आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ,J ,मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य **एवं**

श्री अश्वनी तनेजा, लेखा सदस्य**,** के समक्ष

Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member

ITA No.6733/Mum/2011
Assessment Year: 2008-09

Jagshi J. Chheda, Prop. Silver Developers, 9001, Meru Heights, 268, Telang Road, Matunga (CR), Mumbai-400019	**बनाम**/ Vs.	ACIT, 17(2) Piramal Chambers Mumbai-
(Assessee)		(Revenue)
P.A. No.ACYPC2992B		

ITA No.6854/Mum/2011
Assessment Year: 2008-09

ACIT, 17(2) Piramal Chambers Mumbai-	**बनाम**/ Vs.	Jagshi J. Chheda, Prop. Silver Developers, 9001, Meru Heights, 268, Telang Road, Matunga (CR), Mumbai-400019
(Revenue)		(Respondent)
P.A. No.ACYPC2992B		

ITA No.3851/Mum/2012
Assessment Year: 2009-10

Jagshi J. Chheda, Prop. Silver Developers, 9001, Meru Heights, 268, Telang Road, Matunga (CR), Mumbai-400019	**बनाम**/ Vs.	ACIT, 17(2) Piramal Chambers Mumbai-
(Assessee)		(Revenue)
P.A. No.ACYPC2992B		

ITA No.4760/Mum/2012
Assessment Year: 2009-10

ACIT, 17(2) Piramal Chambers Mumbai-	**बनाम**/ Vs.	Jagshi J. Chheda, Prop. Silver Developers, 9001, Meru Heights, 268, Telang Road, Matunga (CR), Mumbai-400019
(Assessee)		(Revenue)
P.A. No.ACYPC2992B		

Appellant by	Shri Paresh Shaparia(AR)
Respondent by	Shri S.R. Kirtane (DR)

सुनवाई की तारीख/**Date of Hearing:**	**19/05/2016**
आदेश की तारीख /**Date of Order:**	**24/06/2016**

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals are filed by the assessee and revenue pertaining to same assessee and filed against separate orders of Ld. order of Ld. Commissioner of Income Tax (Appeals), {(in short 'CIT(A)'}, passed against assessment order u/s 143(3) of the Act by the AO.

2. During the course of hearing, arguments were made by Shri Paresh Shaparia, Authorised Representative (AR) on behalf of the Assessee and by Shri S.R. Kirtane, Departmental Representative (DR) on behalf of the Revenue.

First we shall take up appeal of the assessee in ITA No.6733/Mum/2011 for A.Y. 2008-09:

3. Ground No.1: This ground is not pressed by the Ld. Counsel of the assessee and therefore same is dismissed.

4. Ground No.2: In this ground the assessee has contended that the interest income of Rs. 2,90,90,872/- credited to Work-in-process (i.e. WIP) (on the ongoing phase) is attributable to the WIP, and should be reduced from amount of WIP of the project undertaken by the assessee in its proprietorship unit namely M/s Silver Developers, and thus the same was not liable to be included in the taxable income separately.

4.1. The brief facts in this case are that during the year under consideration the assessee through its proprietorship unit namely M/s Silver Developers, entered into the joint venture agreement with M/s. Godrej Properties & Investments Ltd. (GPIL) for development of property located at Lokmanya Paan Bazar, Chunabhatti, village Kurla, Mumbai. The project was called as "Godrej Coliseum". The amount of investment was to be brought in by both the parties i.e. assessee (herein after called as SD) as well as GPIL. The GPIL was appointed as controller of accounts for controlling the funds of the project, as per mutual agreement. Both the parties were entitled for

interest on the funds brought in @ of 18% per annum. Accordingly, GPIL paid interest to SD aggregating to Rs.2,86,04,353/- on which TDS of Rs.29,91,102/-was deducted by it. Apart from the said interest income, the assessee also received interest income of Rs.4,86,519/- from M/s. Industrial Finance Securities Pvt Ltd, an independent party unconnected with this project. Thus, the aggregate amount of Rs.2,90,90,872/- was received by the assessee as interest income. The assessee did not show the said interest income as its income but deducted the same from the amount of WIP (Work-in-Process) of the project. The AO did not agree with the claim of the assessee and brought to tax this amount separately as interest income under the head income from other sources.

4.2. Being aggrieved, the assessee contested this issue before the Ld. CIT(A) wherein the assessee pleaded that the said interest income was not liable to be taxed as income but it was rightly deducted from the amount of WIP. It was alternatively contended by the assessee that if this interest income was to be assessed as income, then, the same should be assessed under the head 'income from business' only. Ld. CIT(A) considered submissions of the assessee in detail and rejected the first submissions of the assessee by holding that said income was liable to be taxed as income. But, it was held by him that the said interest income was to be assessed as head 'income from business/profession' and directed the AO to rework the amount of WIP and taxable income, accordingly.

4.3. Still being aggrieved, the assessee filed an appeal before the Tribunal and contended that the impugned interest income should not have been taxed as income and the same should have been reduced from the WIP of the project. But, revenue did not file any appeal against the order of the Ld. CIT(A) for treating the said income as income from business. Though, revenue has filed 'Additional Ground' to agitate this issue, but it has not been argued or pressed by before us. Thus, Ld. DR did not contest the order of the Ld. CIT(A) on this ground. In view of the same, the order of Ld. CIT(A) for treating the impugned income as 'income from business' has attained finality. Thus, the limited issue to be decided by us is whether the said impugned amount of interest should be reduced from the amount of WIP or should be treated as income liable to be taxed in the year under consideration.

4.4. In this regard, Ld. Counsel made detailed arguments before us and drew our attention on various pages of Memorandum of Understanding. In nutshell, it has been contended by the Ld. Counsel that the impugned project was ongoing project, no income was yet realised as no sale consideration was received from the project and therefore impugned amount of interest could not have been treated as income under the provisions of the Income Tax Act. It was also contended by him that no person can earn interest from himself.

4.5. On the other hand, Ld. DR relied upon the orders of the lower authorities and submitted that Ld. CIT(A) has very fairly

decided this issue by treating it as 'income from business'. It was further submitted by him that this pleading was never taken by the assessee before the lower authorities that assessee could not have earned interest income from himself. Rather, the assessee has always treated it as an independent transaction. It is also evident from this fact that this amount of interest was paid that the other company namely GIPL and TDS was deducted on this amount. It was further submitted by him that assessee has also paid interest on the funds borrowed for investing in joint venture which has been claimed as expenses. Thus, assessee could not have adopted double standard for giving differential treatment between the interest expenses and interest income. Such kind of approach, if allowed to the assessee, would be contradictory in nature. He, thus, requested for upholding the order of Ld. CIT(A) on this issue.

4.6. We have gone through the facts of this case and orders of the lower authorities. The undisputed facts are that whatever amount of funds was invested by the assessee in joint venture, it was credited in the account of the assessee in the accounts of Joint Venture controlled and maintained by GPIL. It is also not disputed that on the amount of funds brought in by the assessee, the assessee was entitled for interest @ of 18% p.a. In response to our query during the course of hearing, it was fairly stated by the Ld. Counsel that in case agreement of joint venture was canceled abruptly at any given point of time, then as per terms of the agreement, the assessee was entitled for refund of its money along with stipulated amount of interest @

of 18% p.a. Under these circumstances, it can clearly be held that when the impugned financial year passed then the assessee had earned the amount of interest accrued to it because of passage of time viz. interest @ of 18% on the amount of funds invested by the assessee in the joint venture. In other words, the impugned interest is a period item. Under these circumstances, it can clearly be said that assessee had earned pre-decided amount of interest as the time passed. It is further noted by us that factually also GIPL had paid interest to the assessee as was stipulated in the agreement and that too after deducting tax at source for an amount of Rs.29,91,102/-, as stated above. The said amount of TDS has been admittedly claimed by the assessee in its return of income. The totality of facts and circumstances of the case indicate and clearly establish that the impugned interest amount should be treated as income of the assessee for the period under consideration. It is also noted that with respect to interest amount of Rs 4,86,519/- received from M/s Industrial Finance Securities Pvt Ltd, Ld. Counsel fairly stated during the hearing that this company is an independent party unconnected with this project, and therefore this interest income is not relatable to WIP, but it was inadvertently reduced from WIP, but it should be separately taxed as business income. Under these circumstances, we uphold the order of the Ld. CIT(A) for treating the total interest income as taxable in the year under consideration and also uphold his action in treating same as 'income from business' in the given

facts and circumstances of the case. Thus, this ground is dismissed.

5. The appeal filed by the assessee is dismissed.

Now we shall take up appeal of the Department in ITA No.6854/Mum/2011 for 2008-09:

The revenue has filed following grounds of appeal:

> *"1.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,16,11,968/-made on account of interest expenses holding the same as business expenditure as against the capital expenses attributable to WIP treated by Assessing Officer."*
> *2."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.18,09,057/- made by the Assessing Officer on account of Notional interest attributable to interest free deposits while computing the income from the House Property of the assessee."*
> *3."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to treat the hire charges of Rs.77,80,958/- received by the assessee as income from House Property as against the 'income from Other Source' treated by the Assessing Officer."*
> *4."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.19,35,921/- made by the Assessing Officer on account of proportionate common expenses debited to P&L A/c. related to let out or gifted out property."*
> *5.The appellant prays that the order of the CIT(A) on the, above grounds be reversed and that of the Assessing Officer be restored.*
> *6. The appellant craves leaves to amend or alter any ground or add a new ground which may be necessary."*

6. Ground No.1: In this ground the revenue has challenged the action of Ld. CIT(A) in deleting the addition of Rs.2,16,11,968/- which was made by the AO on account of interest expenses holding the same as business expenditure as against the capital expenses attributable to WIP.

6.1. The perusal of the assessment order reveals that the AO made disallowance for a proportionate amount out of total interest expenses debited by the assessee at Rs.2,43,80,067/- on the ground that part of the borrowed funds were utilised for building up WIP. It was noted by the AO that funds utilized for the WIP worked out @ of 69% of total funds. Accordingly, he bifurcated the total interest into two parts and disallowed the amount of interest in proportion to the amount of WIP viz-a-viz total funds.

6.2. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) wherein *inter alia* it was submitted that funds were utilized during the course of business and interest was a period cost and therefore the same should be allowed in totality. Ld. CIT(A) considered the submissions of the assessee and found that disallowance was wrongly made by the AO. The detailed reasoning given by Ld. CIT(A) are reproduced hereunder:

> *"I have carefully considered the facts of the case, the reasoning of the Assessing Officer and the submissions of the Authorised Representative. As per Assessing Officer the appellant had utilized the interest bearing funds towards the WIP and worked out proportionate borrowed funds utilized for the same and based on the average formula worked above the disallowance of the interest expenditure of Rs.2,16,11,968/- from the total*

income and considered it as part of WIP. However the appellant explained that there is no nexus between the interest bearing funds and the WIP. The appellant had entered into Memorandum of Understanding with Godrej Properties & Investments Ltd (GPL) for Joint venture for development of property at Lokmanya Paan Bazar, Kuria. Project- 'Godrej Colisieum". As per the terms & conditions of the MOU the interest expenses incurred for the project by the JV was to be added as cost of the project. However interest will be allowed on the working capital or funds introduced by either of the parties. From the details of the interest received and paid furnished it can be seen that assessee has received interest of Rs.2,90,90,872/- and thereby Assessing Officer disallowed the claim of assessee of reduction of WIP to the extent of interest received. which is dealt in the next ground of appeal in para 9 below. The interest paid of Rs.2,43,80,067 is not included in the WIP but claimed by the assessee as expenses as the same was not related to the JV account for WIP. As per the terms of the MOU each party is required to bear the interest on the funds borrowed by them for introducing the funds in JV. On the funds lying in the JV interest shall be paid. The assessee has contended that the funds borrowed had direct nexus to the funds given for JV on which interest is received. The borrowed funds have been reflected in the Balance Sheet of Silver Developers in the liability side as unsecured loan, secured loan from Jankalyan Sahakari Bank Ltd being term loan and corresponding on the asset side are reflected as in JV —Godrej Control Account (on which interest is received) and stock of premises etc. Thus the interest expenditure was incurred for commercial expediency of the business of the assessee. The reliance is placed on Supreme Court judgement in the case of S A Builders vs CIT 288 ITR 1 (SC) where it is held that if the nexus between the expenditure and the purpose of the business is established the same is allowable. In the assessee's case the purpose of borrowing is directly linked to the business of the Silver Developers and not to the WIP of the JV project, hence the interest paid by the assessee on the funds borrowed

for introducing funds in the JV cannot be added to the cost of WIP. The interest expenditure has direct nexus with the business of the appellant, hence allowable as an expense. Relying on the above, it is held that the interest expenditure of Rs.2,43,80,067/- being incurred in regular course of business for commercial expediency is allowable from business income and no addition is called for to the WIP. The proportionate addition on account of interest of Rs.2,16,11,968/- to the WIP is hereby deleted. This ground of appeal is allowed."

6.3. We have gone through the orders of the lower authorities as well as submissions made by both the sides before us. It is noted that assessee had followed double standards. On the one hand, the assessee claimed that amount of interest income earned for the project was part of WIP and therefore the same was adjusted against the amount of WIP and the same was thus not offered to tax, but the amount of interest paid on the funds borrowed for the purpose of project was not considered as part of WIP project, but it was treated as business expenditure while computing business income from this project. The contradictory approach of the assessee was not correct as per law. We find force in detailed reasoning given by the Ld. CIT(A) for treating interest expenses as part of business expenses allowable in the year under consideration. In addition to that, it is noted by us that interest income from the same project was held to be income under the head business by Ld. CIT(A). In our view, similar treatment should be given to interest income and interest expense. We have already held in earlier part of our order that interest income is not part of WIP and it was assessable separately as business income of the period under consideration. Thus, drawing same

analogy, we find that interest expense is also not part of WIP but business expense of the assessee for the period under consideration. The AO had also unfortunately followed double standards while passing the assessment order. When he had treated the 'interest income' as separate income and did not choose to reduce it from the cost of WIP, then there was no justification on his part to treat 'interest expense' as part of WIP and disallow the same. Thus, taking into totality of facts and circumstances of the case, we find that order of Ld. CIT(A) is well reasoned and thus Ld CIT(A) is justified in treating the interest expenses as having been incurred in the regular course of business and deductible in full as business expense of the period under consideration. We do not find any need to interfere in the findings of the Ld. CIT(A) and the same are upheld. This ground of revenue is dismissed.

7. Ground No.2: In this ground, the Revenue has challenged the action of Ld. CIT(A) in deleting the addition of Rs.18,09,057/- made by the AO on account of notional interest attributable to interest free deposits while computing the income under the head House Property of the assessee during the year.

7.1. Brief facts as noted from the orders of lower authorities are that while computing the annual letting out value of the let out property, it was noted by the AO that assessee had received from its tenant, an interest-free deposit amounting to Rs.4.42 crores and therefore, he added notional interest @ of

12% amounting to Rs.18,09,057/-. The reasoning given by the AO was that in view of provisions of section 22, ALV was required to be determined considering the rent at which property might reasonably be expected to be let out from year to year.

7.2. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) and submitted in detail that as per section 22 and 23, for the purpose of determining annual rental value, no amount of interest was required to be added on notional basis on the deposits received from the tenant and for this purpose reliance as placed upon many decisions from various courts of the country. After considering the submissions of the assessee, Ld. CIT(A) held that addition of notional interest was wrongly made by the AO and observed as under:

> *"I have carefully considered the facts of the case, arguments of the Assessing Officer and the written submissions of the Authorised Representative of the appellant. As per Assessing Officer the appellant had taken huge interest free deposits for the let out property. The Assessing Officer had stated that the standard rent under Maharashtra Rent Control Act, 1999 is not applicable as the properties were commercial properties. The Assessing Officer had relied upon cases like Maakrupa Chemicals Pvt. Ltd 108 ITD 95 (Mum) for determination of ALV which was for the properties which were liable to Rent Control Act. Further the other case laws relied being ACIT vs Rita A. Parekh 10 SOT 779 (Mum), Tivoli Investments & Trading Co (P) Ltd CIT Vs Monikumar Subha for determining the ALV based on notional interest. The case laws relied upon by the Assessing Officer were distinguished by the appellant in the above submission. From the details filed it is seen that the interest free deposits ranges between 9 months to 12 months rent, which is a general practice*

for letting out the property. There were no abnormal or huge interest free deposits as understood by the Assessing Officer. There cannot be any addition based on interest free deposits. The Assessing Officer has no where taken a view that the actual rent received by the assessee is not Annual Let Out Value (ALV) nor has he given any comparables to determine the ALV. In the absence of any such findings the actual rent received requires to be accepted. Even in the case where rent charged is lower, the provisions relating to computation of property does not permit addition of notional interest to the Income from House Property. The assessee has relied upon following judgments:

1. *CIT vs Asian Hotels Ltd 323 ITR 490 (Delhi- FB)*
2. *Trivoli Investments & Trading CO Ltd ITA No 2808/2809/Mum/1996 dated 13.4.2011*
3. *CIT vs J.K. Investors (Bombay) Ltd 248 ITR 723 (Bom)*
4. *M. V. Sonavala vs. CIT 177 ITR 246 (Bom.)*
5. *CIT vs. Prabhabati Bansali 141 ITR 419 (Cal.)*
6. *Indersons Leathers Pvt Ltd vs AddI CIT 295 ITR 295 (AT- Amritsar)*
7. *CIT vs. Satya Co. Ltd. 140 CTR 569 (Cal)*

In the recent Delhi full Bench judgement in the case of CIT vs Asian Hotels Ltd 323 ITR 490 it has been held that there is no scope in law for taxing any notional interest.

5.4 On the basis of the facts of the case and the decisions of above High Courts find that the interest free deposits are reasonable as per trade practice and there cannot be any addition on account of notional interest as made by the Assessing Officer of Rs.18,09,057/- being notional interest on deposits of Rs.4.42 Cores © 12%. The addition of Rs.18,09,057/- to Income From House Property is therefore deleted. This ground of appeal is allowed."

7.3. It is noted by us that Ld. CIT(A) has relied upon various judgments in support of his view. It is noted from the facts narrated by the Ld. CIT(A) that the AO nowhere held that actual rent received by the assessee was not annual let out value and nowhere he had given any other comparables to

determine the ALV. Under these circumstances, the actual rent received was required to be accepted as ALV. The law does not permit the addition of notional interest on the ground of interest-free deposits received from the tenant. The law in this regard has been clearly explained in the various judgments as has been relied upon by the Ld. CIT(A), as reproduced above. No contrary judgment was brought to our notice by the Ld. DR. Under these circumstances, we do not find any reason to interfere in the order of Ld. CIT(A) and therefore same is upheld ground no.2 of revenue's appeal is dismissed.

8. Ground No.3: In this ground the revenue has challenged the action of Ld. CIT(A) and directing the AO to treat the hire charges income received by the assessee as "income from house property" as against "income from other sources", as was treated by the AO.

8.1. The AO treated the rent receipts towards amenities from the tenant in the form of hire charges as income from other sources. The reasoning given by the AO was that the assessee had entered into separate agreements for the hiring amenities and therefore the amount received by the assessee was towards utilization of amenities and not for the utilization of house property, whereas as per provisions of law only rental income from building can be assessed under the head income from house property.

8.2. Being aggrieved, the assessee had filed an appeal before the Ld. CIT(A) wherein it was submitted in detail with the help

of evidences that property which was given on rent and the amenities were inseparable. The Ld. CIT(A) considered submissions of the assessee in detail and accepted the claim of the assessee by holding the impugned income as income from house property with following observations:

> *"I have carefully considered the facts of the case, arguments of the Assessing Officer and the written submissions of the Authorised Representative of the appellant. As per Assessing Officer the appellant had entered into two separate agreements one for rent and another for amenities and not for utilization of the house property, and therefore Assessing Officer taxed the Hire Charges as Income from Other Sources and disallowed the claim of the assessee for taxability under the head Income from House Property. The Authorised Representative has contended that the amenities are integral part of the premises which have been rented. Merely using a different nomenclature does not take away the nature of use of the property. Therefore the amenities are part and parcel of the premises which is let out and therefore liable to be taxed under the head Income from House Property, The Authorised Representative in the paper book has submitted the copies of rental as well as amenities agreement of all the three parties. From the said amenities agreement it can be seen that it referred to the same premises for which rental agreements were entered into for let out of premises and the amenities annexure in all three agreements were identical and, it pertained to:*
>
> *1. RCC Frame Structure - Common Areas Specification:*
>
> *a) Marble / Granite/ Granamite in common areas, Lobbies, etc*
> *b) Kotah on Staircase;*
> *c) 2 Otis Elevators*
> *2. Control Room: CCTV in common area*
>
> *3. Water Supply: Underground / Basement water tank with pneumatic system*
>
> *4. Electricity: Substation within the premises*

5. AHU Rooms: For Housing Split/ outdoor units

6. Fire Control: Wet risers and sprinklers, smoke detectors

From the list of amenities it can be seen that the premises cannot be put to use without amenities mentioned above. The hire charges are for the use of amenities which are inseparable from premises which are let out. Hence the main intention appears to exploit the property and not to render any services. As such there are no services provided which are distinct from letting out of property. The Hon'ble Supreme Court's decision in the case of Shambhu Investments P. Ltd. vs CIT 263 ITR 143 has held that commercial space let out with facilities and amenities like security, power, fixtures etc. has to be taxed as Income From House Property.

6.4 On the basis of above facts, I find that the Hire Charges are inseparable and main intention of the appellant is to let out property with amenities. Hence the same requires to be taxed as Income from House Property. The Assessing Officer is directed to treat the income derived from so called amenities as income from house property. This ground of appeal is allowed."

8.3. We have gone through the evidences and details shown to us. The perusal of particulars of items provided under the amenities, as has been discussed by the Ld. CIT(A) in his order, show that these amenities are of the nature that they constitute integral part of the house building e.g. Electrical Panels, AHU rooms and fire control system, water tanks, elevator, etc. In our considered view, all these items are nowadays considered as items of basic necessities. It has been contended before us that the impugned premises could not have been put to use without these amenities. In any case, the main intention of the assessee was stated to be for exploiting the property and not to render any service with the help of

these amenities. We do not find anything indicating that services provided with the help of these amenities were in any manner distinct from letting out of the property. Under these circumstances, hire charges need not necessarily be separately assessed from rental income. Thus, both of these can be assessed under the head "income from house property" as part of total rental income. We find that the order of Ld. CIT(A) is justified on facts and law both. No interference therein is called for and therefore, same is upheld. This ground is dismissed.

9. Ground No.4: This ground relates to proportionate disallowance or Rs. 19,35,921/- made by the AO on the ground that there might be some expenses which would have been incurred towards the property which was either let out or gifted. The AO made disallowance @ of 25% of the total expenses on the basis of area occupied by the let out properties.

9.1. Being aggrieved, the assessee filed appeal before the Ld. CIT(A) and submitted in detail that the expenses debited in the P & L Account which were claimed as business expenses were not related to the properties let out. After considering the submissions of the assessee, the Ld. CIT(A) analysed the same in detailed and accepted it after giving detailed reasoning as under:

> *"I have carefully considered the facts of the case, the reasoning of the Assessing Officer and the submissions of the Authorised Representative. As per Assessing Officer the appellant had debited various common expenses*

which cannot be said to have incurred wholly & exclusively for business but are also incurred in respect of properties which are rented and gifted. The appellant explained that the expense directly related to the rented/gifted property like property tax, maintenance charges, are already recovered from the persons to whom it is let out I gifted and not debited to the profit & loss account. The other expenses like bank charges, professional charges , travelling, motor car expenses, printing & stationery, salary & wages etc are incurred wholly & exclusively for business of the appellant and cannot be disallowed. I have gone through the details of the expenses and the ledger accounts furnished and find that expenses directly relatable to the premises leased and gifted are recovered and not claimed as expenses. From the details it is seen that Bank Charges claimed are Rs.16,50,689/- which is mainly for Mortgage of Property with Bank for secured Term Loans & Processing Charges. Property Tax claimed is Rs.6,53,288/-. The total property tax expenses incurred is Rs.7,68,945/- out of which Rs.1,15,657/- pertaining to the gifted property has been recovered . The rest of the property tax relates to building held as stock in trade and therefore is an allowable business expenditure. As regards the property tax of rented out property it has not been claimed as an expenditure by the appellant since they have been paid by the respective licensees as per lease agreement. Maintenance Charges claimed is of Rs.11,60,037/-. Total expenses incurred is Rs.15,69,981/- out of which the expenses pertaining to the gifted/ rented property of Rs.4,09,944 is recovered. The rest of the maintenance charges do not relate to the let out property or the gifted properties. Respective maintenance charges have been recovered from licensees and persons receiving the gifted properties and not claimed as expenditure. Therefore this cannot be disallowed. Professional fees claimed is Rs.16,77,364. From the details it is seen that the expenses are not pertaining to leased gifted property but for legal fees pertaining to rehabilitation buildings, club house etc. The other common expenses are also incurred wholly & exclusively for business

purpose and hence no proportionate disallowance is called for. The rest of the expenses are not related to the house property income but are incurred for the purposes of appellant's business. Hence no disallowance is called for. The disallowance of Rs.19,35,921/- is deleted. This ground of appeal is allowed."

9.2. We have gone through the orders of the lower authorities and submissions made by both the sides before us. It is noted that Ld. CIT(A) has made item wise analysis of all the expenses and found that none of these expenses were related to the let out properties or gifted properties. If any expenses were incurred on such type of properties then the same were recovered. It is further noted that Ld. CIT(A) has analysed other expenses also for example professional fee and various other expenses before giving the factual findings that none of these expenses related to let out properties. Nothing was argued by the Ld. DR and nothing was brought before us to controvert the factual findings given by the Ld. CIT(A) as reproduced above. Under these circumstances, we do not find any reason to interfere in the order of Ld. CIT(A) and therefore, same is upheld and ground no.4 of Revenue's appeal is dismissed.

Additional Ground:

10. During the course of hearing our attention was also drawn upon additional ground filed by the Revenue. In the additional ground, the Revenue has challenged the action of Ld. CIT(A) in directing the interest income to be taken as business income instead of income from other sources. During the course of

hearing nothing was argued by Ld. DR on this issue and therefore, same is dismissed as not pressed.

11. As a result appeal file by the Revenue is dismissed.

Now, we shall take assessee's appeal in ITA No.3851/Mum/2012 for A.Y. 2009-10:

12. Ground No.1: This ground was not pressed by the assessee and therefore same is dismissed.

13. Ground No.2: This ground relates to the submissions of the assessee for treating the interest income of Rs.3,36,97,261/- as part of the Work in Process (WIP). This ground is similar to ground no.2 of assessee's appeal for A.Y. 2008-09. We direct the AO to follow our order for A.Y. 2008-09 and dismiss this ground. Accordingly, appeal filed by the assessee is dismissed.

Now we shall take up Revenue's Appeal in ITA No.4760/Mum/2012 for 2009-10:

14. Ground No.1: In this ground the Revenue has challenged the action of Ld. CIT(A) in deleting addition of Rs.77,24,739/- debited under the head purchases on the ground that Ld. CIT(A) had considered additional evidences in violation of Rule 46A of Income Tax Rule 1962.

14.1. During the course assessment proceedings, it was noted by the AO that various expenses debited by the assessee in the P & L account were not allowable as assessee was following

project completion method and these expenses were not period cost but were required to be capitalised as part of WIP.

14.2. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) wherein detailed submissions were filed. It was demonstrated that impugned expenses related to the period cost of the assessee.

14.3. It was further demonstrated that these expenses were not related to the joint venture project, and these expenses were revenue nature expenses and these were incurred as per the contractual obligations of the assessee. Ld. CIT(A) considered submissions of the assessee in detail and deleted the same by holding as under:

> *"I have carefully considered the facts of the case, reasons for addition by the Assessing Officer and the written submission of the Authorised Representative of the appellant As per Assessing Officer the expenditure incurred of Rs.77,24,739.- is not a period cost but requires to be capitalized for the ongoing project of the appellant pertaining to JV with Godrej Properties & Investments Ltd (GPL), The AR has explained & substantiated his contention that the said expenditure was not incurred in relation to the Joint Venture with M/s Godrej Properties & Investments Ltd. based on the clauses of MOU dated 17.6.1999 with GPL & agreement dated 25.7.2002 with Lokmanya Pan Bazar Association Ltd.*
>
> *4.5 As per the MOU dated 17.6.1999 with M/s Godrej Properties & Investments Ltd (GPL) and agreement dated 25.7.2002 with Lokmanya Pan Bazar Association Ltd for rehabilitation and award payment it was agreed between the parties that the appellant only had to bear the cost for his portion of project. The joint venture agreement with GPL is in respect of the development of the saleable area to*

be constructed which is totally different. The expenditure debited to the profit & loss account for borewell charges, civil labour charges, labour charges for K building, materials purchased and transportation charges are not relatable to JV project as understood by the AO. As per the clauses 18(e) of the MOU dated 17.6.1999 between GPL, cost other than for the JV portion of the development is exclusively to be borne by the appellant which is specified in the Clause 18.(e). This reads that as 'Silver will provide at its own cost, in a separate building to be constructed on part of the said property (not the theatre plot) area of 14000 sq. ft. (built up) to be provided to the Association under the said Agreement dated 24th March, 1994 The IV is relatable only to the saleable area to be developed in JV by GPL, whereas the expenses incurred are in relation to area other than JV area for which there is contractual liability arising out of the agreement with Lokmanya Pan Bazar Association Ltd. It is also seen from the submission that a similar expenditure was also debited in the earlier year i.e. A Y 2008-09 and no such disallowance was made by the AO in the order passed u/s 143(3) in that year. There is no change in facts and circumstances for both the years. The expenses related to the JV are separately accounted in the WIP account. The expenses debited by the appellant which are not related to JV are revenue expenditure and incurred as per the contractual obligation for which no revenue is to be generated. Hence it is an allowable as business expenditure. The disallowance of Rs.77,24,739/- is therefore deleted. This ground of appeal is allowed."

14.4. During the course of hearing, it was put to the Ld. DR by point out that what are those additional evidences which have been referred by the Ld. CIT(A) in his order. Ld. DR was not able to point out any additional evidences. Even on merits Ld. DR was not able to controvert or contradict the factual

findings given by the Ld. CIT(A). It is seen that Ld. CIT(A) has analysed entire facts and similar expenses have been allowed in earlier year A.Y. 2008-09 in the order passed u/s 143(3) by the AO himself. It was further found by the Ld. CIT(A) that the impugned expenses were not related to the joint venture project and therefore there were no reasons for transferring these expenses to the WIP account. Under these facts, we find that Ld. CIT(A) has rightly deleted the disallowance made by the AO. We do not find any reasons to interfere in the findings recorded by the Ld. CIT(A) and therefore these are upheld and consequently ground no.1 of Revenue's appeal is dismissed.

15. Ground No.2 to 5: These grounds are covered by our order of A.Y. 2008-09 in the case of revenue's appeal. No distinction has been made by the either party on fact or law between the two years, therefore, following our order we dismiss ground no.2 to 5 of Revenue's appeal.

16. As a result appeal of the revenue is dismissed.

17. In the result, all of the appeals filed by the assessee as well as Revenue are dismissed.

Order pronounced in the open court on 24th June, 2016.

Sd/-	Sd/-
(Amit Shukla)	(Ashwani Taneja)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य** / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24/06/2016

*Patel, P.S.*नि.स.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**