

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D” MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2107/MUM/2025
Assessment Year: 2011-12**

Dattani Construction,
Laxmi Shopping Centre, V.L.
Road, Kandivali West, Kandivali
West S.O.,
Mumbai-400067.

Appellant

Vs.

ITO Ward 42(1)(2),
Kautilya Bhavan,
Mumbai-400051.

**PAN NO. AAAFD 4748 E
Respondent**

Assessee by : Mr. Prateek Jain
Revenue by : Mr. Annavaram Kasuri, Sr. DR

Date of Hearing : 03/11/2025
Date of pronouncement : 12/11/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 29.01.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:

1. On the facts and circumstances of the case and in law, Id. CIT(A) erred in confirming the action of Ld. AO in reopening the assessment by issue of notice u/s. 148, which is illegal and bad-in-law or otherwise void for want of jurisdiction.



2. On the facts and circumstances of the case and in law the Id. CIT(A) erred in confirming the action of Ld. in treating difference in receipts as per 26AS Rs.4,05,826/- as income of the appellant, for the reasons mentioned in the impugned order or otherwise.

3. On the facts and circumstances of the case and in law the Id. CIT(A) erred in confirming the action of Ld. AO in treating compensation received by the appellant Rs.48,50,000/- as income from others Sources instead of business income for the reasons mentioned in the impugned order or otherwise.

4. On the facts and circumstances of the case and in law the Id. CIT(A) erred in confirming the action of Ld. AO in making disallowance of Sales Promotion Expense amounting to Rs. 9,17,014/- by transferring the same to Capital work-in- progress for the reasons mentioned in the impugned order or otherwise.

5. On the facts and circumstances of the case and in law the Id. CIT(A) erred in confirming the action of Ld. AO in making disallowance of Financial Expense amounting to Rs. 23,74,386/- by transferring the same to Capital work-in- progress for the reasons mentioned in the impugned order or otherwise.

6. On the facts and circumstances of the case and in law the Id. CIT(A) erred in confirming the action of Ld. AO in making disallowance of General Administration Expense amounting to Rs. 15,37,367/- by transferring the same to Capital work-in-progress for the reasons mentioned in the impugned order or otherwise.

2. Briefly stated, the facts of the case are that the assessee, a partnership firm, is engaged in the business of real estate development. For the year under consideration, the assessee filed its return of income on 30th September, 2011, declaring a total income of ₹4,64,557/-. The said return was selected for scrutiny, and in pursuance thereof, statutory notices under the provisions of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) were duly issued and complied with.



2.1 Subsequently, the assessment was completed under section 143(3) of the Act on 21st March, 2014, wherein the learned Assessing Officer made certain additions and disallowances. These, inter alia, included—(i) an addition on account of the difference in receipts as per Form No. 26AS amounting to ₹4,05,826/-, comprising interest income of ₹23,334/- and rental income of ₹3,82,492/-, and (ii) a disallowance of expenses claimed under the head “Income from Other Sources”, which were directed to be capitalised by transfer to “Capital Work-in-Progress”.

3. On further appeal, the Ld. CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved, the assessee is in appeal before us by way of raising grounds as reproduced above.

5. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 55.

6. Before us, the Ld. counsel for the assessee submitted that the assessee does not wish to press ground Nos. 1, 3 and 6 of the appeal. Accordingly, same are dismissed as infructuous.

7. Ground No. 2 of the assessee’s appeal pertains to the addition made on account of the difference in receipts as reflected in Form No. 26AS, amounting to ₹4,05,826/-.



