

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

I.T.A. Nos. 711/Del/2024
(Assessment Year : 2017-18)

DCIT
Circle – 7(1)
New Delhi

Vs. DLF Limited
9th Floor, DLF Centre,
Sansad Marg, H.O. Sansad
Marg, New Delhi – 110 001

PAN : AAACD 3494 N

(Appellant)

..

(Respondent)

And

I.T.A. Nos. 673/Del/2024
(Assessment Year : 2017-18)

DLF Limited
9th Floor, DLF Centre,
Sansad Marg, H.O. Sansad
Marg, New Delhi – 110
001

Vs. DCIT
Circle – 7(1)
New Delhi

PAN : AAACD 3494 N

(Appellant)

..

(Respondent)

Appellant by :

Shri R. S. Singhvi,
Shri Satyajeet Goel and
Shri Rajat Garg, C.A.'s
Shri Surender Pal, CIT-
D.R.

Respondent by :

Shri Sanjay Kumar Yadav,
Sr. D.R.

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Date of Hearing 12.02.2025
Date of Pronouncement 23.04.2025

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The instant cross appeals filed by the respective parties are directed against the order passed by the National Faceless Centre (NFAC), Delhi ('CIT(A)' in short) dated 18.12.2023 arising out of the assessment order dated 30.09.2021 passed by the ACIT, Circle – 7(1), Delhi under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") passed by the ITO, Delhi, for Assessment Years (A.Y.) 2017-18. Since, both the appeals relate to the same assessee, these are heard analogously and are being disposed of by this common order.

ITA No.711/Del/2024 (Revenue's appeal) :

2. The Revenue has filed the appeal with the following grounds:

1. *Whether on the facts and circumstances of the case and in law, the Ld. NFAC has erred in deleting the addition of Rs.319,01,05,617/- made by the AO on account of disallowance of revenue recognition as per POCM method of recording ignoring that the AO has categorically held that the Internal Development Charges (IDC) incurred by the assessee cannot be*

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loaded/apportioned against unlaunched area?

2. *Whether on the facts and circumstances of the case and in law, the Ld. NFAC has erred in deleting the addition of Rs.61,34,84,000/- made by the AO on account of disallowance of Interest capitalization ignoring that the AO has categorically held that the assessee is following POCM method of accounting under which interest expenditure related to projects under construction can only be allowed on proportionate basis to the extent of revenue recognized and the interest of Rs.61,34,84,000/- are in the nature of cost attributable to the acquisition/construction of asset, therefore, needs to be capitalized.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. NFAC has erred in deleting the addition of Rs.54,63,24,512/- made by the AO on account of disallowance of expenses related to exempted income u/s 14A r.w Rule 8D of the Act ignoring that the AO has categorically held that the assessee has made disallowance of expenses u/s 14A on estimate basis and no working has been submitted as per the provision of Rule 80 r.w.s 14A of the Act?*
4. *Whether the Ld. NFAC under the facts and circumstances of the case and in law is justified in deleting the addition of account of reclassification of income from house property amounting to Rs 24,85,57,703/-.*
5. *Whether the Ld. NFAC under the facts and circumstances of the case and in law was Justified in deleting the addition of Rs.9,03, 15,833/ made by the AO on account of disallowance of expenses of Helicopter and Aircraft which were not related to business of assessee.*
6. *Whether on the facts & circumstances of the case and in law, the Ld. NFAC has erred in allowing the Principal claim of deduction of Rs.582,695.93 lacs ignoring that the assessee had to follow consistency in method of accounting i.e. POCM for the year under consideration*

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and accordingly, the AO has rightly rejected the change in method of accounting and made additions accordingly?

7. *Whether on the facts and circumstances of the case the CIT(A) was justified in accepting the claim of the assessee for reduction amounting to Rs.5,82,69,593 lacs without any evidence and completely against the provisions of Income Tax Act, 1961 as earlier year losses can be set off only in accordance with the provisions of the Act and not as an adhoc claim in subsequent years.*
8. *Whether the CIT(A) was justified in allowing the assessee the change in accounting completely in contravention to law laid down by the Hon'ble Supreme Court (Sanjeev Woollen Mills vs Commissioner of income Tax (2005) 149 Taxman 431 (SC)/2005 279 ITR 434 (SC)/(2005) 199 CTR 441(SC))24-11-2005)& CIT, Udaipur vs Hindustan Zine Ltd (2007) 161 Taxman 162 (SC)/(2007) 291 ITR 391 (SC)/(2007) 210 CTR 282 (SC) (18-05-2007) that assessee has to follow consistently one method of accounting.*
9. *Whether the CIT(A) was justified in allowing a method of accounting to the assessee which is in contravention to the provisions of section 145 of the Income Tax Act read with Rules.*
10. *Whether CIT(A) was Justified in accepting an accounting standard which is in contravention to the method prescribed in the Income Tax Act, 1961.*
11. *Whether CIT(A) was justified in allowing the assessee to adopt an accounting standard which was not even notified by the Government(Ind AS got effective from 01.04.2018 only).*
12. *Whether CIT(A) was justified in allowing the assessee a deduction for which Revenue was not even disclosed during the year.*

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13. *Whether the Ld. NFAC under the facts and circumstances of the case and in law was Justified in deleting the addition of Rs. 6,30,05,370/- made by the AO on account of disallowance u/s 40(a)(ia) of Income Tax Act, 1961.*
14. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. The brief facts leading to this case are that the assessee company, engaged in the business of real estate, having multiple ongoing projects of construction and also selling upon the plots of land, filed its return of income declaring loss of Rs.20,04,58,93,245/- on 04.11.2017 through electronic media for A.Y. 2017-18. However, a revised return was filed on 29.03.2019 declaring loss at Rs.20,04,58,93,245/-. The said assessment was selected for scrutiny through CASS and statutory notices were issued under Section 143(2) of the Act on 09.08.2018 followed by notice under Section 142(1) along with questionnaire dated 24.10.2019 and 21.12.2019 which were served upon the assessee through electronic media. The said assessment was finalized upon making additions on various counts which was partly deleted by Learned CIT(A) in appeal preferred by the assessee. Against the order of deletion of addition made by the CIT(A), the instant appeal has been preferred by the Revenue and assessee has come in appeal challenging the confirmation of addition made by CIT(A) on account of unverified purchased transactions. Hence, cross

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appeal is before us.

4. **Ground No.1** : Deletion of addition to the tune of Rs.319,01,05,617/- on account of recognition of revenue as per Percentage of Completion Method (POCM) made by the Assessing Officer.

5. During the course of assessment proceedings, the assessee was asked by the AO by and under notice dated 09.07.2019 to furnish detailed working of revenue recognition from various projects under Percentage of Completion Method (POCM) with details of budgeted cost and actual cost and also issued show-cause as to why addition should not be made to its income for the year under consideration as per history of its case. assessee filed its reply on 19.04.2021 & 29.07.2021 along with detailed documents which, however, was not accepted by AO and observed that based on the report of the Special Auditor for A.Y. 2009-10, the entire Internal Development Cost (IDC) incurred till 31.03.2017 at Rs.361,79,60,025/- is required to be loaded on area launched till 31.03.2017 for the reason that IDC incurred by the assessee cannot be loaded / apportioned against un-launched area in phase-V, and addition, therefore, to the tune of Rs.319,01,05,617/- on account of revenue recognition under POCM was made by the AO, which was in turn deleted by the Learned CIT(A). Hence, the instant appeal before us.

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6. At the time of hearing of the matter, the Learned DR vehemently supported the order passed by the Learned AO.

7. On the other hand Learned AR submitted before us that the issue is squarely covered in assessee's own case by and under the order dated 11.03.2016 for A.Y. 2006-07 which was subsequently followed up to A.Y. 2016-17 by its order dated 19.07.2023. Both the orders passed by the Co-ordinate Bench was also referred by the Learned AR being annexed to the paper book filed before us.

8. Under these facts and circumstances of the matter, we, thus, considered the order passed by the Co-ordinate Bench dated 19.07.2023. While rejecting the ground preferred by the Revenue the Co-ordinate Bench, observed as follows:

“6. The issue arises out of the addition made by Ld. AO on account of Revenue recognition as per POCM. In assessee's own case for A.Y. 2006-07 (supra) issue has been considered against the Revenue with relevant finding in para no. 35 to 42. It can be observed that in A.Y. 2006-07, the issues are restored to the files of Ld. AO to make further inquiries in respect of Mangolia project and Summit project. However, the adoption of POCM was approved. Further in A.Y. 2008-09 the department's appeal had again raised the issue and taken into consideration the determination of issue in favour of the assessee by the Tribunal in assessee's own case for A.Y. 2006-07. The Co-ordinate Bench had decided the issue against the Revenue. In the present A.Y. the para 9.2 of the order of the Ld. CIT(A) shows he has followed the findings in favour of the assessee by its predecessor by A.Y. 2009-10. In the light of aforesaid the adoption of POCM cannot be interfered and the ground is rejected.”

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9. In view of the order passed by the Co-ordinate Bench of Tribunal in favour of the assessee on the identical facts and circumstances of the matter, we do not find any reason to interfere with the order passed by the Learned CIT(A) which is found to be just and proper. Hence, this ground of appeal preferred by the Revenue is dismissed.

10. **Ground No.2** : Deletion of addition to the tune of Rs.61,34,84,000/- on account of disallowance on account of capitalization of interest made by the Assessing Officer is under challenge.

11. During the course of assessment proceedings, the Learned AO asked the assessee to furnish details of finance charges alongwith justification with respect to the allowability of such expenses. The appellant company vide letter dated 23.03.2021 submitted that during the year, it had incurred interest expenses of Rs. 1241.30 crores, out of which Rs. 1236.08 crores had been debited to the Profit & Loss account and claimed as deduction u/s 36(1)(iii) of the Act and the balance amount of Rs. 5.22 crores, the details whereof were filed, had been capitalized to the various projects and shown in the Balance Sheet under the head 'Capital work-in-progress'. The details of Rs. 1236.08 crores were also filed before the AO. As regards the claim of interest of Rs.1236.08 crores under Section 36(1)(iii) of the Act, it was submitted

that the company had sufficient interest-free funds available in the form of share capital, reserves and surplus and hence, deduction u/s 36(1)(iii) was allowable. The appellant company also relied upon the orders of the ITAT in the earlier years in its own case where such interest was allowed and the AO's formula, holding that the company had used mixed funds and hence a part of interest u/s 36(1)(iii) of the Act was not allowable, was rejected.

12. At the time of hearing of the matter, the Learned DR vehemently supported the order passed by the Learned AO.

13. On the other hand, Learned Counsel appearing for the assessee submitted before us that this ground of appeal has been decided in favour of the assessee for A.Y. 2006-07 by and under the order passed by the Co-ordinate Bench of Tribunal on 11.03.2016 which was, in fact, subsequently, followed up to A.Y. 2016-17. A copy of the order passed by the Hon'ble Co-ordinate Bench has also been duly submitted before us as annexed to the paper book filed by the assessee. Such submission made by the Learned AR has not been able to be controverted by the Learned DR.

14. Heard the parties, perused the records. Considering the assessee's submissions, the Learned AO came to a conclusion that under the percentage of completion method, interest expenditure related to a project under construction can only be

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allowed on pro-rata basis to the extent of revenue recognition. The impugned amount therefore, are in the nature of borrowing cost attributable to the acquisition or construction of qualifying assets and the same need to be capitalized and thus not allowable as revenue expenditure. Finally, the expenses of Rs.61,34,84,000/- was added to the total income of the assessee, which was deleted by the Learned CIT(A) with following observation:

“6.3.3 It is observed that the facts and circumstances with regard to capitalization of interest in this year are identical to the facts in the assessment year 2009-10 and subsequent assessment years. I have no reason to differ with the findings of my predecessors in the appellate orders for the earlier assessment years. Accordingly, I am of the considered view that capitalization of interest of Rs. 61,34,84,000/- on notional basis by the AO based on various permutations is not justified. The claim of interest by the appellant which is in accordance with the provisions of section 36(1)(iii) of the Act deserves to be allowed. Therefore, the addition of Rs. 61,34,84,000/- is not sustainable and hence the same is deleted.”

15. It is the fact that this particular issue came up in appellant's case in various assessment years were duly taken care of by the Learned CIT(A) and the order for A.Ys. 2014-15 to 2016-17 dated 19.07.2023 whereby and whereunder the reasonable formula adopted by the AO for making disallowance on account of capitalization of interest has been rejected and relying upon the order passed by the Co-ordinate Bench of Tribunal for A.Y. 2006-07 in assessee's own case, the order of the CIT(A) deleting the disallowance made by the

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AO on account of capitalization of interest has been upheld by the ITAT by its order dated 19.07.2023. A copy of the order passed by the Co-ordinate Bench dated 19.07.2023 for A.Ys. 2014-15 to 2016-17 has been duly annexed to the paper book filed before us. The relevant observation whereof is as follows:

“7. The issue arises from the addition made by Ld. AO on account of capitalization of the interest. The issue is covered in favour of the assessee vide assessee in assessee’s own case for A.Y. 2006-07 wherein in para no. 43 to 50 a Co-ordinate Bench has made the relevant findings . Ld. CIT(A) has deleted the addition primarily holding in para no. 10.2 of its order as follows:-

“It emerges from the facts of the present case that the Assessing Officer has not identified any specific diversion of funds which were not used for the purposes of business. The funds borrowed from the banks and self generated have either been utilized in construction business or advanced to the subsidiaries, associate companies and earned the interest income which has been offered for the tax during the year. It is held that there is no diversion of money for non-business purposes. The loans to the subsidiaries have been given for the business purposes and interest has been charged.

• The proviso to section 36(l)(iii) is not applicable as:

1. The buildings under construction are not the capital assets

2. These are stock in trade

3. Any borrowing for the stock in trade can never be capitalized.

• Accounting standard AS-(16) has no application. Accounting Standards cannot override the provisions of

Income Tax Act.

