

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.899/DEL/2013 & 1704/DEL/2015  
Assessment Year: 2009-10 & 2012-13

Ajay Enterprises Pvt. Ltd., 8 <sup>th</sup> Floor, Eros Corporate Tower, Nehru Place, New Delhi.	Vs.	DCIT, Central Circle-6, New Delhi.
TAN/PAN: AAACA1967D		
(Appellant)		(Respondent)

I.T.A. No.1348 & 1349/DEL/2013, 5776/DEL/2014 &  
2083/DEL/2015  
Assessment Year: 2008-09, 2009-10, 2011-12 & 2012-13

DCIT, Central Circle-6, New Delhi	Vs.	Ajay Enterprises Pvt. Ltd., 8 <sup>th</sup> Floor, Eros Corporate Tower, Nehru Place, New Delhi.
TAN/PAN: AAACA1967D		
(Appellant)		(Appellant)

Appellant by:	S/Shri Pradeep Dinodia & R.K. Kapoor, CA		
Respondent by:			
Date of hearing:	28	06	2021
Date of pronouncement:	30	07	2021

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid batch of appeals has been filed by the department and the assessee arising out of separate orders of Ld. CIT (Appeals) for the quantum of assessment passed u/s 143(3) for the aforementioned years. Since most of the issues

involved are common, arising out of identical set of facts, therefore, all these appeals were heard together and this common order is passed dealing with the various issues raised by the department as well as the assessee. We will first take up the appeal for the A.Y. 2008-09 filed both by the assessee as well as the department.

**ITA NO. 898/DEL/2013 – A. Y. 2008-09**

2. At the outset, the Ld. Counsel for the assessee, Mr. Pradeep Dinodia stated that assessee does not want to press the solitary ground raised by it in its appeal pertaining to disallowance of Rs. 7,90,230/- on account of replacement fund in view of the findings of Ld. CIT(A) on this issue. In the written synopsis dated 25.06.2021 filed online, the assessee has opted not to press the solitary ground raised in this appeal. In view of this submission of the assessee, the appeal filed by the assessee being ITA No. **898/Del/2013** is treated as dismissed. The appeal of the assessee is dismissed.

**ITA No. 1348/Del/2013 – A. Y. 2008-09**

3. Now we shall deal with the departmental appeal as above. The facts in brief are that assessee filed its Return of Income for A. Y. 2008-09 declaring an income of Rs. 23,90,50,763/- on 30.09.2008. The case of the assessee was picked up for scrutiny and assessment order dated 31.12.2010 u/s 143(3) of the Income Tax Act was passed at a taxable income of Rs. 42,48,16,084/- by making various

disallowances as per the said order. In the appeal before Ld. CIT (A), the assessee was allowed relief as per the detailed order dated 07.12.2012 passed by the Ld. CIT(A)-1, New Delhi. Against which the department has come up in appeal before us and has raised following grounds of appeal in this assessment year i.e. A. Y. 2008-09:-

- i. The order of Ld. CIT(A) is not correct in law and on facts.*
- ii. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 93,040/- made by the Assessing Officer on account of cessation of Liability u/s 41(1)/28 of the Income Tax Act, 1961.*
- iii. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs. 72,199/- on account of excessive depreciation on printers/UPS.*
- iv. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in restricting the disallowance of Foreign Travelling Expenses to Rs, 2,00,000/-.*
- v. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in directing to allowing the assessee's claim of losses amounting to Rs. 18,52,00,000/- in the Dwarka Project despite the fact that the losses worked out by the assessee was on estimate basis and unscientific.*
- vi. The appellant craves leave to add, amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

4. **Ground No. 1 & 6** as above are general in nature and does not require any adjudication

5. **Ground No. 2** raised by the department pertains to an addition made by the Ld. AO amounting to Rs. 93,040/- u/s 41(1)/28 of the Income Tax Act. The Ld. CIT-DR, Sh. Satpal Ghulati by referring to the order of assessment submitted that this addition was made on the ground that certain trade creditors/liabilities were appearing in the Balance Sheet for more than 3 years. The same, according to AO/Department, have ceased to exist and represented remission of liability liable to be taxed u/s41(1) of the Income Tax Act. The Ld. AO relied upon the judgment of Hon'ble Supreme Court in the case of **CIT v/s T. V. Sundram Iyenger & Sons Ltd. [222 ITR 344 (SC)]** to come to the conclusion that assessee is not required to pay such creditors and liability of the assessee has ceased to exist. The Ld. CIT-DR relied upon the findings of AO as contained in the assessment order.

6. The Ld. AR of the assessee submitted that addition made by the AO is not as per law and provisions of section 41 of the Income Tax Act. In the synopsis dated 25.06.2021 filed online the assessee has submitted on this issue as under:-

*“It was submitted before the CIT (Appeals) that the facts of the assessee’s case were not at par with T V Sundaram judgment and it was also explained that the subsequent judgment Hon’ble Supreme Court in the case of **CIT Vs.***

**Singauli Sugar Works (236 ITR 518)** have explained the provisions of Section 41(1) and has clearly laid down the proposition that simply on expiry of the period of the limitation under the Limitation Act could not extinguish the debt and provisions of Section 41(1) are not attracted. **(PB-80-87)**. It was further explained that these clarifications by Hon'ble Supreme Court has subsequently been accepted by the Ho'ble Punjab & Haryana High Court in the case of **CIT Vs. Smt. Sita Devi Juneja (187 Taxman 96)** and also in **CIT Vs. G P International (186 Taxman 229)**.

The reference was also made to the judgment of Hon'ble Delhi High Court in the case of **CIT Vs. Jaipur Jewelers (Exports) (187 Taxman 169)** for highlighting that so long as there is no cession of liability by writing it back in the books of the assessee, no addition can be made u/s 41(1) of the Income Tax Act. The Ld. CIT (Appeals) on appreciation of all the facts has allowed the relief.

Apart from the judgments relied upon in the Order of CIT (Appeals), it is respectfully submitted that the Hon'ble Delhi High Court has reiterated these provisions in the case of **CIT Vs. Jain Exports Limited (2013 TIOL 449- High Court Delhi)**. It has further been clarified in the said judgment that so long as the liabilities are disclosed and appearing in the Audited Balance sheet, the same cannot be treated as cessation of liability and cannot be added back as income u/s 41(1) of the Income Tax Act.

*Similarly Gujarat High Court has held in the case of **CIT Vs. Nitin S. Garg (208 Taxman 16)** that so long as assessee continues to show admitted amount as liabilities in the Balance Sheet, the same could not be treated as cessation of liability.*

*Hon'ble Delhi ITAT in the case of **ITO v. Hero Global Design Limited 2019-TIOL-460-ITAT-Del** has held that provisions of section 41(1) are not attracted if there is no evidence to suggest the cession or remission of trading liability.”*

7. We have heard the parties and perused the relevant finding given in the impugned order. Admittedly, the liabilities/creditors continue to appear in the audited accounts of the assessee as on 31.03.2008 and assessee has not written back these amounts. Hon'ble Supreme Court in the case of **CIT Vs. Singauli Sugar Works (supra)** have explained the provisions of section 41(1) and has held that so long liabilities are continuously shown and admitted in the audited accounts, the same do not cease to exist.

8. In our view, the Ld. CIT (A) has taken a correct legal view of the matter and has correctly deleted the addition. We uphold the action of CIT (A) on this issue and dismiss this ground of appeal of the department.

9. **Ground No. 3** raised by the department is regarding the depreciation of account of computer peripherals such as printers and UPS etc. The AO has reduced the claim of depreciation by an amount of Rs. 72,199/- by treating the computer peripherals such as printers and UPS as ordinary items of plant and machinery. The assessee claimed depreciation @ 60%/30% for these items depending upon the period of acquisition is more than 180 days and less than 180 days but AO restricted the claim to 15%/7.5% and worked out a disallowance of Rs. 72,199/-. At the time of hearing, both the parties fairly agreed that this issue is now settled by the judgments of Hon'ble Delhi High Court and eventually Hon'ble Supreme Court in the case of **CIT v. BSES Yamuna Power Ltd. [358 ITR 47 (Delhi)]** and in the case of **Birla Soft Ltd. [TS-82-SC-2014]**. Respectfully, following these judgments, it is held that CIT (A)'s order on this issue does not need any interference and is hereby upheld. The Ground No. 3 raised by the department is accordingly dismissed.

10. **Ground No. 4.** This ground has been raised by the revenue against the relief allowed by the Ld. CIT (A) on account of disallowance made by the AO towards the Foreign Tour Expenses of wife of one of the Directors of the company. The AO in the Assessment Order observed that when Mr. Aveneesh Sood travelled overseas his wife Mrs. Tithi Sood also travelled. On being required to explain, the assessee claimed before the AO that Mrs. Tithi Sood was also an employee of

the company and these travels were undertaken for the business purpose of the company. It was also submitted that these expenses in any case have also been considered for the purposes of payment of fringe benefit of tax. No part of the disallowance of these expenses can be made under the provision of Income Tax laws. However, AO was not satisfied and he disallowed the air ticket expenses along with 50% of the expenses of foreign travelling of the Director as having been incurred on wife of the director which as per the Assessment Order worked out to be Rs. 4,00,082/-.

11. Before the Ld. CIT (A), assessee reiterated the submissions as were made before the Ld. AO. The Ld. CIT(A) on appreciation of all the facts has held that since wife of the Director was also an employee of the company, at the same time, some personal element of the expenses cannot be ruled out, he restricted the disallowance to Rs. 2,00,000/- on an estimation basis and allowed relief to the assessee for the balance amount of Rs. 2,00,082/-.

12. The Ld. DR made reference to the Order of AO and relied upon the same. However, the Ld. AR of the assessee, on the other hand, submitted that an identical issue came before Hon'ble ITAT in assessee's own case for the A. Y. 2010-11, where also the disallowance made by the Ld. AO was restricted to about 50% of the disallowance by Ld. CIT (A) and Hon'ble ITAT has upheld the said Order of ld. CIT (A). The



assessee also referred to and relied upon the judgment of Hon'ble Gujarat High Court in the case of **Sayaji Iron & Engineering Ltd. 253 ITR 749 (Gujarat)** to claim that there cannot be any personal element in the hands of the corporate entity and disallowance made by the AO was wholly unjustified. Reference was also made to the case of Hon'ble Punjab & Haryana High Court in the case of **CIT Patiala vs. Road Master Industries of India (P) Ltd. 2009-TIOL-446-HC-P&H** to submit that once an FBT has been paid on the amount, which fact is undisputed, no other disallowance can be made under the provisions of Income Tax Act.

13. However, on a specific query being made by the Bench, it was clarified that assessee is not in appeal on this issue and has also accepted the order of Ld. CIT(A) on this issue by accepting the disallowance of Rs. 2,00,000/- on this account.

14. Having heard the parties, we find that this issue is squarely covered in favor of the assessee by an order of this Tribunal in ITA No. **4832/Del/2014** in A. Y. 2010-11. Respectfully following the said order, we dismiss this ground of appeal of the department and confirm the order of Ld. CIT (A) on this issue. **Ground No. 4** of the Department is dismissed.

15. **GROUND NO. 5:** This Ground of Appeal has been raised by the Department against the relief allowed by the CIT (A) in respect of losses claimed by the assessee amounting to

Rs.18.52 Crores in respect of Dwaraka Project. According to the Department, these losses had been worked out by the assessee on estimated basis and in an unscientific manner.

16. The facts pertaining to this issue as noted and discussed at Pages 1 to 12 of Assessing Officer's Order for A. Y. 2008-09 are that, auditors had given a *Note No. 2* in the audit accounts that loss of Rs.18.52 Crores has been written off in a commercial project as the estimated total contract cost and revenue indicate a loss. Picking up a thread from this note, the Assessing Officer was of the view that such loss was claimed on estimated basis on which the Assessing Officer required the assessee to explain the basis of claiming loss with necessary details and supporting documents. In response to such requirements of the Assessing Officer, the assessee explained that it had acquired a plot for developing a commercial site in auction from the DDA for which the total cost came to be Rs.122.98 Crores. There is no dispute on this. It was further explained that assessee proposed to develop a shopping mall for which initially there was a good response from the public. However, there was sudden fall in the demand of real estate properties in view of "sub-prime crisis" in USA and because of global recession. It was further explained that most of the large corporate houses postponed their proposed acquisitions and suddenly the availability of space in the real estate market exceeded than the demand due to which there was sudden and uncontrollable crash in the market prices. It was further explained that another

group company who had also acquired another plot in the auction, opted to surrender the plot to DDA at a huge loss. However, to keep a face and reputation intact in the market, the assessee opted to continue the project. It was further explained the loss has been calculated and claimed in accordance with the Accounting Standard-7 issued by the Institute of Chartered Accountants of India. The project cost and revenues as computed in accordance with the said Accounting Standards were also filed with the Assessing Officer. It was explained that Percentage of Completion Method (POCM in short) has been consistently followed by assessee in respect of all its projects in the past and even in the current year in respect of all its other projects. It was explained to the AO that sales and cost have been estimated on the basis of percentage completion method. Relying upon the extracts from the Accounting Standard 7, it was highlighted to contend that the loss claimed was in accordance with the accepted rules and law on this issue. The assessee further relied upon certain judgments which had decided the issue of accounting for project loss based on Accounting Standard 7, some of which are as under:-

- a. Jacobs Engineering India Pvt. Ltd. Vs. ACIT (ITA No. 335/Mum./2007 & 336/Mum./2007).***
- b. Hon'ble Bombay Tribunal in the case of Mazagaon Dock Limited Vs. JCIT (29 SOT 356).***

- c. Hon'ble Delhi High Court in the case of CIT vs. Woodward Governor of India Private Limited (294 ITR 451).**
- d. Hon'ble Supreme Court and Hon'ble Delhi High Court in the case of CIT Vs. Woodward Governor of India Pvt. Ltd. (Supra) 312 ITR 254 (SC).**

17. On the proposition that reasonably estimated liability on the date of drawing the accounts has to be accounted for and are legally allowable, following judgments are relied upon:

- a. Supreme Court in the case of Bharat Earth Movers (2004) 245 ITR 428 (SC).**
- b. Metal Box Company of India Ltd. V. Their Workmen (1969) 73 ITR 53 (SC).**
- c. Calcutta Co. Ltd. V. CIT (1959) 37 ITR 1 (SC).**
- d. CIT V. Insilco Ltd. 179 Taxman 5 (Delhi)**

18. Thereafter, the Assessing Officer required the assessee to explain the basis of computation of loss which was furnished. Similarly, other details as required by the AO in respect of total salable area, total area actually sold and agreed sales realization in respect of area sold, total unsold area and the rate at which such unsold area has been estimated were called for which were also furnished by the assessee as recorded by the AO at Page No. 7 of his Order. The complete details of total project cost at Rs.176.10 Crores were given Page 6 of AO's Order. Similarly, total estimated sales revenue calculated at Rs.157.58 Crores were given Page 7 column 10

of his Order. The difference between estimated project revenue and project cost, being Rs. 18.52 Crores was claimed as loss in A.Y. 2008-09 as per Accounting Standard-7. Thereafter, the AO called for further information in respect of the said project details which was all submitted to the AO.

19. The main reason given by the Assessing Officer was that very small amount of expenditure had been incurred by the assessee on the project till Assessment Year 2008-09 and only 30% of the area in respect of that project had actually been booked by the assessee and necessary revenue had been recognized in respect of the same. This aspect has been recorded by the AO in Point No. 6 at Page 10 of his Order. The other reasoning of the AO was that in arriving at estimated loss by the assessee, the sale value adopted for unsold area of the project by the assessee was lower than the rates at which the assessee had actually sold part of the project during the year under consideration. The Assessing Officer thereafter noted the facts and figures given by the assessee at Para 10 Page 11 of his Order.

20. The AO held that if average rate of the actual area sold during the year by the assessee were to be considered for the unsold space/area then the sales realization comes out to Rs.197.55 Crores as against Rs.157.58 Crores estimated by the assessee.

21. The Assessing Officer did not make any serious challenge to the cost estimates of the project which was estimated by the assessee at Rs.176.10 Crores.

22. The Assessing Officer worked out the estimated sale price of un-booked/unsold area at Rs.197.54 Crores based on the rates on which the assessee has actually booked the space during the year as against Rs.157.58 Crores claimed by the assessee. The Assessing Officer, thus, was of the view that the Dwaraka Project will not result into losses as claimed by the assessee in its Return of Income but is likely to result into profits. He, therefore, disallowed the loss of Rs.18.52 Crores claimed by the assessee.

23. The learned CIT DR, Shri Satpal Gulati at the outset by referring to **Para 4.5, Page 33** of the learned CIT (A)'s Order submitted that the adjudication done by the learned CIT(A) is based on erroneous understanding wherein the learned CIT(A) has opined that the entire dispute is about the allocation of loss in these 5 assessment years during which the project was completed i.e. Assessment Year 2008-09 to Assessment Year 2012-13. The learned CIT DR submitted that the Order of Assessment for Assessment Year 2009-10 will also have to be read along with the Order of Assessment for Assessment Year 2008-09 because learned CIT(A) has considered the entire period during which this project continued and allocated the total losses over the period of 5 years under the POCM method. To that extent the submissions being made by Ld.

CIT-DR as well as by Ld. AR on this issue shall also cover Ground No. 2 raised by the department in A. Y. 2009-10 in ITA No. **1349/Del/2013**.

24. The learned DR brought certain facts to our notice wherein it was submitted that whereas in Assessment Year 2008-09 the assessee claimed the total estimated cost of this project at Rs.176.10 Crore and total estimated revenues at Rs.157.58 Crores and determined the loss at Rs.18.52 Crores, going forward for Assessment Year 2009-10 while revising the cost of this project at Rs.173.26 Crores, the assessee estimated the sale value at Rs.129.26 Crores. It was submitted that although the cost estimates made by the assessee in these two years has slightly reduced and there is no real challenge given by the Assessing Officer to such cost estimates, it is the sales realization value which has sharply dipped from the last year as per assessee's own estimates which was at Rs.157.58 Crores in A. Y. 2008-09 to Rs.129.26 Crores in Assessment Year 2009-10. The learned CIT DR took us through the Assessment Order for 2009-10 and submitted that although the learned Assessing Officer in Assessment Year 2008-09 was of the view that the Dwaraka Project would not run into loss, but in Assessment Year 2009-10 he has accepted the fact that the project may run into losses and against the total losses of Rs.44 Crores estimated by the assessee cumulatively (Assessment Year 2008-09 at Rs.18.52 Crores and for Assessment Year 2009-10 at Rs.25.48 Crores), the learned Assessing Officer has accepted

the losses from this project at Rs.14.98 Crores and disallowed the balance losses. The balance losses of Rs.29.02 Crores were disallowed in Assessment Year 2008-09 at Rs.18.52 Crores and in Assessment Year 2009-10 at Rs.10.50 Crores. The learned CIT DR submitted that the cumulative losses of Rs.44 Crores in two years were mainly on account of the fact that the assessee sold major part of the unsold area at a highly discount price of 31.5% to its sister concern namely Nehru Place Hotels Real Estate Pvt. Ltd. (NPHREPL) which according to the Assessing Officer was a company covered u/s 40A (2)(b) of the Income Tax Act. The issue of allowing discount to the sister concern has been discussed in A. Y. 2009-10 only because entire unsold area was sold by the assessee to its sister concern in A.Y. 2009-10. It was submitted that out of the total saleable area of 81,644 Sq. Ft., only 26,765 Sq. Ft. was sold to outside parties in A. Y. 2008-09 and A. Y. 2009-10 and remaining area of 54,879 Sq. Ft. was sold to the related party on which heavy discount of 31.5% has been granted. By referring to the findings of learned CIT(A) in Para 4.5 of his order, the learned DR submitted that the CIT(A) did not address the issue of heavy discount of 31.5% given by assessee while selling the major space to its sister concern.

25. Under the circumstances, the learned CIT-DR requested that the matter should be restored back to the file of CIT (A) for examining this aspect and then render his findings on the



issue to determine the losses claimed by the assessee. Selling the space at heavy discounted price of 31.5% as against 5% discount which the learned AO has accepted and granted over the last sale price to independent party was the only reason, which according to learned CIT-DR has caused losses to the assessee over and above, what the AO has determined by taking a cumulative view for Assessment Year 2008-09 till Assessment Year 2009-10. The learned CIT-DR concluded his submissions by reiterating his earlier submissions that the matter should be restored back to the file of CIT (A) for adjudication on the issue of sale price of the unsold area which has been sold in Assessment Year 2009-10 to a sister concern at a hefty discount of 31.5% which according to the learned AO and Department should not exceed 5% as has been fairly given by the AO.

26. Mr. Pradeep Dinodia Ld. Counsel appearing on behalf of the assessee submitted with reference to the ground raised by the department on this issue that the only grievance which the department has on this issue is about the estimated and unscientific nature of losses. **Ground No. 5** of the department is reproduced for the sake of ready reference.

*On the facts and in the circumstances of the case the Ld. CIT(A) has erred in directing to allowing the assessee's claim of losses amounting to Rs. 18,52,00,000/- in the Dwarka Project despite the fact that the losses worked out by the assessee was on estimate basis and unscientific.*

27. By drawing our attention to the aforesaid ground, he submitted that there is no challenge either to the costs incurred by the assessee or the sales made by the assessee as has been made out in the submissions by the learned CIT-DR. The learned AR has submitted that the ground raised by the department is misconceived in as much as that the method employed by the assessee, i.e., POCM read with Accounting Standard-7 talks of estimates only. It has been submitted that there is no dispute on the method employed by the assessee or the applicability of Accounting Standard-7 to the facts of the assessee's case. Our attention was drawn to various clauses of Accounting Standard-7, a copy of which has been filed in the **Paper Book at Pages 262 to 280**. Referring to the paragraphs 31, 34 and most importantly paragraphs 35 and 36, it has been submitted that the very basis of working out and claiming the losses in Assessment Year 2008-09 or in other Assessment Years are dependent upon estimates as per Accounting Standard-7. Paragraphs 35 and 36 of the Accounting Standard were specifically highlighted, which for the sake of ready reference is reproduced:

*“ 35. When it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognized as an expenses immediately”.*

*36. The amount of such a loss is determined irrespective of:*

- a. *Whether or not work has commenced on the contract;*
- b. *The stage of completion of contract activity, or*
- c. *The amount of profits expected to arise on other contracts which are not treated as a single construction contract in accordance with paragraph 8.*

28. Drawing support from the aforesaid paragraphs, it has been submitted that when the losses are probable from the contract revenue then such losses are required to be claimed immediately irrespective of the fact whether or not the work has commenced on the contract or not or whatever may be the stage of completion of the contract. AO's reasoning in the assessment order that only about 30% area has been booked has no relevance in view of the aforesaid clauses in AS-7. It has been submitted that the learned CIT (A) has categorically held that Accounting Standards prescribed by the CBDT are required to be followed. To buttress these submissions, the learned AR has referred to and relied upon various judgments, some of which are as under:

- a. **Jacobs Engineering India Pvt. Ltd. Vs. ACIT (ITA No. 335/Mum./2007 & 336/Mum./2007).**
- b. **Hon'ble Bombay Tribunal in the case of Mazagaon Dock Limited Vs. JCIT (29 SOT 356).**
- c. **Hon'ble Delhi High Court in the case of CIT vs. Woodward Governor of India Private Limited (294 ITR 451).**

**d. Hon'ble Supreme Court and Hon'ble Delhi High Court in the case of CIT Vs. Woodward Governor of India Pvt. Ltd. (Supra) 312 ITR 254 (SC)**

29. Similarly the learned AR submitted that, whether the estimates of the project cost made by the assessee were realistic based on the relevant costs or not and in case the AO had any doubt about the said cost, he should have gone for independent valuation as has been held by Hon'ble Delhi High Court in the case of **CIT Vs. Triveni Engg. & Industries Limited (2011) 196 Taxman 94 (Delhi) after considering the ratio laid down by Apex Court in Calcutta Co. Ltd. Vs. CIT (1956) 37 ITR 1 (SC)**. But, this, according to AR, was not required because the Ld. AO has accepted the cost estimates and it is only the realization of revenue which has been altered by the Ld. AO, both in A. Y. 2008-09 and A. Y. 2009-10 by making his own estimates of sales as against the estimation done by the assessee.

30. The learned AR thus requested that the ground raised by the department having no connection with the estimated cost or estimated sale price or on the losses estimated by the assessee and claimed in the ITRs is required to be dismissed on this basis alone.

31. The learned AR further submitted that the version of learned CIT-DR that the CIT (A) did not consider about the AO's views of allowing hefty discount is not correct. It has

been submitted that the learned CIT(A) has taken into consideration each and every aspect of this matter and has correctly arrived at conclusion which has been drawn by him on the given facts of this case. Our specific attention was drawn to the Order of learned CIT (A) for the Assessment Year 2008-09 from where it was pointed out that the learned CIT(A) has reproduced the Order of the learned AO as well as the detailed submissions of the assessee in his order. At Page 19 of the learned CIT (A)'s order, the estimated sale price of the project in Assessment Year 2008-09 which was made by the assessee at Rs.157.45 Crores has been noted. As against this, the estimated sale price of the project which was taken by the AO at Rs.197.55 Crores for the Assessment Year 2008-09 has also been noted. Similarly the actual sale price realized in the project in subsequent year i.e. Assessment Year 2009-10 at Rs.129.26 Crores has been duly noted. He also submitted that in Para 4.4 of the learned CIT(A)'s order at Page-31, the submissions which were made by the assessee in Assessment Year 2009-10 have also been noted and recorded by the learned CIT(A) which, inter-alia, contains the explanation about selling the remaining space at down payment basis to Nehru Place Hotels Real Estate Pvt. Ltd. and justification of allowing discount while making this sale. The justification and explanation of making sales to remaining unsold space has been explained in Paragraphs h, i, j and k at Page 32 to 33 of the learned CIT (A)'s Order which for the sake of ready reference are reproduced as under:

*h. All remaining spaces were booked on down payment basis by NPHREPL and are eligible for major discounts. No commission was paid/payable on these bookings; no further expenses were required to be incurred for Advertisement and other marketing activities. Further, the company has anticipated substantial saving in inventory carrying cost in the shape of interest.*

*i. Purchase price in the case of NPHREPL has been accepted by the same AO and no adverse inference has been drawn in that case.*

*j. Based on same purchase price, income earned by NPHREPL in subsequent years has also been assessed and brought to tax by same AO.*

*k. Assessee company has taken prudent decision to sell the spaces at best possible rate to save interest cost and other recurring expenses.*

32. Our specific attention was drawn to the submissions dated 09.10.2012 made before the learned CIT(A) in Assessment Year 2009-10 which are available at Paper Book Pages 54 to 88 wherein the detailed submissions and reasons of losses in this project has been explained.

33. The learned AR submitted that the assessee purchased a plot in auction from DDA in January, 2007 when the real estate market was at its peak, for a cost of Rs.122.98 Crores.

There is no dispute on this fact. It has been claimed that there was a sudden down fall in the real estate due to Sub Prime Crisis in September, 2007 in USA. Banks and financial institutions were unwilling to finance any institution related to real estate and there was fear in the real estate market for sustaining larger projects. Due to such global crisis, most of the real estate sector projects were put on hold. Real estate sector was badly affected as was also witnessed by the sharp fall in the reality indices. International real estate transactions dipped by 46% by July, 2008 and sliding reality sector forced the realtors to renegotiate rentals and all the contractors and builders were slashing the prices. Future indication about the real estate sector was also projected to be bad. Major reality developers and contractors slashed their prices. Demand in the real estate sector dipped by about 50% both in the premium and middle segment. DDA auctioned about 29 plots around that period. Out of these 29 plots, construction never started on 18 plots. Two plots were surrendered by the persons who got the same in auction. One of the plots surrendered was by an associate concern of the company namely, R.C. Sood & Co. Pvt. Ltd. and loss of above Rs.30 Crores was incurred on surrender. The same loss was duly accepted by the same AO in associate company case. It has been submitted that the buyers who took the space with the assessee also started defaulting in making payments. Further, booking of the space became very slow. Whereas during Assessment Year 2008-09 25.475 Sq. Ft.

which was about 30% of the space, constructed by the assessee was booked, in Assessment Year 2009-10 only 3,212 Sq. Ft. was booked to the independent parties which was about just 6% above the unsold space of the project. Not only the real sector was adversely affected, even the companies dealing in consumer goods started giving heavy discount between 40 to 60% to clear of their inventories. All the aforesaid assertions made by the assessee were duly supported by relevant evidences by way of newspaper cutting and with reference to relevant websites it is submitted. It was submitted that after the total cost of the project estimated at Rs. 176.1 Crores in A. Y. 2008-09, about 70% of the cost was represented by the value of land at Rs. 122.98 Crores. When there is substantial drop in the market value of land which is also sold as part and parcel of any space constructed by the assessee, the loss is inevitable. It was undisputedly demonstrated before the Ld. AO as well as before Ld. CIT (A) that there was drop of about 40% in the land prices as was evidenced from the reserved price of the land which was sought to be auctioned by the DDA. All the supporting evidence on this issue had been filed which are uncontroverted it was submitted.

34. On the specific issue of allowing 31.5% discount to the sister concern, the AR of the assessee submitted that in view of the deteriorating real estate market heavy borrowed funds were involved in the project which was affecting the entire



future growth of the company. The assessee company worked out a formula to offer discount on bulk sale to a sister concern, who was having sufficient surplus funds. Such discounts were worked out as under:

<i>Discount for Bulk booking on down payment basis</i>	24%
<i>Advertisement and other selling expenses</i>	3%
<i>Commission</i>	5%
<i>Other Overheads</i>	<u>1%</u>
	<u>33%</u>

35. Ld. AR submitted that each and every item which went into making of the aforesaid calculation of 33%, against which assessee offered on 31.5%, was decided by a well-reasoned and sound basis on commercial basis. He submitted that average carrying time of inventory of the assessee is about 2 years and assessee was paying interest to the bank varying between 12.5% to 16% as supported from the paper book pages 233 to 240. It was pointed out that interest on loan obtained from Housing Development Finance Corporation Ltd. for the period 01.04.2007 to 31.03.2008 was @ 12.5% as witnessed from paper book pages 233 to 236 which went up to 15.75 to 16% in the financial year 2008-09 relevant to A. Y. 2009-10 (paper book pages 237 to 240). The assessee while determining the discount of 24% on this count took a very conservative view. Similarly as regards commission paid to agents and other selling expenses, assessee explained from the paper book that such expenses were actually incurred by the assessee as was evident from sample supporting bills of

commission paid @ 5% to certain booking agents referred to and filed at paper book pages 225 to 227. Similarly, advertisement cost of about 3% is incurred by the assessee which is supported by bills etc. as seen from Paper Book Pages 228 to 232. Other overheads of 1% were also calculated on a reasonable basis. It was submitted that there is no dispute on all such costs which the assessee has actually incurred and also allowed by the Ld. AO in the respective year of incurrence.

36. The Ld. AR further submitted that sales to the sister concern at the discounted price of 31.5% was a prudent business decision. In any case such sale was accepted in the assessment of the said sister concern by the same Assessing Officer. A copy of assessment order for A. Y. 2009-10 and A. Y. 2010-11 in the case of **Nehru Place Hotel & Real Estates (P) Ltd.** dated **12.12.2011 and 04.07.2012** passed by the same Assessing Officer i.e. DCIT, Central Circle-6, New Delhi was referred to as filed in paper book at pages 245 onwards of the paper book accompanied by the computation of income. It has been submitted that both the assessee as well as the sister concern were assessed by the same AO simultaneously around the same time. Assessment Order of the assessee for A. Y. 2009-10 is dated 29.12.2011 passed by DCIT, Central Circle-6, New Delhi and assessment order of NPHRPL for A.Y. 2009-10 is dated 12.12.2011 by the same AO i.e. DCIT, Central Circle-6, New Delhi. It has been submitted that if the

Ld. AO has accepted the purchase price of the same item in NPHRPL, there is no reason to alter sale price of the assessee. The AR submitted that tax rates of both the companies are same and hence there is no tax leakage viewed from any angle.

37. The Ld. AR further submitted that the provisions of section 40A (2)(b) have been wrongly relied upon by the Ld. AO because section 40A(2)(b) is applicable to expenses incurred and not on the sales transactions. Bonafide sales made cannot be adversely viewed and sales amount actually realized cannot be questioned by the AO. Reliance for this proposition was made by the Ld. AR on the judgment of Hon'ble Supreme Court in the case of **A. Raman & Co.** as reported in **67 ITR 11 (SC)**.

38. It is also submitted by Ld. AR that there is no dispute on costs incurred by the assessee on this project. Similarly the sale price realized by the assessee has also been accepted by the Ld. AO in all subsequent assessment years i.e. A. Y. 2010-11, A. Y. 2011-12 and A. Y. 2012-13, which is the period during which this project of Dwarka Mall ran and completed. Once the same sale price has actually been accepted by the Revenue in subsequent year and further loss claimed in these subsequent years also allowed, there is no reason to question the same during these two years, it has been submitted.

39. It was also submitted on behalf of the assessee that although Ld. CIT (A) should have allowed the complete loss of Rs. 45.72 Crores on this project in the assessment year 2008-09 itself in accordance with AS-7 read with clause 35 & 36, yet allocation of loss done by him in various years did not adversely affect the assessee or the revenue because tax rates in all the years was same and assessee has always been a tax paying company in all these years. Thus, it was submitted that the Ld. CIT (A)'s order is a well-reasoned order and does not leave any aspect of the issue untouched as claimed by the Ld. CIT-DR and this order has also been acted upon by the department in A. Y. 2010-11. Further, assessee claimed no loss from this project in A. Y. 2010-11 in its ITR. Yet, in appeal before CIT (A), a claim was preferred to allow the loss allocated by the Ld. CIT (A) as per his order for A. Y. 2008-09. This claim was allowed by Ld. CIT (A) and AO allowed such loss in appeal effect order, a copy of which was referred and filed at pages 376-377 of paper book. The department has not filed any appeal on this issue in A.Y. 2010-11 and granted deduction of loss of Rs. 2.8 Crores as was allocated by Ld. CIT (A) in his order for A. Y. 2008-09. This, according to Ld. AR, means that department has no grievance on this order of Ld. CIT (A) for A. Y. 2008-09. Similarly, a query was raised from the Bench for the A. Y. 2011-12, wherein Hon'ble Bench noted that there is no such disallowance in the assessment order for Rs. 2.51 Crores for which a ground has been raised in ITA no. **5776/Del/2014** by the department. Ld. CIT-DR

clarified that such ground is also linked with the order of Ld. CIT (A) in A. Y. 2008-09 and there is no discussion on the issue in the assessment order for A. Y. 2011-12.

40. The Ld. AR concluded his arguments by submitting that the order passed by Ld. CIT (A) deserves to be upheld on all counts. If order of Ld. CIT (A) is upheld, then assessee's cross appeal in A. Y. 2009-10 restricting the loss claimed in ITR at Rs. 25.48 to Rs. 19.1 Crores as per allocation of loss done by Ld. CIT(A) in his order, will also have to be dismissed because assessee has been granted the differential loss in the next 3 assessment order i.e. A. Y. 2010-11, 2011-12 and 2012-13 in the appeal effect orders by the AO.

### **DECISION**

41. We have heard both the parties and perused the relevant material referred to us at time of hearing on the issue of allowability of loss on the Dwarka Project. Succinctly, the facts as noted from the assessment orders passed by the Ld. AO are that in A. Y. 2008-09, it is seen that the AO was of the view that Dwarka Project will not return losses which view of the AO stood changed when he passed assessment order for A. Y. 2009-10. Against the cumulative loss of Rs. 44 Crores till A. Y. 2009-10 out of which assessee claimed Rs. 18.52 Crores in A.Y. 2008-09 and balance Rs. 25.48 Crores in A. Y. 2009-10, the AO calculated and accepted the loss of Rs. 14.98 Crores and disallowed balance loss of Rs. 29.02 Crores in these two years being Rs. 18.52 Crores in A. Y. 2008-09

and Rs. 10.50 Crores in A. Y. 2009-10. It is observed and also has been admitted by both the parties before us that, there is no dispute on the cost estimates by the assessee. Cost estimates on the Dwarka Project have very minor variations over the years and have rather reduced from Rs. 176.1 Crores as estimated in A. Y. 2008-09 to Rs. 173.26 Crores in next two years and fructified at Rs. 174.98 Crores in the final year i.e. A. Y. 2012-13 when this project was finally closed. The AO has not challenged the cost estimates. However, what the AO had done to disallow the claim of losses in these two years is that he has changed the sales estimates and made his own estimates about the possible sale realizations.

42. In A. Y. 2008-09, when assessee estimated its realizable sales value at Rs. 157.45 Crores including the area already booked, the Ld. AO estimated the same to be at Rs. 197.54 Crores as is seen from Page 7 of AO's order. The difference in arriving at these estimates has arisen on account of the fact that assessee had valued the estimated sales realization of unsold area of the space constructed by it on the basis of latest rate at which some space was booked but AO adopted an average rate of space for which about 30% of property was actually booked by the assessee during A. Y. 2008-09. The assessee has estimated the sale realization of the unsold area on a conservative basis by relying on the 'Principle of Prudence', because realty sector as stated before us by the Ld. Counsel for the assessee was undergoing through turmoil and

badly affected due to global trend and sub-prime crisis in USA which adversely affected the real estate sector globally. In our view, the Assessing Officer was not justified in estimating the sales realization at Rs. 197.54 Crores in A. Y. 2008-09 based on the average rates at which the some of the space was booked in A. Y. 2008-09. In a scenario, where admittedly the prices of properties were crashing averaging rates of estimated sales was not proper. Averaging principles can be applied where conditionality of comparable cases are more or less static and are not changing. On the facts as brought on record, there is no denial of the contentions of the assessee that property prices during the period were substantially falling down. Under the circumstances it is only the last realized price which could have been taken the basis for valuing the sale price realization for the unsold stock for the purpose of considering the sales realization under the POCM method, which in our view, had been correctly done by the assessee in A. Y. 2008-09. The facts and figures given by the assessee regarding the downward trend in the property prices are unconverted and unchallenged. There is no evidence on record brought out by the AO or by Ld. CIT-DR before us that the claim of the assessee about the downfall the real estate sector was not correct. Therefore, all the reasons or grounds on which loss of Rs. 18.52 Crores was disallowed by the AO in A. Y. 2008-09 have no substratum to stand. The only reason for working out the losses in A. Y. 2008-09 and A. Y. 2009-10 as also submitted by Ld. CIT-DR, is that the AO was of the

view that 31.5% discount allowed by the assessee while selling major area to its sister concern in A. Y. 2009-10 is not justified and only 5% discount would have been sufficient.

43. The other aspects of the issue that POCM method is applicable, As-7 is applicable, is also not in dispute. In fact, as already noted above, in the POCM method applied by the assessee, the AO has merely substituted the estimated sales in A. Y. 2008-09 and enhanced the sale price actually realized by the assessee in A. Y. 2009-10 and in subsequent 3 years, the cost and sales value have been accepted by the AO himself i.e. in A. Y. 2010-11, 2011-12 and 2012-13.

44. The Ld. Counsel of the assessee has given elaborate justification for allowing the discount to the sister concern which is supported from the documents filed in the paper book and available on records. All the details and explanation filed by the assessee about major crisis in the real estate market during that period, falling indices of reality sector, atmosphere of fear and crashing of reality prices, DDA slashing its floor prices of similar properties by about 40% from Rs. 118.21 Crores in March 2009 to Rs. 70.93 Crores in 2010 and 2011, but still no buyers of similar property in Dwarka itself which assessee's Mall was constructed are uncontroverted. All such submissions and claims are duly supported by all the relevant evidences. It is noticed that DDA made an open offer of Plot No. 9 measuring 5976 Sq. Meters



situated at City Centre, Dwarka, Sector-14, Delhi initially from 13.03.2009 to 30.03.2009 for a floor price of Rs. 118.21 Crores. The same very plot was again offered for public auction from 01.10.10 to 20.10.2010 but for a reserve price of Rs. 70.93 Crores but remained unsold. Yet another attempt by the DDA to sell the same plot was made vide public offer during 11.02.2011 to 08.03.2011 again for Rs. 70.93 Crores. This single instance clearly proves the assessee's version of downward trend in the real estate sector. DDA had to slash the prices by about 40% on the commercial land. Viewed from this angle, the assessee who admittedly purchased the plot through auction from DDA for the auction price of Rs. 111.12 Crores had incurred high costs by about Rs. 44.45 Crores, which cannot be disputed. Similarly there is no dispute that another sister concern namely R. C. Sood & Co. Pvt. Ltd. surrendered plot and incurred losses of about Rs. 30 Crores. All these instances do justify the action of the assessee in making losses on the Dwarka Project.

45. Similarly assessee had given a detailed basis of determining and arriving at the discount of 31.5%. Carrying cost of stock, commission expenses, selling expenses such as advertisements and other administrative expenses/estimated by the assessee have not been refuted either by the AO or Ld. CIT-DR before us and remain uncontroverted and unchallenged. Whereas assessee had given a detailed explanation about giving 31.5% discount on unsold stock,

how AO estimated the discount figure of 5% is not reasoned by the AO in the assessment order and is a mere guess work. Such an adhoc approach adopted by the Ld. AO has no basis and cannot be sustained. How the business affairs are to be conducted and what is the best for the business has to be judged by a businessman and how much discount was required to be given in a given situation has to be decided by the business. As long as the transactions are genuine and actually carried out, no faults can be found simply because the parties to the transaction are related. Courts across the country have time and again reiterated these principles. AO cannot judge these transactions sitting in the arm's chair of a businessman. Reasonableness of expenditure, the test of commercial expediency would be required to be judged from the point of view of a businessman as has been held in many of the judgments some of which are as under:-

- a. **CIT Vs. Panipat Woolen & General Mills Limited  
103 ITR 66 (SC)**
- b. **Sasoon J. David & NCo. Pvt. Ltd. Vs. CIT 118  
ITR 261 (SC).**
- c. **CIT Vs. Walchand & Co. 65 ITR 381 (SC).**
- d. **J. K. Woolen Mills Vs. CIT 72 ITR 612 (SC).**
- e. **Aluminium Corporation Vs. CIT 86 ITR 11 (SC).**
- f. **CIT Vs. Delhi Safe Deposit 133 ITR 756 (SC).**
- g. **SA Builders Ltd. Vs. CIT 288 ITR 1 (SC).**

46. The only reason given by the Ld. AO that sales in A. Y. 2009-10 to the sister concern are covered u/s 40A (2)(b) of the Income Tax Act. We fail to appreciate this reasoning and concern of the AO. As rightly pointed out by Ld. Counsel and duly acknowledged by Ld. CIT-DR that provisions of section 40A(2)(b) cannot be applied to the transaction of sales or income. These provisions are applicable when assessee incurs expenditure, the expenditure incurred by the assessee being costs of the project have all been accepted by the revenue. We also notice that provisions of section 40A(2)(b) could have been relevant in the hands of NPHRPL who purchased this space from the assessee but that was possible only if NPHRPL had paid to assessee more price than the market price of similar space. On the contrary, here the allegation of the AO is other way round, i.e., assessee has sold it cheaper at a discount. Therefore, provisions of section 40A (2)(b) would not be applicable even in NPHRPL. Ergo, in our view nothing adverse turns out against the transactions of sale/purchase between the related concerns as alleged by the Ld. AO and consequentially nothing adverse can be inferred from allowing discount by the assessee while affecting the sales to its sister concern in A. Y. 2009-10. We are also at tandem with the arguments of Ld. Counsel that amount of sales amount actually realized by the assessee cannot be artificially enhanced as has been hold by Hon'ble Supreme Court in the case of **A. Raman & Co. 67 ITR 11 (SC)**. That the transaction between the related parties is genuine is not in dispute. The

Ld. AO has also accepted this aspect and the only reason for restricting the cumulative loss of Rs. 44 Crores in A. Y. 2008-09 and A. Y. 2009-10 as noted from assessment order for A. Y. 2009-10 is the reduction of discount actually allowed by assessee @ 31.5% to 5%. Therefore, so long as transactions between the transacting parties are genuine, no challenge can be thrown to the prices decided between the parties. The AO has subsequently in A. Y. 2010-11, 2011-12 and 2012-13 accepted both the cost of the project and the sales actually realized in line with the previous year's estimation.

47. A cumulative appreciation of all the facts and legal position as gathered and applicable to the facts of this case on this ground would lead to a natural conclusion that AO was not justified in disallowing losses in A. Y. 2008-09 and also in A. Y. 2009-10.

48. Now next issue which is required to be considered by us as to whether the order of Ld. CIT (A) requires any change vis-à-vis total losses of this project having been allocated in the manner indicated by him in his order. The Ld. Counsel of the assessee has claimed that as per the losses allocated by Ld. CIT(A) Rs. 32.90 Crores was required to be allowed in A.Y. 2008-09 only as against Rs. 18.52 Crores claimed by the assessee in its ITR. However, Ld. CIT (A) has restricted the losses in A. Y. 2008-09 to the extent of Rs. 18.52 Crores and reallocated major part of this loss in A. Y. 2009-10. As per the

order of Ld. CIT (A), the assessee should have been allowed and was eligible to the loss of Rs. 4.70 Crores in A. Y. 2009-10 as against Rs. 25.48 Crores claimed by him in its ITR. However, Ld. CIT (A) determined the loss allowable in A. Y. 2009-10 at Rs. 19.10 Crores. If the submission of Ld. Counsel is fully accepted, then it would mean lot of rectification orders etc. will have to be passed. Since the assessee as well as department has already acted upon the order of Ld. CIT (A) by filling appeals and cross-appeals and keeping in view the fact that tax rates in each of these years was the same as also admitted by the Ld. AR, we feel that no useful purpose will be served to accept this settled assessment history of the assessee. We, therefore, are of the view that allocation done by Ld. CIT(A) for the total losses of Rs. 45.72 Crores incurred by the assessee over the period of project running into 5 years started from A. Y. 2008-09 to A. Y. 2012-13, which allocation as already clarified has been acted upon both by the assessee as well by the department, there is no reason for us to give any directions on this submission of the assessee and action of Ld. CIT(A) on this issue of allocating the losses to various years is found justified and is hereby upheld. Accordingly, in view of our aforesaid reasoning, grounds of appeal raised by the department being **Ground No. 5** in A. Y. 2008-09 and **Ground No. 2** in A. Y. 2009-10 are dismissed.

**Appeal No. 1349/Del/2013– A. Y. 2009-10**

49. **Ground No. 1 & 5** raised by the department in the Memorandum of Appeal, are general in nature and does not require any specific adjudication.

50. **Ground No. 2** pertains to the issue of losses in the Dwarka Project. We have already, while dealing with Ground No. 5 for A. Y. 2008-09 raised by the department, heard the issue and rendered our judgment on the same in ITA No. **1348/Del/2013**. Our finding given above will apply mutatis mutandis. This ground of appeal also stands dismissed in view of our findings in the said appeal

51. **Ground No. 3** has been raised by the department in this year vide which, the Ld. CIT(A) has deleted the additions of Rs. 1,32,355/- made by the Assessing Officer u/s 41(1)/28 of the Income Tax Act. Both the parties fairly agreed that facts and circumstances as well as submissions of both the parties are identical as has been made against **Ground No. 2** for A. Y. 2008-09 in ITA No. **1348/Del/2013**. Since all the facts, reasons of the AO while making disallowance as well as the grounds on which relief has been granted on this issue by the Ld. CIT(A) are identical, we dismiss this ground of appeal raised by the department in line of our order for A. Y. 2008-09 (supra).

52. **Ground No. 4.** This ground of appeal has been raised for deleting the disallowance on account of excessive depreciation on Printers & UPS. Both the parties have agreed that the reasoning of the AO while making the disallowance as well as the grounds on which the Ld. CIT(A) has granted relief are similar to **Ground No. 3** for A. Y. 2008-09 in ITA No. **1348/Del/2013**. This issue has already been decided by us in **Ground No. 3** of the department for A. Y. 2008-09 (supra). On the identical reasoning, we dismiss this ground of appeal of the department.

**Appeal No. 899/Del/2013 – A. Y. 2009-10**

53. The assessee has filed cross appeal against the order of CIT (A) on account of the fact that assessee claimed a total loss of Rs. 25.48 Crores in A. Y. 2009-10. Out of this, the Ld. CIT (A) allowed the loss of Rs. 19.1 Crores as per POCM method and the balance loss were allocated to be allowable in A. Y. 2010-11 to A. Y. 2012-13. The appeals filed by the department in A. Y. 2011-12 and 2012-13, which are being simultaneously heard also clarify this position that assessee claimed these balance losses in A. Y. 2010-11 to A. Y. 2012-13 in appeals filed before CIT(A), which the Ld. CIT(A) has allowed following his own order in A. Y. 2008-09.

54. In our view, no grievance is left with the assessee to pursue this ground. Assessee has also submitted that if order

of Ld. CIT (A) in A. Y. 2008-09 is upheld in toto then this ground of appeal raised by the assessee shall become infructuous. Since, we have upheld the order and findings of Ld. CIT (A) in A.Y. 2008-09 and A. Y. 2009-10, this ground of appeal raised by the assessee does not survive.

55. Therefore, assessee's appeal **899/Del/2013** is hereby dismissed.

**Appeal No. 5776/Del/2014 – A. Y. 2011-12**

56. The solitary ground raised by the department in A. Y. 2011-12 pertains to the relief allowed by the Ld. CIT(A) amounting to Rs. 2,51,00,000/- on account of losses in the Dwarka Project. The Assessment Order does not make any mention of this item and there is no discussion in the Assessment Order on this issue. On being enquired, it has been explained that this relief was sought by the assessee from the Assessing Officer pursuant to the order done by Ld. CIT(A) in Appeal No. 4/14-15 dated 08.08.2014 on account of the loss of Dwarka Project as per CIT(A)'s Order for A. Y. 2008-09. It has been submitted that assessee claimed a loss of Rs. 0.79 Lacs in its ITR which was allowed by the Ld. AO but in the appeal filed before the Ld. CIT (A), additional claim of Rs. 2.51 Crores was made as per the allocation of losses done by Ld. CIT (A) in his order for A. Y. 2008-09. The Ld. CIT (A) has allocated the loss on this project to the extent of Rs. 3.3 Crores in this year. The differential amount of loss as per



CIT(A)'s order was claimed in the appeal filed before Ld. CIT(A).

57. Since this ground of appeal also arises from the order of Ld. CIT (A) for A. Y. 2008-09, which order has been upheld by us in A. Y. 2008-09 in ITA No. **1348/Del/2013** read with ITA No. **1349/Del/2013** for A. Y. 2008-09 and A. Y. 2009-10 respectively. This ground of appeal raised by the department is consequential to those orders and is required to be dismissed. Hence, appeal of the department for A. Y. 2011-12 being ITA no. **5776/Del/2014** is dismissed.

**ITA No. 2083/Del/2015 A. Y. 2012-13**

58. **Ground No. 1** raised by the department in this year is general and does not require any adjudication.

59. **Ground No. 2:** This ground has been raised against deletion of Rs. 1,38,740/- on account of sale promotion expenses which was made by the AO. This disallowance was made by the AO on the reasoning that directors of the company had incurred these expenses through their personal credit cards and the element of personal nature in such expenses cannot be ruled out. The AO disallowed 20% of the total expenses debited under the head 'Sale Promotion' on that reasoning on an estimated and adhoc basis.

60. The Ld. CIT (A) deleted this disallowance made by the Ld. AO by following his own order for the A. Y. 2010-11. The

Ld. CIT (A) observed that company is an artificial legal entity and incapable of incurring any personal expenses. For this legal proposition, the Ld. CIT (A) followed the judgment of Hon'ble Gujarat high Court in the case of **Sayaji Iron & Engineering Co. v. CIT 172 CTR 339.**

61. It is noticed that this issue also came up before Hon'ble ITAT in assessee's own case in ITA No. **4832/Del/2014** in A. Y. 2010-11, wherein Hon'ble ITAT has upheld the order of Ld. CIT (A) in A. Y. 2010-11. A copy of this order has been filed before us. Since the issue involved and the facts as well as law on this issue are identical, respectfully following the judgment of Hon'ble ITAT in assessee's own case in ITA No. **4832/Del/2014** for A. Y. 2010-11, we uphold the order of CIT(A) on this issue and dismiss this ground of the department.

62. **Ground No. 3:** This ground has been raised by the department towards bad debts written off. The Ld. AO disallowed a sum of Rs. 15,11,300/- on account of bad debts written off, which mainly represented the advances given to various parties who were suppliers of the assessee in the ordinary course of its business. The Ld. AO disallowed this amount on the plea that the amount written off are not covered u/s 36(1)(vii) of the Income Tax Act. According to AO such write-off don't fall within the purview of section 36(1)(vii) of the Income Tax Act. The Ld. CIT (A) deleted this

disallowance by holding that if the advances given to the supplier and the expected goods and services are not received against such advances and become irrecoverable, the same represent business loss u/s 28 and are allowable u/s 37 even if the same are not allowable u/s 36(1)(vii) of the Income Tax Act.

63. At the time of hearing both the parties fairly agreed that the order of CIT (A) does not need any inference. We also find support on this issue from the judgment of Hon'ble Supreme Court in the case of **Badridas Daga v/s CIT 34 ITR 10**, wherein it has been held that amounts advanced in the ordinary course of business which become irrecoverable are allowable as business losses. The order of Ld. CIT(A), therefore, on this issue is upheld and this ground of appeal of the department is dismissed.

64. **Ground No. 4:** This ground raised by the department pertains to the loss on account of Dwarka Project. This issue has not been discussed in the assessment order as was the case in A. Y. 2011-12 and arises from the additional claim made by the assessee in its appeal to Ld. CIT(A) who has by following his own order in A. Y. 2008-09 allowed this relief to the assessee. The facts of this matter have already been elaborately discussed in appeal of the assessee in ITA No. **1348/Del/2013 and ITA No. 1349/Del/2013** which are being decided simultaneously in this order itself. Since the

order of Ld. CIT(A) for A. Y. 2008-09 and 2009-10 has been upheld in toto. The ground of appeal raised by the department on this issue is dismissed. Needless to mention that as already observed in the earlier part of our order, the department has allowed similar relief to the assessee in A. Y. 2010-11 following the same order of Ld. CIT (A) and has not filed any appeal against such order. This ground of appeal is consequential to the orders passed by us for A. Y. 2008-09 and 2009-10 (supra), therefore needs to be dismissed.

**ITA No. 1704/Del/2015 – A. Y. 2012-13**

65. The solitary ground raised by the assessee in this appeal pertains to disallowance of Rs. 10,47,025/- incurred by the assessee during the year as ground rent on lease hold properties to L& DO. According to the AO this amount is not allowable u/s 43B of the Income Tax Act and shall be allowed only in the year in which this is actually paid by the assessee. The Ld. CIT (A) has concurred with the views of the Ld. AO by holding that although the nature of payments specified is not covered by clause (b) to (f) of section 43B, but it may be covered under clause (a) of section 43B, which talks of any sum payable by the assessee by way of tax, duty, cess or fee by whatever name called under any law for the time being in force. Thus, according to Ld. CIT (A) ground rent payable to L&DO falls in this clause and he has upheld the disallowance made by the AO.

66. Before us, the Ld. AR submitted that the provision of section 43B is not applicable to the said nature of payment. Reliance has been placed on the judgment of this Tribunal in the case of **K. Narendra v/s ACIT** as reported in **77 TTJ 76 (Del)**. A copy of this judgment has been filed before us. In that case also, the issue involved was whether the amount payable for misuse of premises and illegal construction was allowable or not. The nature of such amount, i.e., amount payable towards misuse of premises and illegal construction was held to be in the nature of ground rent by following the judgment of Hon'ble Delhi High Court in the case of **Gulab Singh & Sons (P) Ltd. v. CIT 94 ITR 537 (Delhi)**. It was amongst others held that ground rent does not come under any items mentioned in the various clauses of section 43B. Although the main issue in that case was of allowability of such amount u/s 24 of the Income Tax Act but still the issue of allowability of ground rent from the perspective of section 43B was also considered and it was held that ground rent is not disallowable by applying the provision of section 43B. Relevant findings of the judgment of Hon'ble Delhi ITAT in the case of **K. Narendra (Supra)** on this issue are as under:-

*We have also perused the provisions of section 43B of the Act. Under section 43B of the Act, certain deductions are allowable only if the sums have been actually paid. Such items are mentioned in clause (a) to (e) of this section. Ground-rent does not come under any of the items*

*mentioned in various clauses of section 43B of the Act. So, no disallowance on account of damages demanded by L&DO for misuse of the premises could be made even under section 43B of the Act. Considering the facts as a whole, we hold that the assessee is entitled to deduction of amount payable to L&DO for misuse of the premises under section 24(1)(v) of the Act. The AO is, therefore, directed to allow the same in all the six appeal section. Thus, this ground of appeal for all the six years.*

67. Respectfully following the said judgment of this ITAT in the case of **K. Narendra (Supra)** we hold that the provision of section 43B are not applicable to the ground rent and disallowance made by the AO and upheld by Ld. CIT(A) is hereby directed to be deleted.

68. In nutshell, ITA No. **2083/Del/2015** for A. Y. 2012-13 being department appeal is dismissed and appeal of the assessee in ITA No. **1704/Del/2015** for A. Y. 2012-13 is allowed.

**Order pronounced in the open Court on 30<sup>th</sup> July, 2021.**

Sd/-  
**[Dr. B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 30<sup>th</sup> July, 2021  
Pkk