7.1 The brief facts relevant to this issue are that, as per Form No. 26AS placed at pages 32 to 35 of the Paper Book, the assessee had received certain sums by way of rent and interest, along with credit for tax deducted at source (TDS), as summarised below:

Name of the party	Nature of receipt	Total amount paid/credited	Total tax deducted	Total TDS deposited
Selvel Publicity And Consultants Pvt. Ltd.	Rent	6,00,000/-	60,000/-	60,000/-
Kavveri Telecom Infrastructure Ltd.	Rent	4,24,992/-	42,499/-	42,499/-
Aditi Fastfood Pvt. Ltd.	Interest	23,334/-	2,334/-	2,334/-
Total		10,48,326/-	1,04,833	1,04,833

7.2 The Assessing Officer observed that against the aforesaid receipts aggregating to ₹10,48,326/-, the assessee had disclosed only a sum of ₹6,42,500/- under the head “Miscellaneous Income” in the return of income. Consequently, the balance amount, comprising rent of ₹3,82,492/- and interest of ₹23,334/-, remained undisclosed.

7.3 During the course of assessment proceedings, the assessee submitted that it had, in fact, received only rent of ₹6,00,000/- from *Selvel Publicity and Consultants Pvt. Ltd.* and had not received any payment from *Kavveri Telecom Infrastructure Ltd.*, except for the amount of TDS credited in its favour. The assessee thus contended that, since the TDS of ₹42,499/- was reflected in its name, the same amount was taken as income. In this manner, the assessee claimed to have offered total income of ₹6,42,499/- while availing credit for the entire TDS of ₹1,04,834/-.



7.4 The Assessing Officer, however, did not find the explanation satisfactory. He was of the view that since the assessee had claimed credit for the entire TDS amount of ₹1,04,834/–, it was incumbent upon it to declare the corresponding gross receipts of ₹10,48,326/–. Accordingly, he treated the differential sum of ₹4,05,826/–, comprising rent of ₹3,82,492/– and interest of ₹23,334/–, as undisclosed income and added the same to the total income of the assessee.

7.5 Before the Ld. CIT(A) the assessee again reiterated that no rental income or the interest income was received from M/s Kavveri Telecom Infrastructure Ltd. and Aditi Fastfood Pvt. Ltd. respectively either in the current year or in the subsequent year and therefore, no addition was warranted. The Ld. CIT(A) however rejected the contention of assessee observing as under:

“5.2 Ground of Rs.3,82,492/-. During the course of appellate proceedings, appellant has submitted that difference of rent shown in 26AS of the appellant had neither received the sum nor was the amount in anyway receivable by them. The only error on the part of the appellant was that the corresponding TDS in respect of the rent which was not related was claimed by them. Apart from that appellant has not submitted any documents showing that the addition made by the AO was erroneous. However, during the assessment proceedings, AO has observed that appellant has not restricted its TDS claim to the amount offered to tax but claimed full TDS corresponding to the amount reflected in 26AS statement whereas appellant offered only portion of the corresponding income to tax. The parties who have made payments to the appellant had deducted TDS thereon have uploaded the said information in their TDS returns corresponding to the appellant's PAN. Therefore, whatever AO contended appears to be true as appellant stated that it had erroneously claimed the TDS amount. However, it failed to prove to whom this



TDS belongs to and who has offered the corresponding amount for taxation in their returns. In view of that contention of the appellant is rejected and addition made by the AO of Rs.3,82,492/- on account house property income is being sustained. Ground of no.3 is therefore, dismissed.”

7.6 We have carefully heard the rival submissions of the parties and perused the material available on record. The controversy that arises for consideration is whether the assessee is entitled to claim credit of tax deducted at source (TDS) in respect of amounts reflected in Form No. 26AS, without having offered the corresponding income to tax in the year under consideration.

7.7 It is an admitted position that as per Form No. 26AS, a total sum of ₹10,48,326/- has been shown as receipts in the name of the assessee, comprising rent of ₹4,24,992/- and interest of ₹23,334/-. The case of the assessee, however, is that no rent was actually received from *Kavveri Telecom Infrastructure Ltd.*, except for the credit of TDS appearing in its favour. Likewise, with respect to *Aditi Fastfood Pvt. Ltd.*, it has been contended that no interest amount was received apart from the TDS component.