It is a matter of record that the borrowed funds have been utilized for the business of the real estate and the loans and advances to the subsidiaries. The company has earned the interest of Rs.895.62 crore from the loans and advances which has been offered as the income. In view of the above, it is clear that the company has effectively claimed the net interest of Rs.722.81 crore on the term loans which have been used for the purposes of business of the company and in this respect it is evident that the interest earned by the company is more than the net interest debited in the accounts on the term loans and thus there is no question of making any adhoc disallowance. This is further fortified by the fact that the balance sheet of the company in the schedule 16 as on 31.03.2014 shows the closing inventory of Rs.8,112.24 crore which indicates the use of the substantial amount of interest bearing funds. In view of the above, it is held that capitalization of interest of Rs./134734,87,000/- on notional basis by the Assessing Officer based on various permutations was not justified and accordingly the same is deleted. The Assessing officer is directed to modify the assessment order accordingly.”

8. *Co-ordinate Bench in para no. 49 of ITA No. 2677/Del/2011, A.Y. 2006-07 has observed as follows :*

“49. We have carefully considered the rival contentions. It appears that the AO has made this addition mainly because of note mentioned by assessee in its accounting policies with respect to borrowing costs according to Accounting Standard 16 issued by ICAI. We have perused notes attached to financial statements and we are of opinion that these notes have arisen in the financial statement of the assessee because of the issue of applicability of Accounting Standard 16 issued by the ICAI. According to Accounting Standard 1 i.e. disclosure of accounting policies, each and every company is required to disclose the accounting policy with respect to various significant income, expenditure

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and assets and liabilities etc. applicable to it. Borrowing cost is also one of them. ICAI has issued Accounting Standard 16 Accounting for Borrowing Cost wherein it is provided that in case of interest expenditure incurred by the company, it is required to be capitalized if the borrowing is related to the qualifying assets.

In this case the inventory is a qualifying assets as it is held for more than 12 months and therefore interest attributable to it is required to be capitalised in the books of accounts as per AS - 16. Therefore we do not agree with the arguments of AR that AS -16 does not apply to inventory. However, those are the provisions which are applicable for the maintenance of the accounts of the company and interest is allowable according to provisions of section 36(1) (iii) of the act. Further according to us, the provisions of Accounting Standards and provisions of the Act are two different set of regulations and while deciding this issue, it is well settled judicial precedent that is if there is a contradiction between the two, the provisions of the Act shall prevail. Provisions of section 36(1)(iii) provides that the amount of interest paid in respect of capital borrowed for the purposes of the business or profession deduction is required to be allowed. Proviso inserted w.e.f. 01.04.2004 is the only restriction if condition laid down u/s 36(1) (iii) are satisfied by the assessee. The proviso says that any amount of the interest paid in respect of capital borrowed for acquisition of an asset whether capitalized in books of accounts or not for any period beginning from the date on which the capital asset was borrowed for acquisition of the asset till the date on which such asset was put to use shall not be allowed as deduction. The deduction is to be disallowed even if the interest is capitalized in the books of accounts or not. Hon'ble Supreme Court in the case of Core Healthcare [298 ITR 194] has held that provisions of section 36(1)(iii) is a code in itself. In the present case, the interest paid by the assessee is not for the purpose of acquisition of any capital asset but for its inventory. We do not find any restriction in provisions

contained u/s 36(1)(iii) which provides that the interest can be disallowed if incurred for the purpose of inventory as provided under Accounting Standard 16. Apparently, in this case, there is no allegation that interest is not paid on capital borrowed for the purpose of the business. Hon'ble Mumbai High Court in the case of CIT vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] has held as under :-

“4. From the facts found by the Tribunal on record, it is clear that assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities were assessed under section 28 of the Income-tax Act. In this case, we are concerned with the second activity (hereinafter referred to, for the sake of brevity, as "Kandivali Project"). According to the Commissioner, loan was raised for securing land/development rights from the Mandal. That, the loan was utilized for purchasing the development rights, which, according to the Commissioner, constituted a capital asset. According to the Commissioner, since the loan was raised on securing capital asset, the interest incurred thereon constituted part of capital expenditure. This finding of the Commissioner was erroneous. In the case of India Cements Ltd. v. CIT [1966] 60 ITR 52, it was held by the Supreme Court that in cases where the act of borrowing was incidental to carrying on of business, the loan obtained was not an asset. That, for the purposes of deciding the claim of deduction under section 10(2)(iii) of the Income-tax Act, 1922 [section 36(1)(iii) of the present Income-tax Act], it was irrelevant to consider the purpose for which the loan was obtained. In the present case, the assessee was a builder. In the present case, the assessee had undertaken the Project of construction of flats under the Kandivali Project. Therefore, the loan was for obtaining stock-in-trade. That, the Kandivali Project constituted the stock-in-trade of the assessee. That, the Project did not constitute a fixed asset of the assessee. In this case, we are concerned with deduction under section 36(1)(iii). Since

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the assessee had received loan for obtaining stock-in-trade (Kandivali Project), the assessee was entitled to deduction under section 36(1)(iii) of the Act. That, while adjudicating the claim for deduction under section 36(1)(iii) of the Act, the nature of the expense - whether the expense was on capital account or revenue account - was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That, the utilization of the capital was irrelevant for the purposes of adjudicating the claim for deduction under section 36(1)(iii) of the Act -Calico Dyeing & Printing Works v. CIT [1958] 34 ITR 265 (Bom.) In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order to acquire a revenue asset or a capital asset. The said judgment of the Bombay High Court applies to the facts of this case."

Further, in the following decisions of various coordinate Benches, the deduction of interest has been allowed u/s 36(1)(iii) even where the assessee has followed the projection completion method :-

(i) ACIT vs. Tata Housing Development Company Ltd. - 45 SOT 9 (Bom.);

(ii) DCIT vs. Thakar Developers - 115 TTJ 841 (Pune);

(iii) DCIT vs. K. Raheja Pvt. Ltd. - (2006) TIOL 220 ITATMUM.;

(iv) K. Raheja Development Corporation vs. DCIT in ITA No.240/Bang./97 dated 22.09.1997 - In this case, reference application filed by the Department has also been . rejected by the Hon'ble Karnataka High Court vide its order dated 08.11.2000 in Civil Petition No.832/2000 (IT).

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Before us, Id. DR could not cite any decision against the claim of the assessee, therefore, respectfully following the decision of Hon'ble Bombay High Court and as well as various coordinate Benches, cited above, we do not concur with the view of CIT (A) on disallowance of interest of RS.24.75 crores u/s 36(1) (iii) of the Act. The alternative argument of the assessee regarding adoption of any artificial formula for the purpose of computing interest disallowance. Ld. CIT (A) has presumed proportion of utilisation of funds in absence of the nexus holding that assessee has used mixed funds. Honourable Bombay High court in case of CIT V Reliance Utilities & Power limited 313 ITR 340 has held that

“The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments.”

Therefore we are of the view that presumption is to be assumed in favour of the assessee and not against assessee. Hence, we reject the formulae adopted by CIT(A) of working out proportionate disallowance by adopting artificial formulae. Therefore respectfully following decisions of Honourable Bombay High court in CIT vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] and CIT V Reliance Utilities & Power limited [313 ITR 340] We reverse the order of the CIT(A) confirming the disallowance of expenditure of Rs.27.40 crores and direct the AO to allow this interest expenditure u/s 36(1) (iii) of the Act.”

9. The aforesaid have been followed in assessee's own case for A.Y. 2008-09 (supra) accordingly, following the same, the ground raised by Revenue is not sustainable, same is rejected.

16. Having regard to the order passed by the Co-ordinate Bench of Tribunal, we find that the issue is covered in favour

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of the assessee. In that view of the matter, the order passed by the Learned CIT(A) in deleting the addition of Rs.61,34,84,000/- in regard to the claim of interest under Section 36(1)(iii) of the Act on the identical facts and circumstances of the matter is found to be just and proper so as not to warrant interfere. Hence, this ground of the appeal preferred by the Revenue is found to be devoid of any merit and thus, dismissed.

17. **Ground No.3** : Deletion of disallowance of expenses to the tune of Rs.54,63,24,512/- under Section 14A read with Rule 8D(2)(ii) & (iii) of the Act made by the Assessing Officer is under challenge before us, which has been claimed to be covered in assessee's own case by and under the judgment passed by the Co-ordinate Bench dated 19.07.2023 for A.Ys. 2014-15 to 2016-17.

18. At the time of hearing of the matter, the Learned DR vehemently supported the order passed by the Learned AO.

19. The order passed by the Co-ordinate Bench has been duly considered by us. The relevant observation whereof is as follows by us as under:

“13. The issue arises out of the addition made by Ld. AO u/s 14A r.w.r. 8D wherein the Ld. CIT(A) has restricted the addition to Rs. 9,10,488/- only. The issue has been considered in case of assessee in assessment year 2010- 11 vide ITA no.

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4187/Del/2015 order dated 29.09.2020 and it has been further followed in A.Y. 2011-12 vide ITA no. 4159/Del/2015. The Ld. CIT(A) has considered the fact that assessee had made his own disallowance for which Assessing Officer has not recorded his satisfaction about disallowance so made by the appellant and relying judgment of Hon'ble Delhi High Court in Maxopp Investment Ltd. vs. CIT 247 CTR 162 (Del.) benefitted the assessee. As the same being settled proposition of law requires no interference. The ground is rejected."

20. Since the issue is found to be covered in assessee's own case on the identical facts, the order passed by the Learned CIT(A) in allowing the said ground by deleting the addition made by the Learned AO is found to be correct and thus, ground of appeal preferred by the Revenue is rejected.

21. **Ground No.4:** Deletion of addition to the tune of Rs.24,85,57,703/- on account of re-classification of income from "Income declared under the head income from house property" to "Income from business and profession" made by the Assessing Officer is the issue before us.

22. At the time of hearing, the Learned DR for the Revenue vehemently relied upon the order passed by the Learned AO.

23. On the other hand, the Learned Counsel for the assessee submitted before us that the issue is squarely covered in favour of the assessee for A.Y. 2006-07 which was further been followed in subsequent years particularly 2014-15 to

2016-17.

24. While considering the order passed by the Learned CIT(A), we find that the issue has been decided in favour of the assessee relying upon the judgment passed by the Coordinate Bench dated 19.07.2023 for A.Ys. 2014-15, 2015-16 and 2016-17, the details discussions whereof as appearing at page 215 of the paper book filed by the assessee is as follows:

“14. The issue arises out of the addition made by Ld. AO on account of treating the business income as income from house property. Ld. CIT(A) has followed the reasoning given by predecessor for A.Y. 2009-10 wherein considering the assessee’s own case for A.Y. 1996-97 the issue was decided in favour of the assessee. The Tribunal in assessee’s own case for A.Y. 2006-07(supra) has considered the issue and decided the same in favour of the assessee. The same requires no different treatment. The ground is rejected.”

25. Thus, having regard to this order passed by the Coordinate Bench in favour of the assessee, we do not find any reason to interfere with the order passed by the Learned CIT(A) in deleting the impugned addition on the identical facts. This ground of appeal is, therefore, found to be devoid of any merit and thus dismissed.

26. **Ground No.5:** This ground relates to deletion of disallowance to the tune of Rs.9,03,15,833/- on account of Helicopter and Aircraft expenses made by the Assessing Officer, treating them as not incurred wholly & exclusively

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for the business purpose holding them personal in nature.

27. At the time of hearing, the Learned DR supported the order passed by the Learned AO on this ground raised the matter.

28. On the other hand, Learned AR submitted before us that the issue is squarely covered in assessee's own case by and under the order passed by the Co-ordinate Bench dated 29.09.2020 for A.Y. 2010-11, which was subsequently followed up to A.Y. 2016-17, the copy whereof has duly been annexed to the paper book filed before us by the assessee.

29. We find that the order passed by the Co-ordinate Bench of Tribunal appearing at page 13 therein, the relevant observation whereof is as follows:

"17. The issue arises out of addition made by the Ld. AO on account of personal nature expenses attributed to the use of helicopter and aircraft expenses treating them as not incurred wholly & exclusively for business purpose. Ld. CIT(A) taking into account the nature of business activity of the assessee considered the observations of Ld. AO not sustainable and further holding that if any expenditure is identified as personal expenditure incurred on the directors and other employees it would fall within the meaning perquisite and is taxed accordingly. In assessee's own case for A.Y. 2010-11(supra) the issue has been considered and decided in favour of the assessee with following relevant finding para 24 reproduced as below:

"24. Ground number 16 and 17 of the appeal is with

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respect to the disallowance of expenses not incurred wholly and exclusively for business purposes amounting to Rs. 49,629,551/- and operational expenditure of Rs. 387,449,073/-. This issue has been raised by the learned assessing officer wherein he disallowed the expenditure of the above sum considering the same as a personal in nature and disallowed 66.6% of the expenditure amounting to Rs. 387,449,073/- on the maintenance of the aircraft and helicopter observing that assessee has not proved business expediency of the expenditure and those expenditure appeal to be personal in nature. The learned CIT - A has dealt with this issue at para number 23 of his order at page number 177 - 196 noting that assessee is engaged in the business of development of real estate and it is one of the largest realistic developer in the field of colonization and township developments all over the country the procurement of the various material is source from the various countries across the globe. The company takes technical assistance/know-how from the repeated technical consultants globally. The company requires two flights directors, senior executives, ingenious and consultants both on its rolls and hired in India and abroad which various project: sites located all over the country. Due to the frequency of such transportation the company deemed it fit to acquire the aircraft and helicopter rather than only hire such services. Therefore the expenditure on maintenance and operation of the helicopter and aircraft and chartering of aircraft and other routine expenditure were expended for the purposes of the business. It was further held by him that assessee is a public limited companies are distinct assessable entity as per the definition of person u/s two (31) of the act therefore it cannot be stated that the expenditure identified as expended by the directors and other employees of the company is personal in nature because of the limited company is an in animated person and there cannot be anything personal about such an entity. He further followed the decision in case of Sayaji Iron and engineering Co Ltd 253 ITR 749 and deleted the addition/disallowance. The learned departmental representative could not show us any reason to state

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that the expenditure incurred by the assessee on such travel expenditure of aircraft and helicopter can be considered as a personal expenditure of a company. There were no contrary decision is pointed out before us. In view of this we do not find any infirmity in the order of the learned CIT - A in deleting the above disallowance. Accordingly ground number 16 and 17 of the appeal of the learned assessing officer is dismissed.”

This has been followed subsequently in assessee’s own case for A.Y. 2010-11 and 2011-12 (supra). In the light of aforesaid, following aforesaid, the ground has no substance, the same is decided against the Revenue.”

30. Having regard to the order passed by the Co-ordinate Bench in assessee’s favour, the issue since found to be squarely covered on identical facts the order passed by the Learned CIT(A) in granting relief to the assessee by deleting the addition is found to be just and proper so as not to warrant interference. Hence, this ground of appeal is rejected.

31. **Ground Nos.6 to 12 :** Deletion of addition to the tune of Rs.58,26,95,93,000/- on account of one time Ind-AS claim under the head “Large any other amount claimed as deduction” on account of adoption of Ind-AS is the subject matter before us.

32. The brief facts of the case are that for the purpose of recording revenue from the business of real estate development, the assessee had been consistently following the

method as prescribed under the relevant Companies Act i.e., 'Percentage of Completion Method' ('POCM') as per Indian Generally Accepted Accounting Principles ('IGAAP') till 31.03.2016. Subsequently, by and under the notification dated 16.02.2015, the Ministry of Corporate Affairs, Govt. of India, in terms of provisions of Section 133 of the Companies Act, 2013 notified Ind-AS for the purposes of preparation of books of accounts; the same was made mandatorily applicable to all listed companies / companies having turnover worth Rs.500 crores or more w.e.f. 01.04.2016. Accordingly, the financial statement for the year ended 31.03.2017 were prepared by the appellant company in accordance with the new method of accounting from IGAAP-POCM to Ind-AS POCM.

33. In that view of the matter, the difference between the revenue to be recognized as per the Ind-AS POCM and the revenue already recognized in the books of account till 31.03.2016 as per IGAAP POCM, was adjusted by the appellant in the opening "other equity" for the F.Y. 2016-17. Further that, from F.Y. 2016-17 onwards, revenue for all the projects was recognized based on the working as per the changed method of accounting i.e, Ind-AS POCM. During the year under consideration, the appellant claimed an amount of Rs.5,82,695.93 lakhs in the return of income representing the amount on account of statutory transition from IGAAP to

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IND-AS in the following manner :

- *“The difference in cumulative margin already recorded in the books of account in respect of the ongoing projects upto 31.03.2016 under the old accounting method (IGAAP-POCM) and the cumulative margin that ought to have been recorded in respect of the ongoing projects upto 31.03.2016 as per the new accounting method Ind- AS POCM) as notified by the Ministry of Corporate Affairs, Government of India.*
- *The difference in the amount of upfront fees paid on loans and debentures amortized under the old method of accounting (IGAAP) upto 31.06.2016 and the amount that ought to have been amortized under the new method of accounting (Ind-AS) upto 31.03.2016.*

➤ *The working of the same is as follows :*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs. lakhs)</i>
1.	<i>Gross margin in respect of ongoing projects upto 31.03.2016 under the old method</i>	15,08,342.92
2.	<i>Less: Gross margin in respect of ongoing projects upto 31.03.2016 under the new method</i>	9,30,933.81
3.	<i>Difference (1-2)</i>	5,77,409.11(A)
4.	<i>The amount with respect to upfront fees paid on loans and debentures to be amortized as per the old method upto 31.03.2016.</i>	23,804.41
5.	<i>Less: The amount with respect to to upfront upfro fees paid on loans and debentures to amortized as per the new method upto 31.03.2016</i>	29,091.23
	<i>Difference (5-4)</i>	5,286.82(B)
	<i>Total principal claim (A+B)</i>	582,695.93

34. Show-cause thereafter, on 26.07.2021 proposing denial of claim of the assessee and making addition thereupon was issued by the Assessing Officer for the following reasons:

“1. Effective interest adjustment on debentures:

- The computation of such amount and details/financials relied upon for the said computations have not been filed.*
- The adjustment under IND-AS is for preparation of books of account and determination of book profit. However, in the present case the adjustment has been claimed as deduction for the year under consideration under normal provisions of the Act.*
- This is not a case where liability has been crystallized during the year.*
- The claim of said deduction is in respect of claim of liability which is in the nature of payment of interest expenses. Accordingly, the claim of deduction of such liability cannot be allowed in view of the overriding provisions of section 43B of the Act.*

2. POCM adjustment:

- The computation of such claim of deduction and details/financials relied upon for the said computations have not been filed.*
- Ind-AS are applicable for the purposes of accounting vis-à-vis maintenance of books of account and not for the purposes of computation of income under the Act.*
- The adjustment made by the assessee in the present case is based on the entries in the books of account on notional basis and, therefore, are not required to be considered for the purposes of computation of income under the head "profits and gains of business or profession"*
- Reliance placed on the decision of the Hon'ble Supreme Court in Southern Technologies Ltd versus JCIT (320 ITR 577)*
- Based on the principles of res judicata and theory of*

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precedent, the assessee's income is to be computed as it was done in the earlier assessment years.

- *The contention of double taxation is not supported by the details available on record.*
- *The claim of POCM adjustment is also not in accordance with ICDS adjustments and in its return of income, the assessee has tried to take shelter of ICDS adjustment in respect of POCM adjustment and claim of effective interest adjustment on debentures."*

35. The assessee duly filed its submission, which was not found to be acceptable and claim of the assessee was therefore, rejected for the following two reasons:

"POCM adjustment

"Ind As has been prescribed for preparation of books of account. However, total income has to be computed according to provisions of the Act and ICDS. There is no provision in the Act for claim of deduction in respect of such profit/income which has already been offered on the basis of provision of the Act applicable for the relevant assessment year."

Effective interest adjustment on Debentures

"The incremental claim of upfront fees has been made stating that higher claim of such deduction should have been made in earlier years. Accordingly, the assessee has applied Ind AS as applicable for the year under consideration to the earlier year in which Ind AS was not applicable. Therefore, such claim of deduction is not as per provisions of the Act."

36. On the contrary, the Learned AO computed the income of the appellant applying the old method for the year under consideration and restricted the above claim of Rs.1,48,423.72 lakhs; the details whereof is as follows:

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Sr. No.	Particulars	Amount (Rs. lakhs)
1.	Gross margin accounted for during the assessment year 2017-18 following new method (Ind AS POCM) which stood already accounted for under the erstwhile old method IGAAP POCM .	145,926.57
2.	The amount with respect to upfront fees paid on loans and debentures not taken into consideration consequent to application of the new method which otherwise would have been considered under the old method of accounting.	2,497.15
Total alternate claim		1,48,423.72

37. Thus, an addition of Rs.4,34,272.21 lakhs (Rs.5,82,695.93 - Rs.1,48,423.72) was made to the returned income of the appellant. In appeal, the assessee was given relief by allowing the entire claim of Rs.5,82,695.93. Hence, the instant appeal before us.

38. Before the First Appellate Authority, it was submitted by the assessee that the principal claim of Rs.5,77,409.11 lakhs was consequent to the mandatory adoption of Ind-AS for A.Y. 2016-17 onwards and the same should be allowed mainly for the following reasons;

(i). Section 145 is a mandatory provision and when complied with by the taxpayer, the tax department cannot object to the

method of accounting regularly applied by the taxpayer.

(ii). The assessee is allowed to change accounting policy on a bona-fide basis and change in accounting method to comply with legal requirements has to be accepted by the department.

(iii) The method of recognizing revenue followed is eventually revenue-neutral and represents a true and fair view of the state of affairs and income of the appellant.

In order to establish that the revised methodology under Ind-AS POCM as compared to IGAAP POCM and the revenue neutral effect of adoption of Ind-AS POCM by the appellant, the appellant explained the same with the following example as it appears from the order passed by the Learned CIT(A) :

- *Total budgeted sale value of a project is Rs. 100*
- *Total rebates allowable are Rs. 10 subject to certain conditions*
- *Project will be completed in 5 years*
- *Actual rebate at the end of 5 years is Rs.9.5*
- *Based on past trends, management's assumption at the start of project is that 90% of the rebates will have to be paid, say Rs. 9.*

Under the erstwhile IGAAP POCM, such rebates/discounts were accounted for on actual basis at the time of credit of such benefit to the customers. However, IND AS 18 requires that such rebates should be estimated and accounted for upfront at the start of project based on a best estimate.

Accordingly, while calculating margins as per IGAAP

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POCM, rebate of Rs. 9.5 is accounted for at the end of the project i.e., year 5 on actual basis and the cumulative margin during the life of the project would be calculated as under:

Under IGAAP					
(A) Budgeted	Year-1	Year-2	Year-3	Year-4	Year-5
<i>Cumulative Sales</i>	100	100	100	100	100
<i>Less : Rebates</i>	-	-	-	-	9.5
<i>Net sales</i>	100	100	100	100	90.5
<i>Cumulative Cost</i>	70	70	70	70	70
<i>Margin</i>	30	30	30	30	20.5

Under IGAAP					
(A) Budgeted	Year-1	Year-2	Year-3	Year-4	Year-5
(B) Actual					
<i>Cumulative Sales</i>	60	80	90	95	100
<i>Less : Rebates</i>	-	-	-	-	9.5
<i>Net sales</i>	60	80	90	95	90.5
<i>Cumulative Cost</i>	35	40	45	50	70
<i>Cost %</i>	50%	57.14 %	64.29 %	71.43 %	100 %
<i>Sale %</i>	60%	80%	90%	95%	100 %
<i>POCM Sale</i>	30	45.71	57.86	67.86	90.5
<i>POCM Cost</i>	21	32	40.5	47.5	70
<i>POCM Margin</i>	9	13.71	17.36	20.36	20.5
<i>Year to year margin</i>	9	4.71	3.64	3	0.14
<i>Cumulative total margin during project life cycle</i>					20.5

However, since under IND-AS POCM rebates are estimated upfront in the year 1, Rs. 9 shall be reduced from budgeted sale value in year 1 itself based on the assumption that 90% of the total rebates will have to be paid. Further, at the end of the year 5, actual rebate comes to Rs. 9.50 which would be considered in year 5 and the cumulative margin

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during the life of the project would be calculated as under:

Under IND-AS					
(A) Budgeted	Year-1	Year-2	Year-3	Year-4	Year-5
<i>Cumulative Sales</i>	91	91	91	91	90.5
<i>Cumulative Cost</i>	70	70	70	70	70
<i>Margin</i>	21	21	21	21	20.5
(B) Actual					
<i>Cumulative Sales</i>	56	74	83	89	90.5
<i>Cumulative Cost</i>	35	40	45	50	70
<i>Cost %</i>	50%	57.14%	64.29%	71.43%	100%
<i>Sale %</i>	61.54%	81.32%	91.21%	97.8%	100%
<i>POCM Sale</i>	28	42.29	53.36	63.57	90.5
<i>POCM Cost</i>	21.54	32.53	41.04	48.90	70
<i>POCM Margin</i>	6.46	9.76	12.31	14.67	20.5

Under IND-AS					
(A) Budgeted	Year-1	Year-2	Year-3	Year-4	Year-5
<i>Year to year margin</i>	6.46	3.30	2.55	2.36	5.83
Cumulative total margin during project life cycle					20.5

It was submitted that it was evident from the above example that the cumulative margin during the life of the project remains constant (i.e. Rs.20.5), both under IGAAP POCM as well as IND-AS POCM. Accordingly, there would be no loss to the Revenue on account of change in the method of accounting adopted by the Appellant. The appellant also filed table showing the amount offered to tax under IGAAP in earlier years being accounted for again the subsequent years under Ind-AS is as under:

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Sr. No.	A.Y.	Alternate claim filed (IGAAP POCM) (Rs. In lakhs)	Alternate claim filed (Borrowing Cost) (Rs. In lakhs)	Total of Alternate claim (Rs.In laksh)
1.	2017-18	145,926.57	2,497.15	148,423.72
2.	2018-19	63,208.54	2,123.94	65,332.48
3.	2019-20	104,107.91	118.23	104,226.14
4.	2020-21	172,825.79	350.9	173,176.18
5.	2021-22	150,899.69	197.12	151,096.81
6.	2022-23	162,346.98	-	162,346.98
Total		799,315.48	5,286.82	804,602.31

(iv). No amount has been claimed by the appellant under the provisions of ICDS-I, rather, a mere disclosure has been made under ICDS-I.

(v). POCM has been consistently followed by the appellant in the past and has been accepted by the Revenue authorities. In such a case, income offered to tax as per POCM cannot be considered as ‘hypothetical’ or ‘notional’.

(vi). Changed method of accounting should not lead to double taxation and non-allowability of deduction claimed by appellant would lead to double taxation of income.

39. In support of each contention, assessee took support of different judicial pronouncements.

40. It was further pointed out by the assessee before the

CIT(A) that out of the claim of Rs.5,77,409.11 crores in the assessment year under consideration on account of change in the method of accounting, excess revenue as per the change method had been booked to the extent of Rs.444,160.95 lakhs in the A.Ys. 2017-18 to 2023-24. The breakup whereof was also given. In that view of the matter under the present facts and circumstances of the case, the AO was not justified in disturbing the claim of appellant in not allowing deduction arising out of change in the method of accounting as the case made out before the Learned CIT(A).

41. Before us, Learned AR drew our attention to the notification issued by the Ministry of Corporate Affairs dated 16.02.2015, which annexed to the paper book at pages 688-690 which has duly been considered by us clause 4 whereof speaks of applicability of the same to the all listed companies/companies having turnover worth Rs.500 crores or more w.e.f. 1st April, 2016.

42. We have further considered the Accounting standard dealt with the issue of recognition of revenue in Real estate transaction was Ind-AS 18 which also prescribes recognition of revenue as per POCM but with slight modification appearing at pages 710-743 of the paper book filed before us.

