objection of ld. Assessing Officer was that the details asked by him were not provided by the assessee. Assessee had explained that it carries out infrastructure projects outside India in the countries such as Africa. For the purpose of such overseas projects, senior management regularly visited the embassies of those countries, which were located at Delhi. Instead of booking hotels and increasing extra expenditure, the bungalow so purchased was used for the purpose of guest house. Ld. Assessing Officer has not made out a case that the bungalow was used by persons other than the employees/management of assessee. Once, the asset has been acquired and put to use, it is eligible for depreciation. Even otherwise if the bungalow remained vacant, the depreciation is to be allowed as the asset formed part of block of asset.

4.6. After taking into account the detailed submissions made by the assessee in the course of first appellate proceedings, ld. CIT(A) came to the conclusion that assessee is eligible to claim depreciation on the bungalow used as guest house for the purpose of business of the assessee which formed part of the block of assets being building.

4.7. In the conspectus of the above discussion, we do not find any reason to interfere with the findings arrived at by ld. CIT(A). Accordingly, ground no.2 raised by the Revenue is dismissed.

4.8. Ground No.3 relates to disallowance of depreciation on KK Square office building of Rs.3,00,14,896/- Facts of the matter is that assessee owns certain floors in a building named 'K.K. Square' at Andheri, Mumbai which are used for the purpose of its business. These premises were purchased by the assessee in earlier years and depreciation was claimed and allowed in those earlier years. For the present year, the premises appeared as a part of the opening WDV in its block of assets. As the building was forming part of its opening WDV of its block of assets, assessee claimed depreciation thereon during the year under consideration. Ld. Assessing Officer on the basis of Inspector's report, partially disallowed the depreciation amounting to Rs. 3,00,14,896/-, by alleging that some floors (ground, first, fifth and sixth) of the said building were not used for the purpose of business.

4.9. Contention of assessee is that the floors were put to use by the assessee for the business purpose as per the finding given in earlier years and therefore, the assessee is eligible to claim depreciation on such vacant premises. Depreciation is mandatory allowance under the Act as per explanation 5 to section 32(1). Once it is established and accepted in the earlier years that the building is used for the business purposes and has entered the block of assets, depreciation has to be allowed to the assessee as per provisions of explanation 5 to section 32(1) being a mandatory allowance. Assessee further submitted that depreciation being a mandatory allowance is allowable even in the case

of temporary suspension of the business whereas in the case of the assessee, the whole premise was used solely for the business purpose.

4.10. Assessee in this regard, placed reliance on the following decisions:

- (1) CIT v. Bharat Aluminium Co. Ltd. [2010] 187 Taxman 111 (Del)
- (2) CIT v. Oswal Agro Mills Ltd. [2012] 341 ITR 467 (Del)
- (3) ACIT v. S.K. Patel Family Trust [2013] 33 taxmann.com 678 (Guj)
- (4) Swati Synthetics Ltd. v. ITO [2010] 38 SOT 208 (Mum)

4.11. Ld. CIT(A) observed that ld. Assessing Officer has never raised any doubts regarding use of building for business purpose and allowed depreciation in the earlier assessment orders considering that the building was put to use for business purposes. Therefore, following rule of consistency, depreciation on the building should be allowed. Further, depreciation is allowed on the block of assets and individual assets have no separate existence for the purposes of section 32(1). Ld. CIT(A) held that even though part of the ground floor, 1st floor, 5th floor and 6th floor remained vacant during the year, the floors were put to use by the assessee company for the business purpose and the assessee was eligible to claim depreciation. Accordingly, the disallowance of depreciation amounting of Rs.3,00,14,896/- made by ld. Assessing Officer in respect of some floors of K. K. Square Office Building was deleted.

4.12. In the light of the facts and circumstances of the case and the legal proposition put forward which remain uncontroverted, we do not find any reason to interfere with the meritorious findings arrived at by

ld. CIT(A). Accordingly, ground Nos. 3 raised by the Revenue is dismissed.

4.13. Ground No.4 is in regard to addition of deemed rent of Rs.1,42,00,032/- u/s. 23 of the Act. Ld. Assessing Officer alleged that some of the floors of KK Square Building were not being used and were lying vacant and therefore, he proceeded to apply provisions of deemed rent u/s.23 of the Act and made an addition of Rs.1,42,00,032/-u/s. 23.

4.14. Assessee, in this respect contended that all the floors, i.e., Ground Floor, first floor and sixth floor as mentioned in the assessment order is used by the assessee as business premise for the business purpose as under:

Ground Floor:- Assessee used the ground floor of the building for welfare activities and other miscellaneous usage. The premises generally used by the assessee occasionally for function as well as used by the project team of OIA and sub-contractor whenever they visit Mumbai for project discussion and detailing.

First Floor:- Assessee used the first floor of the building for the storage of records of the company. Assessee has huge and flourishing business in the earlier years and have worldwide business. Therefore it requires a large space to store the documents related to business.

Fifth and Sixth floor:- Assessee used the Fifth and Sixth floor of the K.K. Square building for staff seating purposes. Assessee had prospering business and substantial manpower in the previous years and these floors are used by the company for working staff and documents storage.

4.15. Assessee further submitted that the deeming provisions of section 22 of the Act is not applicable on the property used by the assessee for the purpose of running its business or profession. In the present case, assessee used the business premises solely for business purpose. Ld. Assessing Officers in the assessment of earlier years

(except A.Y. 2015-16) had allowed the depreciation on the impugned property at K. K. Square building, treating the same as building used for business purposes. Therefore, deeming provisions of section 22 of the Act is not applicable on the assessee's case. As per section 22, "*The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property"*".

4.16. Assessee further submitted that K.K. Square building is a commercial building and its use is verifiable with the electricity bills and municipal taxes paid by it. It also submitted that the main objects of the assessee company are execution of infrastructure projects overseas and not to earn rental income by letting out property.

4.17. Ld. CIT(A) is of the opinion that as per provisions of section 22, annual value of the property consisting of building or land appurtenant owned by the assessee, other than the property occupied for the purpose of business is chargeable as income from house property and it is a fact that the KK Square office building was used by the assessee for business purposes. Therefore, provisions of section 22 are not applicable to the facts of the case. Accordingly, consequential provisions of section 23 regarding deemed rental income from vacant premises is not applicable. Based on this finding, ld. CIT(A) deleted the addition made by ld. Assessing Officer.

4.18. In the given set of facts and position of law as discussed above which remain uncontroverted, we do not find any reason to interfere with the findings so arrived at by the Id. CIT(A). Accordingly, ground no.4 raised by the Revenue is dismissed.

4.19. Ground No.5 is in respect of disallowance of office and administrative expenses of Rs.19,49,209/-in respect of Delhi Bungalow. Ld. Assessing Officer alleged that as the bungalow at Delhi was not used for the purpose of business, the expense incurred on the bungalow and claimed as a deduction should also be treated as non-business expenditure. Ld. Assessing Officer made a 10% disallowance to the extent of Rs.19,49,209 out of the total office and administrative expenses considering it as incurred for non-business purposes.

4.20. Assessee in this regard submitted that the property at Delhi is being used for the business purpose and it has never used the said premises for the accommodation of any outsider party. Since, the assessee has used the premises solely for business purposes, expenses relating to same are allowable u/s 37 of the Income Tax Act, 1961. Further, it stated that the above addition has been made by the Ld. Assessing Officer on estimate basis without having any substantial evidence in hand regarding the incurrance of expenses. As per assessee, Id. Assessing Officer has not brought on record any cogent basis as to why the office and administrative expenses was to be disallowed.

4.21. Ld. CIT(A) took note of the fact depreciation on the Delhi bungalow has already been held to be allowed, treating the same as being used for the purpose of its business. Thus, once the guest house

has been held to be used for business purposes, the ad-hoc disallowance of 10% of the expenditure did not survive.

4.22. In the given set of facts and position of law as discussed above with nothing brought on record to controvert the factual position, we do not find any reason to interfere with the findings so arrived at by the Id. CIT(A). Accordingly, ground no.5 raised by the Revenue is dismissed.

4.23. Ground No.6 is regarding disallowance of electricity expenses of Rs.1,72,817/- for Delhi Guest House. As the Id. Assessing Officer alleged that the Delhi guest house was not used for the purpose of business, electricity expenses of Rs.1,72,812 was disallowed by him, treating the same as non-business expenses.

4.24. Id. CIT(A) noted that once the said guest house has been held to be used for business purpose, the disallowance of electricity expenses incurred for the same is also held to have been incurred for business purposes.

4.25. In the light of the facts and circumstances of the case, we do not find any reason to interfere with the findings so arrived at by the Id. CIT(A). Accordingly, ground no.6 raised by the Revenue is dismissed.

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

C. Assessment Year 2016-17 u/s. 143(3)

5. All the six grounds raised by the Revenue in this appeal are identical to those already dealt by us in the appeal for Assessment Year 2015-16 in the above paragraphs except for variation in the quantum

of disallowance/addition made by the ld. Assessing Officer for which relief has been granted by ld. CIT(A). There being no change in the factual matrix and position of law for all the six grounds when compared with the appeal for Assessment Year 2015-16, our observations and findings therein apply *mutatis mutandis* to the appeal for this year also. Accordingly, appeal by the Revenue is dismissed.

D. Assessment Year 2016-17 u/s. 147

6. Appeal for this year arose on account of reopening of the assessment u/s. 147. Original assessment was completed u/s.143(3) by making certain disallowance and additions which we have already dealt in the above paragraphs. In the impugned reassessment proceedings, two disallowances have been made, one relating to claim of deduction u/s.80G and the other for disallowance of interest.