7.8 In our considered opinion, this issue necessitates verification at the level of the Assessing Officer. The Assessing Officer shall ascertain—(i) whether the alleged deductor has claimed the impugned amount as rental expenditure in its books of account towards the assessee, or (ii) the quantum of amount, if any, credited or actually paid by the said deductor to the assessee. The Assessing Officer may also verify from the respective deductors whether only



the TDS amount was finally adjusted or settled between the parties, and no other amount was either paid or payable.

7.9 If, upon such verification, it is found that no amount other than the TDS has been received or is receivable by the assessee, the Assessing Officer shall grant credit of the TDS reflected in Form No. 26AS in favour of the assessee, after taking into account the rental income of ₹42,500/- from *M/s Kavveri Telecom Infrastructure Ltd.*. A similar course of action shall be adopted in respect of the interest from *Aditi Fastfood Pvt. Ltd.*

7.10 Accordingly, this ground of appeal is restored to the file of the Assessing Officer for fresh adjudication, after carrying out necessary verification and making such inquiries as may be deemed fit from the concerned deductors. The Assessing Officer shall thereafter decide the issue in accordance with law and after affording due opportunity of being heard to the assessee.

7.11 The ground No. 2 of the appeal of the assessee is allowed for statistical purposes.

8. Ground Nos. 4 and 5 of the assessee's appeal pertain to the disallowance of sales promotion expenses amounting to ₹9,17,014/- and financial expenses amounting to ₹22,74,836/-. The Assessing Officer treated the said expenditures as not allowable under the head "*Income from Other Sources*" and accordingly



directed that the same be capitalised by way of transfer to *Capital Work-in-Progress (CWIP)*.

8.1 The brief facts relevant to the issue under consideration are that the assessee had debited certain expenses against “*Miscellaneous Income*”, comprising sales promotion expenses of ₹18,31,596/–, general administrative expenses of ₹51,24,557/–, and financial expenses of ₹23,74,386/–. It was the contention of the assessee that, in earlier assessment years, a consistent practice had been followed whereby 70% of such expenses were claimed as deductible under the head “*Income from Other Sources*” and the balance 30% was capitalised as *Capital Work-in-Progress* pertaining to the assessee’s real estate projects. This practice was accepted by the AO in earlier years.

8.2 However, for the year under consideration, the learned Assessing Officer deviated from this practice and transferred the entire amount of certain expenses to *Capital Work-in-Progress*, specifically—sales promotion expenses of ₹9,17,014/– (excluding donation of ₹9,14,502/–), general administrative expenses of ₹50,20,998/– (after allowing depreciation of ₹4,68,573/–), and financial expenses of ₹23,74,386/—aggregating to ₹83,12,398/–.

8.3 In appeal, the learned Commissioner of Income Tax (Appeals) [CIT(A)] granted partial relief to the assessee. The Ld. CIT(A) accepted the assessee’s contention with respect to general



administrative expenses and directed that 70% thereof be allowed as deduction, with the remaining 30% to be capitalised as *Capital Work-in-Progress*. However, he declined to extend similar treatment to the sales promotion expenses and financial expenses, thereby sustaining the disallowance of those items..

8.4 Before us, the Ld. counsel for the assessee referred to Paper Book page 29 and 31 of the Paper Book where detail of the sales promotion expenses and investment expenses is provided. For ready reference said detail is reproduced as under :

“DATTANI CONSTRUCTIONS

**SCHEDULE FORMING THE PART OF PROFIT & LOSS
ACCOUNT FOR THE YEAR ENDED MARCH 31, 2011**

Miscellaneous Income		
Particulars		
	Rs.	Ps.
Rent Recd	642499.60	
Compensation	4850000.00	
		5492499.60
Sales Promotion Expenses		<u>Schedule No. 4</u>
Particulars		
Advertisement	917014.00	
Donations	914582.00	1831596.00
Total		1831596.00