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43. The guidance note on application of Ind AS 18 issued by ICAI vide publication on May, 2016 appearing at pages 691-709 of the paper book as relied upon by the Learned AR has also been perused. As per the submission made by Learned AR, the key difference between the revenue recognition as per IGAAP POCM and IND AS POCM is as follows:

- As per the provisions of IGAAP POCM, project revenue was measured at "consideration received or receivable" and the rebates and discounts were accounted for at the end of the project.
- However, as per para 9 of the IND-AS 18, project revenue is to be measured at fair value of the consideration received or receivable. The amount of revenue arising on a transaction is usually determined by agreement between the entity and the buyer or user of the asset. However, the measurement of fair value of the consideration received or receivable is done taking into account the amount of any trade discounts and volume rebates allowed by the entity.
- Accordingly, to measure the fair value of consideration received or receivable, rebates/discounts (in the form of timely payment rebate, move in rebate, down payment rebate, subvention cost incurred on behalf of customers and compensation payable to customers for delayed delivery), allowed to the customers, are accounted as a reduction from actual and budgeted revenue and the impact is accordingly accounted for throughout the project cycle as against IGAAP POCM where the impact

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of rebate and discount was accounted for at the end of the project.

44. As per the Learned AR Pursuant to mandatory change in method from IGAAP to IND AS, the assessee company re-evaluated the budgeted/actual estimates of the ongoing projects, which lead to reduction in margin to the extent of Rs.5,77,409.11 lakhs. It may be noted that the assessee has already paid tax on this amount in earlier years and the one-time claim in the year under reference is for sake of aligning the revenue recognition process with the changed POCM method under IND-AS 18. It is merely a transitional claim being reversal of margin recognized under previous method (IGAAP POCM).

45. In connection with the project-wise details of difference in margin under IGAAP POCM and IND-AS POCM as certified by the auditor, the Learned AR has drawn our attention to pages 283 to 295 of the paper book. It was further argued by him that one-time claim of deduction on account of change of method is for the purpose of avoiding double taxation as this very income i.e. Rs. 5,77,409.11 lakhs has already been taxed in the past and would eventually be again taxed in the future based on POCM. In these circumstances, the disallowance made by the Assessing Officer is absurd and would result in double taxation. In fact, in sum and substance,

the exercise of change of method and one-time claim is revenue neutral as the same will have no impact on the total profit from the projects and ultimate taxable income on cumulative basis at the end.

46. In this connection, he has drawn our attention to the finding of Learned CIT(A) at para nos 10.5.7 to 10.5.9 of the order passed by the Learned CIT(A).

47. Further, the detailed submission filed before CIT(A) explaining the changed method of accounting alongwith illustrations and consequential one-time claim of expenses has also been informed by the Learned AR appearing at paper book at pages 253-269.

48. With regard to ICDS i.e. Income computation and disclosure standards issued by CBDT, it is submitted that CBDT has not issued any ICDS concerning the issue of revenue recognition from real estate project and as such in the absence of any ICDS, there could be no case of any violation or contravention. The relevant finding of CIT(A) on this issue is at para 10.5.10 of page 129

49. Furthermore, the provision of Section 145 provides the profit and gains of business should be computed in accordance

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with either cash or mercantile system of accounting regularly employed by the assessee. In the present case, the assessee is regularly following Percentage of completion of method for recognizing revenue and the slight change in method is on account of change in accounting standard as notified by MCA which is binding on the assessee. Accordingly, the requirement of Section 145 is fulfilled.

50. It is emphasized that the accounting standards notified by expert statutory authorities are required to be followed for determining taxable income in absence of any specific methodology specified by the CBDT. Reference is made to the decision of Apex Court in the case of CIT v. Virtual Soft Systems Ltd. 404 ITR 409 (SC). Reference to various judicial precedents is appearing at Paper Book Page Nos. 245-252.

51. It is worth mentioning that the Assessing Officer has himself accepted the revenue recognition under IND AS-18 POCM in immediate subsequent year i.e. A.Y. 2018-19 vide order under Section 143(3) dated 30.09.2021 and as the rejection of change of method and consequential disallowance of one-time claim in the year under reference is inconsistent and without any basis.

52. In a similar way, the assessee company has also claimed

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one-time deduction of Rs.5286.82 lakhs in respect of change in treatment of upfront fee paid on loans and debentures in accordance with Ind-AS 109. The change introduced by the new method is that earlier the assessee used to amortize upfront fee on straight-line basis over the period of loan, however, as per Ind-AS 109, from 01.04.2016, the upfront fee was factored as interest cost by arriving at effective rate of interest. Accordingly, the annual amortized amount debited to Profit and Loss account was re-computed on each loan since inception and the difference of Rs. 5286.82 lakhs was claimed as one-time claim. The detailed explanation to this effect is at Paper book Pages 267-271. Further, the Learned CIT(A) approved the claim vide finding recorded at pages 130-131, Para 10.5.11 to 10.5.13 of the impugned order which has been perused by us.

53. In the light of the above, the grounds raised by the revenue on the issue of one-time claim have been dealt with by the appellant in the following manner:

<i>Ground No.</i>	<i>Issue raised</i>	<i>Remarks</i>
6.	<i>CIT(A) ignored that the change of method tantamount to inconsistency</i>	<i>The change of method from IGAAP POCM to IndAS 18 POCM is mandated by MCA and there is no case of any arbitrary change of method</i>

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7	<i>CIT(A) was not justified in accepting the claim without any evidence and against the provisions of Income tax act as earlier year losses can be set- off only in accordance with provisions of the Act and not on ad-hoc basis.</i>	<i>This ground is wholly misconceived as the one-time claim is on account of implementation of IndAS and supported from auditor certificate. Further, as opposed to the allegation of set-off of earlier year losses, it is case of reversal of profit margin already subjected to tax in earlier years and as such this ground is incorrect and contrary to facts of the case.</i>
8	<i>The change in accounting is contrary to law laid down by Apex Court in the various cases that assessee has to follow consistently one method of accounting.</i>	<i>As clarified above, it is not a case of change of method by the assessee on its own volition but mandatory implementation of IndAS notified by MCA in terms of Section133 of Companies Act which is binding on the assessee. In these circumstances, the change of method is in conformity with statutory notification by MCA and decisions of Apex Court. In fact, the assessee has followed the changed</i>

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		<i>method consistently as per applicable guidelines and notified standards.</i>
9	<i>The change of method is in contravention of section 145.</i>	<i>Assessee is regularly following POCM for recognition revenue and the slight change in method is on account of change in accounting standard as notified by MCA is binding on the assessee and accordingly, requirements of Section 145 is fulfilled.</i>
10	<i>IndAS 18 and IndAS 109 is in contravention of method prescribed in the Income tax Act, 1961</i>	<i>The Income Tax Act does not specify any particular method for recognizing revenue from real estate transactions or recognition of cost of financial instruments and as such this ground is misconceived. In fact, the IndAS being issued by expert statutory body, the same are valid and required to be followed as held by Apex Court in the case of CIT v. Virtual Soft Systems Ltd. 404 ITR 409 (SC)</i>
11	<i>IndAS were Government notified by w.e.f.</i>	<i>This ground is incorrect. As is</i>

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	<i>01/04/2018 only and as such they are not applicable</i>	<i>factually per MCA notification dated 16th Feb, 2015 placed at PB Pg 688, the IndAS were made mandatorily applicable w.e.f. 1st April, 2016.</i>
	<i>CIT(A) was not justified in allowing deduction for which revenue was not disclosed during the year.</i>	<i>Again, this ground is absurd and contrary to facts as the one-time claim is only with reference to margin already recognized and subjected to tax in earlier years and the claim of deduction is merely a transitional claim to realign the revenue recognition from the various project with changed method as per IndAS-18. In fact, as clarified above, the deduction so claimed has duly been offered to tax in subsequent years and as such the claim is revenue neutral in nature. The relevant finding of CIT(A) is at Page 127-129, Para 10.5.7 10.5.9</i>

54. The Learned CIT(A) considering the entire aspect of the matter, granted relief to the assessee with the following

observation :

“10.5.2 It is noticed that the appellant company, being in the business of real estate development, was following the POCM as per IGAAP upto 31.03.2016 as per prescribed under the Companies Act. Vide notification dated 16.02.2015 in terms of section 133 of the Companies Act, 2013 issued by Ministry of Corporate Affairs, mandatory adoption of Ind-As was made applicable from financial year 2016-17. Accordingly, the financial statements for F.Y. 2016-17 were prepared as per new method. Under IGAAP, revenue from real estate projects started on or after 01.04.2012 was recognized in accordance with GN-IGAAP issued by ICAI. This POCM method was accepted by the AO in the past. The appellant has pointed out that it has been consistently following POCM for recognition of revenue under IGAAP and continues to follow the same under Ind-AS. The change is only with regard to methodology of POCM which has been redefined under Ind-AS. Therefore, it is seen that the appellant has been regularly following the regulations for recognising the revenue which is in conformity with the provisions of section 145 of the Act, as per which taxable income for the purpose of the Act is determined as per the method of accounting regularly followed by the assessee. The courts including the Hon'ble Supreme Court have consistently held that income from business or profession has to be computed as per the consistent and regularly followed method of accounting provided it is in accordance with the applicable accounting standards. The only exception is provided in sub-section (2) of section 145 under which Income Computational and Disclosure Standards (ICDS) have been prescribed. Although the Central Government has notified ICDS, the same do not provide method for computation of income in respect of real estate developers. The CBDT has also clarified in the FAQ issued on 23rd March, 2017 vide Circular No 10/2017 (Reply to Question No. 12) that ICDS III is not applicable to Real Estate Developers. In this regard, Question 12 of FAQs and its reply is reproduced hereunder:

"Q:12: Since there is no specific scope exclusion for real estate developers and Build Operate Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS III and ICDS IV should be applied by real estate

developers and BOT operators. Also, whether ICDS applicable for lease.

A:12: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable."

Since no specific ICDS has been prescribed for computation of income, the appellant was mandated, under section 145(1) of the Act, to follow the method of accounting prescribed under section 133 read with section 129 of the Companies Act, 2013 and as recommended by the Institute of Chartered Accountants of India. In the absence of any ICDS applicable to real estate contracts, the taxable income of the appellant, who is a real estate developer, has to be determined in accordance with the method of accounting regularly and consistently followed, including the changed method, where the change in the method of accounting is bonafide and consistently followed thereafter. Therefore, it can be said that in the absence of any particular method prescribed under under ICDS, the computation of income made by the appellant is in accordance with the requirements of section 145(1) of the Act. In this case, it is not a case where the appellant had suo-moto adopted Ind-AS and GN- IND-AS governing revenue recognition. On the other hand, the appellant was obliged to adopt the new accounting method to comply with the statute. Therefore, the change in the method of accounting adopted by the AO cannot be said to be not bonafide.

10.5.3 The appellant also referred to the various judicial pronouncements for the proposition that an assessee is entitled to change his method of accounting provided the same is bonafide and is consistently followed thereafter. In such cases, it is not open to the revenue authorities to question the change in the method of accounting. In the present case, the appellant had not suo-moto adopted Ind-AS and GN-Ind-AS governing revenue recognition. Rather, the appellant was obliged to adopt the new accounting method to be compliant with the statute. In the absence of any particular methodology prescribed under ICDS for real estate developers, the appellant was obliged to compute its taxable income in

accordance with the method of accounting regularly employed, which is in accordance with the requirements of section 145(1) of the Act. Accordingly, the method adopted by the appellant is not in conflict with any provisions of the Act. Therefore, in such cases, I am of the view that due to change in the circumstances, because of changes in the statute, the change in accounting policy should be treated as bona-fide. I have also taken note of the following judicial pronouncements where the mandatory change in the method of accounting was considered bona-fide and the consequent deduction was allowed while computing business income under the Act:-

(a) In the case of CIT V. Virtual Soft Systems Limited [2012] 18 taxmann.com 119/205 Taxman 257/341 ITR 593 [Delhi HC] (affirmed by Supreme Court in the case of CIT vs. Virtual Soft Systems Ltd: 404 ITR 409 (SC), the method of accounting for lease followed by the assessee on the basis of guidelines of ICAI was accepted. The relevant extracts of the decision are reproduced as under:

"8.1 The foremost aspect which, thus arises for consideration in this case is: whether the method of accounting employed by the assessee to determine the real income evidently derived from lease of assets, could be given a go-by. In determining its income and its presentation, the assessee took recourse to the Guidance Note, issued by the ICAI, on accounting for leases. The ICAI's publication on the subject indicates that the Guidance Note on accounting of leases was issued by it, for the first time, in 1988, which was, then revised in 1995.....

In this background what is required to be considered is whether the books of accounts could be rejected by the AO merely for the reason that recourse to the Guidance Note was taken by the assessee. In this regard, we would be required to examine the provisions of s. 145 of the IT Act. Sec. 145 of the IT Act adverts to the method of accounting followed by an assessee. Sub-s. (1) of s. 145 provides that income chargeable under the head "profits and gains of business or profession" or "income from other sources" shall be computed either on cash basis or on mercantile system, whichever method being regularly employed by the assessee. This provision is, however, subject to the Central Government notifying AS in

respect of any class of assessee or class of income.s. (1) of s. 145 provides that income chargeable under the head "profits and gains of business or profession" or "income from other sources" shall be computed either on cash basis or on mercantile system, whichever method being regularly employed by the assessee. This provision is, however, subject to the Central Government notifying AS in respect of any class of assessee or class of income. Sub-s. (3) of s. 145, empowers the AOs to disregard the books of accounts submitted by the assessee only if he is not satisfied with the correctness or completeness of the accounts of the assessee or, the method of accounting employed by the assessee or on account of AS notified under sub-s. (2), not being particularly followed by the assessee. In this particular case, the AO has disregarded, in substance, the method of accounting followed by the assessee qua lease rentals without basing it on the grounds provided in S. 145 of the IT Act. The fact that the assessee justified its method of accounting, by taking recourse to the Guidance Note issued by the ICAI in that behalf, was disregarded, on what we would term as, a disjointed reading of the provisions of the said Guidance Note. Both the AO as well as the CIT(A) have adverted to para 2 of the Guidance Note to come to, what we consider an erroneous conclusion in as much as they have held that in determining as to whether deduction on account of equalization charges ought to be allowed or not, what has to be borne in mind is ultimately the provisions of the IT Act. In our view, such an observation in para 2 of the Guidance Note is really saying the obvious. Therefore, even if this Guidance Note was silent on this aspect the provisions of the IT Act would undoubtedly still apply. Thus, as to what is the impact of provision of para 2 of the Guidance Note will be considered by us as we progress further with our judgment.

9.1 However, what is important at this stage is to first actless ourselves to the aspect as to whether the AO could have disregarded the method of accounting followed by the assessee in respect of lease rentals. In our view, the AO could not have done so, as the method of accounting was based on a guideline commended for adoption by a professional body such as the ICAI. The Guidance Note reflects the best practices adopted by accountants the world over. The fact that, at the relevant

point in time, it was not mandatory to adopt the methodology professed by the Guidance Note issued by the ICAI, is irrelevant, for the reason that, as long as there was a disclosure of the change in Accounting Policy in the accounts, which had a backing of a professional body such as the ICAI, it could not be discarded by the AO. This is specially so, since the ICAI is, recognized as the body vested with the authority to recommend ASs for ultimate prescription by the Central Government in consultation by the National Advisory Committee of Accounting Standards, for presentation of financial statements....

10. The change in accounting policy, as noticed by us above, had the imprimatur of a duly recognized professional body, i.e., the ICAI. Therefore, notwithstanding the fact that the opinion of the ICAI was expressed in a Guidance Note which had not attained a mandatory status, would not, in our view, provide a basis to the AO to disregard the books of accounts of the assessee and in effect method of accounting for leases, followed by the assessee."

The above judgment has also been referred to in the following decisions:-

(i) Prakash Leasing Ltd. Vs DCIT [2012] 208 Taxman 464. *In this case, the Karnataka High Court considered the question regarding deduction of lease equalisation charges from lease receipts wherein it was contended by the assessee that it was entitled to claim deduction of such lease equalisation taking recourse to the guidance note issued by ICAI while accounting for lease transaction. The High Court considered several judgments, including the judgment of Delhi High Court in Virtual Soft System Ltd (supra) and in para 12 observed as under:-*

"...However, when the law, as amended subsequent to the aforesaid judgment of the Apex Court, expressly provided that the Central Government may notify in the Official Gazette from time to time the accounting standards to be followed by any class of assessee or in respect of any class of income, the assessment orders to be passed under the Act by the authorities have to be in

conformity with the accounting standards notified by the Central Government....

(ii) In the case of Commissioner of Income Tax and others Vs Pact Securities and Financial Services and others reported in (2015), 374 ITR 681 (AP), the assessee had claimed a deduction of Rs. 48,56,224/- by way of "lease equalisation charges" from the lease rental income. It was submitted on behalf of the assessee that the treatment in the accounts had been given as per the "guidance note" on accounting for lease issued by ICAI. The question before the High Court was whether the assessee could take recourse to the "guidance note" qua accounting for lease determination of its income and whether the deduction as claimed by the assessee sought to be allowed. The High Court decided the issue in favour of the assessee. The relevant portion of the order is reproduced below:-

"Therefore, in our opinion, notwithstanding the fact that the opinion of the Institute of Chartered Accountants of India was expressed in the guidance note, which had not attained a mandatory status, would not, in our view, be a ground to discard the books of account of the assessee or INC method of accounting for lease followed by the assessee and disallowing the assessee to deduct the lease equalisation charges from the lease rental income"

(b) In the case of CIT v. Insilco Ltd [2009] 179 Taxman 55 [Delhi HC], where pursuant to the change in Accounting Standard 2, the assessee capitalized the cost of spares and claimed depreciation on the said capitalized value, the jurisdictional Delhi High Court observed that the assessee was obliged to capitalize the entire cost of spares in consonance with the mandatory provisions of AS-2 and AS-10 and that there was no merit in the submissions of the revenue that the accounting treatment in accordance with the Accounting Standards had no relevance for the purposes of the Act. The relevant extract of the judgment is as under:

16.5 It is to be noted that these Accounting Standards are mandatory in nature and applied to accounts prepared after 1-4-1999. In that sense the submission of the assessee has to be

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accepted that the change in the accounting policy had been brought about by virtue of the issuance of the revised accounting standards issued by the Council of the ICAI, which was, applicable for the assessment year under consideration. Furthermore, the provisions of subsections (3A), (3B) and (3C) of section 211 of the Companies Act, 1956, clearly provide that every profit and loss account and balance sheet of a company shall comply with the Accounting Standards prescribed.

.....

Therefore, we have no difficulty in accepting the submissions of the learned counsel for the assessee that it was obliged to capitalize the entire cost of spares in consonance with the mandatory provisions of Accounting Standards (AS) 2 and (AS) 10.

16.6 It is not disputed that the assessee is maintaining the accounts based on a mercantile system. Under sub-section (1) of section 145 of the Act the assessee's income which is chargeable under the head "Profits and gains of business or profession" is required to be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

16.7 "As indicated above the assessee has been maintaining a mercantile system of accounting, therefore, the treatment of emergency spares in accordance with the revised Accounting Standards (AS) 2 and (AS) 10 would be in consonance with the mercantile system of accounting which under the Act the revenue is required to look at for computing income of the assessee chargeable under the head "Profits and gains" from business. The submission of the learned counsel for the revenue that the accounting treatment to be meted out to a transaction in accordance with the Accounting Standard has no relevance for the purposes of the Income-tax Act, 1961 is a submission which does not commend to us."

10.5.4 In view of the above facts and judicial precedents, there is no denying the fact that the appellant had to mandatorily prepare its financial statements for F.Y. 2016-17 as per Ind-AS to comply with the statute and the same resulted

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in change in the accounting policies governing revenue recognition. In such case, the AO was not justified in disregarding the method of accounting for revenue recognition adopted by the appellant in the assessment year under consideration as the appellant was obliged to do so due to changes in the statute. It is not the AO's case that the change in the method of accounting in the assessment year under consideration was. malafide. It is also a matter of record, not controverted by the AO, that the changed method of accounting was consistently followed by the appellant in the subsequent years. Therefore, there seems to be no conflict of any of the provisions of the Act with the method adopted by the appellant for computation of income.

10.5.5 As regards the correctness of the principal claim of Rs. 5,774.09 cr, the same has been justified through a certificate dated 20.08.2021 issued by the statutory auditor of the appellant company, a copy of which was filed at page 1 to 19 of paper book Volume 1 of submissions dated 25.09.2023. This is on account of reversal of excess margin already offered to tax under IGAAP POCM in the earlier years as a result of mandatory adoption of new accounting method, i.e., Ind-AS POCM as prescribed by the Ministry of Corporate Affairs. In order to substantiate that the cumulative margins of Rs. 15,08,343 lakhs under IGAAP POCM in respect of ongoing projects upto 31.03.2016, have been offered to tax upto A.Y. 2016-17, the appellant filed relevant extract of assessment order for A.Y. 2016-17 as per attachment 4 of its submissions dated 20.11.2023, wherein project-wise details of revenue offered to tax have been given. The summary of the POCM adjustment of Rs.5,774.09 cr was given as under:

<i>Cumulative margin under Ind-AS POCM till 31 March 2016 (Rs. Lakhs) [A]</i>	<i>Cumulative margin under IGAAP POCM till 31 March 2016 (Rs. Lakhs)[B]</i>	<i>Cumulative net margin reversal (Rs. Lakhs)[C=B-A]</i>
930,933.81	1,508,342.92	577,409.11

Thus it is seen that the principal claim of Rs. 5,774.09 cr has

been worked out by the appellant on the basis of recognized principles and as per applicable accounting standards and has been duly vetted by the auditors.

10.5.6 I also find merit in the submissions of the appellant that Ind-AS is applicable to all the projects which were ongoing and continuing as on the date of transition. As already stated above, because of mandatory applicability of Ind-AS, the appellant had to switch over to the revenue recognition and working of cost estimates from the beginning of such projects. In case of project of continuing nature, the accounting treatment has to be given from the beginning of the project to give a correct picture of the income of the project. If the revenue recognition and cost estimates are not changed from the beginning, the same may lead to distortion because income from the project would be recognised on different basis in the two periods i.e., before and after the change. In this regard, the decision of Kolkata Tribunal in the case of Bata India Ltd. v. DCIT [2019] 111 taxmann.com 453 wherein it was held that transitional liabilities of gratuity and leave encashment as per provisions of AS-15, which were disclosed in notes appended to accounts, should be adjusted while computing book profit under section 115JB under the Act is relevant. The appellant's submission that on account of mandatory application of Ind-AS it had to switch over to the method of revenue recognition in respect of on-going projects also, to be consistent with the mandatory requirement, is found to be acceptable.

10.5.7 I also find that the method of recognising revenue followed by the appellant is eventually revenue-neutral and represents true and fair view of the state of affairs and income of the appellant. int. The overall profit margin during the life cycle of a project as per IGAAP POCM and as per IND-AS POCM remains the same and only the difference in sale consideration (on account of adoption of Ind-AS) has been spread over a number of years impacting the overall workings. The revised methodology under Ind-AS POCM as compared to IGAAP POCM and the revenue- neutral effect of adoption of Ind-AS POCM has been explained by way of an example. On perusal of the example of taking the total budgeted sale value of a project at Rs. 100, given by the appellant in para C (35)

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of its written submissions dated 25.09.2023, it is seen that under both the methods i.e., under IGAAP POCM as well as under Ind-AS POCM in the above example, where the life of the project has been assumed to be five years, the cumulative margin during the life of the remains the same i.e., Rs. 20.5. Therefore, it can be seen that over the life-time of the project, either of the two methods leads to the same result in terms of profits and, therefore, it is revenue-neutral. In this regard, I have also taken note of the various judicial precedents cited by the appellant including the judgment of the Hon'ble Supreme Court in the case of CIT v. Bilahari Investment (P.) Ltd. [2008] 168 Taxman 95 (SC), wherein, the Apex Court, while adjudicating on the acceptability of a change adopted by the assessee in the method of accounting, accepted the contention of assessee that the change adopted by him in the method of accounting should be permitted since the same is revenue neutral, i.e. it does not lead to any loss to the exchequer. I have also considered the various judgments mentioned any para C (38) of the appellant's submissions wherein it was observed that no addition to the income was called for on account of change in the method of accounting if the same was found to be revenue-neutral. Thus, since the method followed by the appellant because of mandatory adoption of Ind-AS is found to be revenue-neutral, no adverse view in this regard can be taken.

10.5.8 It may also be noted here that the appellant, having opted for concessional tax rate u/s 115BAA A.Y. 2020-21 onwards prior to which the effective rate of tax was 35%, the excess margin accounted for in its books of account on account of mandatory adoption of Ind-AS POCM has already been offered to tax @35%. In case the reversal of revenue in assessment year 2017-18 is not allowed, the said margin would again be taxed in the subsequent assessment years.

10.5.9 I also observe from the submissions and details filed by the appellant that deduction/adjustment claimed by it in the assessment year 2017-18 on account of reversal of revenue shall be e off-set by higher reporting of revenue in future years since total revenue under both IGAAP and Ind-AS remains the same. In case this adjustment is not allowed, the same would amount to double taxation of income as the

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projects are ongoing and continuous and the appellant has already reported higher revenues in the subsequent years. It is seen that the one-time adjustment of Rs. 5,774.09 cr claimed by the appellant towards reversal of revenue of earlier years upto F.Y. 2015-16 impacts the revenue/margin recorded in the books of account for the subsequent years starting from 01.04.2016 because higher margins have been recorded in subsequent years by virtue of the changed method, i.e., Ind-AS POCM as basis of revenue recognition. Accordingly, one-time adjustment claimed by the appellant is off-set in each subsequent year on account of unwinding of the revenue reversed earlier. From the perusal of the chart submitted by the appellant in para 2.9 and 2.13 of its submissions dated 20.11.2013 giving the cumulative impact of revenue of subsequent years recorded in the books of account as per Ind-AS vis-à-vis IGAAP POCM, it is seen that from assessment years 2017-18 to 2023-24, the excess revenue booked on account of Ind-AS POCM is Rs. 4,441.61 cr. This is the difference between the margin for the entire period (A.Y. 2017-18 to 2023-24) if IGAAP POCM was continuously adopted (Rs. 1,848.80 cr) and margin for the same period as per Ind-AS POCM (Rs. 6,290.41 cr). Thus, out of one-time adjustment of Rs. 5,774.09 cr claimed by the appellant in A.Y. 2017-18 on account of reversal of revenue due to mandatory change in the method of revenue recognition, margin/ revenue to the extent of Rs. 4,441.61 cr has already been off-set on account of higher revenue/margins in respect of ongoing projects upto A.Y. 2023-24. Thus, only an amount of Rs.1,332.48 cr (Rs.5,774.09 cr -Rs.4,441.61 cr) remains to be recognized as revenue till assessment year 2023-24. Accordingly, the one-time adjustment of Rs. 5,774.09 cr on account of reversal of revenue will be off-set in subsequent years and hence the change in the method of accounting adopted by the appellant in the assessment year 2017-18 ultimately will not have any impact on revenue and, therefore, it is revenue-neutral. It is thus evident that the deduction/adjustment claimed by the appellant in A.Y. 2017-18 due to mandatory transition from IGAAP POCM to Ind-POCM shall be offset by higher reporting of revenue in subsequent years because, as already mentioned above, the total revenue under both IGAAP as well as Ind-AS remains the same. Thus, once it is found that the method followed by the appellant

because of mandatory adoption of Ind-AS is revenue-neutral, no adverse view in this regard can be taken. Therefore, it can be seen that if the adjustment claimed by the appellant is not allowed in A.Y. 2017-18, the same would result in double taxation of the same income--once having been offered to tax in the earlier years due to IGAAP POCM and again to be offered in the t years a er Ind-AS POCM.