6.1. For the first issue relating to disallowance of deduction claimed u/s.80G of Rs.31,55,000/-, relevant fact is that assessee claimed deduction of Rs.31,55,000/- u/s. 80G being 50% of Corporate Social Responsibility Expenditure (CSR) of Rs.63,10,000/-. Assessee had debited this amount of CSR expenditure along with another amount of Rs. 2 lacs its profit and loss account. While computing the total income, it added back the same and claimed deduction u/s.80G being eligible under the said provision. According to the ld. Assessing Officer, since the donation made by the assessee relates to CSR expenditure, it is not allowable and thus, made the addition. In the first appeal, assessee by placing its reliance on various decisions of Coordinate Bench submitted that Explanation to section 37 does not bar the assessee to claim deduction u/s. 80G for CSR expenditure which are otherwise eligible for deduction u/s.80G. It asserted that there is no specific restriction

for claiming the deduction u/s. 80G, thus disallowance so made is not tenable. There is no co-relation between sections 37(1) and 80G, principle governing what is not allowable u/s.37(1) is explained in the said section itself. Similar is the position in the provisions of section 80G where it expressly provides for what is not allowable. Section 80G falls in chapter VI-A which comes in play only after the gross total income has been computed by applying computation provisions under various heads of income. By considering the detailed submissions made by the assessee and by following the decisions of Coordinate Bench of ITAT, Id. CIT(A) allowed the claim of deduction made by the assessee u/s.80G against which Revenue is in appeal before the Tribunal.

6.2. On the given set of facts, we note that the issue before us is no longer *res integra* as dealt by long line judicial pronouncements of various Coordinate Benches of ITAT. Considering the facts on record where there is no dispute on making of donations by the assessee except that it has been made out of CSR fund, we find that there is no statutory bar in claiming the deduction u/s. 80G. Donations made by the assessee do not fall under specified exception and therefore, assessee is entitled to deduction claimed u/s. 80G. There is no embargo in claiming such expenditure as a deduction under Chapter VI-A, including section 80G, provided the conditions stipulated therein are satisfied. Contention of the Id. DR that such donations lack voluntariness solely because they form part of CSR obligation is misconceived in law. The choice of recipient of such CSR donations is always with the assessee alone. As long as the donations are made to institutions approved u/s.80G and all the requisite documentary compliances are in place, the deduction cannot be denied merely because the payment also satisfies the CSR requirement under the Companies Act. Accordingly,

we do not find any reason to interfere with the findings so arrived by ld. CIT(A) in this regard on deleting the disallowance made by the ld. Assessing Officer. Ground No.1 raised by the Revenue is dismissed.

6.3. Second ground is in respect of disallowance of interest. Contention of ld. Assessing Officer is that assessee has used its interest bearing funds for interest free advances and charged lesser interest rate. By taking this view, he made a disallowance of proportionate interest of Rs.5,81,28,099/-.

6.4. Fact of the matter is that assessee had both long term borrowings and short term borrowings, duly recorded in its books and reported in its audited financial statements. Long term borrowings amount to Rs.32.77 Crores and short term borrowings amount to Rs.21.73 Crores, totalling to Rs.54.50 Crores. Assessee had paid interest of Rs.13,36,13,692/-. In the year under consideration, assessee also had short term advances on its asset side of the balance sheet. From perusal of the audited balance sheet, it is seen that short term advances were Rs.428,92,53,560/-, out of which amount of Rs.222,43,29,673/- was advanced to contractors and suppliers. Further, amount of Rs.23,98,54,582/- is receivable from the government (service tax, VAT etc) and Rs.75,94,571/- represents security deposits given for business purposes. Advance given to others and the advance receivable in cash was of Rs. 164,18,25,065/- and Rs.17,56,49,669/-. During the year, assessee received interest of Rs.7,54,85,593/- from such advances given.

6.5. Ld. Assessing Officer without analysing the correct facts, made the disallowance of interest being difference between the interest

received and interest paid. Assessee demonstrated that the majority of the amount was given to the contractors for business purpose including security deposits, in the normal course of its business activities. These also include amounts receivable on account to service tax, VAT input, etc. which are not in the nature of loans and advances.

6.6. Ld. CIT(A) after considering the factual position as submitted by the assessee, allowed the claim made towards interest expenditure by deleting the proportionate disallowance made by ld. Assessing Officer. It is also pertinent to note that most of the loans and advances given are to unrelated parties and is not a case where amount is advanced to sister concerns as loans. In view of the above narration of facts and considering the meritorious findings of ld. CIT(A), we do not find any reason to interfere with the same. Ground no.2 raised by the Revenue is dismissed.

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

E. Assessment Year 2017-18

7. Both the grounds raised by the Revenue in this appeal are identical to those already dealt by us in the appeal for Assessment Year 2015-16 in the above paragraphs except for variation in the quantum of disallowance/addition made by the ld. Assessing Officer for which relief has been granted by ld. CIT(A). There being no change in the factual matrix and position of law for the two grounds when compared with the appeal for Assessment Year 2015-16, our observations and findings therein apply mutatis mutandis to the two grounds raised in the appeal for this year, also. Accordingly, appeal by the Revenue is dismissed.

F. Assessment Year 2019-20 [Revenue appeal]

8. We first take up appeal filed by the Revenue in ITA No.4319/Mum/2025. Ground No.1 is towards claim of deduction for provision on expenses made by the assessee with respect to engineering, procurement and construction (EPC projects), claimed u/s.37(1).

8.1. Facts of the matter are that assessee is in the business of infrastructure/construction. Assessee undertakes large scale construction projects with a time frame of around five years. To present a correct factual position in its financials, the general practice is to account for the revenue/costs on an estimate basis and provide/recognize the same at the end of the financial year. Assessee follows mercantile system of accounting. Assessee had made provision of expenses in accordance with provisions of accounting standard AS-29. Assessee tests the provision of expenses as on last day of every year to check whether the same are payable. Subsequently, if the sales/income or cost/expense not receivable or payable, the same are reversed in the books of accounts. Assessee had entered into three contracts during the year under consideration namely; Tendaho Sugar Factory, Cosmoros and Chalinze. To recognize revenue, it follows percentage completion method when a certain percentage of work is completed and to provide for expenses as and when a liability to the work done arises. As per the accounting standard governing Construction Contracts, when the result or outcome of any contract for construction can be projected, the related revenue and costs shall be recognized by taking into account the stage of completion of such contracts. In all the aforesaid projects, assessee followed same principles of accounting. Assessee recognized the revenue for the

amount of work done. Similarly, a provision for expenses incurred for the work done was also provided. Details in this respect is tabulated below:

Nature	Amount (Rs.)	Corresponding Revenue Offered
Progress Billing Provision (Tendaho Sugar Factory)	6,94,92,500	6,40,78,544
Progress Billing Provision (Comoros)	7,55,76,580	999,95,400
Progress Billing Provision (Chalinze)	15,11,53,046	19,99,90,800
Audit Fees for F.Y.2018-18	12,00,000	--
Property Tax	27,99,457	--
Foreign Exchange Recasting	17,14,61,676	--
TOTAL	47,16,83,260	--

8.2. For each of the projects for which provision was created, assessee explained the basis for creating such provision as extracted below:

“For Tendaho Sugar Factory Assessee recognized revenue of Rs. 6,40,78,544/- and created a provision for expenses incurred for the work done amounting to Rs. 6,94,92,500/-. The stage of completion pre decided by the parties was achieved in subsequent years and the Assessee has billed the client and reversed the sales. Accordingly, the provisions created during the year has also been reversed/booked. The entire provisions has been reversed/booked in subsequent two years as and when the stage of completion was achieved.

For Comoros Project the Assessee recognized the revenue amounting to Rs. 9,99,95,400/- and created a provision for expenses incurred for the work done amounting to Rs. 7,55,76,580/-. The Assessee had raised certain invoices on the client and booked sales in the books of accounts. The said invoices raised were not cleared by the client and were pending for a long period of time. As per the terms and conditions of the contract, on nonpayment of dues, the Assessee suspended the work until their payments were cleared. (Paper book page 135) The Assessee reversed the progressive sales/ costs accounted in subsequent years. The provisions for expenses debited to the profit and loss account were reversed and credited to the profit and loss account. Disallowing the same again will result in double taxation.

For Chalinze - The Assessee recognized the revenue amounting to Rs.19,99,90,800/-for the amount of work and created a provision for expenses incurred for the work done amounting to Rs. 15,11,53,046/. The contract was terminated by Chalinze despite the best efforts of the Assessee (Paper book page

no 138). On termination of the contract, sales recognized and the cost/expenses provided for in FY 2018-19 are no longer income or expense of the Assessee and the same are to be reversed in the books of accounts. The Assessee has reversed provision of Rs. 15,11,53,046/-has been reversed in subsequent years ie credited to the profit and loss account in subsequent years. Disallowing the same again will result in double taxation.”

8.3. In respect of provision for audit fees and property tax, according to assessee these are statutory provisions and are allowable deduction. For the audit fees, the same is booked/accounted in the subsequent year when the auditor raises its invoice on the assessee for the audit carried out by them. In respect of property tax, assessee holds various commercial properties and is required to deposit municipal taxes every year which is provided for in its books. In respect of foreign exchange recasting, it was submitted that assessee had taken projects overseas for which revenue is received in foreign currency. Foreign currency holdings of the assessee are re-casted on the balance sheet date in Indian rupees. This re-casting on the balance sheet date resulted into a loss for which provisions has been created. Assessee draws its financial statements in accordance with the accounting standards and report its foreign exchange fluctuations in compliance thereto. Exchange fluctuation loss is to be recognised in terms of mercantile system of accounting and is allowable deduction u/s. 37(1).

8.4. Ld. CIT(A) by taken note of the factual matrix while granting relief on the provision for expenses as tabulated above. In this regard, it is observed that assessee had offered its revenue following percentage completion method and created provision for expenses in compliance with accounting standard AS-29. The provisions so created are subsequently reversed. Ld. CIT(A) concluded that provisions are created on reasonable estimates on a scientific basis which are subsequently

reversed and those are in line with the decision of the Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India P. Ltd. [2009] 312 ITR 254 (SC) and Rotork Controls India (P) Ltd. vs. CIT(A) [2009] 314 ITR 62 (SC). Thus, ld. CIT(A) allowed the claim of assessee for the provision of expenses as tabulated above, u/s. 37(1).

8.5. Before us, the factual position remains uncontroverted since nothing cogent has been brought on record to prove otherwise. Assessee has followed scientific basis of recognising its revenue and creating provisions for its expenses under the mercantile system of accounting by applying percentage completion method for its EPC projects. In respect of provisions created for audit fees and property tax, these are expenses for which genuineness is not doubted and hence held to be allowable expenditure. For the foreign exchange fluctuation loss, on the balance sheet assessee has recognised the loss status in accordance with the accounting standard which is based on scientific method. In view of the above and considering the meritorious findings of ld. CIT(A), along with judicial precedents of Hon'ble Supreme Court (supra), we do not find any reason to interfere with the findings so arrived at by ld. CIT(A). Accordingly, ground no.1 raised by the Revenue is dismissed.

8.6. Ground No. 2 is in respect of not invoking the provisions of Section 41(1) of the Act in respect of outstanding liabilities. Assessee had entered into an agreement with Mashkour Sugar Factory Company ("Mashkour") in the year 2009, to perform works relating to supply, supervision of erection, testing and completion of factory plant and remedying of defects of the work performed for 8700 TCD sugar project. During Assessment Year 2014-15, assessee recognized revenue by crediting the profit and loss account amounting to Rs. 38,79,50,000/-.

Consequently, assessee also provided for the expenses incurred amounting to Rs. 38,33,68,650/- and debited the profit and loss account. Assessee received a letter of termination from Mashkour in AY 2018-19 according to which Government of India was not supportive of this project and was not releasing further finances. The said letter is extracted below for ready reference:

MASHKOUR
MASHKOUR SUGAR COMPANY LTD.
ARKAWEET - KHARTOUM - SUDAN



مشكور
شركة مشكور للسكر المحدودة
أركويت - الخرطوم - السودان

MSC/Admin/04/01/06/17
Date: 15/06/2017

To: Overseas Infrastructure Alliance K K Square, 470, Cardinal Gracious Road, Andheri (East),
Mumbai-400 099, India
Tel: 00912240435000
Fax: 00912228252981
Email: oa@oialliance.com

Atten: Mr. Austine Sequeira,

Dear Sir,

Sub: Notice of Termination of Contract

This notice is made regarding the contract agreement concluded between ourselves as employee and your good-selves as contractor dated 11th of October 2009. As you are certainly aware that the said contract has been long – rocking in for more than seven years without moving ahead. This protracted situation has frustrated the implementation, completion, and handing over the said contract.

Recently, our Government has realized beyond reasonable doubt, through diplomatic channels, that the GOI line of credit for Mashkour Sugar Company will not be disbursed as long as OIA is an EPC contractor. This situation tantamount to frustration of the execution of Contract Agreement of Mashkour Sugar Plant, the execution which is totally depends on the finance provided by the EXIM Bank of India at the behest of the Government of India. This situation squarely falls under section 19 titled "Force Majeure" of the general conditions of the Contract Agreement dated 11th of October 2009.

According to the contractual arrangements existing between ourselves, the occurrence of "Force Majeure" is essentially releases both parties from any obligation or liabilities when a circumstance beyond the parties control occurs, preventing the fulfillment of the contract. Such circumstance has been covered by section 15.2 (e) and section 19.2 of the General Conditions of the Contract Agreement dated 11th of October 2009.

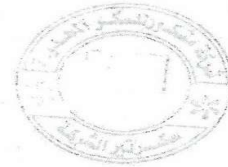
Therefore, we hereby serve you notice that our Contract Agreement dated 11th of October 2009 (and any other related contracts under it) is hereby terminated as of the date hereof, and as such OIA will no longer serve as EPC contractor under the said contract due to occurrence of Force Majeure situation, and the subsequent frustration of the Contract Agreement.

Best Regards,

Muawia Badawi Mohamed Ali
General Manager,

CC:

- State Minister of the Ministry of Finance and National Economy.
- Under Secretary Ministry of Finance and Economic Planning.
- Export Import - India Bank.
- Foreign Financing - Ministry of Finance and National Economy.



8.7. According to the assessee, it was an ambitious project for it and made efforts to resolve the issues and revive the contract. Because of its efforts, assessee did not reverse/write back the provision for expenses created by it amounting to Rs. 38,33,68,650/-. Unfortunately, a civil war broke between two major rival military groups of the Government in April 2023. Owing to condition of *force majeure*, assessee while finalizing its financials for the year ended on 31.03.2024, reversed the provision amounting to Rs. 38,33,68,650/- created for the expenses on the project and credited it to the profit and loss account of the assessee.

8.8. Assessee had another provision created in the preceding years for marketing of its projects - Marketing of ROC Project (Societe Sicas) for Rs.4,73,95,819/- and Marketing of Burkinafaso Project (Indis Batiments) for Rs.1,32,57,246/-. These provisions were created for appointment of marketing team/local agents in respective countries where the projects were undertaken to support the execution of the projects. Since the projects were not achieving desired results, the payment could not be made. As per the agreement entered with them, their charges were to be payable on receipt of project proceeds. Accordingly, assessee reversed the provisions amounting to Rs.6,06,53,065/- in AY 2024-25.

8.9. At the outset, assessee reiterated that it had reversed the provisions in AY 2024-25 which have been taxed u/s. 41(1), during the year under consideration. Therefore, invoking section 41(1)(a) and holding that the liability had ceased during the current year results in double taxation.

8.10. Ld. CIT(A) deleted the additions made u/s. 41 of the Act. With respect to the Mashkour project, ld. CIT(A) observed that the same was not treated as cessation of trading liability as the assessee was continuously negotiating with the Government of India and the Government of Sudan for revival of the project. However, after civil war broke out in Sudan in April 2023, assessee reversed the provision in AY 2024-25. Further, ld. CIT(A) stated that with respect to other provisions also, assessee wrote back these provisions in AY 2024-25. The provision did not cease during Assessment Year 2019-20 and mere fact that it was outstanding for a long time, would not mean that the liability had ceased in the current year. Thus, disallowance of provisions made of Rs.44,40,21,715/- by the ld. Assessing Officer u/s.41(1) of the Act was deleted.

8.11. We have perused the material on record and considered the submissions made by both the parties. The most clinching fact in respect of this issue is that assessee has already reversed the provisions created by it, in the subsequent year, that is in AY 2024-25, fact of which has been taken note of by ld. CIT(A) while giving relief to the assessee. This fact remains uncontroverted by bringing any cogent material by the Revenue. Also, assessee has shown this liability in its audited financial statements year after year and there is no evidence on record to demonstrate that the liability has ceased. Section 41(1) applied by the ld. Assessing Officer cannot be upheld to consider such liability as income for year under consideration without there being any remission or cessation of liability, more importantly when the liability has been reversed by the assessee in its books of accounts in the subsequent year. Accordingly, we do not find any reason to interfere

with the findings arrived at by ld. CIT(A). Ground no. 2 raised by the Revenue is dismissed.

8.12. Ground no.3 is in respect of deduction of provision for expenses u/s. 37(1). Assessee had undertaken transactions with persons who have not duly complied with TDS/GST compliances for certain expenses amounting to Rs. 55,86,073/- in its normal course of business. The said expenses mainly consisted of salary to its employees, professional fees and certain other expenses. These transactions were incurred wholly and exclusively for business purpose. Ld. Assessing Officer treated such transactions as non-genuine and disallowed the expenses u/s 37(1) of the Act. During the assessment proceedings, ld. Assessing Officer noted that assessee had entered into financial transactions with 14 parties such as Manoj Kumar, India Travel Support Pvt. Ltd., Sujan Kumar Palla, Jiben Dev, A. Vasarithakumar, Ami India Logistics Pvt. Ltd., Ramesh Sagar, Chetananand Balke Ishna Mohite, Shashank Kadam, Chandrakant Lokhmde, Shah Ariz Reyaz, Bharat Gaikwad, Venkatasubramanian Nehru, and Anna Natures Nursery. These parties did not file their GST returns or TDS returns. Therefore, ld. Assessing Officer doubted creditworthiness of the parties and genuineness of transaction, amounting to Rs.55.86,073/-. Assessee submitted the details of purchase/sales/invoices and supporting document, payments were made after TDS. Also, GST and TDS were deposited by the assessee with the Central Government. Assessee also submitted that the assessee cannot be held responsible if the parties did not file their respective tax returns.

8.13. Ld. CIT(A) took note of the factual position that the parties were employees/contractors of the assessee. These expenses were incurred

for the purpose of business and allowable as business expenditure u/s. 37(1) of the Act. According to the Id. CIT(A), if the persons to whom salary/contract fees/professional fees was paid and they did not file their tax returns, assessee cannot be penalized for the default of the parties. Disallowance of Rs. 55,86,073/- made by the Id. Assessing Officer u/s. 37(1) was deleted.

8.14. We have considered the submissions made before us and the factual position as noted in the orders of the authorities below. It is an admitted fact that the 14 parties in respect of which expenses have been claimed as business expenditure u/s.37(1) were employees or the contractors of the assessee and these expenses were incurred for the purpose of the business. Nothing cogent is brought on record to demonstrate otherwise by the Revenue. In the conspectus of the discussion above and the factual position, we do not find any reason to interfere with the findings arrived at by Id. CIT(A). Accordingly, ground no. 3 raised by the Revenue is dismissed.

8.15. Ground no.4 is in respect of disallowance/additions u/s. 69C on account of expense transactions (vendors/trade payables) with parties which were not substantiated for their genuineness and business necessity.

8.16. Facts of the matter are that during the search proceedings, enquires were from one shri Purshottam Maheshwari to produce supporting bills, vouchers of the documents in respect of transaction with 10 parties which included India Batiments, Pooja Engineering Co., Team Universal Infratech, Info Transtech India Pvt. Ltd., Super Creative Graphic Services, Voltech Manufacturing, Hero Wirelex Pvt. Ltd., Jyoti

Sugar Eng. Pvt. Ltd., Services and Material Technice and Vijay Engineering Co. In response, in the post search proceedings, he submitted invoices of 8 parties. During the assessment proceedings, ld. Assessing Officer noted that the balance outstanding amount of the expenses in respect of those parties was written off by assessee without bringing it to profit and loss account. Assessee submitted that the total amount of expenses related to these parties is Rs.11,52,56,783/- for which copies of ledger accounts, invoices and contracts with those parties were furnished. Assessee also submitted that in case of some of the parties, there were issues of recovery from debtors and it was agreed that the suppliers/creditors would receive/recover amount from the debtors. Net result being 'Nil', it did not reflect in the profit and loss account. According to the ld. Assessing Officer, claim of net effect on profit and loss account by squaring of the debtors with creditors was not substantiated with evidence. In the case of Indis Batiments, ld. Assessing Officer noted that the payment made was not reflected in the bank statement and the figure of balance amount outstanding in the ledger account and that in the bill did not match. Further, in the case of Pooja Engineering, the outstanding balance was Nil as stated by the assessee, but there was no corroborative evidence. Thus, ld. Assessing Officer noted that the transactions of these parties remained unsubstantiated, leading to addition of Rs. 18,52,23,084/-. According to the assessee, correct amount on this issue is Rs. 11,52,56,783/-. Nature of transaction undertaken by the assessee with the said parties is tabulated below.

Party Name	Nature of transaction
India Batiments	Consultant at Burkinafaso for local liasoning and helping in project execution
Pooja Engineering	Purchase of Material Like 5S Butterfly Valve for Chalinze Project Tanzania

Team Universal Infratech	For Maldives Project. It was a sub contractor on the Maldives Project
Info Transtech India (P) Ltd	Translation from French to English and back for various projects. The charges are as per the number of words
Voltech Manufacturing Co. Ltd.	Supplier for Transformer
Hero Wiretex Pvt. Ltd.	Supply of spare parts for Tendaho Project, Phase No.1, Ethopia
Jyoti Sugar Engineering Pvt. Ltd.	Supply of Mills Spare Parts for Tendaho Project Phase No.1, Ethopia
Service and Materials Technics	Supply of Material at Burkina Faso
Vijay Engineering & Machinery Co.	Supply of Pumps etc. for Fincha Sugar Factory. Ethopia

8.17. According to the assessee, it had incurred various expenditure in its normal course of business through these parties which are wholly and exclusively for the purpose of business. For each of the party, assessee gave the correct factual position on the treatment given by it which is noted as under:

- a) In respect of India Baltiment, out of Rs.1,69,47,574/-, payment of Rs.1,16,10,300/- was made and balance amount of Rs.53,37,273/- was outstanding as on 31.03.2019. This outstanding amount was adjusted against the account of Burkinafaso.
- b) In the case of Pooja Engineering, out of amount of Rs.6,29,539/-, payment of Rs. 4,52,329/- was made during the year and there was outstanding balance of Rs.1,77,209/- which was adjusted against the account of Rajeev Techno.
- c) In the case of Team Universal Infratech, amount of Rs.2,76,154/- was adjusted against the outstanding of Sonee Hardware and amount of Rs. 1,95,669/- was adjusted against My Company Pvt. Ltd.
- d) In the case of Info Transtech India (P) Ltd., against the amount of Rs.5,89,160/-, an amount of Rs.41,518/- was paid to Ashok Verma

and Rs.19,116/- was written off as Sundry balance. Remaining amount was paid to Info Transtech.

- e) In the case of Super Creative Graphic Services Pvt. Ltd., against the amount of Rs.29,60,412/- which relate to the period from 30.04.2009 to 13.03.2014, payments were made between 13.05.2009 and 16.03.2011.
- f) With respect to Voltech Manufacturing, against the outstanding amount of Rs.2,87,14,298/- which relate to the period from 31.03.2011 to 31.03.2019, payments were made from 30.11.2010 to 27.03.2015.
- g) With respect to Hero Wiretax Pvt Ltd, against the amount of Rs 5,39,52,573/- outstanding from 01.02.2018 to 31.03.2019, payments were made from 31.03.2017 to 01.04.2018.
- h) With respect to Jyoti Engineering Pvt Ltd., against the amount of Rs.89,13,869/- outstanding from 31.10.2017 to 31.03.2019, payments were made from 07.06.2017 to 31.03.2020.
- i) With respect to Service and Material Technics, against the amount of Rs 78,96,406/-, payments were made from 15.02.2016 to 14.06.2016.

8.18. From the above factual position as discussed above and considered by the Id. CIT(A), we note that Id. Assessing Officer has not correctly interpreted the entire facts. In most of the cases, payment has been made by the assessee to various parties and in some of the cases, it has been made as advance. For some cases, the accounts have been set off against the suppliers or creditors as there was no outstanding amount. All these expenditures are incurred during the normal business activity and allowable u/s.37(1). Provisions of section 69C do not apply in view of the factual position as discussed above for which

nothing cogent has been brought on record by the Revenue to controvert the same. Accordingly, we do not find any reason to interfere with the meritorious findings arrived at by the Id. CIT(A). Ground no. 4 raised by the Revenue is dismissed.

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

G. Assessment Year 2019-20 [Assessee appeal]

9. Ground no.1 is in respect of disallowance of short term capital loss (STCL) amounting to Rs.18,64,32,589/-. Facts of the matter are that assessee in an earlier year had purchased a residential property located at Jorbagh, Delhi. It formed part of assessee's block of assets as 'buildings-depreciation rate of 5%'. This property was purchased from Mr. Asim Ghosh and Ms. Sanjukta Ghosh on 31.07.2014 for Rs. 42 crores. After claiming depreciation, Written Down Value (WDV) for the year was Rs.37,25,32,589/-. Source of funds for purchasing the property was loan taken from Standard Chartered Bank. During the year under consideration, assessee sold the said property to CADS Properties Pvt. Ltd. (CADS) for Rs. 18.61 crores, resulting in STCL. Though there was a loss, the said property was sold at a value which was higher than the prevailing market rate during the relevant time. CADS had taken loan from Ghevar Investments and Properties Limited to purchase the property from the assessee.

9.1. Based on statements at the time of investigations of directors of CADS, viz. Mr. Jagdish Madnani and Mr. Manoj Patel and also of Mr. Suresh Chaturvedi, Id. Assessing Officer concluded that the said property transferred to CADS was a sham transaction, routed through Nand Kishore Chaturvedi, only to book bogus loss in the books of the

assessee so as to safeguard the property from auction owing to defaults in repayment of Standard Chartered Loan. Further, ld. Assessing Officer also alleged that block of assets had not ceased to exist and therefore, there is no occasion for STCL which was disallowed. Table for computation of STCL is as under:

Particulars	Amount (Rs.)
Sale Consideration	18,61,00,000
Less: Written down value of asset	-37,25,32,589
Capital Gain/(Loss)	(18,64,32,589)

9.2. The said property was used by assessee for its business purpose as it was utilized as a guest house by its Director Mr. Ambuj Chaturvedi. It formed part of its fixed assets and reported in its financial statements prepared under the Companies Act, 2013 as '*Building*'. For the purpose of the Act, a residential property forms part of the Block – '*Buildings (depreciation rate 5%)*' and commercial property is classified as a separate Block – '*Buildings (depreciation rate 10%)*'. It would be pertinent to note that the said residential property was the only asset which formed part of this block with depreciation rate of 5%. Assessee had no other residential property and the same is evident from the depreciation chart as per the Act. Assessee had been claiming depreciation at 5% in its returns since AY 2015-16 onwards which have been accepted by the department.

9.3. Since assessee was under financial distress, it found difficulty in repaying the loan taken from Standard Chartered Bank for the said property. To avoid default on repayment, assessee sold it and utilized the proceeds to repay the outstanding loan and to finance some business expenses as well.

9.4. After considering the submissions made before us and perusing the orders of the authorities below, we note that the two broad allegations by ld. Assessing Officer for disallowing the impugned STCL are towards holding the transaction as sham for which ld. Assessing Officer has relied on the statements recorded of Mr. Suresh Chaturvedi, Mr. Manoj Patel and Mr. Jagdish Madnani. Second basis is that of holding the block of asset has not ceased to exist which according to him, is still in existence in the fixed asset chart of the financial statements.

9.5. For the purpose of holding the transaction as sham, ld. Assessing Officer has relied heavily on the statements recorded during the course of search conducted under section 132 of the three aforesaid persons. In the course of assessment proceedings, in order to clarify the correct factual position stated in the statement of Mr. Suresh Chaturvedi, a retraction was filed by him against his own statement on 09.11.2022. By way of his retraction, he clarified the correct factual position which has not been considered by the ld. Assessing Officer while making the disallowance. According to the assessee, it is a transaction to restructure its borrowing, since it was in a financial distress, unable to pay the loan taken from Standard Chartered Bank through which the purchase of the impugned property was funded. Ld. Assessing Officer has misunderstood the nature of transaction. It is admitted fact on record that the said transaction was undertaken at prevailing market rate and through proper banking channel. In order to demonstrate that it is a sham transaction, nothing cogent has been brought on record by the authorities below, except for solely relying on the statements recorded during the course of search, which were subsequently retracted.

9.6. On the second allegation by ld. Assessing Officer that the block of asset has not ceased to exist, reference is made to Rule 5 of the Income-tax Rules, 1962, (the Rules) which prescribes rates for depreciation. Based on this, the depreciation rate for block of assets comprising of residential property is 5%, whereas block of assets comprising of other than residential property is 10%. Once an asset is a depreciable asset and forms part of the block when such a block of asset ceases to exist at the end of the previous year, the provisions of Section 50 become applicable, which deals with capital gain relating to the said such depreciable assets. On a harmonious reading of Section 43(6)(c) and Section 50, it is brought out that when an asset is sold and the block of assets cease to exist, the difference between WDV and the consideration received is treated as short-term capital gain or short-term capital loss, as the case may be.

9.7. In the present case, ld. Assessing Officer has referred to the fixed asset chart appearing in the financial statements to hold that the block of assets did not cease to exist. Ld. Assessing Officer failed to appreciate that depreciation is calculated by different methods under the Companies Act, 2013 and under the Act. As per the Companies Act, there is no differentiation between residential or commercial property. Both are classified as buildings and same rate of depreciation applies. However, for the income-tax purposes, residential and commercial buildings form part of two different blocks of assets attracting different rates of depreciation. In the present facts of case, the property in question is the only asset forming part of block of assets being '*building having depreciation rate of 5%*' under the Act and after its sale during the year, the said block ceased to exist under the provisions of the Act.

This factual position has also been acknowledged and affirmed by Id. CIT(A) while dealing with this issue in Para 5.3.6 of the first appellate order which is undisputed and uncontroverted. Accordingly, the two basis alleged by the Id. Assessing Officer while disallowing the STCL on the impugned transaction does not hold good in the given set of facts and discussion made above. Considering the overall factual matrix and the discussion made in the above paragraphs, corroborated by documentary evidence and correct factual position brought out from the same, we do not agree with the stand taken by the Id. Assessing Officer and thus, allow the claim of the assessee towards STCL on the impugned transaction. Accordingly, ground no. 1 raised by the assessee is allowed.

9.8. Ground no. 2 is in respect of ad-hoc disallowance of reimbursement of director expenses of Rs. 27,01,000/-. During the assessment proceedings, Id. Assessing Officer observed that assessee reimbursed certain expenses to directors Shri Ambuj Chaturvedi, Shri Advait Chaturvedi and Shri Suresh Chaturvedi. Details of reimbursement of expenses amounting to Rs. 92,77,372 is as under:

- i. Suresh Chaturvedi - Rs. 22,84,308/-
- ii. Advait Chaturvedi - Rs. 12,50,471/-
- iii. Ambuj Chaturvedi - Rs. 27,59,580/-
- iv. Ved Prakash Rustagi - Rs. 7,83,013/-
- v. Purshottam Maheshwari - Rs 22,00,000/-

9.9. Reimbursement was in respect of travelling and conveyance expenses of the director, incurred to meet various business objectives of the assessee in different locations outside India, mostly in Africa. According to the assessee, these expenses were incurred for business

purpose and out of commercial expediency. Further, there was no personal element reported by the auditor. However, the Id. Assessing Officer being not convinced with the submission of the assessee, disallowed Rs.27.01 lacs being 30% of total reimbursement of expenses of Rs.90.70 u/s.37(1) of the Act.

9.10. Claim of the assessee is that it is in the business of undertaking EPC infrastructure contracts. Assessee takes up projects all across India as well as outside India. Directors of the assessee have to travel extensively to review and evaluate progress of the projects. These projects require extreme level of niche expertise in the respective fields. This makes it very important for the Directors to be actively involved in the projects, because of which it becomes necessary for them to travel to project sites and supervise them personally. These reimbursement of expenses is based on actual expenses incurred by the Directors. These are duly verified and audited by the auditors.

9.11. We note that Id. CIT(A) has made a factual observation that assessee is engaged in EPC contracts/infrastructure projects and carries out its project work outside India mainly, African countries for which directors are required to travel and incur hotel expenses which are reimbursed by the assessee. According to him, 70% allowance of these expenses takes care of the travelling and hotel expenses incurred by the directors as business expenditure and the balance 30% disallowed by the Id. Assessing Officer was upheld by observing that assessee did not provide complete details towards these reimbursements. We note that disallowance made by the Id. Assessing Officer and upheld by the Id. CIT(A) by applying an ad-hoc rate of 30% is without any basis and justification. No discrepancy or deficiency has

been brought on record in respect of the expenditure claimed by the assessee for which relevant details were placed on record. Incurring of expenditure is not in doubt. Factual position of the project works undertaken by the assessee and travelling required by the directors including hotel stay is also not in dispute. These are legitimate business expenditure incurred by the assessee which are wholly and exclusively for the purpose of business. Also, there is nothing on record which demonstrates that there is personal element involved in incurring of this expenditure. These reimbursements are duly verified and subjected to audit and are reimbursed based on actual expenses incurred by the directors. Considering the overall factual matrix and without any material brought on record to controvert this factual position, we delete the addition made by the ld. Assessing Officer applying 30% ad-hoc rate. Accordingly, ground no. 2 raised by the assessee is allowed.

9.12. In the result, appeal of the assessee is allowed.

H. Assessment Year 2020-21 [Revenue appeal]

10. Ground nos. 1 and 5 are taken together which relate to claim of deduction towards provision for expenses u/s. 37(1) and adjustment made for the same while processing the return u/s. 143(1).

10.1. Facts of the matter is that assessee had filed its return of income on 15.02.2021, reporting total income at Rs.1,04,28,010/-. In the Tax Audit Report filed by the Tax Auditor, it erroneously mentioned contingent liability debited to Profit & Loss in Clause 21(g) of Form 3CD amounting to Rs. 181,23,76,955/-. Return was processed u/s 143(1) computing total income of the assessee as Rs. 182,28,04,970/-. It is noted that such contingent liability was not debited to Profit & Loss

Account by the assessee and thus, there was no such disallowance made in the return filed. In other words, since the said contingent liabilities were not debited to the Profit and Loss Account of the assessee, the question of disallowances u/s 37 does not arise. Tax Auditor revised Form 3CD on 12.03.2024 for the year. Revised copy of the Tax Audit was submitted before the ld. Assessing Officer. However, in the assessment order, ld. Assessing Officer took the starting point for computation of total income to be the total income as per 143(1) of the Act.

10.2. Assessee contented that since the contingent liabilities were not debited to the Profit and Loss Account, question of disallowances u/s 37 does not arise. During the course of assessment proceedings, assessee had provided copy of revised Form 3CD so as to rectify the erroneous income computed by CPC. Assessee had requested ld. Assessing Officer not to consider the disallowance u/s 37 with regards to contingent liabilities as the same can be verified with revised Form 3CD and that the same was not debited to the Profit and Loss Account. When the regular assessment done, the intimation issued under section 143(1) automatically merges with the assessment made under section 143(3). Once the intimation under section 143(1) is merged with the assessment order, only the later survives. During the course of impugned assessment proceedings, these facts were brought to the attention of ld. Assessing Officer which were ignored and the income was considered as per intimation under section 143(1) instead of income reported in the return.

10.3. Ld. CIT(A) took note of the factual position that assessee did not claim any deduction in respect of the said contingent liability. Also,

revised Form 3CD was made available, correcting the mistake in reporting. It is settled principle of law that if the expenses were not claimed as deduction, no disallowance should be made. Thus, ld. CIT(A) held that addition of Rs.181,23,76,955/- made in the order u/s.143(1) was not warranted, therefore, ld. Assessing Officer was directed to re-compute the assessed total income after taking the income as shown by the assessee in the return for AY 2020-21.

10.4. From the above, we note that there are two issues involved, one relating to erroneous reporting by the tax auditor in Form 3CD in respect of contingent liability for which assessee did not claim it in its profit and loss account and thus, there was no impact on the total income computed by the assessee as reported in its return, filed for the year under consideration. Second issue relates to taking the income computed while processing the return u/s. 143(1), whereby adjustment was made towards this erroneously reported contingent liability while computing the total income in the assessment order passed u/s. 147 read with Section 143(3).

10.5. On the first issue relating to erroneous reporting by the tax auditor in the tax audit report about the contingent liability, fact of the matter is that assessee has not claimed the said amount in its profit and loss account having no impact on the computation of total income. It is a settled position in law that if the expenses were not claimed as deduction, no disallowance could be made for the same. This fact is undisputed as nothing has been brought on record to controvert the factual position. On this aspect claim of the assessee is allowed.

10.6. On the second aspect of computing the total assessed income by taking the income as computed while issuing intimation u/s. 143(1), it is important to note that the doctrine of merger comes into picture when case of the assessee was taken up for reassessment u/s. 147 read with section 143(3). Thus, the adjustment made by CPC Bengaluru, while processing the return u/s. 143(1) gets merged into the order passed u/s. 147 read with Section 143(3). What survives is the assessment order passed u/s. 147 read with Section 143(3) and not the income computed u/s. 143(1). It is also worth noting a fact that assessee has duly explained its case in respect of adjustment made by CPC while making an adjustment on account of contingent liability due to erroneous reporting by the tax auditor in form 3CD towards contingent liability. Once fact of the matter has been duly explained by the assessee and the fact is undisputed that no deduction has been claimed by assessee on this account while computing the total income, taking the total income as computed in the intimation u/s. 143(1) is not correct. Therefore, considering this factual position, we are in agreement with the finding of Id. CIT(A) to hold that disallowance made by Id. Assessing Officer towards contingent liability is not tenable and therefore deleted. Further, Id. Assessing Officer is directed to consider the income as reported in the return of income and not under intimation issued u/s. 143(1). Accordingly, ground No. 1 and 5 raised by the Revenue are dismissed.

10.7. Ground no. 2 and 3 raised by the revenue have already been dealt in the appeal by the Revenue for Assessment Year 2019-20 as discussed in the above paragraphs. The factual position and the position of law remains same, except for variation in the quantum of disallowance/addition made. Thus, our observations and findings while

adjudicating on these two issues contested by revenue vide ground No. 2 and 3 are covered by the grounds raised by it in appeal for A.Y. 2019-20. Following the same observations and findings, these ground nos. 2 and 3 raised by the Revenue are dismissed.

10.8. Ground no. 4 by the Revenue shall be dealt along with ground no. 4 raised by the assessee in its appeal. Thus, we will take this ground together while adjudicating appeal of the assessee.

I. Assessment Year 2020-21 [Assessee appeal]

11. Ground nos. 1 and 2 are taken together in respect of addition made u/s. 69C for payment made alleging that these are based on WhatsApp chats obtained from the mobile phone of third party and statement on oath recorded of third party.

11.1. Facts relating to these two transactions are as under:

- i. During the assessment proceedings, ld. Assessing Officer observed that a WhatsApp chat was recovered from mobile of Shri Manoj Patel which contained a correspondence regarding transfer of 4,00,000 Ethiopian Birr. In the statement recorded u/s. 132(4), Shri Manoj Patel stated that Manoj Gupta was employee of the assessee, who looked after liasoning work in Ethiopia. The 4,00,000 Ethiopian Birr was sent to Mohan and Mohan gave it to Manoj Gupta for some business expenses in Ethiopia. The source and rationale of cash transaction would be known to the management of the assessee company. Subsequently, during post search proceedings, Shri Manoj Patel explained that it was a temporary advance received from late Shri Mohan Sajnani, a non-resident Indian. Ld. Assessing Officer relying upon the statement

of Shri Manoj Patel made addition of Rs.9,60,000/- (equivalent to 4,00,000 Ethiopian Birr).

- ii. During the search proceedings, another WhatsApp chat regarding cash of Rs. 16,00,000/- was recovered. Shri Manoj Patel in his statement recorded u/s.132(4) stated that the cash of Rs. 16,00,000/- was received from Ram Babu, office boy and it was to be transferred to Shri Manoj Patel, employee of Mumbai office through P. Vijay Angadia. Later on, assessee submitted before the ld. Assessing Officer that cash was withdrawn by Shri Suresh Chaturvedi from the bank for some requirement of funds and the cash was given back to Shri Suresh Chaturvedi. Ld. Assessing Officer relying upon the statement of Shri Manoj Patel and the WhatsApp chat made addition of Rs. 16,00,000/- u/s 69C of the Act.

11.2. Ld. CIT(A) confirmed these two additions for want of documentary evidence. Before us, ld. Counsel for the assessee asserted that both the above additions have been made merely by relying on WhatsApp chats of the third parties. Clarifications filed by Mr. Manoj Patel has also been ignored by the authorities below. It is also pointed out that these WhatsApp images do not contain or mention the name of assessee. Further, nothing has been brought on record to corroborate the factual position and conclusively demonstrate that transactions pertain to assessee.

11.3. According to the assessee, these WhatsApp chats based on which ld. Assessing Officer has made the addition and ld. CIT(A) has confirmed the same cannot be relied upon without having any corroborative evidence and without proving the authenticity of the documents so

found. Assessee stated that as per section 65B(4) of the Indian Evidence Act, 1872, these cannot be relied upon as the same is electronic record. Section 65B(4) of the Indian Evidence Act, 1872 prescribes certain conditions to ensure the authenticity of the documents. A certificate should be obtained certifying the authenticity of the document. Assessee placed reliance on the decision of Coordinate Bench of ITAT, Mumbai in the case of ACIT Vs. Prashant Prakash Nilawar in ITA no. 5689/Mum/2024, where the Coordinate Bench held that corroboration of WhatsApp communication is imperative for addition u/s 69C of the Act. Coordinate Bench observed that ld. Assessing Officer failed to corroborate the evidence recovered from third parties in accordance with the provisions under the Information Technology Act, 2000 and Indian Evidence Act, 1872. It was held that additions made u/s 69C based on WhatsApp chats are liable to be dismissed. It was noted that impugned additions in any case cannot be based on electronic image/sheets found and seized from the mobile of third parties during the course of search proceedings.

11.4. Assessee placed reliance on another decision of Coordinate Bench of ITAT, Mumbai in the case of DCIT, CC-8(2) vs. Niru Dhiren Shah in ITA no. 4294/Mum/2025, whereby the Coordinate Bench held that mere screenshots or forwarded chats have no evidentiary value since they are susceptible to tampering or fabrication. Unless the source device is produced or section 65B certificate is produced, such chats cannot be relied upon.

11.5. In conspectus of the above discussion and the factual matrix as well as judicial pronouncements relied upon, we find that additions made by the ld. Assessing Officer u/s. 69C are based merely on the

basis of WhatsApp chats of the third party and statement recorded without any corroborative evidence brought on record to establish that such payments in cash were made by the assessee. Accordingly, ground No. 1 and 2 raised by the assessee are allowed.

11.6. Ground No. 3 raised by assessee is in respect of addition made u/s. 69C of Rs. 25,00,000/- alleging payment of Rs. 20,00,000/- to Shri Ramesh Chandra and Rs. 5,00,000/- to Sanjay Agarwal which according to assessee is based merely on the basis of rough dumb jotting in loose papers and statement on oath recorded of third parties.

11.7. Facts relating to the issue are that during the assessment proceedings, ld. Assessing Officer observed that page no.31 of the seized documents contain details of cash expenditure incurred by Shri Kapil Chaturvedi on behalf of the assessee. Rs.20,00,000/- was paid to Shri Ramesh Chand Gurg, legal consultant of the assessee and Rs.5,00,000/- to Shri Sanjay Agarwal, CFO on 30.01.2020. During the post search proceedings, Shri Kapil Chaturvedi vide letter dated 07.12.2022 stated that the amount represented petty cash payment of Rs. 20,000/- to Shri Ramesh Chand Garg and Rs.5,000/-to Shri Sanjay Agarwal. However, ld. Assessing Officer considered this as an afterthought. By referring to the provisions of section 292C and 132(4)(a) on presumption of document, made addition of Rs. 25,00,000/-u/s.69C as unexplained expenditure.

11.8. Ld. CIT(A) confirmed the additions so made by observing that assessee has not been able to satisfactorily explain the contents of the seized documents which indicated the alleged payments. Assessee submitted that authorities below have relied solely upon the statements

recorded on oath during the course of search without considering the letter of retraction of statement which were filed, clarifying the correct factual position. Additions have been made merely on the basis of excel sheets/loose papers found during the course of search. No corroborative evidence has been brought on record to suggest that assessee has made such payments. The loose papers were found in the residence of Shri Kapil Chaturvedi and nowhere in this loose paper, name of the assessee is mentioned. In the course of search proceedings, Shri Kapil Chaturvedi was asked to explain the loose papers for which he gave his explanation in point No. 31 that these were payments made in cash to Ramesh Chander, i.e. their legal consultant amounting to Rs. 20,000/- and Rs. 5,000/- to Shri Sanjay Agrawal. He stated that these figures were in thousands and not in lakhs. Assessee thus, asserted that ld. Assessing Officer has not brought any cogent material on record to prove that assessee has made such payment while invoking the provisions of section 69C. Ld. Assessing Officer has relied on these statements recorded during the course of search without considering that a letter of retraction of statement with clarification as to error in the statement so recorded earlier was filed before the investigation wing by the deponents.

11.9. Case of the assessee is that since the seized documents did not belong to assessee but were seized from the residential premise of Shri Kapil Chaturvedi, the addition so made in its hand is not tenable. Strong reliance is placed on the decision by Hon'ble Supreme Court in the case of CBI vs. V. C. Shukla (AIR 1988 SC 1406). According to this judgment, loose sheets have been ruled out as not of any evidentiary value. Hon'ble Court thus observed:

Loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting, it is not the record of the assessee. Even

assuming such entries as correct and authentic, they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an inference about correctness of the entries still, such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person. Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.

11.10. In view of the above discussion and considering the factual matrix and the judicial pronouncements, additions made by the Id. Assessing Officer by applying provisions of section 69C is held to be not tenable and thus deleted. Ground no. 3 raised by the assessee is allowed.

11.11. We now take up ground no. 4 both, in the case of assessee and the Revenue's appeal. It relates to addition u/s. 69A amounting to Rs. 32,46,000/- with respect to alleged cash loan from P. P. Shah Group which is stated to be based merely on the basis of rough dump jotting in loose paper and statement on oath recorded of third parties.

11.12. Facts of the matter in this regard is that a loose paper was found from residence of Shri Paresh Shah which contained certain noting of 1.58 crore. Various entries were mentioned from 27.01.2020 to 27.01.2022. Shri Paresh Shah in the statement recorded u/s. 132(4) stated that Rs. 138 lakh was fees receivable from the assessee and Rs.20,00,000/- was loan given by him to the assessee which was received back. Further, payment of Rs.20,00,000/- was made to MCGM in cash on behalf of assessee's condominium. Shri Purshottam

Maheshwari in his statement stated that the document contained details of amount received by assessee from Shri Paresh Shah from 14.01.2020 to 27.01.2022. The total receipt amount was 158.20 lakh and repayment was Rs.20,00,000/-. Upon confrontation of the statement of Shri Purshottam Maheshwar, Shri Paresh Shah stated that fees receivable was mentioned inadvertently. On the basis of the seized document and statement of Shri Paresh Shah, Shri Purshottam Maheshwari and Shri Suresh Chaturvedi, ld. AO made the addition of Rs.74,50,000/- in respect of the amount represented in the sheet pertaining to the year.

11.13. During the first appellate proceedings, assessee reiterated the submission made before ld. Assessing Officer. Assessee submitted that amount of Rs. 74,50,000/- represented professional fees charged by Shri Paresh P. Shah. Assessee provided ledger copy of account of Shri Paresh P. Shah. From ledger it is seen that from 02.09.2017 to 31.01.2018, Shri Paresh P. Shah charged professional fees of Rs. 2,95,000/- per month. From 01.02.2018, the professional fees were reduced to 1,18,000/- and it continued till 31.01.2020. During F.Y. 2017-18, out of professional fees of Rs. 25,96,000/-, assessee made payment of Rs. 8,70,000/- and amount of Rs. 17,26,000/- remained outstanding. During F.Y. 2018-19 out of professional fees of Rs. 14,16,000/-, assessee made payment of Rs. 1,18,000/- and amount of Rs. 30,24,000/- (including opening balance) remained outstanding. During F.Y. 2019-20, out of professional fees of Rs. 11,80,000/-, assessee made no payment and amount of Rs. 42,04,000/- (including opening balance) remained outstanding. Because of non-payment of professional fees, Shri Paresh Shah discontinued his services. After a settlement was arrived in 2024 and assessee made payment of Rs.

40,00,000/- on 19.04.2024, Shri Paresh Shah raised invoices of 74,50,000/- on 03.09.2024. The invoice contained detailed description of services rendered in respect amount of Rs 50,49,000/- and Rs. 24,50,000/. Assessee made payment of Rs. 34,50,000/ on 10.09, 2024 and settled the account. However, ld. CIT(A) noted from the ledger account that as on 02.01.2020, total amount of Rs. 42,04,000/- remained outstanding even though the assessee has tried to explain the amount represented fees payable to Shri Paresh Shah, still difference of Rs. 32,46,000/- (74,50,000 -42,04,000) remained unexplained. He therefore, out of total addition of Rs. 74,50,000/- deleted the addition of Rs. 42,04,000/- and addition of the balance Rs. 32,46,000/- was upheld.

11.14. Submissions of the assessee in this regard are that the provisions of section 69A of the Act get attracted when assessee is found to be owner of any money which is not recorded in his books of accounts and he offers no/unsatisfactory explanation about the source thereof. In the present case, apart from a rough notings/jottings of Mr. Paresh Shah which cannot be construed as books of accounts, there is no corroborative documentary evidence to suggest that assessee had received cash loan of Rs.74,50,000/-. Assessee was not found in possession of any cash as stated in loose papers. Neither the possession nor the ownership of cash could be proved from the loose papers, seized from the residence of Mr. Paresh Shah. Assessee has duly explained all the notings of Mr. Paresh Shah which is also confirmed by Mr. Purshottam Maheshwari vide his clarification letter filed on 09.11.2022. It has been held in a plethora of judicial pronouncements that no adverse view can be taken and no additions can be made in the hands of the assessee on the basis of rough dumb jottings found on loose

papers and mere statements recorded on oath of third parties without any corroborative evidence found during the course of search. The addition is based on loose papers and dumb documents found at a third person, i.e. Mr. Paresh Shah's residence, without any corroborative evidence in support of such documents. The excel sheets/ loose papers seized during the search operation, without corroboration have no authenticity and therefore, cannot be relied upon. Such entries without any corroborative evidence, cannot be made basis for addition. It has been held in a many judicial pronouncements that additions cannot be made on basis of surmises, suspicion and guess work. Addition on the basis of loose sheets and stray computer data seized/impounded during the course of search and survey action of a third party, alone, cannot be conclusive evidence to allege the assessee of having taken cash loans. Ld. Assessing Officer failed to appreciate that the statements recorded were retracted or clarified by the deponents. Ld. Assessing Officer relied on the statement of ex-employee, Mr. Purushottam Maheshwari who had already retracted his statement.

11.15. We note that addition is made on the basis of loose sheets and stray computer data seized during the course of search of a third party. There is no corroborative evidence on record which incriminates the assessee. The alleged cash loan by the assessee has no basis in respect of data found at the residence of Mr. Paresh Shah. Ld. Assessing Officer has not brought any cogent material on record to prove that assessee has taken a cash loan for the purpose of invoking provisions of section 69A except for placing reliance on the statement recorded. Thus, in summary, it is stated that addition made by the ld. Assessing Officer is based on loose papers and dumb documents found at a third person

i.e. Mr. Paresh Shah's residence without any corroborative evidence in support of such documents.

11.16. Ld. CIT(A) has given partial relief and upheld the amount of Rs. 32,46,000/- treating it to be unexplained. From the conspectus of the above factual position and the discussion, it is noted that the addition made is on the basis of seized document from the residence of Mr. Paresh Shah and on the basis of statement only. Assessee has explained its case and ld. CIT(A) taking note of the same has given partial relief. There is nothing which has been brought on record to controvert the factual position for the relief granted by Ld. CIT(A). For the balance addition made by the ld. CIT(A), assessee has adequately explained the entire document and the transaction undertaken by it which relates to outstanding professional fees. Assessee has furnished the invoice and description of services rendered for which professional fees were charged and accordingly, ground no.4 raised by the Revenue is dismissed and the ground no. 4 raised by the assessee in this regard is allowed.

11.17. Ground no. 5 is in respect of ad-hoc disallowance towards reimbursement of expenses to directors which has already been dealt by us in appeal for Assessment Year 2019-20. Facts remaining same except for quantum of addition, our observations and findings apply *mutatis mutandis* for this year also. Accordingly, ground no. 5 raised by assessee is allowed.

11.18. In the result, appeal by the assessee is allowed and appeal by the Revenue is dismissed.

J. Assessment Year 2021-22 [Assessee appeal]

12. Only ground raised by the assessee is in respect of ad-hoc disallowance made by the ld. Assessing Officer from reimbursement of expenses to directors which has already been dealt by us in the appeals for the preceding two assessment years i.e. Assessment Year 2019-20 and Assessment Year 2020-21.

12.1. Facts remaining same except for variation in the quantum of disallowance, our observations and findings in those two appeals apply *mutatis mutandis* to this year also.

12.2. Accordingly, the sole ground raised by assessee in this appeal is allowed in terms of our observations and findings for the two preceding years.

12.3. In the result, appeal by the assessee is allowed.

K. Assessment Year 2022-23 [Revenue appeal]

13. Ground no. 1 is in respect of deduction of provision for expenses claimed by the assessee u/s. 37(1) which is identical to ground raised by the Revenue in appeals for Assessment Years 2019-20 and 2020-21 which has already been adjudicated by us in the above paragraphs.

13.1. Facts being identical except for variation in the quantum of disallowance, our observations and findings given in the above paragraphs while dealing with the same ground in appeals for Assessment Years 2019-20 and 2020-21 apply *mutatis mutandis* for ground in this year also. Considering the same, ground no. 1 raised by the Revenue is dismissed.

13.2. Ground no. 2 is towards deduction claimed in respect of expenses towards maintenance of immovable property at Jorbagh, Delhi. Facts relating to this issue are that during the year, property at Jorbagh was owned by CAD Properties Limited which was given on rent to assessee. Assessee was using this property as its guest house for business purposes. In the course of such proceedings, ld. AO noted that expenses amounting to Rs.24,29,500/- were incurred in respect of pump AMC, CCTV AMC, EPB AX AMC, Genset AMC, lift AMC, etc. According to the ld. Assessing Officer, these expenses were giving benefits of enduring nature and therefore, had to be borne by the landlord and not the tenant and thus, made the disallowance. Ld. Assessing Officer also referred to the statement of Mr. Ambuj Suresh Chaturvedi recorded during the course of search seeking clarification on the excel sheet found from his laptop. In the statement at question no.65, it was asked that this excel sheet contains Jorbagh budget for monthly expenses and yearly expenses. Explanation was sought in this respect for which the answer was given that this excel sheet contains estimated funds required to meet various expenses related to the premise at Jorbagh. In the answer it was stated that these budgets are sent to Mr. Kapil Chaturvedi, Head Establishment Cell, in the office of the assessee for his knowledge and approval. This question and answer from the statement of Mr. Ambuj Suresh Chaturvedi is reproduced in page 9 of the impugned assessment order.

13.3. Claim of the assessee is that it had incurred expenses of Rs. 9,33,815/- on the said property for its maintenance. Out of the total amount of Rs. 9,33,815/- incurred by the assessee, amount of Rs. 5,96,726/- was towards electricity expenses, Rs. 2,30,927/- was towards water charges and Rs. 1,06,162/- was towards repairs and

maintenance of the said property. All the details of these expenses with supporting documents were furnished in the course of assessment proceedings which were negated by the Id. Assessing Officer for making the addition. According to the assessee, when it has claimed amount of Rs. 9,33,815/- as expenses, question of disallowing the amount of Rs. 24,49,500, u/s.37(1) does not arise.

13.4. Ld. CIT(A) considered the submissions filed by the assessee to take note of the nature of expenses which all relates to various annual maintenance contracts entered on year-on-year basis and are recurring in nature, not giving any kind of benefits of enduring nature. He also took note of the fact that genuineness of incurring of these expenses has not been doubted by the Id. Assessing Officer and are incurred for the purpose of the business. Hence allowable u/s.37. The addition so made was thus, deleted.

13.5. Before us, nothing contrary has been brought on record to dislodge the claim of the assessee. We also took note of the answer to the question raised in the course of search proceedings recorded in the statement of Mr. Ambuj Chaturvedi, wherein the question itself mentioned about the document containing Jorbagh budget for monthly expenses and yearly expenses and in the answer also it was stated that these are budgets and are estimated for requirement of funds. Thus, the addition made by the Id. Assessing Officer based on this statement which suggests that the amount of Rs. 24,49,500/- was merely an estimate and not the actual expenditure incurred, does not warrant an addition.

13.6. Considering the overall factual matrix and the explanation placed on record, we do not find any reason to interfere with the findings of Id. CIT(A). Accordingly, ground no. 2 raised by the Revenue is dismissed.

13.7. Ground no. 3 is in respect of addition of Rs. 4,77,00,000/- made u/s.69A. Fact in this regard are that, during the search proceedings, a screenshot of Income and Expenditure statement of Stroypoekt LLC-OIA JV was found. It is for the period 01.04.2021 to 08.01.2022 reflecting income of Rs 20,94,32,936/-. During the search proceedings, statement of Shri Suresh Chaturvedi, promoter of the assessee was recorded. In reply to Q.No.81 of the statement, he stated that the contract work of construction of two-lane hard shoulders of Kohima-Jessami Road on NH 29 in the state of Nagaland was done by Stroypoekt LLC-OIA JV. The basic contract value was 214,37,02,000/- The project work was sub-contracted to South East Architect Sun Builders (SEAB) by the JV. As per the MOU with SEAB, JV shared 5% of Revenue and SEAB shared 95% of revenue. Amongst the JV partner, Stroypoekt LLC got share of 1.92% and the assessee got share of 3.08%. During the F.Y.2020-21, sales was Rs.5,87,42,480/- and there was no purchase. Thus, there was profit of Rs 5,87,42,480/-. During FY 2021-22, total sales was Rs. 47,83,79,763/- and the purchase was of Rs. 46,18,35,091/-. Against sales of Rs.47,83,79,763/-, payment of Rs.47,75,59,845/- was made, and the balance of Rs.8,19,918/- was received. The profit of Rs. 1,65,44,672/- (Rs.1,57,24,754 Rs.8,19,918) was shown in the books of account. For the F.Y.s 2021-21 and 2021-22, total revenue was Rs.51,71,22,243/- and total expenditure was Rs.52,05,77,571/-. The screenshot of Income and Expenditure statement was for the period from 01.04.2021 to 08.01.2022 and it reflected the income of Rs.20,94,32,936/-. Total revenue upto

31.03.2022 as per the books was Rs.53,71,22,243/-. Thus, screenshot of Income and Expenditure statement had to be examined with reference to the total revenue and expenditure upto 31.03.2021. Ld. Assessing Officer relied on the statement of Shri Suresh Chaturvedi, promoter of the assessee that assessee received Rs.6.42 crores on which TDS was deducted and it was shown in the books of account. However, ld. Assessing Officer did not examine the statement with the books of account of the JV and the assessee.

13.8. In this regard, assessee submitted that it had duly declared profit of Rs. 1.65 crore on the revenue of Rs. 53.71 Crore which was recorded from the Project till March 2022. OIA JV did not carry out part of the contract as it was terminated vide MOU dated 15.03.2023. However, the loose leaf found during the course of search does not reflect all the expenses incurred by JV in accordance with the arrangement as explained above and hence, such a loose leaf cannot be relied upon. Ld. Assessing Officer proceeded to make the additions in the hands of assessee merely on the basis of the statement recorded on oath and without appreciating the fact that the revenue of Rs. 6.42 Crores was the revenue for the entire project. Ld. Assessing Officer failed to bring-in any corroborative evidence to prove that assessee had earned the revenue of Rs. 6.42 Crores. For the purpose of making additions in the hands of the assessee, ld. Assessing Officer relied upon the statements recorded on oath during the course of search, without considering that such statements were subsequently retracted before the Investigation Wing by the deponents to clarify the facts by filing clarification letters. Ld. Assessing Officer did not bring any cogent material on record to prove that assessee has earned revenue of Rs. 6.42 Crores for the purpose of invoking the provisions of section 69A of the Act. The excel

sheets seized during the search operation, without corroboration, have no authenticity and therefore, cannot be relied upon. Assessee contended that the same has been held in a plethora of judicial pronouncements that additions cannot be made on basis of surmises, suspicion and guess work.

13.9. Ld. CIT(A) has analysed the submissions made by the assessee in this regard and has given his meritorious observations. Ld. CIT(A) in para 9.3.1 on page 35 held that ld. Assessing Officer has relied upon the statement of Shri Suresh Chaturvedi, promoter of the assessee that the assessee received Rs.6.42 crores on which TDS was deducted and it was shown in the books of account. Ld. Assessing Officer has not examined the statement with the books of account of the JV and the assessee. It is not a case of ld. Assessing Officer that the assessee received the income which was not recorded in the books of account. The only reason for making addition by ld. Assessing Officer is that there was difference between the profit as per the books of account and the amount mentioned by Shri Suresh Chaturvedi in his statement. From perusal of the answer to Q.No.81 by Shri Suresh Chaturvedi, it is seen that assessee received Rs.6.42 crore on which TDS was also deducted and it was shown in the books of account. The amount received does not represent the profit of the assessee, it is a receipt revenue by the assessee. Ld. Assessing Officer, without verifying the complete facts has made the addition interpreting the amount received as profit earned by the assessee during the year. Ld. CIT(A) thus concluded that on the facts of the case available on record, the addition of Rs.4,77,00,000/- made by ld. Assessing Officer, u/s.69A is not supported by any corroborative evidences. He thus, deleted the addition of Rs. 4,77,00,000/- made by the ld. Assessing Officer.

13.10. We have considered the submissions made before us and note that it is not a case of ld. Assessing Officer that the assessee received the income which was not recorded in the books of account. The only reason for making addition by ld. Assessing Officer is that there was difference between the profit as per the books of account and the amount mentioned by Shri Suresh Chaturvedi in his statement. Answer to Q.No.81 by Shri Suresh Chaturvedi, clearly mentions about receipt of revenue and not the income which has been incorrectly inferred by the ld. Assessing Officer. In the given set of facts, we do not find any reason to interfere with the meritorious findings arrived at by Ld. CIT(A). Accordingly, ground no. 3 raised by the Revenue is dismissed.

13.11 In the result, appeal by the revenue is dismissed.

L. Assessment Year 2022-23 [Assessee appeal]

14. Ground no. 1 and 2 raised by the assessee relate to addition made u/s.69A of Rs. 83,70,000/- in respect of cash loan taken and of Rs. 20,00,000/- u/s.69C in respect of repayment of cash loan to the same party, i.e. Shri Paresh Shah.

14.1. Similar ground in this respect has already been dealt by us in the appeal for Assessment Year 2020-21 both, in the case of Revenue and assessee vide ground no. 4. Fact relating to this year are that during the search proceedings, a loose paper was found from the residence of Shri Paresh Shah. It contained date wise details of Rs.158 lakhs and Rs.20 lakhs returned back by it. Ld. Assessing Officer relying upon the seized document and statement of Shri Purusottam Maheshwari and Shri Paresh Shah considered it as cash loan and cash repayment,

accordingly, ld. Assessing Officer made addition of Rs. 83,70,000/- u/s 69A and addition of Rs. 20,00,000/- u/s 69C of the Act. Assessee submitted that Shri Suresh Chaturvedi requested Shri Paresh Shah for Rs 25 lakhs to be paid in cash to a consultant for resolving tax dispute for MCGM on behalf of OIA Condominium in January, 2022. In this regard, Rs.15 lakhs was paid to the consultant and another 5 lakhs was paid in April, 2022 and Rs.5 lakhs was still payable. The dispute was adjudicated in September, 2022 by letter dated 23.08.2022 issued by MCGM adjudicating the tax demand at Rs.1,06,97,135/- instead of the original demand of Rs.2.79 crores. Assessee submitted confirmation regarding the said sum from OIA Condominium.

14.2. During the course of assessment proceeding, assessee explained the following temporary advance by Mr. Ashish Shah to OIA Group of Rs. 23,70,000/- as under.

27.01.2022	23,70,000
15.04.2022	15,00,000

14.3. It was explained that assessee's group companies in UAE were in need of a temporary advance there. Mr. Ashish Shah gave a temporary advance of USD 30,000 (equivalent to Rs 23.70 lacs) during January 2022 and AED 69,000 (equivalent to Rs. 15 lacs) during April-May 2022 to the group companies in UAE. This was handed over to Mr. Jomy, assessee's representative in Dubai. Mr. Paresh Shah had only put in a word of recommendation for the temporary advance, since Mr. Ashish Shah was a common friend and Mr. Suresh Chaturvedi was not available to talk to the said Mr. Ashish Shah. Thus, amount of Rs. 23,70,000/- does not represent a loan transaction, rather it is a payment made by Mr. Ashish Shah to Mr. Jomy, the representative of

OIA group in Dubai. Thus, it is not a loan from Mr. Paresh Shah but a temporary emergency advance to OIA Group by Mr. Ashish Shah for OIA's overseas operations. The said temporary advance was given to the foreign company and not to the assessee.

14.4. Short term cash advance by Mr. Paresh Shah to assessee of Rs. 20,00,000/-

16.12.2021	(-)20,00,000
18.08.2021	(+)20,00,000

14.5. On the above, assessee explained that it had taken a temporary short term cash advance of Rs. 20,00,000/- for emergency situation from Mr. Paresh Shah on 18.08.2021 and the same was repaid in cash to Mr. Paresh Shah on 16.12.2021. Due to business exigency and financial difficulties, assessee had received cash. Assessee repaid the same in December 2022.

14.6. Having considered the submissions made before us, we note that the provisions of section 69A of the Act get attracted when the assessee is found to be owner of any money which is not recorded in his books of accounts and he offers no/unsatisfactory explanation about the source thereof. In the present case, apart from a rough notings/jottings of Mr. Paresh Shah which cannot be construed as books of accounts, there is no corroborative documentary evidence to suggest that assessee had received cash loan of Rs 83,70,000/-. As stated in loose papers, assessee was not found in possession of any cash. Neither the possession nor the ownership of cash could be proved from the loose papers seized from the residence of Mr. Paresh Shah. It has been held in a plethora of judicial pronouncements that no

adverse view can be taken and no additions can be made in the hands of the assessee on the basis of rough dumb jottings found on loose papers and mere statements recorded on oath of third parties without any corroborative evidence found during the course of search. Ld. Assessing Officer has not brought any cogent material on record to prove that assessee has taken a cash loan for the purpose of invoking the provisions of section 69A of the Act except directly placing it in assessment order from the statement recorded on oath. The excel sheets/loose papers seized during the search operation, without corroboration, have no authenticity and therefore, cannot be relied upon. Such entries without any corroborative evidence, cannot be made basis of addition. It has been held in many judicial pronouncements that additions cannot be made on basis of surmises, suspicion and guess work. The addition on the basis of loose sheets and stray computer data seized/impounded during the course of search and survey action of a third party, alone, could not be conclusive evidence to allege the Assessee of having taken cash loans. Accordingly, in the given set of facts and the discussion made above, addition made by the ld. Assessing Officer, both u/s.69A and section 69C are deleted. Ground nos. 1 and 2 raised by the assessee are allowed.

14.7. Ground no. 3 and 4 are in respect of addition made on account of payment made to two persons in Ethiopia which are based on WhatsApp chat. The additions made are u/s.69C. This issue has already been dealt by us in grounds raised by the assessee in its appeal for Assessment Year 2020-21 which have been adjudicated in favour of the assessee in terms of our observations and findings therein. The two grounds in the present appeal before us for Assessment Year 2022-23 are also based on WhatsApp chat to make the addition u/s.69C. Since

the additions are of the similar nature as dealt by us in appeal for Assessment Year 2020-21, our observations and findings therein apply *mutatis mutandis* to these two grounds also. In terms of our observations and findings for Assessment Year 2020-21, ground nos. 3 and 4 raised by the assessee in this appeal for AY 2022-23 are also allowed.

14.8. Ground no. 5 raised by the assessee is on account of ad-hoc disallowance made at the rate of 30% from reimbursement of expenses to directors. This issue has already been dealt by us in appeals for Assessment Years 2019-20, 2020-21 and 2021-22 in appeals of the assessee. The facts remaining identical except for variation in the quantum of disallowance, the observations and findings in those three appeals apply *mutatis mutandis* to this year also. In terms of aforesaid observations and findings, this ground no. 5 raised by the assessee is also allowed.

14.9. In the result, appeal by the assessee is allowed.

15. In the result, appeals of both, assessee and revenue are decided as per the table below:

Sr. No.	ITA No.	Assessment Year	Appeal by	Result of the appeal
1.	3995/M /2025	2011-12	Department	Dismissed
2.	3996/M /2025	2015-16	Department	Dismissed
3.	4090/M /2025	2016-17	Department	Dismissed
4.	4321/M /2025	2016-17	Department	Dismissed
5.	3998/M /2025	2017-18	Department	Dismissed

6.	4319/M /2025	2019-20	Department	Dismissed
7.	4043/M /2025	2019-20	Assessee	Allowed
8.	4320/M /2025	2020-21	Department	Dismissed
9.	4045/M /2025	2020-21	Assessee	Allowed
10.	4044/M /2025	2021-22	Assessee	Allowed
11.	4318/M /2025	2022-23	Department	Dismissed
12.	4064/M /2025	2022-23	Assessee	Allowed

Order is pronounced in the open court on 20 February, 2026

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 20 February, 2026

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai