आयकर अपीलीय अधिकरण, मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'C' MUMBAI

सर्वश्री जी.एस. पन्नू, लेखा सदस्य **एवं** श्री अमित शुक्ला, न्यायिक सदस्य

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER AND

SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील सं. / **ITA No.4772/MUM/2011**

निर्धारण वर्ष /Assessment Year 2005-06

Prerna Conwood Associates, 114, Maker Chambers VI, 220, Nariman Point, Mumbai – 21.	**बनाम/** Vs.	The Income Tax Officer 12(3)(2), Aaykar Bhavan, MK Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFP 2901R		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं. / **ITA No.4705/MUM/2011**

निर्धारण वर्ष /Assessment Year 2005-06

The Income Tax Officer 12(3)(2), Aaykar Bhavan, MK Road, Mumbai – 400 020	**बनाम/** Vs.	Prerna Conwood Associates, 114, Maker Chambers VI, 220, Nariman Point, Mumbai – 21.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFP 2901R		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं. / **ITA No.4771/MUM/2011**

निर्धारण वर्ष /Assessment Year 2005-06

आयकर अपील सं. / **ITA No.4773/MUM/2011**

निर्धारण वर्ष /Assessment Year 2006-07

आयकर अपील सं. / **ITA No.4774/MUM/2011**

निर्धारण वर्ष /Assessment Year 2007-08

Prerna Conwood Associates, 114, Maker Chambers VI, 220, Nariman Point, Mumbai – 21.	**बनाम/** Vs.	The Income Tax Officer 12(3)(2), Aaykar Bhavan, MK Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFP 2901R		

(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by	Shri Amit Khatiwala
Revenue by	Shri Premanand J

सुनवाई की तारीख / Date of Hearing : 16/06/2015
घोषणा की तारीख /Date of Pronouncement : 31/07/2015

<u>आदेश / O R D E R</u>

PER G.S.PANNU, A.M:

The above captioned five appeals relate to the same assessee which involve certain common/inter linked issues pertaining to assessment year 2005-06, 2006-07 and 2007-08, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. First we shall take up the cross-appeals filed by the assessee and Revenue pertaining to A.Y. 2005-06 vide ITA No.4772/Mum/2011 & ITA No.4705/Mum/2011. The said cross appeals are directed against an order passed by Ld. CIT(A)-23 Mumbai dated 29/03/2011, which in turn arises out of an order passed by AO under section 143(3) of the Income Tax Act, 1961 (the Act) dated 24/12/2007.

3. In the appeal of the assessee, the following revised grounds of appeal have been raised.

> *"1) The Learned Commissioner of Income Tax (Appeals) - 23, Mumbai [CIT(A)] erred in holding that the project at Pranik Garden at Kandivli has been completed during the year under appeal and thereby erred in computing the income from the said project during the year.*
>
> *Your appellant submits that the project has been completed in F.Y.2006- 2007 and CIT(A) ought to have held so and the income computed by the Assessing*

Officer ought have been deleted. Your appellant submits that the said income is wrongly taken as the income of the year and the same ought to be deleted.

2) The learned CIT(A) erred in confirming the addition of income of Rs.62,11,417/- pertaining to various years as income of the year.

3) The learned CIT(A) erred in confirming 30% of Corporate Expenses incurred during F.Y. 1994 - 1995 to F.Y. 2001 - 2002 while computing the income from the project and thereby sustaining the addition of Rs.24,32,562/-.

Your appellant submits that the above disallowance is incorrect and the same ought to be deleted.

Without prejudice to the above disallowance confirmed by CIT(A) is excessive and unreasonable and the same ought to be reduced substantially.

4. The Learned CIT(A) erred in enhancing the disallowance of Corporate Expenses from 50% to 60% of the expenses incurred during F.Y. 2002-03 to F.Y.2004 - 2005 and 50% to 70% for F.Y. 2005 - 2006 and F.Y.2006 - 2007 while computing the income from the project and thereby sustaining addition of Rs. 44,41,500/-.

Your appellant submits that the enhancement of disallowance by CIT(A) is without providing any opportunity and therefore illegal.

Your appellant further submits that the said disallowance is not correct and the same ought to be deleted.

Without prejudice to the above disallowance confirmed by C!T(A) is excessive and unreasonable and the same ought to be reduced substantially.

5) The learned CIT(A) erred in confirming the addition of Rs.3,45,375/- on account of unaccounted interest.
Your appellant submits that the said addition is incorrect and ought to be deleted.

6) The learned CIT(A) erred in confirming the disallowance of 10% of the expenses on construction of swimming pool and gymnasium including garden and children play equipments amounting to Rs.7,90,200/-.

Your appellant submits that the above disallowance is incorrect and the same ought to be deleted."

4. In the cross appeal preferred by the Revenue the following grounds have been raised:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to re-compute the disallowance of corporate expenses @ 70% for F.Y. 2005-06 & 2006-07 ignoring the facts that the

payments have been made to the persons covered u/s. 40A(20(b) are excessive and unreasonable.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of disallowance of expenses of payment to contractor M/s. PM Construction, ignoring the fact that the genuineness of the assessee is not proved during assessment proceeding as well as during remand proceedings."

5. Before proceeding further, it would be appropriate to note that the assessee is a partnership firm engaged in the business of builders and developers. For the assessment year 2005-06 it filed the return of income declaring total income at nil, which was accompanied by P&L Account, balance sheet etc. In the assessment finalized under section 143(3) of the Act the AO has determined the total income at Rs.4,32,33,530/-, which was assailed in appeal before Ld. CIT(A) who has allowed partial relief. Not being satisfied with the order of Ld. CIT(A) the assessee is in appeal before us on the above stated Grounds of appeal, whereas the Revenue is also in appeal in relation to the reliefs allowed by Ld. CIT(A).

5.1 In so far as the ground of appeal No.1 raised by the assessee is concerned, the same relates to the manner in which income of the assessee is liable to be computed from the development of its project named Pranik Garden at Mahavir Nagar, Kandivali(West), Mumbai. In this context, brief facts are that the assessee firm has undertaken development and construction of a project consisting of various buildings. In the return of income filed the assessee did not declare any income from the said project on the ground that the same was still under construction and not complete. The assessee was accounting for the income from the development and construction of the project on the basis of project completion method. Though the AO did not disagree with the assessee on the method of accounting employed i.e. project completion method, so however, he differed with the assessee on the aspect of completion of the project. As per the AO the project was completed during the year under consideration and therefore, the profit from the project was liable to be computed and assessed for in the year under consideration itself. This stand of the AO has since been upheld by Ld. CIT(A) also and the assessee is in appeal before us by way of ground of appeal No.1.

5.2 The discussion in the orders of authorities below reveal that as per AO the project was substantially completed during the year under consideration in as much as all the buildings comprised in the projects were constructed, sold and the flat buyers had taken possession and occupied their respective flats from March, 2000 onwards. In the assessment order the AO has made a Tabulation of the state of affairs as on 31/3/2005, in terms of which it is inferred that all the flats, shops and parking space was sold and occupied except a few in Tower –B. The AO also noticed that vide letter dated 16/07/2002 the assessee firm had approached the Mumbai Municipal Corporation for issuance of occupation certificate, which was eventually issued by the Mumbai Municipal Corporation on 21/04/2005. The AO has also recorded a finding that not only all the flats/shops were sold but assessee had also collected 98% of the total sale proceeds. The AO has also referred to information obtained by issuance of notice under section 131 of the Act to the maintenance society of the flats, which revealed that the possession of flats was taken by the flat- owners prior to 31/3/2005. The AO has also noticed that the maintenance society was collecting maintenance charges from its members who had actually occupied the flats. For all the above reasons, the AO has treated the project as being complete during the year under consideration itself and, he has proceeded to compute the profits from such project.

5.3 The plea of the assessee has been that in the case of building Tower-B, the occupation certificate was issued by the Mumbai Municipal Corporation on 21/4/2005 and, therefore, the project can be said to have been completed only on such date, which falls in the previous year relevant to next assessment year and therefore, the profits from the project should be booked in the next assessment year under the project completion method. The aforesaid plea has been reiterated before us in order to assail the stand of the income tax authorities.

5.4 In our considered opinion, the aforesaid plea set up by the assessee does not vitiate the conclusion of the lower authorities that the project of the assessee was substantially completed in the previous year relevant to the assessment year under consideration. In fact it is seen that the project consisted of construction of Tower-A,B,D & E, Tower –Ekata and shopping arcade/parking space. The AO has noticed that except for Tower-B the occupation certificates for all other buildings were received prior to 31/3/2005 and in fact they have been received in the earlier years. With respect of Tower-B, it is seen that though the occupation certificatewas issued by the Mumbai Municipal Corporation on 21/4/2005 but 30 flat owners out of 40 flats, took possession of the flats before 31/3/2005 and the flats were occupied. The maintenance society confirmed before the AO that the flat owners were occupying the flats even before 31/3/2005. In any case, it is not disputed that assessee approached the Mumbai Municipal Corporation for issuance of occupation certificate, through an Architect on 16/7/2002 itself, which would show that as per the assessee the building Tower-B was completed before it approached the Municipal Corporation for issuance of the occupation certificate. Having regard to the fact-situation and the material on record, we find enough justification for the lower authorities to hold that the project of the assessee was substantially completed in the previous year relevant to the assessment year 2005-06 and, therefore, income from such project was liable to be assessed in assessment year 2005-06 itself by application of the project completion method. Thus, in so far as ground of appeal No.1 is concerned assessee fails.

6. As a consequence of his decision to assess the income earned from the project in A.Y 2005-06 itself, the AO worked out the profit of the project by taking the full value of sale consideration (i.e. consideration actually received + receivable) and the cost of construction of the project. The AO has arrived at the total income from the project at Rs. 3,70,22,113/- Apart from the aforesaid, Assessing Officer assessed an amount of Rs.62,11,417/- as an income not related to the project but as an income from other sources. This aspect has been assailed by the assessee before us by way of Ground of appeal No.2.

6.1 In this context the brief facts are that while examining the cost of construction, Assessing Officer found that assessee had accounted for Rs.23,35,18,651/- under work-in-progress as expenses were stated to have been incurred from the commencement of the project in October, 1992 to 31/3/2005. The aforesaid cost included amount of land cost, material cost, labour cost, corporate cost and also credits in respect of various incomes earned in the course of resale of flats already sold in the past. The AO noted that credit for various incomes earned amounting to Rs.62,11,417/- could not be said to be generated out of the construction and development of the project. Such income was by way of interest on overdue instalments of the purchasers, interest on overdue outgoings, interest on bank deposits, transfer charges as transfer of ownership of flats/shops/parking space due to resale transactions including brokerage and miscellaneous income. The aforesaid incomes, which were credited to the work-in-progress account, were brought to tax as income from other sources. The Ld. CIT(A) has also affirmed the stand of the AO, against which assessee is in further appeal before us.

6.2 Before us, the plea of the assessee is that the aforesaid incomes/receipts relate to assessee's business activities and, therefore, should be treated as business income and not as an income assessable under the head income from other sources.

6.3 On the other hand, the Ld. DR appearing for the Revenue has defended the orders of lower authorities on this aspect.

6.4 We have carefully considered the rival submissions. Factually speaking, it cannot be disputed that the aforestated incomes, namely, the interest on overdue installments, interest on overdue out comings, interest on bank deposits, transfer charges as transfer of ownership of flats/shops, etc. on resale transactions and brokerage income on resale of flats are not incomes arising in the course of assessees business activity of construction and development of the real estate project. Therefore, in our view, the lower authorities have made no mistake in assessing the aforesaid incomes under the head income from other sources, which we hereby affirm. Thus, ground of appeal No.2 of the assessee fails.