10.5.10 As regards the AO's contention that it is the real liability and not the notional liability which can be claimed as deduction by placing reliance on the decision of the Hon'ble Supreme Court in the case of Southern Technologies Ltd versus JCIT (320 ITR 577), it may be mentioned here the appellant was under an obligation to compute its taxable income in accordance with the method of accounting regularly employed (i.e. POCM) as provided under section 145(1) of the Act in the absence of any particular methodology specified under the provisions of the Act or ICDS. Therefore, the claim of the appellant is as per the provisions of the Act. Further, in the case cited by the AO, the observations of the court were in a different context. In this case, the appellant had created certain provisions against non-performing assets on the basis of accounting prescribed by the Reserve Bank of India under Prudential Norms. The provisions were debited to profit and loss account and the assessee had claimed deduction of these provisions while computing its taxable income. In this case, the court held that the directions of RBI do not govern the computation of taxable income under the Act. Thus, it can be seen that the judgment of the Hon'ble Supreme Court is to be read in the context of the specific provision of the Act governing deductibility of the 'provision'. In fact, the decision of Hon'ble Supreme Court was considered by Delhi High Court in the case of Commissioner of Income-tax v. Vasisth Chay Vyapar Ltd. (196 taxman 169) wherein the court observed that the said ruling was on the issue of deductibility of 'provision' under the specific provisions of the Act and did not deal with principles relating to recognition of income. This decision of Delhi High Court was upheld by the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Vasisth Chay Vyapar Ltd. [2018] 90 taxmann.com 365 (SC). Therefore, the AO's reliance on the decision in the case of Southern Technologies Ltd. is misplaced.

10.5.11 Claim of upfront fees paid on loans and debentures

The appellant had incurred certain expenses in the form of upfront fee while raising borrowings in the form of loans and debentures. As per the provisions of IGAAP such upfront fee was amortised and charged to the profit and loss account on a straight-line basis over the period of loan, till 31.03.2016. However, from F.Y. 2016- 17 onwards, under Ind-AS 109, the upfront fee was factored as interest cost by arriving at Effective Rate of Interest ('EIR'), Consequently, the annual amortised amount debited to P&L account was recomputed on each loan since inception. Therefore, on transition from IGAAP POCM to Ind-AS POCM, the appellant recomputed the annual amortized amount to be debited to P&L account and an amount of Rs. 5,286.82 lakhs was arrived, being the difference between the amount of upfront fee recognized under IGAAP and the amount that should have been recognized under Ind-AS up to the date of transition. The said differential (as per Ind- AS vis-à-vis IGAAP) of Rs. 5,286.82 lakhs has been claimed as deduction in the return of income for AY 2017-18. It was stated that this incremental claim was required to be made on account of transition to Ind-AS and was made since the appellant would not be able to claim the same in future years as it would not be debited to profit and loss account in subsequent years, on account of the Ind-AS adjustment explained above. It was further submitted that the said claim is tax neutral because the total charge in relation to the upfront fee will remain the same under IGAAP as well as Ind-AS.

10.5.12 It needs to be appreciated that the incremental claim of Rs. 5,286.82 lakhs has arisen on account of transition from IGAAP POCM to Ind-AS POCM. This is the difference between the amount of upfront fee recognized under IGAAP and the amount that should have been recognized under Ind-AS upto the date of transition. Therefore, on transition to Ind-AS, the appellant has recomputed the annual amortized amount on each loan to be debited to profit & loss account and the differential (as per Ind-AS vis-à-vis IGAAP) has been claimed as deduction. The computation and detailed working of the incremental claim duly certified by the auditor was filed

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before the AO vide appellant's reply dated 20.08.2021, a copy of which was filed during the course of appellate proceedings at page 1 to 19 of paper book Volume I. A summary of the same was also given in the written submissions dated 25.09.2023 filed during the course of appellate proceedings. It may be mentioned here that the appellant will not be able to claim the same in the subsequent years as it will not be debited to profit & loss account in the subsequent years due to Ind-AS adjustment. Further, the total deduction/claim in respect of the upfront fee shall remain the same during the entire period of loan irrespective of whether IGAAP POCM or Ind-AS POCM is followed. Hence the same is revenue- neutral.

10.5.13 As regards the AO's contention that the claim of deduction cannot be allowed due to the over-riding provisions of section 43B, it may be mentioned here that u/s 43B interest payable to certain institution can be allowed only if it is otherwise allowable under the Act and the same has been paid before the specified date. As regards the allowability of the claim of upfront fee, there is no doubt that it is an allowable expenditure under the provisions of the Act as the same was incurred wholly and exclusively for the purpose of the appellant's business. The deduction upfront fee paid on spread over basis has been allowed in the assessme completed for A.Y. 2015-16 and 2016-17. Further, as regards the condition of act payment as per section 43B, it is to be noted that the funds received by the appell on account of borrowings were net of upfront fee. In other words, the funds received by the appellant were reduced by the amount of such fee and hence no separate payment in respect of such fee was liable to be made by the appellant. Therefore, in my view there is no violation of the provisions of section 43B of the Act.

10.6 In view of the discussions in the forgoing paragraphs, I am of the considered view that the AO was not justified in rejecting the change in the method of accounting as the same was in accordance with the provisions of the Act and was triggered by the change in accounting policy/method. In the absence of any particular method prescribed under ICDS for real estate developers, the appellant company was obliged to compute its income in accordance with the method of accounting regularly employed, which is in accordance with

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the requirements of section 145(1) of the Act. The revenue already booked under IGAAP POCM in earlier years, now reversed and claimed would again be recorded by the appellant under Ind-AS POCM in future years. Therefore, if the deduction in respect of adjustment resulting from transition from IGAAP POCM to Ind-AS POCM is not allowed, the same would result in double-taxation of income as the projects are ongoing and continuous and the appellate has reported revenues in the subsequent years.

10.6.1 In view of the above discussions, I am of the considered view that change in the method of accounting to Ind-AS POCM in the assessment year 2017-18 due to mandatory adoption of Ind-AS was bonafide and hence the excess revenue of Rs.5,82,695.93 lakhs (Rs. 5,77,409.11 lakhs + 5,286.82 lakhs) recognized in the earlier years in respect of the projects which were under implementation and are yet to be completed needs to be reversed and the appellant deserves to be allowed deduction of the adjustment of Rs. 5,82,695.93 lakhs in the assessment year 2017-18, otherwise the same would amount to double taxation of income as the gross margins already booked would be again booked by the appellant in future years. Therefore, the principal claim of Rs. 5,82,695.93 lakhs is directed to be allowed to the appellant company. But since the alternate claim of the appellant amounting to Rs. 1,48,423.72 lakhs (Rs. 1,45,926.57 lakhs+ Rs. 2,497.15 lakhs) has been allowed by the AO while disallowing the principal claim of Rs. 5,82,695.93 lakhs and only net addition of Rs. 4,34,272.21 lakhs has been made, the appellant will not be entitled to the alternate claim of Rs. 1,48,423.72 lakhs. However, if at later stage principal claim is denied to the assessee, then assessee would be eligible for alternate claim.”

55. It is relevant to mention that on 20.12.2024 the following clarifications were raised to the assessee by the Bench in regard to the issue involved in the grounds under consideration:

“The Ld. AR is requested to

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- i. *Furnish the basis of the proposition made in 'Statement of Facts' before the Ld. CIT (A) that Ind AS as adopted by the assessee was to be applied to all the projects, which were ongoing and continuing as on the date of transition.*
 - ii. *Furnish the basis, how the notification dated 16.02.2015 is applicable from 01.04.2016 and on a mandatory basis.*
 - iii. *To clarify the observation of the AO in para - (e) on page-57 of the assessment order that the Ind AS standard was applicable when assessee has taken a contract for construction and not where the assessee has undertaken construction activity.*
 - iv. *To clarify the observation of the AO in para (i) on page 56 of the assessment order and in para no. 9.3 (i) on page-55 of the assessment order regarding the details not submitted by the assessee during the assessment proceedings and whether such details were later filed before the Ld. CIT (A) and whether the Ld. CIT (A) called for a remand report or obtained the comments of the AO before passing his order.*
 - v. *To clarify as to whether the income claimed to be withdrawn from assessment year 2012-13 to 2017-18 on account of Ina AS standard has been offered in assessment year 2017-18 to 2022-2023 was filed before the AO and examined by him in respect of assessee's claim that if the adjustment claimed in AY 2017-18 on account of Ind AS standard was not allowed will amount to double taxation of the same income.*
 - vi. *To clarify how the issues raised in question of law no. (vii), (viii), (ix), (x), (xi) and (xii) in Form -36 has been dealt by the 1d. CIT (A) in deciding his appellate order.*
- These cases are fixed for clarification on 30.12.2024 at 2:30 PM.”*

56. On 30.12.2024 the assessee duly furnished the written submission clarifying the above issues raised by the Bench in the following manner:

“1. The captioned matter has been fixed for hearing on 30th December, 2024 for some clarification. As per the order sheet entry dated 20/12/2024, it is noted that the Hon'ble Bench has sought certain clarification in respect of the issue of one-time

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claim of deduction being transitional impact on account of implementation of Ind-AS.

2. It is clarified that the assessee company before FY 2016-17 was preparing accounts and recognizing income from real estate projects as per system of accounting notified under IGAAP. However, upon notification of Ind-AS by MCA vide notification dated 16th February, 2015 (PB Pg 688) which were mandatory applicable on the assessee company w.e.f 01/04/2016, the assessee company is preparing accounts as per Ind-AS and the transitional impact being one-time claim of deduction has been claimed as under:

Particular	Amount (Rs./Lacs)
POCM Adjustment	5,77,409.11
Effective Interest rate adjustment on debenture	,286.82
Other Ind-AS adjustment (notional in nature)	1,943.01
Net adjustment	5,84,638.93

3. It may be clarified that assessee has not changed new system but it is merely a case of substitution of same POCM method based on new guidelines under IndAs- 18 as notified by MCA which is of mandatory nature.

4. The major part of the one-time claim relates to Percentage of completion method which required reversal of margin recognized and taxed in earlier years under IGAAP POCM in order to ensure streamlining of the accounting and to for the purpose of avoiding double taxation of income. It is emphasised that Ind-AS 18 lays down modified criteria for recognizing income under POCM which entails delayed recognition of income and as such as a consequence, a part of the margin recognized under earlier IGAAP POCM needed reversal. Hence, the one-time claim of deduction is essentially reversal of income/ margin already recognized in earlier years. The detail of claim is as under:

Particulars	Amount (In Rs. Lacs)
Gross margin in respect of ongoing projects recognized	15,08,342.92

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<i>upto 31.03.2016 under old method</i>	
<i>Gross margin in respect of ongoing projects recognized upto 31.03.2016 under New Method</i>	<i>9,30,933.81</i>
<i>Difference</i>	<i>5,77,409.11</i>

We have already filed detailed synopsis on this issue before the Hon'ble Bench during the course of hearing.

4. In the above background, the query raised by the Honble bench is clarified hereunder:

1. Furnish the basis of the proposition made in 'Statement of Facts' before the Ld. CIT(A) that Ind AS as adopted by the assessee was to be applied to all the projects, which were ongoing and continuing as on the date of transition.

A. The basis of proposition is that the notification of MCA, mandating applicability of Ind-AS, contains specific Ind-AS 101 which provides methodology for transition from old accounting method to the new one (refer PB page 689) which is reproduced hereunder:

11. The accounting policies that an entity uses in its opening Ind AS Balance Sheet may differ from those that it used for the same date using its previous GAAP. The resulting adjustments arise from events and transactions before the date of transition to Ind ASs. Therefore, an entity shall recognise those adjustments directly in retained earnings (or, if appropriate, another category of equity) at the date of transition to Ind ASs.

It may be appreciated that in case of a pending/ongoing real estate project, the effect of change in method of accounting is to be seen from the beginning of the project since the changed method will have impact on the assets/liabilities and income/loss arising from the project. However, it is obvious that changed method will not have any impact on the completed real estate project since the income/loss arising from a completed project already stands recognized in the books and same will have no impact on current or future assets/liabilities of the company. The assessee has

adopted notified IndAS in respect of all ongoing and continuing projects.

ii. Furnish the basis, how the notification dated 16.02.2015 is applicable from 01.04.2016 and on a mandatory basis.

A. The para 4 of the MCA notification dated 16.02.2015 as enclosed at PB Pg 688 is reproduced hereunder for ready reference:

4. Obligation to comply with Indian Accounting Standards (Ind AS). - (1) The Companies and their auditors shall comply with the Indian Accounting Standards (Ind AS) specified in Annexure to these rules in preparation of their financial statements and audit respectively, in the following manner, namely:-

(i) any company may comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning on or after 1st April, 2015, with the comparatives for the periods ending on 31st March, 2015, or thereafter;

(ii) the following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1 April, 2016, with the comparatives for the periods ending on 31st March, 2016, or thereafter, namely:-

(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of rupees five hundred crore or more;

(b) companies other than those covered by sub-clause (a) of clause (ii) of sub-rule (1) and having net worth of rupees five hundred crore or more;

(c) holding, subsidiary, joint venture or associate companies of companies covered by sub-clause (a) of clause (ii) of sub-rule (1) and sub-clause (b) of clause (ii) of sub-rule (1) as the case may be; and

On reading of the above, it is clear that as per clause 4(i) it was optional for the companies to adopt Ind-AS w.e.f. 1st April, 2015 since the word used is 'may', however as per clause 4(ii), the MCA made it mandatory for specified

companies including listed companies to adopt Ind-AS w.e.f 1st April, 2016 by using the word 'shall'.

The assessee is a listed company having net worth in excess of Rs. 500 crores and as such as per clause 4(ii), it was mandatory for the assessee company to adopt Ind-AS for preparation of accounts w.e.f. 1st April, 2016 i.e. FY 2016-17 and AY 2017-18 onwards.

The CIT(A) has considered this aspect in detail vide finding recorded at Page 119, Para 10.5.2 and Page 125, Para 10.5.4 of the CIT(A) order.

iii. To clarify the observation of the AO in para-(e) on page-57 of the assessment order that the Ind AS standard was applicable when assessee has taken a contract for construction and not where the assessee has undertaken construction activity.

A. The AO in para (e) on Page 57 has observed that ICDS III is not applicable in the present case. In fact, the observation of the AO is in line with contention of the assessee company as ICDS III is not applicable to the present case since the assessee is not carrying out any construction contract.

It is clarified that the assessee company is engaged in the business of real estate development where the projects are developed over the land owned by the assessee and the construction is carried out by the assessee on its own account. It is not a case of construction contract.

In fact, none of the ICDS notified by CBDT is applicable in respect of real estate development and the factual position to this effect has been clarified by the CBDT in FAQ issued on 23rd March 2017 vide Circular No. 10/2017.

The relevant clarification is reproduced hereunder:

Question 12: Since there is no specific scope exclusion for real estate developers and Build-Operate- Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.

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Answer: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

It is thus not even the case of the AO that the ICDS III is applicable on the assessee and as such the reference to ICDS III in para (e) at Page 57 is of negatory nature. In fact, Ld. CIT(A) has specifically taken note of the above vide finding recorded at Page 120 of the impugned order.

iv. To clarify the observation of the AO in para-(i) on page-56 of the assessment order and in para no.9.3 (i) on page-55 of the assessment order regarding the details not submitted by the assessee during the assessment proceedings and whether such details were later filed before the Ld. CIT(A) and whether the Id. CIT(A) called for a remand report or obtained the comments of the AO before passing his order.

A. It is observed that in Para 9.4 (i) on Page 56 and Para 9.3(1) the AO has observed about non-furnishing of details regarding working of transitional claim of deduction. In this regard, it is submitted that the assessee company has duly furnished the details subsequently before the assessing officer and the factual position to this effect is duly appearing in the assessment order as under:

Page 65 of Asst. Order:

As desired by your goodself in para 9.4 of the SCN, the assessee wishes to submit a detailed working, of the manner in which the amount of Ra.577,409.11 lakhs has been determined, duly certified by the Accountants/Auditors as per Annexure 4 of certificate enclosed herewith.

Page 69 of the Asst. Order:

In accordance with the provisions of IND AS, an amount of Rs. 5,286.82 lakhs was arrived, being the difference between the amount of upfront fee recognized under IGAAP and the amount that ought to have been recognized under IND-AS up to the date of transition. With a view to further support the claim, the assessee wishes to provide herewith detailed

workings wherein the underlying amount has been calculated. The workings are enclosed herewith as Annexure B of certificate enclosed herewith. It thus clear that assessee company had duly filed complete details in support of one-time claim of deduction before the assessing officer during the course of assessment proceedings.

V. To clarify as to whether the income claimed to be withdrawn from assessment year 2012-13 to 2017-18 on account of Ind AS standard has been offered in assessment year 2017-18 to 2022-2023 was filed before the AO and examined by him in respect of assessee's claim that if the adjustment claimed in AY 2017-18 on account of Ind AS standard was not allowed will amount to double taxation of the same income.

A. In this regard, it is submitted that the before the assessing officer, the assessee company duly explained the issue of double taxation and furnished the relevant details alongwith complete walkthrough of revenue recognition of a Bhuvneshwar project on example basis. The relevant submission of the assessee is appearing at Page 70 of the Assessment order. Therefore, it is self evident that the details regarding offering of income in subsequent year under new Ind-AS POCM was duly placed before the assessing officer.

It is also relevant to take note that there is no such dispute even in the grounds raised by the revenue and even the AO has accepted the profit declared in subsequent year based on Ind-AS 18 POCM. There is thus no adverse revenue implication. The legal position to this effect is also supported from the full bench decision of Hon'ble Apex Court in the case of CIT v.Excel Industries Ltd. 358 ITR 295 (SC).

Further, CIT(A) has rightly appreciated this position vide finding recoded at Page 128 para 10.5.9 of the impugned order.

vi. To clarify how the issues raised in question of law no.(vit, (vitt), (ix), (x), (xi) and (xii) in Form -36 has been dealt by the ld. CIT(A) in deciding his appellate order.

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A. In this regard, the attention of Your Honor is drawn to the synopsis filed during the course of hearing wherein we have dealt with and clarified all the grounds raised in the appeal filed by the revenue and same is reproduced hereunder for ready reference:

Ground No.	CIT(A) ignored that the change of method tantamount to inconsistency	The change of method from IGAAP POCM to IndAS 18 POCM is mandated by MCA and there is no case of any arbitrary change of method. Further, substitution of method is being as per applicable guidelines in all subsequent years and as such there is no case of any inconsistency.
	CIT(A) was not justified in accepting the claim without any evidence and against the provisions of Income tax act as earlier year losses can be set-off only in accordance with provisions of the Act and not on ad-hoc basis.	This ground is wholly misconceived as the one-time claim is on account of implementation of IndAS and supported from auditor certificate. Further, as opposed to the allegation of set-off of earlier year losses, it is case of reversal of profit margin already subjected to tax in earlier years and as such this ground is incorrect and contrary to facts of the case.
	The change in accounting is contrary to law laid down by Apex Court in the various cases that assessee has to follow consistently one method of accounting.	As clarified above, it is not a case of change of method by the assessee on its own volition but substitution of mandatory IndAS notified by MCA in terms of Section 133 of Companies Act which is binding on the assessee. In these circumstances, the change of method is in conformity with statutory notification by MCA. In fact, the assessee has followed the changed method consistently as per applicable guidelines and notified standards.

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	<i>The change of method is in contravention of section 145.</i>	<i>As clarified in Para 10 above, there is no contravention of section 145 and even the AO has not recorded any such finding.</i>
	<i>IndAS 18 and IndAS 109 is in contravention Of method prescribed in the Income tax Act, 1961</i>	<i>The Income Tax Act does not specify any particular method for recognizing revenue from real estate transactions or recognition of cost of financial instruments and as such this ground is misconceived. In fact, the IndAS being issued by expert statutory body, the same are valid and required to be followed as held by Apex Court in the case of CIT v. Virtual Soft Systems Ltd. 404 ITR 409 (SC). <u>In fact, the AO himself has accepted POCM IGAAP in earlier years.</u></i>
	<i>IndAS were notified by Government w.e.f. 01/04/2018 only and as such they are not applicable.</i>	<i>This ground is factually incorrect. As per MCA notification dated 16th Feb, 2015 placed at PB Pg 688, the IndAS were made mandatorily applicable w.e.f. 1st April, 2016.</i>
	<i>CIT(A) was not justified in allowing deduction for which revenue was not disclosed during the year.</i>	<i>Again, this ground is absurd and contrary to facts as the one-time claim is only with reference to margin already recognized and subjected to tax in earlier years and the claim of deduction is merely a transitional claim to realign the revenue recognition from the various project with changed method as per IndAS-18. In fact, as clarified above, the deduction so claimed has duly been offered to tax in subsequent</i>

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		<i>years and as such the claim is revenue neutral in nature. The relevant finding of CIT(A) is at Page 127-129, Para 10.5.7-10.5.9</i>
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In view of the above, we may humbly submit that the issues raised by the revenue in Ground No. (vii), (viii), (ix), (x), (xi) and (xii) are incidental to the core issue of change of method of accounting and same have duly been considered and discussed by CIT(A) while adjudicating the issue.

5. We hope Your Honors will find the above in order.

57. It is noted that the clarification raised in regard to the question No. vii, viii, ix, x, xi & xii in Form No. 36 duly replied in the tabular form by and under the written submission dated 30.12.2024 which has already been placed before the Ld. CIT(A) and discussed in paragraph No. 53 as above. Further that the assessee by and under the written submission dated 11.02.2025 furnished the copy of the auditor certificate in respect of one time claim, the income chart of preceding years, chart showing how one-time claim has been subsequently offered to tax, notification dated 7th December 2006 notifying IGAAP for preparation of accounts, observation regarding notional adjustment. He has further explained the application of Ind-AS 18 and the issue regarding double taxation with illustration. In this regard, he has referred pages 253 to 255 and 263 to 265 of the paper book filed by the assessee. Further the copy of the order

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passed by the coordinate bench in assessee's own case in ITA No. 674 & 712/Del/2024 for AY 2018-19 was also furnished before us by and under the said submission dated 11.02.2025.

Year-wise details of returned income and assessed income u/s 143(3)
was shown as follows:

(Amount in Core)

<i>Assessment Year</i>	<i>Returned Income</i>	<i>Assessed Income u/s 143(3)</i>	<i>Date of Assessment Order u/s 143(3)</i>
2008-09	1,512.17	2,768.17	27.04.2011
2009-10	660.41	1,655.25	30.04.2012
2010-11	473.39	1,047.39	24.09.2014
2011-12	887.54	1,930.77	31-03-2014
2012-13	1,444.82	2,317.17	21.12.2016
2013-14	505.43	1,517.62	27.12.2016
2014-15	28.88	946.20	30.12.2016
2015-16	784.67	1,548.72	30.12.2017
2016-17	(95.84)	587.85	30.12.2018

58. Further that the following notification dated 7.12.2006 had also been annexed to the said submission dated 11.02.2025 for ready reference:

Ministry of Company Affairs
NOTIFICATION

New Delhi, the 7th December, 2006

ACCOUNTING STANDARDS

G.S.R. 739 (E). - In exercise of the powers conferred by clause (a) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), read with sub-section (3C) of section 211 and sub-section (1) of section 210A of the said Act, the Central Government, in consultation with National Advisory Committee on Accounting Standards, hereby makes the following rules, namely:-

1. Short title and commencement. (1) These rules may be called the Companies (Accounting Standards) Rules, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. In these rules, unless the context otherwise requires,-

(a) "Accounting Standards" means the Accounting Standards as specified in rule 3 of these rules;

(b) "Act" means the Companies Act, 1956 (1 of 1956);

(c) "Annexure" means an Annexure to these rules;

(d) "General Purpose Financial Statements" include balance sheet, statement of profit and loss, cash flow statement (wherever applicable), and other statements and explanatory notes which form part thereof.

(e) "Enterprise" means a company as defined in section 3 of the Companies Act, 1956.

*(f) "Small and Medium Sized Company" (SMC) means, a company-
(1) whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;*

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- (ii) which is not a bank, financial institution or an insurance company; (1)
- (iii) whose turnover (excluding other income) does not exceed rupees fifty crore in the immediately preceding accounting year;
- (iv) which does not have borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year; and
- (v) which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation: For the purposes of clause (f), a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

(2) Words and expressions used herein and not defined in these rules but defined in the Act shall have the same meaning respectively assigned to them in the Act.

3. Accounting Standards. (1) The Central Government hereby prescribes Accounting Standards 1 to 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India, which are specified in the Annexure to these rules.

(2) The Accounting Standards shall come into effect in respect of accounting periods commencing on or after the publication of these Accounting Standards.

4. Obligation to comply with the Accounting Standards.- (1) Every company and its auditors shall comply with the Accounting Standards in the manner specified in Annexure to these rules.

(2) The Accounting Standards shall be applied in the preparation of General Purpose Financial Statements.

5. An existing company, which was previously not a Small and Medium Sized Company (SMC) and subsequently becomes an SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to an SMC until the company remains an SMC for two consecutive accounting periods.

[No. 1/3/2006/CL-V]
JITESH KHOSLA, Jt. Secy."

59. The clarification as sought for found to have been duly replied in its proper perspective by the assessee by and under the written notes/submissions dated 30.12.2024 and 4.02.2025 in order to substantiate their claim as already narrated hereinabove and therefore, having regard to the facts and circumstances of the matter, we find that the claim of the appellant being bona-fide in view of the mandatory adoption of the Ind-AS for F.Y. 2016-17 onwards and consistent with the method of accounting as per the provision of section 145 of the Act and being revenue neutral should be allowed.

60. We have further taken into consideration that out of the claim of Rs.5,77,409.11 lakhs in the year under consideration on account of change in the method of accounting, excess revenue as per the change method had been booked to the extent of Rs.444,160.95 lakhs in the A.Ys. 2017-18 to 2023-24. The observation made by Learned CIT(A) that the excess revenue of Rs.5,82,695.93 lakhs (Rs.5,77,409.11 lakhs + Rs.5,286.82 lakhs) recognized in the earlier years in respect of the projects which were under the implementation and yet to be completed needs to be reversed is therefore, found to be correct. Further that, deduction for adjustment of Rs.5,82,695.93 lakhs in the A.Y. 2017-18 should be allowed

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otherwise the same would amount to double taxation of income as the gross margins already booked would be again booked by the appellant in the future years is, therefore, acceptable.

61. Thus, taking into consideration, the entire aspect of the matter, we do not find any reason to interfere with the order passed by the Learned CIT(A) in allowing the principal claim of Rs.5,82,695.93 lakhs to the appellant which is found to be just and proper so as not to warrant interference. Thus, this ground of appeal filed by revenue is dismissed.

62. **Ground No.13** : Deletion of addition to the tune of Rs.6,30,05,370/- made by the AO on account of disallowance under Section 40(a)(ia) of the Act is the subject matter before us.

63. During the year under consideration, the appellant made payments of Internal Development Charges ('IDC') to the tune of Rs.1,38,40,000/-, Infrastructure Augmentation Charges ('IAC') to the tune of Rs.2,52,23,400/- to the Director, Town & Country Planning ('DTCP'), Haryana Urban Development Authority ('HUDA') on which no tax was deducted at source by the appellant company. In reply to the show-cause dated 30.08.2021 issued by the AO as to why disallowance under

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Section 40(a)(ia) of the Act should not be made due to non-deduction of TDS on these payments, the assessee replied that IDC and IAC paid to DTCP was, in fact, payment made to the Govt. and therefore, tax at source was not liable to be deducted on such payments. Similar payment of EDC to HUDA under Haryana Development and Regulation of Urban Areas Act, 1975 should also be treated as payments to the Govt. as the same was in the nature of statutory fees mandatorily required to be paid for the purpose of obtaining licence from DTCP. Such submissions made by the assessee was not found acceptable by the AO and addition @ 30% of total income of Rs.21,00,17,900/- i.e. ultimately Rs.6,30,05,370/- was made by the AO which was in turn deleted by the Learned CIT(A). Hence, the instant appeal before us.

64. In support of the EDC payment made to HUDA, the assessee relied upon the judgment passed by the Hon'ble Delhi High Court in the case of BPTP Ltd. vs. PCIT reported in [2020] 113 taxmann.com 587 (Delhi). In fact, in this particular case, the Hon'ble Jurisdictional High Court observed that the re-assessment proceedings ought to be set aside as the AO had not given any basis for forming his opinion that how EDC which was in fact in the nature of statutory fee, was subjected to deduction of tax at source. It is

relevant to mention that the Special Petition filed by the Revenue against the said order stood rejected.

65. It was duly explained by the assessee before the Learned First Appellate Authority that such payments are covered under the provision of Section 196 of the Act and therefore, TDS is not required to be deducted on the same.

66. So far as, IDC and IAC is concerned that was direct payments made to DTCP who is the Department of Govt. of Haryana and DTCP itself qualifies as Govt. and, therefore, payments of IDC, IAC & EDC are duly covered under the ambit of Section 196 of the Act which do not require any deduction of tax, as such payments are made to the State Govt. In support of the same, the assessee relied upon very many judgments passed by different High Courts. The Learned CIT(A) ultimately granted relief to the assessee with the following observations:

"12.3.3 I have also perused the case laws of ITAT, Delhi relied upon by the appellant and referred to in para 12.1.3 above, wherein it was held that since payments to HUDA were deposited in the Consolidated Fund of the State, the appellant was not required to deduct tax at source on such payments. The issue of non-deduction of TDS on payment of EDC has been discussed in detail by ITAT, Delhi in the case of M/s Santur Infrastructure Pvt. Ltd. vs. ACIT, Range 77 in ITA No. 6844/Del/2019 vide order dated 18.12.2019. The relevant findings of the ITAT are reproduced below:-

"6. When we examine the question "as to whether TDS

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on payment of EDC to HUDA was not to be deducted by assessee because levy is made by DTCP having control over the EDC and not HUDA as contended by the Id. AR for the assessee" in the light of the aforesaid undisputed facts, we are of the considered view that the assessee has no liability to deduct TDS in respect of the payment made to a Government Department, DTCP in this case, u/s 196 of the Act as the payment was made to HUDA on behalf of DTCP only.

7. It is the case of the assessee that the payment of EDC has been made for carrying out any work in pursuance of the contract entered into between assessee and DTCP, which is a Government Department, and not in pursuance of any contract between the assessee and HUDA. This proposition mooted out by assessee is sustainable because payment of EDC were made by the assessee not for carrying out any specific work to be done by HUDA for and on behalf of the assessee rather DTCP, a Government Department of Haryana, levy these charges for carrying out external development from the developer and engages the services of the HUDA for execution of the work.

8. On the other hand, Id. DR for the Revenue laid emphasis on section 194C of the Act and contended that HUDA is neither a Government Department nor a local authority, hence payment made to it is subject to deduction of TDS u/s 194C of the Act.

9. We are of the considered view that when payment of EDC has been made by the assessee in accordance with license granted by the DTCP, the payment made to HUDA was not made in pursuance of any work contract or under statutory obligation meaning thereby that when the assessee has no privity of contract with HUDA rather the assessee has privity of contract with DTCP, a Government Department of Haryana, as per Agreement (supra) and the HUDA has merely received the payment for and on behalf of DTCP, the assessee was not required to deduct the TDS.

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10. *Ld. DR for the Revenue by relying upon the Office Memorandum F.No.370133/37/2017-TPL dated 23.12.2017 issued by the Central Board of Direct Taxes (CBDT) contended that there is no ambiguity that HUDA is a taxpayer entity under the Income-tax Act and as such, TDS provisions would be applicable on EDC payable by developer to HUDA.*

11. *When we examine Revenue in the light of the facts and circumstances of the case in which EDC have been paid to HUDA for Financial Years 2013-14, 2014-15, 2015-16 & 2016-17 (upto December 2016) as mentioned by the Id. CIT (A) in para 2.1 of his order, it goes to prove that prior to 23.12.2017, the date of CBDT circular, there was no clarity whatsoever as to the deduction of tax on EDC. When there was no clarity with the assessee prior to 23.12.2017, if TDS was to be deducted by the assessee on payment of EDC, it provided a "reasonable cause" u/s 273B of the Act that TDS was not required to be deducted.*

12. *Ld. AR for the assessee contended that DTCP had issued a clarification dated 29.06.2018 to the effect that no TDS was/is required to be deducted in respect of payment of EDC and relied upon the order passed by the coordinate Bench of the Tribunal in case of RPS Infrastructure Ltd. vs. ACIT in ITA Nos.5805, 5806, 5349/Del/2019 order dated 23.07.2019 wherein it is held that, "on the basis of letter supra issued by DTCP that the letter covers both past and future transactions and TDS was not required to be deducted."*

We have perused the order passed by the Tribunal in case of RPS Infrastructure Ltd. (supra) in which letter (supra) has been examined, it is clear that TDS was/is not required to be deducted in respect of deduction of EDC. So, in view of the matter, we are of the considered view that when DTCP, a Department of Government of Haryana, has itself clarified not to deduct the TDS, no penalty is leviable u/s 271C on the assessee"

12.3.4 *I have also perused the consolidated order*

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24.03.2023 of the Hon'ble Delhi High Court relied upon by the appellant allowing bunch of writ petitions, where the case of a group company, DLF Homes Panchkula Pvt. Ltd in W.P. No. 4351/2021 was treated as a lead matter. While referring to the decision of the Coordinate Bench of Delhi High Court in BPTP Limited vs Principal Commissioner of Income tax, Central-III, the Hon'ble Court held that EDC payments are not in the nature of rent and, therefore, not amenable to the provisions of section 194I of the Act and hence no TDS was required to be deducted on these payments. I have also considered the decision of ITAT, Chandigarh in the case of ITO TDS, Chandigarh vs Sukham Infrastructure Pvt. Ltd where vide order dated 07.06.2018, it was held that TDS provisions u/s 194I are not attracted on EDC payments made by the assessee to GMADA (this is an authority in Punjab exactly similar to HUDA in Haryana). The facts of the present case in respect of EDC payments are similar to the facts in these cases.

12.3.5 In view of the above facts and judicial pronouncements including the decision of the jurisdictional High Court of Delhi cited by the appellant, I am of the considered view that no TDS was deductible on the payments of IDC, IAC and EDC. Therefore, the disallowance of 30% of these payments u/s 40(a)(ia) made by the AO is not justified. Accordingly, the addition of Rs. 6,30,05,370/- made by the AO u/s 40(a)(ia) of the Act is deleted.”

67. In fact, in the matter of BPTP Ltd. vs. PCIT as the Hon'ble High Court of Delhi held that EDC payment are not in the nature of rent and thus not entitled to the provision of Section 196 of the Act and hence no TDS was required to be deducted on this payments. The order passed on the issue by the Hon'ble High Court in the case of DLF Homes Panchkula Private Limited in W.P.(C) Nos. 4351 & 3790 of 2021 & Ors

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was duly considered by the Learned CIT(A); the relevant portion of the same is reproduced as under:

- *“The reasoning of the Assessing Officer that the petitioner was liable to withhold TDS on the payments of EDC rested on the finding that such payments are in the nature of rent and therefore, the petitioner was liable to deduct DS at the rate of 10 per cent under section 194-1.*
- *The respondents readily admitted that section 194-1 is not applicable and the payment of EDC cannot be ued as rent attracting the obligation to Construed deduct TDS at the rate of 10 per cent on the said payment. However, they earnestly contended that since the Assessing Officer has the jurisdiction to determine whether IDS is payable or not, the impugned order be set aside and the matter be remanded to the Assessing Officer. According to them, the Assessing Officer has erroneously mentioned that TDS was required to be deducted under section 194-1 instead of section 194C. It is contended that merely mentioning an incorrect provision is a curable defect; it does not affect the substratum of the impugned order or renders it vulnerable to challenge.*
- *This court does not find any merit in the contention that the substratum of the impugned order is correct, and the Assessing Officer has merely referred to a wrong provision of law.*
- *The question as to the nature of EDC payment was squarely one of the issues that was required to be addressed by the Assessing Officer. He had concluded that the same was 'rent' as it was in nature of an arrangement to use land. It is not open for the respondents to now contend that EDC charges are payment made to a contractor under a contract and not 'rent' under an arrangement to use land.*
- *It was specifically contended on behalf of the petitioner that provisions of section 194C/1941 did not apply. The Assessing Officer did not allude to the said provisions, which requires a resident person paying any amount to a contractor to deduct TDS; according to the Assessing Officer, the nature of the EDC is rent. Further, he reasoned that the agreement between*

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the petitioner and the State Government of Haryana (license under the HDRUA Act and the HDRUA Rules made there under) would be covered under the expression, "any other agreement or arrangement for use of land".

- *As noted above, it is conceded by the respondents that the view of the Assessing Officer is patently erroneous.*
- *In the instant case, the revenue does not seek to support the decision of the Assessing Officer that EDC are 'rent' or in the nature of 'rent'. Thus, concededly, the fundamental reasoning on which the impugned order rests is fundamentally flawed.*
- *The contention that the Assessing Officer has merely referred to a wrong section and therefore, the said reference may be ignored is also without merit. As noticed above, the Assessing Officer has not only held that TDS was liable to be deducted under section 194-1, he has also proceeded to analyse the said section and hold that EDC are in the nature of rent. He has, in addition, also applied the rate of TDS at the rate of 10 per cent for assessing the petitioner's liability.*
- *The reasoning of the Assessing Officer for finding that the petitioner was obliged to deduct TDS is important. The determination of the nature of payment is vital for ascertaining whether there was any obligation on the part of the petitioner to deduct and deposit TDS on EDC. The revenue appears to be approaching the issue from quite the reverse direction; it has for an inexplicable reason, concluded that the assessee ought to deduct TDS from EDC and now seeks to find provisions of law to sustain the said conclusion. In the instant case, the Assessing Officer has proceeded on the basis that EDC is rent but the revenue contends that it is a payment to contractor attracting the provisions of TDS under section 194C.*
- *It is apparent from the above, that the approach of the revenue is flawed. Thus, the contention that the findings of the Assessing Officer regarding the nature of EDC charges as well as the provisions referred by him for determining the petitioner's liability are not material and rejected.*

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- *Accordingly, for the reasons stated above, the impugned order is set aside and the said petition is allowed.”*

68. The judgment passed by the ITAT, Chandigarh Bench in the case of ITO TDS Chandigarh vs. M/s. Sukham Infrastructure Pvt. Ltd. wherein it was held that TDS provision under Section 194C of the Act are not attracted on EDC payments made by the assessee to GMADA which is statutory authority under the Govt. of Punjab similar to HUDA of Haryana were also duly considered and relying upon the same disallowance of 30% of these payments under Section 40(a)(ia) of the Act made by the AO, in our considered opinion has rightly been found to be not justified and addition made therefore, rightly found to be deleted by the Learned CIT(A) so as not to warrant interference. Hence, this ground of appeal is found to be devoid of any merit and thus, dismissed.

69. In the result, appeal of Revenue is dismissed.

ITA No.673/Del/2024 (Assessee's appeal) :

70. The assessee has filed the appeal with the following grounds:

1. *That the learned CIT(A) has grossly erred in law and on the facts and in the circumstances of the appellant's case in*

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confirming the disallowance of Rs.95,12,768/- on account of alleged unverified purchase transaction.

2. *That the claim of expenses is supported from documentary evidences and the correctness of same being not dispute, the upholding of disallowance by CIT(A) is mechanical and on arbitrary basis.*
3. *That the appellant craves leave to add, alter, amend, substitute, withdraw and / or vary any grounds of appeal at or before the time of hearing.”*

71. The assessee has come in appeal challenging the disallowance of Rs.95,12,768/- on account of alleged unverified purchase transactions.

72. During the course of assessment proceedings, in order to verify the genuineness of transaction in regard to the purchase shown to have been made by the assessee, notice under Section 133(6) of the Act was issued to 15 parties one of that namely; M/s. SMS Interiors Pvt. Ltd. did not file any reply of such notices. The assessee submitted the ledger account of this party in its books of account along with the reconciliation and supporting documents and further relied upon various judicial pronouncements. It was argued that the absence of documentary evidence the bogus nature of purchase, addition is not sustainable merely because notice under Section 133(6) of the Act remained un-complied with. However, such case made out by the assessee was not found to be acceptable and

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the impugned addition was made as unverified purchase transaction.

73. Before the First Appellate Authority, the assessee on 23.03.2021 filed the details of purchase of these parties along with address of the parties, PAN, GST/TIN, Opening balance, Bill Nos., date of purchase, amount of purchase, date of payment and closing balance. The appellant was further been informed of the service of notice under Section 133(6) of the Act on M/s. SMS Interiors Pvt. Ltd. with the draft assessment order proposing addition on account of unverified transactions holding that the said party had not furnished ledger confirmation in response to the notice under Section 133(6) of the Act, the assessee raised his objection. It was submitted that the observation of the AO that the assessee was given opportunity to file ledger account and however, such was not correct as the ledger account had already been filed on 28.05.2021 and further that, the purchase made by the assessee with this party cannot be treated as unverified purchase transactions as sufficient details mentioned herein above were duly filed. As the party failed to reply to the notices under Section 133(6) of the Act, the assessee cannot be penalized by making addition as the case was made out by the assessee. However, the Learned CIT(A) upheld the addition only on this count that the appellant could have

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produced this party once non-compliance of notices under Section 133(6) of the Act by the said party was made known to assessee in order to proof the genuineness of this purchases. The judgment relied upon by the assessee were distinguished by the Learned CIT(A) as sufficient evidence in the form of confirmation from the party delivery Challan, sales tax return, sales tax Challan etc. were duly filed in those cases which is absent in the instant case. Thus, reliance on this judicial precedence by the appellant is miss-placed as was the ultimate finding of the Learned CIT(A) while upholding the addition made by the Learned AO. Under this facts and circumstances, the Learned Counsel appearing for the assessee submitted before us that the assessee may be given further opportunity to submit the entire set of requisite documents in support of the genuineness of the purchase made with M/s. SMS Interiors Pvt. Ltd. before the Learned AO which has not been objected by the Learned DR.

74. Hence, the assessee's appeal is disposed of by remitting the issue to the file of the Learned AO to consider the same afresh upon granting opportunity of being heard to the assessee and upon considering the evidence on record and any other evidence which the assessee choose to file in order to prove the genuineness of the transactions i.e. the purchase

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made with SMS Interiors Pvt. Ltd. The learned AO is directed to pass a reasoned order strictly in accordance with law.

75. In the result, appeal filed by the assessee is allowed for statistical purposes.

76. In the combined result, appeal filed by the Revenue is dismissed and appeal filed by the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 23/04/2025

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated 23/04/2025

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI