IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA No.1775/M/2013
Assessment Year: 2006-07

ITA No.3728/M/2013
Assessment Year: 2009-10

ITA No.2306/M/2011
Assessment Year: 2007-08

M/s. Soni & Associates, 003, Shivganga Building No.III, Soni Complex, Chincholi Bunder Road, Malad (W), Mumbai – 400 064 **PAN: AAAFS4432Q**	Vs.	ACIT -25(2), First Floor, C-11, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by	: Shri Y.P. Trivedi, A.R. & Ms. Usha Dalal, A.R.
Revenue by	: Shri V. Justin, D.R.
Date of Hearing	: 15.11.2017
Date of Pronouncement	: 27.12 .2017

O R D E R

Per D.T. GARASIA, Judicial Member:

The above titled appeals have been preferred by the assessee against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 16.01.2013, 22.02.2013 & 14.02.2011 relevant to assessment years 2006-07, 2009-10 & 2007-08 respectively. All these appeals are related to same group of company. Therefore, we dispose these appeals by this common order.

2. The short facts of the case are as under:

The assessee firm is engaged in business of builders and developer. The assessee purchased the land at Malad (West) vide agreement dated 27.03.03 executed between Soni Associate and Namah Realtors. The land was purchased under various agreements in the years 1994-95 and 1995-96. At the relevant time, the land was encroached with hutments and other tenements which were required to be settled before the development could take place on the said plot. In view of this, the first project namely Shiv Parvati was completed in the Assessment Year 2002-2003. In the said project the total sale was declared in assessment year 2002-03 of Rs.8,56,00,000/-. The settlement with the tenant and encroachers was still not completed. During the period 1994 to 2003, to complete the project, M/s. Soni & Associates has sold certain flats to prospective flat purchasers. The Buildings could not be completed in time due to the recession. Therefore, M/s, Soni & Associates had to settle prospective purchasers of 3rd and 4th building namely Om Elegance. The purchasers were interested in canceling the agreements on account of delay in construction of the buildings. Therefore, assessee has to compensate these purchasers and additional liability had to incur to complete the project. In the meantime, the partners M.I. Badgujar & M.F. Badgujar desired to retire. They were retired and copy of the agreement was made. Thereafter, the supplementary retirement was also executed in between and according to supplementary deed of retirement Mr. Mohd. Iqbal Badgujar was agreed to be given 13500 sq. ft. salable area free of cost. In additional, cost free area was given to Mr. Mohd. Iqbal Badgujar and only cost free 11000 sq. ft. salable are was loaded on the cost of Elegance. Thereafter, there was agreement between Soni Associate and Namah Realtors. Therefore, assessee had to incur additional cost and the cost has to be allocated between Soni Associate and Namah Realtors and there was net loss towards the land cost and loss return was also filed in 2006-07 and 2007-08. The claim of Rs.1,03,51,756/- as payment to retired partner Mr. M.I. Badgujar was considered as capital expenditure. Thereafter, there was a settlement between second retiring partner. Therefore, assessee had to incur losses. Therefore, in A.Y. 2006-07 assessee is in appeal against not treating the revenue expenditure. In A.Y. 2007-08 assessee is in appeal for not allowing the compensation paid to retiring partner Mr. M.I. Badgujar of Rs.97,02,171/- and also confirming the disallowance of Rs.3 lakhs in A.Y. 2007-08 and in A.Y. 2009-10 assessee is in appeal against no allowing Rs.20,000/- paid as compensation on cancelling of purchased flat and not allowing the reduction of work in progress of Rs.67 lakhs being compensation paid to retiring partner Mr. M.I. Badgujar. In all these three years, the AO and the Ld. CIT(A) have confirmed the same.

3. We have heard the rival contentions of both the parties. During the course of hearing, both the parties agreed that the issue in all

these appeals is relating to one plot which was purchased by Soni Associate and thereafter they have made agreement between Soni Associate and Namah Realtors and land was encroached by hutments and one project was completed in A.Y. 2002-03. In the meantime, there was a try to make settlement with tenements and encroachers. In the meantime, the party who has agreed to purchase the flats had also expressed their interest in cancelling the agreement on account delay in construction of building. Therefore, assessee had to agree to compensate these purchasers the value of the flat as per the rate of sale on the date of sale to prospective purchasers. This additional liability was to incur to complete the project. Therefore, AO has to verify from the beginning the development of the project and the compensation paid by Soni Associate to other partners also and additional compensation was to be paid by the assessee. Therefore, this is a revenue expenditure or capital expenditure that facts can be ascertained only from AO. Therefore, all these files require verification at the end of the AO. Therefore, in the interest of justice and fairplay, we restore this issue back to the file of AO to consider the above points which read as under:

1. Whether in fact payment has been made to Mohd lqbal Badgujar and has he received the funds from the assessee firm?
2. To inquire to whether the said amount which is received by Mohd lqbal Badgujar has been shown in his Return of. Income? Whether an assessment is completed on the said income in his hands?
3. To inquire whether any deduction is claimed in respect of such payment to Mohd. lqbaI Bdujgar by Namah Realtors?

4. To inquire whether any deduction is claimed by any other party- except present assessee i.e. M/s. Soni &Associates?
5. Whether the right to receive the area to be constructed had accrued to Mohd. lqbal Badgujar in the year 1999-2000 by virtue of the agreement dt.05/04/1992?
6. To inquire whether the right to receive the payment in any event had accrued to Shri Mohd. lqbal Badgujar at least in A.Y. 2004-2005 by virtue of the agreement entered in to by the Assessee with M/s. Namah Realtors wherein the schedule to the said agreement area to be given to Mohd. Lqbal Badgujar was specified, and the said agreement was registered.
7. Whether there was diversion by overriding title in the year 1998 or in any event in the year 2003?
8. For the aforesaid purposes the Assessing officer may examine the partners of M/s. Namah Realters and/or Shri Mohd. lqbal Badgujar to Verify these facts.
9. It is submitted that the above directions should be followed by A.0. to arrive at a conclusion whether for Mohd. lqbal Badgujar the right to the area to be constructed, had already accrued to Mohd. lqbal?
10. Whether the Judgments cited by the Assessee's Counsel and also narrated in the opinion of Shri Arun Sathe are applicable in the present case?

Disallowance of Rs 3,00,000/- out of labour charges

4. The AO should consider that all these expenses are

1. Properly vouched

2. The cost auditor has examined and found them to be proper.

3. Compare to the total labour expenses incurred, the disallowance is very excessive and

4. No disallowance was made in other years.

5. The AO should examine whether the addition of Rs.67,00,000/- tentamounts to double taxation of the said amount in which case the addition should be deleted.

5. After considering the above points, the AO is directed to decide these three appeals after hearing to the assessee and AO is directed to give opportunity of hearing before passing the order. AO is directed to pass an order, as per law.

6. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 27.12.2017.

Sd/-	**Sd/-**
(N.K. Pradhan)	**(D.T. Garasia)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 27.12.2017.

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.