7. In the ground of appeal Nos.3& 4, the issue relates to corporate expenses disallowed by the AO while computing income from the project. In brief, the relevant facts are that in computing the cost of construction of the project, the AO noticed that assessee had claimed a sum of Rs.1,15,73,539/- as corporate expenses which pertain to the period from the year 1995 to 2005. The assessee had claimed that such expenses were reimbursed to M/s. Prankik Jasnil & Associates, who was rendering corporate services to various group entities operating from the common premises. In the course of a survey carried out at the business premises of the assessee, it was found that twenty one companies were functioning from the same premises and assessee had contributed Rs.1,15,73,539/- towards corporate office expenses. These expenses were for occupancy charges for four employees, installation of telephone, computer's, etc. The AO was of the view that considering the level of

activity carried out by the assessee and the separate salary made to employees at the site office, etc. the incurrence of Rs.1,15,73,539/- was quite excessive. The AO also noted that the payment was made to persons specified under section 40A(2)(b) of the Act and, therefore, the same was not reasonable. The AO treated 50% of such expenses i.e. Rs.57,86,770/- as excessive and unreasonable and disallowed the same.

7.1 The assessee assailed the matter in appeal before Ld. CIT(A) by pointing out that the corporate expenses amounting to Rs.1,15,73,539/- were for complete ten years and that the same was quite reasonable considering the fact that the assessee firm did not have its own infrastructure set-up or office premises. The assessee also filed details of year-wise expenses booked under this head since the year 1995, and justified the expenditure by contending that the expenses have been worked out at 5% of the project costs in terms of industry norms.

7.2 Ld. CIT(A) considered the submissions put forth by the assessee, but was not satisfied with the stand of the assessee, as according to him, the expenses have to be based on actuals and not on the basis of percentage of the project cost, as done by the assessee. However, the Ld. CIT(A) differed with the estimation made by the AO, and he varied the disallowance, as can be understood from the following discussion in his order:-

> *"Thus in the facts and circumstances of the case and the explanation furnished by the appellant it is held that out of the expenses claimed from the F.Y. 1994-95 to 2001-2002 viz. Rs.81,08,539/-, 30% would be a reasonable disallowance, and for the period thereafter upto FY 2004-05, since only some part of the construction work was remaining, 60% of the claim is not exclusively for the purpose of business. The disallowance for the latter period would work out to Rs.20,79,000/- (60% of Rs.34,65,000/-). For the periods thereafter, since the project is completed in FY 2004-05, although the appellant claims it to be completed in FY 2006-07 and has claimed expenses in the following two financial years, reasonable disallowance of corporate expenses would be @ 70% of the claim, since the Assessing Officer would have to consider the expenses booked after FY 2004-05 upto FY 2006-07."*

7.3 The aforesaid discussion reveals that so far as expenses claimed for the period 1994-95 to 2001-02 are concerned, the Ld. CIT(A) reduced the disallowance to 30% as against 50% disallowed by the AO and for the period thereafter upto 31/3/2005 the disallowance was enhanced to 60%, as against 50% disallowed by the AO. Further, for the period 2005-06 to 2006-07, the CIT(A) enhanced the disallowance to 70% as against 50% disallowed by the AO.

7.4 By way of Ground of appeal No.1, assessee is contesting the disallowance of 30% retained by the CIT(A) out of corporate expenses pertaining to the period 1994-95 to 2001-02; and, by way of Ground of appeal No.4, assessee is contesting the enhancement of disallowance from 50 to 60% of the expenses pertaining to the period 2002-03 to 2004-05 and to 70% for the period 2005-06 to 2006-07.

7.5 On the other hand, the Revenue by way of its ground of appeal No.1 in the cross-appeal is contesting the disallowance made by the CIT(A) @70% in relation to the expenses for the period 2005-06 to 2006-07.

7.6 As the aforesaid discussion shows that the issue relating to disallowance of corporate expenses has been raised in the cross-appeals, therefore, the cross-grounds are taken up together.

7.7 At the time of hearing the Ld. Representative for the assessee vehemently pointed out that there was no justification for the Ld. CIT(A) to retain any disallowance out of corporate expenses and in any case, the enhancement of disallowance for the expenses pertaining to the period 2002-03 to 2006-07 was not justified. It is further pointed out that the whole addition is based on mere conjectures and surmises and there was no evidence found for non incurrence of any such expense.

7.8 On the other hand, Ld. DR appearing for the Revenue had defended the orders of the lower authorities.

7.9 We have carefully considered the rival submissions. Having perused the orders of the authorities below, we find that the entire addition is not based on any evidence or material. In fact, the entire corporate expenses have been incurred by way of reimbursement to a concern, who is maintaining common facilities for all the group concerns operating from a common premise. While the AO cannot be faulted for examining the impugned expenses, so however,, he has made the disallowance without bringing out any material or evidence to say that the expenses were not genuine or that the same were false. Therefore, the Ld. CIT(A) ought to have deleted the entire addition instead of scaling down the disallowance out of the expenses pertaining to the period 1994-95 to 2001-02 and enhancing the disallowance in respect of the period from 2005-06 to 2006-07. As a consequence, we hereby set-aside the order of Ld. CIT(A) and direct the AO to delete the impugned addition. Thus, assessee succeeds in ground of appeal Nos.3 &4.

8. In so far as the Ground of appeal No.1 raised by the Revenue is concerned, the same relates to the corporate expenses disallowed for the period 2005-06 to 2006-07. The said ground, in our view, is quite misconceived in as much as the Ld. CIT(A) has enhanced the disallowance to 70% and not reduced the disallowance made by the AO at 50%. Nevertheless, in view of our decision in the assessee's appeal on ground Nos.3 & 4 above, the aforesaid ground in the appeal of the Revenue is liable to be dismissed. We hold so.

9. Now, we may take up the ground of appeal No.5 of the assessee, which relates to a sum of Rs.3,45,375/- on account of unaccounted interest.

9.1 In this context, the brief facts are that during the course of survey certain loose papers were found which showed of installments due and interest on overdue installments to be charged from the purchasers of flats. The AO noticed that on comparison of the interest recoverable as per said statement with the actual interest income accounted for in the books of accounts, there was a difference of Rs.19,55,281/-. It was noticed by the AO that the interest income credited in the books of account was lower by a sum of Rs.19,55,281/- in comparison to the interest recoverable shown in the documents found in the course of survey.

9.2 The stand of the assessee was that the statement found during the course of survey only reflected a possible interest chargeable from the customers and not actual recoveries; and that whatever interest was received, the same was accounted for as income. The assessee also pointed out that it was following cash system of accounting and hence interest was liable to be accounted for on receipt basis. The AO disagreed with the assessee as according to him the assessee would necessarily collected all the dues , including interest due from the buyers, before handing over the possession of the flats. Therefore, according to him the difference of Rs.19,55,281/- was interest already collected by the assessee outside the books of account, which he brought to tax.

9.3 Ld. CIT(A) has also affirmed the stand of the AO in principle but with regard to the transaction of Flat No94 in Tower-A, he directed the AO to verify the plea of the assessee that the booking of the flat was cancelled and thus the interest shown in the statement found during the survey was actually not received. Ld. CIT(A) has required the AO to verify the aforesaid aspect and if it is found correct, then the interest in respect of the Flat No.94 in Tower-A has been directed to be deleted.

9.4 Before us, assessee has assailed the addition of Rs.3,45,375/- only and in this context our attention was drawn to page-4 of the Paper Book, wherein the statement of interest found at the time of survey is placed. It has been pointed out that in relation to flat No.21, sold to Mrs. Kashmiri Jayendra Malvia assessee had furnished a confirmation to the effect that the said party did not pay any interest on overdue installments to the assessee. Copy of such confirmation has also been placed in the Paper Book at pages 21 to 22. On this basis it is sought to be pointed out that the AO has wrongly considered the said amount as assessable in the hands of the assessee.

9.5 On the other hand, Ld. DR appearing for the Revenue pointed out that the statement found during the survey showed interest on overdue installments and that the lower authorities were justified in assessing such income in the hands of the assessee.

9.6 We have carefully considered the rival submissions and find that the limited issue before us is the interest income assessed by the AO in relation to the flat No.21 in Tower "A" sold to Mrs. Kashmira J. Malavia & Ors. on overdue installments. The addition has been made by AO only on the basis of the document found during survey, which is merely a tabulation showing "interest due" and does not clinchingly establish actual receipt of interest without any corroborative evidence. On the contrary, assessee furnished a confirmation from the flat buyer, a copy of which is also placed in the Paper Book filed before us, which establishes that no interest was paid to the assessee. In the orders of the authorities below, we find no negation qua the aforesaid evidence furnished by the assesse. Therefore, we deem it fit and proper to direct the AO to delete the said addition. Thus, on this aspect, assessee succeeds.

9.7 The last ground in this appeal relates to an addition of Rs.7,90,200/- on account of 10% of expenses on construction of swimming pool and gymnasium disallowed by the AO.

9.8 In this context the relevant facts are that in computing the cost of construction of the project, the AO also took into consideration the provision for committed liabilities on account of the expenses incurred on the project in the subsequent period. It was noticed that construction of some of common amenities was still in progress and the relevant expenditure was incurred in later years. The AO noted that total expenses in the project after 1/4/2005 till 31/3/2007 is Rs.98,81,184/- and the provision for expenses was Rs.79,02,200/-, totaling to Rs.1,77,83,184/-. In the assessment for A.Y 2007-08 provision for expenses claimed amounted to Rs.79,02,200/- out of which 10% was disallowed as excess provision leaving the balance of Rs. 71,11,800/-, which was allowed. The said disallowance of 10% has been affirmed by Ld. CIT(A) against which the assessee is in appeal before us.

9.9 On this aspect, after hearing the rival parties, we find no reason to interfere in the findings of Ld. CIT(A), which are quite fair and proper. Thus, on this aspect assessee fails.

9.10 In the result, appeal of the assessee for 2005-06 is partly allowed.

10. The only ground which remains for assessment year 2005-06 is ground of appeal No.2 in the appeal of the Revenue. By way of this ground, the grievance of the Revenue is against the direction of the Ld. CIT(A) in deleting an addition made by the AO out of payments to M/s. P.M Construction, a contractor for labour charges.

10.1 In brief, the relevant facts are that the AO has made disallowance out of labour charges of Rs.1,67,55,600/-, which, inter-alia, included payments to

M/s.PM Construction of Rs.31,69,358/-. The AO made the disallowance on the ground that the payments made to the contractor were unverifiable. Ld. CIT(A) noted that when the verification exercise was carried out by the AO the summons could not be served upon M/s. PM Construction on account of change in address. During the proceedings before the Ld. CIT(A) assessee furnished the latest address of the said concern, including copy of the ledger account, confirmation, copy of bank statement, and other material to prove the genuineness of the payments. The CIT(A) also directed the AO to conduct enquiries and furnish a remand report.

10.2 The Ld. CIT(A) considered the remand report of the Assessing Officer and also the other documents furnished by the assessees, namely, confirmation of the contractor, assessment order of the contractor, other income tax details of the contractor viz. PAN, return of income, etc. The Ld. CIT(A) has further noticed in the impugned order that Shri Shyam Mundra, proprietor of M/s. PM Construction also appeared before him and confirmed rendering of services and the receipt of payment from the assessee firm.

10.3 After considering assessment order, the submissions of the assessee, remand report of the AO as well as the material before him, the CIT(A)has found it expedient to delete the addition made in respect of payments to M/s. PM Construction. Revenue is in appeal before contending that the genuineness of transaction with M/s. PM Construction could not be proved by the assessee during the course of assessment proceedings.

10.4 On the other hand, Ld. AR has defended the order of Ld. CIT(A) by placing reliance there on.

10.5 We have carefully considered the rival submissions. It is notable that the Ld. CIT(A) has relied upon the material before him which proved that M/s. PM

Construction had rendered services to the assessee firm and that the payment made by assessee stood duly confirmed in the course appellate proceedings. There is no material led by the Revenue which would enable us to disagree with the finding of the Ld. CIT(A) on this aspect, which we hereby affirm. It is also discernible that the material and evidence relied upon by the CIT(A) for deleting the addition was very much made available to the AO in the remand proceedings and he was also directed by the CIT(A) to conduct enquiries and furnish a remand report. We do not find any adverse finding by the AO in this context. Even before us, no cogent reasoning or material has been lead by the Revenue to establish any infirmity in the fining of the Ld. CIT(A). Thus, on this aspect Revenue fails.

10.6 In the result, whereas the appeal of the assessee for assessment year 2005-06 is partly allowed, the cross appeal of the Revenue is hereby dismissed.

11. Now, we may refer to the captioned appeals of the assessee for assessment years 2006-07 and 2007-08, which are directed against the respective orders of Ld. CIT(A) dated 01/04/2011 and 29/03/201.

11.1 In these appeals, the issue relates to the year in which the project of the assessee is said to be completed so as to deduce the income there from. This aspect of the controversy has been dealt with by us in the appeal of the assessee for assessment year 2005-06 vide ground of appeal No.1 in the earlier paras holding that the project of the assessee is deemed to have been completed in assessment year 2005-06 itself. As a consequence, the aforesaid appeals are liable to be decided against the assessee.

11.2 In the result, the appeals of the assessee for A.Y 2006-07 and 2007-08 vide ITA No.4773/Mum/2011 &4774/Mum/2011 are hereby dismissed.

12. The last captioned appeal is vide ITA No.4771/Mum/2011 pertaining to A.Y. 2005-06, which relates to the order of Ld. CIT(A) dated 01/04/2011, whereby the penalty levied by the AO under section 271B of the Act of Rs.1.00 lac has been sustained.

12.1 The AO levied the penalty on the ground that the assessee failed to obtain the requisite tax audit report prescribed under section 44AB of the Act. As per the AO the total sale proceeds for the A.Y 2005-06 exceeded the prescribed limit, which required the assessee to get its accounts audited under section 44AB of the Act.

12.2 On this aspect, Ld. AR explained that in the return of income filed the assessee had not considered the project as complete and it was only in the course of assessment proceedings that the project of the assessee was considered as complete and thereafter the profits were booked. Consequently, the sale proceeds so considered fell within the purview of section 44AB of the Act. The contention of the assessee is that while following the project completion method at the time of preparation of its income tax return, there was no reason to consider that its accounts were liable to be audited under section 44AB of the Act. It was also pointed out that in the past years the assessee has also been filing its return on similar basis.It is only as a consequence of assessment finalized by the AO that the assessee had become liable for getting its accounts audited u/s.44AB of the Act.

12.3 Having considered the submissions put forth by the assessee we find that there was a reasonable cause prevailing with the assessee for not getting his accounts audited under section 44AB of the Act as the prescription of section 44AB of the Act was triggered only after AO rejected the assessee's methodology of booking profit from its project. Therefore, in our view, having regard to the provisions of section 273B r.w.s. 271B of the Act, there was a reasonable cause prevailing with the assessee for not getting its accounts audited under section 44AB of the Act. Accordingly, the penalty levied under section 273B is liable to be deleted. We hold so.

12.4 Thus, appeal of the assessee in ITA No.4771/Mum/2011 is hereby allowed.

13. Resultantly, the captioned appeals are accordingly disposed of.

Order pronounced in the open court on 31/07/2015
आदेश की घोषणा खुले न्यायालय में दिनांकः 31/07/2015 को की गई ।

Sd/-	Sd/-
(अमित शुक्ला / **AMIT SHUKLA**)	(जी.एस. पन्नू / **G.S.PANNU**)
न्यायिक सदस्य **/ JUDICIAL MEMBER**	लेखा सदस्य **/ ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 31./07/2015

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

व.नि.स./*Vm*, Sr. PS