“DATTANI CONSTRUCTIONS

**SCHEDULE FORMING THE PART OF PROFIT & LOSS
ACCOUNT FOR THE YEAR ENDED MARCH 31, 2011**

Financial Expenses	<u>Schedule No. 6</u>
Particulars	



	Rs.	Ps.
Discount	375125.00	
Brokerage	174500.00	2374386.00
Interest	1824761.00	2374386.00
Total		2374386.00

8.5 We have given our thoughtful consideration to the rival submissions advanced by both parties, perused the material placed on record, and duly considered the findings of the authorities below. The material facts are not in dispute. The assessee is engaged in the business of real estate development and, in the ordinary course of its operations, incurs various categories of expenditure including financial, administrative, and sales promotion expenses. The financial expenses comprise brokerage, discount, and interest components, some of which are directly relatable to ongoing real estate projects.

8.6 It is evident from the record that the assessee has been consistently following a uniform accounting methodology over the years, wherein 30% of the expenditure incurred under the aforesaid heads is capitalised as part of *Capital Work-in-Progress* and the balance 70% is claimed as revenue deduction in the year of incurrence. This accounting treatment, being consistently followed in preceding assessment years, has been accepted by the Department and not found fault with in earlier scrutiny assessments. The principle of consistency, recognised by judicial precedents, mandates that a settled accounting practice accepted in



prior years cannot be arbitrarily disturbed in a subsequent year unless there is a material change in facts or law.

8.7 The learned Assessing Officer, however, deviated from this consistent practice and directed the transfer of the entire expenditure to *Capital Work-in-Progress*, on the reasoning that such expenses are relatable to the projects under development. The learned CIT(A), while appreciating the past pattern, partially accepted the assessee's contention in respect of administrative expenses but maintained the disallowance of sales promotion and financial expenses.

8.8 The question that, therefore, arises for determination is whether such sales promotion and financial expenses can be treated wholly as capital in nature or whether a proportion thereof merits treatment as revenue expenditure, as consistently followed by the assessee in earlier years.

8.9 We find that the sales promotion expenses comprise advertisement and publicity expenditure incurred to enhance the overall business visibility and brand presence of the assessee alongwith expenses for publicity of projects also. Such expenditure, by its very nature, cannot be confined exclusively to a particular project but contributes to the general promotion of the assessee's business as a whole. The donation component, on the other hand, has already been disallowed separately by the Assessing Officer,



and therefore, does not form part of the present dispute. Similarly, the financial expenses—comprising brokerage, interest, and discount—partly relate to financing arrangements connected with the projects and partly to the general working capital requirements of the business.

8.10 In our considered opinion, where an assessee is consistently following a method of apportioning part of such expenditure to capital work and claiming the balance as revenue, and such method has been accepted in earlier years, there is no valid reason for departure in the year under consideration in the absence of any contrary finding that the method results in distortion of income. Further, as rightly contended by the assessee, whether the expenditure is allowed as a deduction in the present year or capitalised and allowed as part of the project cost in subsequent years would be revenue-neutral in effect, given the uniformity of tax rates applicable.

8.11 In view of the foregoing, and bearing in mind the settled principles of consistency and revenue neutrality, we find no justification for the deviation made by the Assessing Officer or for the partial disallowance sustained by the learned CIT(A). We, therefore, set aside the findings of the learned CIT(A) on this issue and direct the Assessing Officer to adopt the accounting treatment consistently followed by the assessee in earlier years—namely, to capitalise 30% of the sales promotion and financial expenses as



Capital Work-in-Progress and to allow the balance 70% as deductible expenditure for the year under consideration.

8.12 Accordingly, we set aside the findings of the learned CIT(A) on this issue and direct the Assessing Officer to allow the assessee to capitalise 30% of the sales promotion and investment-related expenses as *Capital Work-in-Progress*, while permitting deduction of the balance 70% as revenue expenditure.

8.13 The ground No. 4 and 5 of the appeal of the assessee are allowed.

9. The ground No. 7 is being general in nature and same is not required to be adjudicated upon and same is dismissed as infructuous.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 12/11/2025.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 12/11/2025
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai