

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.310/M/2012  
Assessment Year: 2008-09**

**ITA No.1566/M/2011  
Assessment Year: 2007-08**

M/s. Ashish Builders Pvt. Ltd., 6 <sup>th</sup> Floor, Agarwal Golden Chamber, Plot No.13/A, Fun Republic Road, Off New Link Road, Andheri – West Mumbai – 400 053 <b>PAN: AAACA 5024F</b>	Vs.	Asst. Commissioner of Income Tax, Range 9(1)/3(1), Mumbai
(Appellant)		(Respondent)

**ITA No.7317/M/2013  
Assessment Year: 2007-08**

**ITA No.433/M/2012  
Assessment Year: 2008-09**

**ITA No.6658/M/2013  
Assessment Year: 2010-11**

Dy/Asst. Commissioner of Income Tax, Circle 3(1)/Range 9(1), R.No.607/R.No.223, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	M/s. Ashish Builders Pvt. Ltd., G-1, B-3, Akhil Tower, Ratan Nagar, Dahisar (E), Mumbai – 400 068 <b>PAN: AAACA 5024F</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Pankaj Toprani, A.R.  
Revenue by : Shri A.B. Koli, D.R.

Date of Hearing : 01.09.2016  
Date of Pronouncement : 23.09.2016

## **ORDER**

### **Per D. Karunakara Rao, Accountant Member:**

There are five appeals under consideration involving three assessment years. We shall deal with the appeals in assessment year wise and to start with, the appeal for the assessment year 2007-08 is taken up.

#### **ITA No.1566/M/2011 (A.Y.2007-08) Assessee's Appeal**

2. Assessee raised three grounds in this appeal out of which ground No.3 is not pressed. Accordingly the said ground is dismissed as not pressed and the balance of grounds Nos.1 and 2 are extracted as under:

- 1) The Learned CIT (A) has grossly erred both in law as well as on facts in sustaining the addition of Rs.75,88,422/- (Interest on Car Loan Rs.51,50,934/-, Advertising Exp. Rs.17,92,052/-, Brokerages Rs.77,736/-, Loan processing Fees Rs.5,67,700/-) in the Work In Progress for the purpose of ascertaining Gross Profit @ 20% which is completely unjustified and uncalled for.
- 2) The Learned CIT (Appeal) has further erred in not appreciating the fact that the Percentage of Completion Method is continuously followed by the appellant therefore not accepting the said method and making the adjustment in the Work In Progress is completely unjustified."

3. The brief facts of the case and the grounds are that the assessee is a builder since the year 1979. Assessee completed a project named 'Green Gagan' in the assessment year 2004-05. The assessee followed percentage computation method qua the cost of the project. Subsequently assessee started another project named "Agrawal Negri" at Vasant East relevant to the assessment year 2006-07. The assessee followed the percentage computation method for this project also. This project is said to have been completed in assessment year 2011-12. In the assessment year 2006-07, assessee declared profits @15% of the WIP. As per the accounting policy, assessee reduces the interest cost and administrative expenses (indirect expenses) from the gross profit before arriving at the taxable net profit of the business. This method is consistently followed by the assessee over the year. The claim in the

assessment proceedings for the year wise 2006-07, where the similar computation was adopted by the assessee, was not accepted. Assessing Officer tinkered with the WIP account and enhanced the same for working out the higher gross profit. The administrative expenses claimed by the assessee were also not fully allowed. In the appeals before the CIT(A), the said changes/additions were deleted and the assessed income is reduced to the return income. Thus, the interest cost the administrative cost were allowed out of the gross profits for the A.Y. 2006-07 eventually.

In the assessment year 2007-08, assessee followed same method of accounting as stated above. Gross Profit @ 20% of the WIP of Rs.4,91,15,853/- was worked out at Rs.98,23,171/-. Out of this said gross profit, assessee claimed administrative expenses of amount of Rs.1,05,34,615/-. Further, assessee also claims indirect expenses amounting to Rs.28,96,193/-. Eventually, assessee returned the loss even after working out the gross profit @ 20% of the WIP. The above computation of the loss was not accepted by the Assessing Officer. In the assessment, the Assessing Officer is of the opinion the work-in-progress (WIP) should be increased by 75% of the indirect expenses. Eventually, the work-in-progress as per the Assessing Officer works out to Rs.5,33,28,339/-. The gross profit on this at 20% works out to Rs.1,06,65,668/- (supra). Aggrieved with the above changes by the Assessing Officer, the assessee is in appeal before the CIT(A) for the assessment year 2007-08. CIT(A) confirmed addition with reference to direct expenses of Rs.75,88,422/-, i.e., 75% of the Rs.1,05,34,615/-. Regarding the addition relating to the changes on account of indirect expenses of Rs.21,72,144/-, CIT(A) deleted the addition to that extent. Accordingly, CIT(A) granted part relief to the assessee. Aggrieved with the confirming of the said addition amounting to Rs.75,88,472/-, the assessee is in appeal before us with the grounds raised extracted above. Further, the Revenue accepted the said order of the CIT(A).

4. Before us, learned counsel for the assessee explained the above facts of the case and mentioned that the said amount of Rs.75,88,472/- constitutes direct expenses and it has four elements and relevant break up is as under:

a. Interest on term loan/unsecured laon	Rs.51,59,134/-
b. Advertisement expenses	Rs. 17,92,052/-
c. Brokerage	Rs. 77,736
d. Loan processing fees	Rs.5,67,700/-

Ld. A.R. argued that these expenses are fully allowable in view of the applicable provision of section 36(1)(iii) (interest expenses) and the 37(1) of the Act. He also submitted that the claims are allowable in view of the finding of the similar issues for the A.Y. 2006-07. Referring to the interest amount of Rs.51,59,134/-, learned counsel for the assessee demonstrated that there is a typographical error in the ground no.1 and the error relates to the description of the “car loan” but the interest should read as “interest on term loan/unsecured loan”. Further arguing for allowing for the entire interest expenditure in the year under consideration out of gross profit and offered by the assessee, Ld. counsel submitted that the same should not be capitalized as done by the AO for the reason that such interest is allowable legally and validly as per the provisions of Section 36(1)(iii) of the Act. He also submitted that the above argument is based on the strength of the Jurisdictional High Court Judgment in the case of Lokhandwala Construction Industries Ltd., 260 ITR 579 (Bom) dated 15.01.2003. This judgment is relevant for the legal proposition that the construction project undertaken by the assessee builder constituted its stock-in-trade and the assessee is entitled to deduction u/s.36(1)(iii) in respect of interest on loan obtained for execution of the said project. Further, referring to decision of Tribunal in the case of Rohan Estates Pvt. Ltd., ITA No.7200/Mum/2010 for the assessment year 2006-07 dated 16.01.2013 which happened to be one of the sister concern of the assessee, Ld. counsel submitted

the similar issue arose with reference to the claim of interest expenditure and the same was allowed in favour of the assessee by the Tribunal. He submitted that the contents of paragraph 3.2 of the said Tribunal's order are relevant. Bringing our attention to the said paragraph, Ld. counsel read out the following "*the interest cost on the corresponding capital borrowed would involved to be incurred without any corresponding increase in the value of the inventory of the project*". He read out "*it is for this reason that interest cost is normally considered as only a period cost and charged to the operating statement for the year under which the same is inquired.*" He has submitted that the said decision of the Tribunal rely heavily on the cited judgment in the case of Lokhandwala Construction Industries Ltd. (supra). Further, he brought our attention to various other decisions to demonstrate that in a case, where percentage computation method is adopted by the assessee, out of the gross profit computed by that method, the interest expenditure for the year on the borrowed capital, is fully allowable in the year under consideration against the said gross profits. Therefore, the decision of the CIT(A) in allowing only 25% and capitalizing the balance of 75% of the interest fixed cost, should be restored as claimed by the assessee. Regarding the claim of advertisement expenses of Rs.17,92,052/-, learned counsel submitted that this claim of the assessee should also be fully allowed without restricting to 25% of the claim. Otherwise, AO capitalized 75% of the claim. Bringing our attention to the decision of the Tribunal in the case of "Vardhaman Developers Ltd." 35 Taxman.com 370. Ld. Counsel submitted, in the said case also, the issue of advertisement expenses against the gross profit came up and the Tribunal fully allowed. In the order, this view of AO was not appreciated by the Tribunal Mumbai Bench and held that the advertisement expenses were only in the nature of selling cost which would not be capitalized for inclusion in the work-in-progress account. Learned counsel brought our attention to paragraph 4 of the said order of the Tribunal and demonstrated that the said advertisement

expenses is fully allowable as the same is in the nature of selling cost. Further, bringing our attention to the brokerage expenses of Rs.77,736/-, Ld. counsel submitted that these expenses are also fully allowable as cost of the business u/s.37(1) of the Act. Further, the learned counsel extracted the above argument to claim of loan processing fees of Rs.5,67,700/-.

5. On the other hand, learned CIT-DR for the Revenue has heavily relied upon the order of the CIT(A). According to him, the advertisement expenses, brokerage and loan processing fees are required to be capitalized and included in the work-in-progress account.

5. We have heard both the parties and perused the orders of the Revenue. The paper books filed before us are also on the record. To brief the undisputed facts, it is the case of the assessee that a percentage completion method i.e. PCM is followed consistently by the assessee in respect of the project in question named Agarwal Negri. By this method, the assessee has been offering some percentage of the cost of the construction of the project (WIP) as profits every year from assessment year 2006-07 onwards. In principle, project was completed in the A.Y. 2011-12. The Assessing Officer accepted the said method of accounting. However, Assessing Officer proceeded to artificially inflate the WIP account for computing more profits for the assessee. The Assessing Officer did the same by transferring the entire/part of direct and indirect expenses debited to the P & L account. To be specific, the administrative expenses (indirect expenses) and part of the interest expenses, advertisement, brokerage, loan processing fee accounts were transferred to the WIP account. Otherwise, there is no dispute on the fact that the percentage completion method is the applicable method of accounting for the project. In the background of these changes, ground No.2 raised by the assessee has to be understood and we need to decide if such changes are validly done by the

Assessing Officer or otherwise. We shall take up the appeal ground wise issues in the following paragraphs:

6. Ground No.1 of the appeal relates to the addition of some of the expenses to the WIP account i.e. interest on unsecured loan/fixed deposits (sic-car loan), advertisement expenses, brokerage expenses and loan processing fees. Assessing Officer considered the above expenses as relatable to the work-in-progress account and recomputed the WIP account at Rs.5,33,28,339/-. Assessee contends that the above said expenditure is fully allowable in the year under consideration. In this regard, assessee relied on various decisions. This issue is relevant for A.Ys/appeals under consideration. We shall take up expenditure-account wise adjudication in the following paragraphs:

A) Interest on unsecured loans and fixed deposits: It is the claim of the assessee that the entire interest expenditure is allowable as it is a time related fixed finance cost on the borrowed capital. The claim of the assessee should be allowed in full in view of the various decisions on this issue. To start with, we perused the order of the Tribunal in the case of Rohan Estates Pvt. Ltd. (supra) which is one of the sister concerns of the assessee. We perused the para 3.2 of the said order of the Tribunal and find it is a self explanatory and the decision of the Tribunal supports the case of the assessee. Under comparable facts of the assessee, interest cost was allowed in favour of the assessee relying on binding jurisdictional High Court judgment in the case of *M/s. Lokhandwala Construction Industries Ltd.* (supra). For the sake of completeness of this order we extract relevant para 3.2 of the order which is reproduced as under:

*“3.2. With regard to the **interest** expenditure, ..... The interest cost on the corresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even*

*remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures in terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred. As such, what in our view would prevail is the method of accounting being regularly followed by the assessee, i.e., on a year to year basis. The same also has the sanction of law inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec. 36(1)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs. Lokhandwala Construction Inds. Ltd.(supra). The same also clarifies that the interest cost is to allowed u/s. 36(1)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deductibility of the said cost u/s. 36(1)(iii) is thus neither in doubt nor in dispute. Further, it may also be in place to state that section 36(1)(iii) stands since amended by Finance Act, 2003 w.e.f. 01/4/2004, by way of insertion of a proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost for the period post acquisition of a capital asset, that would stand to be deductible in computing the business income qua the business of which the relevant asset is a or is to constitute a part (also refer Explanation 8 to s.43(1)). The said decision may, thus, in the given facts and circumstances of the case, as well as the amended law, not be of much assistance.”*

7. We have also perused the said binding High Court judgment in the case of M/s. Lokhandwala Construction Industries Ltd. (supra) and find the same is relevant for the following conclusion – *“construction project undertaken by the assessee builder constituted its stock in trade and the assessee was entitled to deduction under section 36(1)(iii) of the Act in respect of the interest on the loan obtained for execution of said project”*. Relying on the another judgment

of Hon'ble Bombay High Court in the case of Calico Dyeing and Printing Works 34 ITR 265 Bombay, Hon'ble Bombay High Court concluded that the interest expenditure relating to the borrowed capital is allowable under section 36(1)(iii) of the Act. The relevant lines from the para 4 reads as under:-

*“that, while adjudicating the claim for deduction under section 36(1)(iii) of the Act the nature of expense – whether the expenditure was on capital account or revenue account – was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of capital was the relevant for the purpose of adjudicating the claim of deduction under section 36(1)(iii) of the Act. (referring to the judgment in the case of Calico) It was laid down that where an assessee claims deduction of interest paid on the capital borrowed all that the assessee was to show that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether capital was borrowed in order to acquire the revenue asset or a capital asset. ....”*

Considering the above settled position in the matter we are of the opinion that the assessee is entitled to claim entire interest deduction relatable to the capital borrowed and utilized for business purposes in the year under consideration. Resultantly, we disapprove the decision of the Assessing Officer/CIT(Appeals) in transferring the interest expenditure to WIP account. Therefore, assessee is justified in debiting the same to the P&L accounts of the respective assessment years. Thus, we order the Assessing Officer to accept the claim as made in the return of income. Accordingly, this part of the ground No.1 is allowed in favour of the assessee.

B) Regarding advertisement expenditure amounting to Rs.17,92,052/- as stated by Ld. Counsel, we perused the order of the Tribunal in the case of “M/s. Vardhaman Developers Ltd.” 35 Taxman.com 370 and we find such expenses are found allowable as discussed by the Tribunal in the para 4 of the said order of the Tribunal. Relevant extracts from the said para is inserted as under:

“4. .... Similarly **advertisement** ..... expenses are only in the nature of selling cost of the construction business which would not therefore stand to be capitalized in as much as the same could only be in respect of direct cost which adds value to or otherwise adds to its cost of production to the assessee. As regards the argument of there being no corresponding income as it being not relatable to any revenue stream the same to our mind of little significance as long as the assessee is carrying a particular business during the year the income there from has to be computed under section 28 of the Act allowing it all permissible deductions ..... whether the method of accounting being followed by the assessee i.e. project completion method is a correct method in accordance with the law i.e. given that it follows mercantile method of accounting, is another matter altogether. ....”

8. From the above it is evident that the advertisement expenses is an allowable expenditure in the year of spending as the same is the nature of selling cost of the construction business. Considering the same, we are of the view that the finding of the Assessing Officer and the decision of the CIT(Appeals) on this issue is required to be reversed and allow the same in favour of the assessee. Regarding other claim of expenditure on account of **brokerage and loan processing fee**, we find the said claims should be allowed in favour of the assessee as they are otherwise found allowable under section 37(1) of the Act. In our view, these expenses constitute some kind of administrative expenses. The said administrative expenses are allowable as they are relatable to the business activities of the assessee. As such, it is not the Assessing Officer's case that the claims are ingenuine and not qualified the conditions specified in the provisions of section 37 of the Act.

In the result, the ground No.1 raised by the assessee is allowed in favour of the assessee.

9. Regarding ground No.2, we find the same is raised in alternative to the ground No.1. As the ground No.1 is fully allowed in favour of the assessee in effect. We disapproved the changes made by the Assessing Officer/CIT(Appeals) to the WIP account claim of the assessee. In effect, in that sense ground No.2 stands allowed and in favour of the assessee.

10. In the result, appeal of the assessee is fully allowed.

**ITA NO.7317/M/2013 BY THE REVENUE**  
**(ASSESSMENT YEAR 2007-08)**

11. This appeal is filed by the Revenue against the order of the CIT(Appeals) dated 17.09.13 relating to the penalty levied under section 271(1)(c) of the Act. This appeal is directly related to the additions contested in the appeal ITA No.1566/M/2011 filed by the assessee. As discussed at length, in the said appeal, the Assessing Officer computed the assessment by making additions on account of WIP account qua certain expenses relating to interest paid, advertisement, brokerage and loan processing fee. The Assessing Officer levied the penalty of Rs.26 lakhs under section 271(1)(c) of the Act. In connection with the above said additions, CIT(Appeals) deleted the penalty as per the discussion given in para 4.3 of his order. The CIT(Appeals) held that the assessee is entitled to relief on the ground of debatability. Aggrieved with the same the Revenue is in appeal before us.

II. Before us, both the counsels submitted that the adjudication of this penalty appeal becomes academic, if the appeal of the assessee is on quantum additions is allowed in favour of the assessee. As can be seen in the proceeding paragraphs of this order relating to the quantum appeal ITA No.1566/M/2011, it is the finding of the Tribunal that the adjustment made by the Assessing Officer/ CIT(Appeals) to the WIP account are uncalled for in view of the judgment of jurisdictional High Court in the case of M/s. Lokhandwala Construction Industries Ltd. (supra), Rohan Estates Pvt. Ltd. (supra) etc. Therefore, it is a fact that additions stand deleted and the income returned by the assessee in the return of income was approved. Therefore, we are of the opinion that the decision given by the CIT(Appeals) for this reason also does not call for any interference. Accordingly, the grounds raised by the Revenue are dismissed.

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

**CROSS APPEALS FOR THE ASSESSMENT YEAR 2008-09**  
**(ITA Nos.310 & 433/M/2012)**

13. There are cross appeals under consideration for the assessment year 2008-09. The grounds raised by the assessee and the Revenue are as under:

**Grounds of appeal of Assessee:**

- “1. The learned CIT (A) has erred both in law as well as on facts in not accepting the consistently followed method of accounting by the appellant and accepted by the department in the past. Therefore capitalizing the expenses to the extent of 49.04% in determining the work in progress and not allowing the same as revenue expenses is completely unjustified.
2. The learned CIT (A) has further erred in not appreciating the nature of expenses incurred therefore addition @ 49.04% of the administrative and financial expenses in working out capital work in progress are completely unjustified.
3. The learned CIT (A) has completely erred in not allowing whole of the expenses of Rs.164,55,863/- for determining the net profit. Therefore disallowances to the extent of 49.04% are completely unjustified and uncalled-for.
4. The learned CIT (A) has further erred in ascertaining gross profit on enhanced work in progress @ 22% as against 20% determining by the A.O.

The appellant craves to leave, add and alter any ground or grounds of appeal on or before the date of hearing.”

**Grounds of appeal of Revenue:**

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing the method of accounting adopted by the Assessing Officer for determining the Gross Profit by allowing 50.96% of the expenditure as revenue expenditure out of total expenditure incurred by assessee.
2. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.
3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

14. Relevant facts applicable to the cross appeals include that the assessee filed the return of income for the A.Y. 2008-09 declaring the income of Rs.13,05,319/-. Assessee declared GP of Rs.1,97,33,712/- i.e. increased rate of 22% of the WIP of Rs.8,96,98,689/-. Following the assessment order for the assessment year 2007-08, the Assessing Officer increased the WIP account to Rs.11,89,01,931/- after adding 75% of the administrative expenses of (indirect expenses) Rs.1,64,55,863/- and the direct expenses amounting to Rs.78,91,474/-. However, the Assessing Officer adopted the different GP rate of 20% and recalculated the profit amounting to Rs.2.38 crores (rounded off). However, CIT(Appeals) deviated from the above manner of assessment of the AO. CIT(A) studied the extent of sale proceeds earned out of sale of the flats upto the year and found that the assessee recorded total sales of 50.96% of the project sales. Thus, the CIT(Appeals) proceeded to consider only that percentage of the Indirect/Administrative expenses. Thus, the CIT(Appeals) allowed Rs.83,85,000/- of the administrative expenses out of Rs.1.65 crores (rounded off) and capitalized the balance of Rs.80,69,955/- out of the gross administrative expenses of Rs.1,64,55,863/-. Accordingly, the WIP as per the CIT(Appeals) is reworked out and the GP at the rate of 22%, as adopted by the assessee, is considered. Finally, the GP is worked out at Rs.2,15,09,102/-. After allowing the administrative expenses amounting to Rs.83,85,908/-, the taxable net profit is worked out at Rs.1,31,23,194/-. Otherwise, both Assessing Officer and the CIT(Appeals) did not deviate from the fact of "percentage completion method" as adopted by the assessee. However, the deviation is only with reference to the reworking of the WIP account and tinkering with the GP rate. Aggrieved with the deviation of the CIT(Appeals) from that of assessment order, the Revenue is in appeal with the ground extracted above. Further, aggrieved with the order of the

CIT(Appeals) and his method of working out the WIP account, the assessee is also in appeal with the grounds referred above.

It is relevant to mention here that the project completion method is adopted by both the authorities. While the Assessing Officer has adopted the only 20% of the reworked out WIP account the CIT(Appeals) has adhered to the assessee's percentage of 22%. Regarding the changes of WIP, Assessing Officer reworked the WIP at sum of Rs.11,89,00,000/- (rounded off). The Assessing Officer added, an account of indirect expenses, 75% of Rs.1,64,55,863/- to WIP account; On direct expenses account Assessing Officer added sum of Rs.78,91,474/-. Further, both the parties are aggrieved with the CIT(Appeals) conclusions relating to allowing 50.96% of WIP account.

On the other hand, the CIT(Appeals) instead of adding 75% of Rs.1,64,55,863/-, he apportioned the administrative expenses (indirect expenses) of Rs.1,64,55,863/- on the basis of sales recorded in the year under consideration. It works out to 50.96%. The CIT(Appeals) ordered for allowing the said percentage of administrative expenses i.e. 83,85,908/-. Both the parties aggrieved with the said deviation.

15. Before us, the Ld. Counsel for the assessee brought our attention to the grounds and submitted that the CIT(Appeals) erred in capitalizing the expenses to the extent of 49.04% for determining the work-in-progress. Assessee is also aggrieved with the decision of the CIT(Appeals) in capitalizing the administrative and financial expenses against the claim of the assessee that the same are fully allowable in view of the consistency rule. Assessing Officer allowed such claim in A.Y. 2006-07 without any changes. They are also aggrieved with the decision of the CIT(Appeals) in enhancing the percentage of gross profit to 22% as

against the 20% adopted by the Assessing Officer. Of course, assessee calculated the GP on the work-in progress at the rate of 22%. In effect, Ld. Counsel for the assessee submitted that the method of accounting and the method of computation of taxable profits are consistently followed by the assessee for the project of Agarwal Negri. Referring to the administrative expenses, being indirect expenses, the same should be allowed in full as they are required for running of the business of the assessee. In support of the said claim, Ld. Counsel for the assessee brought our attention to the Tribunal's order in the face of its sister concern i.e. Rohan Estates Pvt. Ltd. (supra). According to him the administrative expenses being employees' remuneration, salaries, fixed expenditure etc. are required for maintenance of the office, projects and other over heads. It is not the case of the Assessing Officer that any of these expenses have an element of direct expenditure.

Referring to the direct expenses, the Ld. Counsel submitted that the arguments made by the assessee's counsel in connection with the claims relating to the direct expenses in the ITA No.1566/M/2011 are relevant and apply equally for this appeal too. Referring to the said decision in apportioning the administrative expenses in the ratio of extent of sales recorded in the year under consideration, the Ld. Counsel submitted that once a method of accounting is accepted by the Revenue, no deviation whatsoever is required validly. For this proposition Ld. Counsel brought our attention to various decisions.

1. The decision of Kolkata Bench of ITAT in the case of "M.N. Dastur and Co. Ltd." ITA No.1918 & 1919 (Calcutta) 1995,
2. Bakshi Vikram Vikas Construction Pvt. Ltd." 158 taxman 61 (Delhi),
3. Chabra Land and Housing Ltd." 152 taxman 68.
4. Mangal Teerth Estates Ltd., Madras - 303 ITR 366.

All the above decisions are relevant for the proposition that the ITO is not justified in departing from the consistently followed method

of accounting followed scientifically by the assessee with respect to a project. CIT(Appeals) is not justified in linking the profits to the sales up to an year as the assessee's method of computing the profits is linked to the cost of the project-WIP.

16. Referring to the Revenue's appeal, the solitary ground raised by the Revenue relating to changes adopted by the CIT(Appeals), the Ld. Counsel submitted that the same relates to the ground raised by the assessee in its appeal. Therefore the above arguments of the Ld. Counsel apply.

On the other hand, Ld. D.R. for the Revenue relied heavily on the order of the assessment and the decisions drawn by the Assessing Officer.

#### **Decision of the Tribunal on Cross Appeals-A.Y. 2008-09**

17. We heard both the parties on the issues raised in the grounds by the assessee and the Revenue. We find the issues are interlaced. To sum up, both the parties did not appreciate the deviations recorded by the CIT(Appeals) i.e. the matters of reworking out the WIP account in the ratio of the sales recorded in the year under consideration. However, the assessee is aggrieved for every change made by the Assessing Officer and the deviation recorded by the CIT(Appeals) to the results offered by the assessee in the return of income. Therefore, we have to adjudicate in these cross appeals if the AO and the CIT(Appeals) is justified in 1) Tinkering with the WIP accounts with reference to direct and indirect expenses. 2) The change in the percentage of gross profits adopted by the Assessing Officer and the CIT(Appeals). Finally, 3) The legal issue relating to the deviation to the project completion method offered by the assessee in the return, if the Revenue has jurisdiction at all to bring changes once if at all method of accounting is accepted in the earlier

assessment years qua the project of "Agarwal Negri". We shall adjudicate these issues one by one in the following paragraphs:

A. Regarding administrative and indirect expenses, we find that the administrative expenses are entirely allowable as they are nothing to do with the direct cost of the likely stock in trade. The similar claim is allowed in the case of Rohan Estates Pvt. Ltd. (supra). Relevant extract from para 3.1 is placed here as under:

"3.1..... The administrative expenses as it appears are only general in nature and even with regard to the employees' remuneration there is nothing to indicate that it represents element of either direct cost of production or even of production over head, which only would enable its inclusion as a part of the cost of production/construction. As such, being a fixed period cost these stand to be written off to the P & L account in the year being incurred".

Therefore the administrative expenses amounting to Rs.1,64,55,863/- is entirely allowable. There is nothing on record to demonstrate that the above expenditure is anyway constitutes a direct expenses of the project in any form. Coming to the direct expenses of Rs.7,88,91,474/- we find an identical expenditure was claimed by the assessee in the preceding assessment year 2007-08 which is the subject matter of addition and the litigation vide the appeal No.ITA 1566/M/2011 for similar reasons we allow the same and in favour of the assessee. To sum up, the entire administrative expenses of Rs.1,64,55,863/- and direct expenses of Rs.78,91,474/- is fully allowable, as claimed by the assessee in the P & L account for this year, against the gross profits computed by the assessee. Therefore, the WIP account as maintained by the assessee is approved and no modifications are called for to this.

B. The percentages of GP rate and adopting the 50.69 : 49.31 formula: In this regard, we find no justification for changes in these figures, thus the GP rate of 22% as offered by the assessee is reasonable

and no change is warranted. In effect relying on various judgments cited by the assessee the percentage completion method as followed by the assessee is approved and no disturbances are called for to the same. Thus, we do not approve the sales linked capitalization of expenses in this case.

In the result, all the grounds of the assessee and of the Revenue are allowed.

**ITA No.6658/M/2013 (Assessment year 2010-11)**

18. This appeal by the Revenue is against the order of the CIT(Appeals) and the ground raised by the Revenue reads as under:

“1 Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) has erred in deleting disallowance and capitalization of advertising expenses, brokerage expenses, loan proceeding fees and 75% of indirect expenses made by AO before computing the gross profit @ 40% of the work in progress, without appreciating the facts that the method of accounting adopted by the assessee was faulty and this was the only project carried out by the assessee in last 5 years?

2. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) was right in allowing percentage completion method adopted by the assessee on such basis?

3. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) was right in deleting the addition made on a/c of disallowance of 75% of indirect expenses (Rs.42,47,151/-) and Rs.79,80,097/- being financial and other expenses, without appreciating the fact that the method of accounting adopted by the assessee was faulty and does not disclose true and correct income?

4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

19. From the above, Ld. Counsel submitted that the assessee filed the return of income declaring the loss of Rs.54,57,003/-. The assessee worked out the GP at the rate of 40% on the work in progress. Assessing Officer, as in the earlier years, increased the WIP account to the extent of interest expenses, advertisement expenses, brokerage expenses, loan processing fees and indirect

expenses (75%). CIT(Appeals) granted relief on account of both direct and indirect expenses. Aggrieved with the same Revenue is in appeal before us.

20. On perusal of the order of the CIT(Appeals) (para 5) and the other related paragraph, we find both direct expenses and indirect expenses are fully allowable for the reasons mentioned by us in connection with the appeals for the assessment year 2007-08 and 2008-09 above. Accordingly, the grounds raised by the Revenue for this year also are dismissed and in favour of the assessee.

21. In the result, order of the CIT(Appeals) does not call for interference. In the result, grounds raised by the Revenue are dismissed.

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

**Order pronounced in the open court on 23.09.2016.**

**Sd/-**  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(D. Karunakara Rao)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23.09.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.