Shree Bal Properties and Finance P. Ltd. Vs ACIT- 2(3)(2), Mumbai
A.Y 2014-15 – ITA No. 345/Mum/2018

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No. 2848/Mum/2019
(Assessment Year: 2014-15)

M/s Shree Bal Properties & Finance P. Ltd 4, Buona Case, Sir P.M Road, Opp. Kashmir Arts Emporium, Fort, Mumbai - 400 001.	Vs.	Pr. Commissioner of Income-tax -2, Room No. 344, 3rd Floor, Aaykar Bhavan M.K Road, Mumbai – 400 020.

PAN –AACCS1776N

ITA No. 345/Mum/2018
(Assessment Year: 2014-15)

M/s Shree Bal Properties & Finance P. Ltd 4, Buona Case, Sir P.M Road, Opp. Kashmir Arts Emporium, Fort, Mumbai - 400 001.	Vs.	Dy. Commissioner of Income-tax 2(3)(2), Room No. 552, Aaykar Bhavan M.K Road, Mumbai – 400 020.

PAN – AACCS1776N

Appellant by:	S/shri Mihir Naniwadekar & Kalpesh Turalkar, A.Rs
Respondent by:	S/shri Salil Mishra, CIT D.R & V.Vinod Kumar, D.R
Date of Hearing:	04.03.2020
Date of Pronouncement:	09.06.2020

O R D E R

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the respective orders passed by the Pr. Commissioner of Income-tax-2, Mumbai [Pr. CIT] under Sec. 263 of the Income-tax Act, 1961 [for short 'Act'], dated

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26.03.2019 AND the order passed by the CIT(Appeals)-6, Mumbai, dated 08.11.2017, both of which arises from the assessment framed by the A.O u/s 143(3) of the Act, dated 28.12.2016. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off together by way a common order. We shall first advert to the appeal filed by the asssessee against the order passed by the Pr. CIT u/s 263 of the Act, wherein the impugned order has been assailed on the following grounds of appeal before us :

"1. On the facts and the circumstances of the case and in law, the Learned Commissioner of Income-tax -2, Mumbai (hereinafter said "the CIT") erred in passing order under section 263 of the Income-tax Act, 1961 {Act}, dated 26th March, 2019 (hereinafter referred to as the "impugned order") despite the fact that the CIT was appraised of the fact that an appeal against the order under section 143(3) of the Act passed by the Assessing Officer is pending before the Hon'ble Income-tax Appellate Tribunal, Mumbai and hence CIT cannot assume jurisdiction under section 263 of the Act to pass the impugned order. Hence the impugned order is bad in law and may kindly be set aside/annulled.

2. The ld. CIT erred in not appreciating that in the present case the original assessment order was passed after considering all the details and the documents furnished by the appellant before the Assessing officer and hence the CIT was not justified in exercising the suo motto power of revision under the provisions of section 263 of the Income-tax Act, 1961 ("the Act").

3. The Learned CIT further erred in not appreciating that in the present case the Assessing officer had applied his mind and arrived at the conclusion to disallow the claim of Rs. 1,10,52,418/- and adding the same by holding that the Appellant has claimed the said expenditure of Rs. 1,10,52,418/- by claiming twice: once by claiming benefit under section 24(b) of the Act and again by claiming indexation thereof vide calculating capital gain. Thus, it was not a case of lack of enquiry thereby non-application of mind on the part of the Assessing Officer. No action under section 263 was called for by the CIT on having a different opinion on the subject matter of the present case, the same would not confer revisional jurisdiction on him under the provisions of Section 263 of the Act.

4. The CIT erred in passing the impugned order under section 263 of the Act, in as much as there is nothing erroneous or prejudicial to the interest of the revenue which has been pointed out in the impugned order. The impugned order is therefore liable to be set aside.

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5. The appellant craves leave to alter, amend, and/o substitute the aforesaid grounds of appeal at the time of hearing."

2. Briefly stated, the assessee company which is engaged in the business of running a business centre and building construction had e-filed its return of income for A.Y 2014-15 on 30.11.2014, declaring a total income of Rs. 51,90,270/- under the normal provisions and 'book profit' u/s 115JB at Rs. 3,06,84,301/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had sold its Office premises (I.T Building) located at Pune for a consideration of Rs. 4,55,00,000/-, against which it had worked out the 'Long Term Capital Gain' (for short 'LTCG') at Rs. 62,75,410/-. On a perusal of the working of the LTCG, it was observed by the A.O that the assessee had claimed deduction for cost of acquisition/improvement, as under:

Particulars	Financial Year	Cost (Rs.)	Indexed Cost (Rs.)
Cost of Acquisition	2004-05	Rs. 95,27,993/-	Rs. 1,86,39,136/-
Interest paid	2008-09	Rs. 20,06,379/-	Rs. 32,37,096/-
.....do.....	2009-10	Rs. 18,31,764/-	Rs. 27,21,561/-
.....do.....	2010-11	Rs. 19,49,290/-	Rs. 25,74,379/-

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.....do.....	2011-12	Rs. 32,03,444/-	Rs. 38,31,890/-
.....do.....	2012-13	Rs. 34,66,596/-	Rs. 38,20,579/-
Repairs & Maintenance	2013-14	Rs. 33,99,949/-	Rs. 33,99,949/-
		Total	**Rs. 3,82,24,590/-**

Being of the view, that the deduction of the interest expense would had been claimed by the assessee u/s 24(b) while computing its income under the head 'Income from house property', the A.O declined to accept the said amount as a part of the cost of acquisition/improvement for the purpose of working out the LTCG on the sale of the aforesaid property. It was observed by the A.O that though 'cost of improvement' as defined in Sec. 55 of the Act included all expenditure of a capital nature incurred in making of any addition or alterations to the capital asset by the assessee after it had became his property, however, the same would not include any such expenditure which was deductible while computing its income chargeable under the head "Income from house property". On the basis of his aforesaid reasoning the A.O scaled down the assesse's claim of Indexed cost of acquisition/improvement of Rs. 3,82,24, 590/- to an amount of Rs. 2,71,72,172/-. Accordingly, the LTCG on the sale of the aforesaid property was reworked out by the A.O at an amount of Rs. 1,73,27,828/-.

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4. Being of the view that the assessment order passed by the A.O was erroneous insofar it was prejudicial to the interest of the revenue the Pr. CIT issued a 'Show cause' notice ('SCN') to the assessee, wherein he had sought to revise the assessment order, observing as under :

> "On examination of records it is observed that the assessee had sold the property at a sale consideration of Rs. 4,55,00,000/- , which is less than the value assessed by the stamp valuation authority at Rs. 5,53,36,670/-, provisions of section 50C are applicable in the case of the assessee. During the course of the assessment proceedings the A.O vide notice dated 22.12.2016 had made certain enquiries regarding the said property sold by the assessee during the year and called for supporting evidences for arriving at the Long Term Capital Gains as claimed by the assessee. In response, the assessee made submissions vide letters dated 26.12.2016 and 28.12.2016, wherein the assessee has claimed that as per clause No. 8 of the ready reckoner published by the collector of stamps dated 31.12.2012, large shops/offices are entitled to deduction of 20% from ready reckoner value, if the size of office is above 929 Sq. Meters. The assessee also produced deed of correction dated 26.12.2016 in which both the parties mentioned that value of the property as per ready reckoner rate is Rs. 4,53,00,690/-.
>
> The claim of the assessee has been accepted by the A.O vide the assessment order dated 28.12.2016, wherein sale consideration was taken at Rs. 4,55,00,000/- instead of Rs. 5,53,35,670/- for the purpose of computation of capital gain without applying provisions of section 50C of the Act.
>
> Further, it is also observed that the assessee had claimed substantial sums of Rs. 3.8 crores as indexed cost of acquisition and cost of improvement in this case. It is brought to the notice that the same comprised of cost of construction as shown by the assessee on old balance sheets and interest on loan, stated to be utilized for construction of the property. Hence, the same have to be verified whether they have been claimed as expenditure under any head such as business income or income from house property in the previous assessment years and if so, the same have to be disallowed during the year under consideration. Failure of the Assessing Officer to do so has rendered the assessment order u/s 143(3) dated 28.12.2016 as erroneous in so far as it is prejudicial to the interests of the revenue."

On the basis of his aforesaid observations, the Pr. CIT was of the view that the assessment order passed by the A.O was erroneous insofar it was prejudicial to the interest of the revenue on two grounds viz. (i). the A.O had failed to

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appreciate that as the assessee had sold the property for a sale consideration of Rs. 4,55,00,000/- which was less than the value assessed by the stamp valuation authority at Rs. 5,53,36,670/-, therefore, the provisions of section 50C were applicable; and (ii) the A.O had erred in failing to verify that now when the assessee for computing the indexed cost of acquisition/improvement had included interest paid on borrowed funds that were utilized for construction of property, therefore, whether the same was claimed by the assessee as an expenditure under any head viz. “business income” or “Income from house property” in the previous assessment years, and if so, the same were to be disallowed during the year under consideration. In reply, the assessee tried to impress upon the Pr. CIT that no error had crept in the assessment order which was passed by the A.O after due application of mind. However, the Pr. CIT was not persuaded to subscribe to the contentions advanced by the assessee. Observing, that the assumption of jurisdiction u/s 263 was well in order, the Pr. CIT concluded that the assessment order passed by the A.O was erroneous insofar it was prejudicial to the interest of the revenue on two counts viz. (i). that the A.O had passed the assessment order without enquiry and examination as regards the applicability of Sec. 50C; and (ii). that a perusal of the records

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revealed that the A.O while framing the assessment had failed to make necessary verifications while allowing the assesse's claim of cost of acquisition/improvement to the extent of Rs. 2.71 crores. On the basis of his aforesaid observations the assessment order was 'set aside' by the Pr.CIT on both of the aforesaid issues, with a direction to the A.O to examine the same and after due verification re-compute the income of the assessee.

5. Aggrieved, the assessee has assailed the order passed by the Pr. CIT u/s 263 of the Act before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. We shall advert to the observations recorded by the Pr. CIT in his order passed u/s 263 as under:

(A). AS REGARDS APPLICABILITY OF SEC. 50C:

(i). As is discernible from the records, the assessee had sold the property in question for a sale consideration of Rs. 4,55,00,000/-, which was less than the value assessed by the stamp valuation authority at Rs. 5,53,36,670/-. On being confronted with the said fact in the course of the assessment proceedings, it was

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submitted by the assessee vide his letters dated 26.12.2016 and 28.12.2016, that as per Clause No. 8 of the ready reckoner published by the collector of stamps, dated 31.12.2012, large shops/offices were entitled to deduction of 20% from ready reckoner value if the size of office was above 929 sq. Metres. The assessee also produced a copy of the "deed of correction" dated 26.12.2016 in which both the parties had mentioned that the value of the property as per ready reckoner rate was Rs. 4,53,00,690/-. In the backdrop of the aforesaid, the A.O taking cognizance of the fact that the assessee had taken the sale consideration of the property in question at Rs. 4,55,00,000/- which was higher than its ready reckoner value of Rs. 4,53,00,690/- as per the "deed of correction", therefore, accepted the same. On the contrary, the Pr. CIT observing that as the assessee had paid stamp duty on valuation of Rs. 5,53,36,670/-, therefore, it was incumbent on the part of the A.O to have verified as to whether or not the excess payment of stamp duty was refunded to the assessee. It was observed by the Pr. CIT that in case the excess payment of stamp duty was not refunded to the assessee, then for working the figure of valuation the A.O should have referred the matter to the DVO as per Sec. 50C(2) for determining the value of the property in question.

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(ii). We have perused the "deed of correction", dated 26.12.2016 (Page 31 – 35) of the assesse's 'Paper book' ('APB'), wherein both the parties i.e the assessee and the purchaser had mentioned that value of the property as per ready reckoner rate is Rs. 4,53,00,690/-. On a perusal of Sec. 50C, we find that the same reads as under (relevant extract) :

> "50C(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted [or assessed or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted [or assessed or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer...."

As such, per the mandate of law, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted [or assessed or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted [or assessed or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Admittedly, in the present case the stamp duty qua the transfer of the property in question was paid on a

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valuation of Rs. 5,53,35,670/- adopted by the stamp valuation authority. Although both the parties i.e the assessee and the purchaser had executed a "deed of correction" wherein they had mentioned that the value of the property as per ready reckoner rate was Rs. 4,53,00,690/-, but then, we cannot remain oblivious of the fact that there is no material available on record from where it could be gathered that the valuation adopted by the stamp valuation authority at Rs. 5,53,35,670/- had been substituted by the aforesaid ready reckoner rate of Rs. 4,53,00,690/-. In sum and substance, there is nothing discernible from the records which would reveal that the valuation adopted by the stamp valuation authority had been revised at Rs. 4,53,00,690/-. In the backdrop of the aforesaid facts, we find that the Pr. CIT had directed the A.O to verify as to whether the excess payment of stamp duty was refunded to the assessee or not. We do not find any infirmity in the aforesaid direction of the Pr. CIT, except for the fact that as the stamp duty qua the transfer of the property under consideration was paid by the purchaser party viz. M/s SVG Investments Pvt. Ltd., therefore, the question of refund of any part of the excess stamp duty paid to the assessee would not arise. Accordingly, we to the said extent modify the directions of the Pr. CIT., and direct the A.O to verify as to whether or not the valuation adopted by

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the stamp valuation authority had been revised at Rs. 4,53,00,690/-. In case, the valuation adopted by the stamp valuation authority had not been revised, then for working the valuation of the property the A.O shall refer the matter to the DVO, as per Sec. 50C(2) of the Act. As such, in terms of our aforesaid observations we uphold the well reasoned view taken by the Pr.CIT and dismiss the objection raised by the assessee.

(B). AS REGARDS VERIFICATION OF COST OF ACQUISITION/IMPROVEMENT:

(i). We shall now advert to the observations of the Pr. CIT, wherein he had directed the A.O to verify the facts as regards allowing of the cost of acquisition/improvement of the property in question at Rs. 2,71,72,172/-. As per the facts borne on record the assessee had claimed deduction for cost of acquisition/improvement, as under:

Particulars	Financial Year	Cost (Rs.)	Indexed Cost (Rs.)
Cost of Acquisition	2004-05	Rs. 95,27,993/-	Rs. 1,86,39,136/-
Interest paid	2008-09	Rs. 20,06,379/-	Rs. 32,37,096/-
.....do.....	2009-10	Rs. 18,31,764/-	Rs. 27,21,561/-
.....do.....	2010-11	Rs. 19,49,290/-	Rs. 25,74,379/-
.....do.....	2011-12	Rs. 32,03,444/-	Rs. 38,31,890/-
.....do.....	2012-13	Rs. 34,66,596/-	Rs. 38,20,579/-
Repairs & Maintenance	2013-14	Rs. 33,99,949/-	Rs. 33,99,949/-
		Total	**Rs. 3,82,24,590/-**

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As such, the aforesaid Indexed cost of acquisition/cost of improvement aggregating to Rs. 3,82,24,590/- comprised of three items viz (i). Indexed cost of acquisition of the property (depreciated value) : Rs. 1,86,39,136/-; (ii). Indexed interest paid on loan raised from Janalaxmi Co-op Bank Ltd., which was stated to have been utilized for construction of property : Rs. 1,29,48,409/- [i.e Rs. 32,37,096 (+) Rs. 27,21,561/- (+) Rs. 25,74,379/- (+) Rs. 38,31,890/- (+) Rs. 38,20,579/-]; (iii). Indexed cost of repairs and maintenance of the property: Rs. 33,99,949/-. On a perusal of the records, we find that the A.O had not accepted the claim of interest expenses and the repairs and maintenance expenses as a part of the indexed cost of acquisition/improvement of the property in question, and had thus scaled down the same to an amount of Rs. 2,71,72,172/-. But then, we find that though the A.O had inter alia rejected the assesse's claim of interest expenses as a part of the indexed cost of acquisition/improvement, however, he had confined such exclusion from the cost of only part of such interest expenses viz. (a). A.Y 2011-12: Rs. 38,31,890/-; and (ii). A.Y 2012-13: Rs. 38,20,579/-. Resultantly, the indexed interest expenses for the remaining three years viz. (i). A.Y 2008-09: Rs. 32,37,096/-; (ii). A.Y 2009-10: Rs. 27,21,561/-; and A.Y 2010-11 : Rs. 25,74,379/- ,therein aggregating to Rs. 85,33,036/- had continued to form part of the Indexed

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cost of acquisition/improvement as claimed by the assessee and allowed by the A.O.

(ii). We find that the Pr. CIT had observed that as the assessee for computing the indexed cost of acquisition/improvement had included interest paid on borrowed funds as having been utilized for construction of property, therefore, whether the same were claimed by the assessee as expenditure under any head viz. “business income” or “Income from house property” in the previous assessment years, and if so, the same were liable to be disallowed during the year under consideration. In our considered view there in no infirmity in the aforesaid observation of the Pr. CIT. As a matter of fact, the inconsistent approach adopted by the A.O for partly sustaining the interest expenses and partly excluding the same while determining the indexed cost of acquisition/improvement of the property under consideration is beyond our comprehension. Be that as it may, the Pr. CIT in our considered view had rightly directed the A.O to verify as to whether the expenses claimed by the assessee and allowed by him in the course of the assessment proceedings as part of the indexed cost of acquisition/improvement were claimed by the assessee as expenditure under any head viz. “business income” or “Income from house

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property" in the previous assessment years, and if so, to disallow the same during the year under consideration. Accordingly, finding no infirmity in the aforesaid observations of the revisional authority, we uphold the same.

6. We shall now advert to the claim of the assessee that as it had assailed before the Tribunal the order of the CIT(A), who had vide his order dated 08.11.2017 sustained the assessment framed by the A.O u/s 143(3), dated 28.12.2016, therefore, the Pr. CIT was divested of his jurisdiction of exercising his revisional jurisdiction under Sec. 263 of the Act. As the ld. A.R during the course of hearing of the appeal had failed to support his aforesaid claim, which we find is devoid and bereft of any merit, therefore, the same is rejected.

7. We shall now deal with the judgment of the **Hon'ble High Court of Bombay** in **CIT Vs. Gera Development P. Ltd. (2016) 387 ITR 691 (Bom)** relied upon by the assessee. In the said case, the Hon'ble High Court had observed that if the A.O had considered an issue by raising questions during the assessment proceedings, then the mere fact that it does not fall for discussion in the assessment order would not ipso facto lead to the conclusion that the Assessing Officer did not apply his mind. It was observed by the Hon'ble High Court that if

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the Assessing Officer was satisfied with the response of the assessee on an issue and drops the likely addition, it cannot be said that there was non - application of mind to the issue arising before the Assessing Officer. In our considered view, the aforesaid judgment of the Hon'ble High Court would not assist the case of the assessee before us, as the same is found to be distinguishable on facts. On both the issues i.e (i). applicability of sec. 50C to the transfer transaction under consideration; and (ii). verification of cost of acquisition/improvement of the property in question, which had been adopted by the A.O at Rs. 2,71,72,172/-, as the A.O had failed to make necessary inquiries and verifications, therefore, the Pr. CIT in our considered view had rightly exercised his revisional jurisdiction u/s 263 of the Act.

8. Resultantly, finding no merit in the appeal of the assesee, we dismiss the same in terms of our aforesaid observations.

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9. We shall now take up the appeal of the assessee against the order passed by the CIT(A)-6, Mumbai, dated 08.11.2017, wherein the impugned order has been assailed on the following grounds of appeal before us :

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"1. The learned Commissioner of Income-tax (Appeals-6, Mumbai ["CIT(A)"] has erred in upholding assessment order passed by the Assessing officer ("A.O") by making an addition of Rs. 1,05,52,418/- towards Long Term Capital Gain, by rejecting the evidence placed on record. Hence, the order dated 8th November, 2017 (hereinafter said as "impugned order") passed by the learned CIT(A) is therefore bad in law and liable to be set aside.

2. The learned CIT(A) erred in disallowing the amount of Rs. 76,52,469/- i.e interest paid to Janalaxmmi Co-op Bank Ltd. on borrowed capital for construction of capital asset, by rejecting the evidence placed on record and without appreciating that the said interest was entirely towards the cost of acquisition. Hence, the impugned order passed by the learned CIT(A) is therefore bad in law and liable to be set aside.

3. The learned CIT(A) erred in disallowing the Cost of Improvement of Rs. 33,99,949/- which was incurred by the Appellant as repairs and maintenance, without considering the facts and documentary evidence submitted before the learned CIT(A). The learned CIT(A) further erred in concluding on mere surmises that the repair was routine in nature and did not bring in any benefit to the capital value of the building and cannot be considered as part of cost of improvement. The Appellant submits that the said expenditure should be considered as a Cost of Improvement.

4. The Appellant craves leave to alter, amend, and/or substitute the aforesaid grounds of appeal at the time of hearing."

10. Briefly stated, the income of the assessee company was assessed by the A.O, vide his order passed u/s 143(3), dated 28.12.2016 at Rs. 1,62,42,690/- under the normal provisions and the 'book profit' u/s 115JB was determined at Rs. 4,17,36,719/-.

11. In the course of the assessment proceedings, it was observed by the A.O that the assessee had sold its Office premises (I.T Building) located at Pune for a consideration of Rs. 4,55,00,000/-, against which it had worked out the 'Long

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Term Capital Gain' (for short 'LTCG') at Rs. 62,75,410/-. On a perusal of the working of the LTCG, it was observed by the A.O that the assessee had claimed deduction for Cost of acquisition/improvement, as under:

Particulars	Financial Year	Cost (Rs.)	Indexed Cost (Rs.)
Cost of Acquisition	2004-05	Rs. 95,27,993/-	Rs. 1,86,39,136/-
Interest paid	2008-09	Rs. 20,06,379/-	Rs. 32,37,096/-
.....do.....	2009-10	Rs. 18,31,764/-	Rs. 27,21,561/-
.....do.....	2010-11	Rs. 19,49,290/-	Rs. 25,74,379/-
.....do.....	2011-12	Rs. 32,03,444/-	Rs. 38,31,890/-
.....do.....	2012-13	Rs. 34,66,596/-	Rs. 38,20,579/-
Repairs & Maintenance	2013-14	Rs. 33,99,949/-	Rs. 33,99,949/-
		Total	**Rs. 3,82,24,590/-**

Being of the view, that the assessee would had claimed deduction of the interest expense u/s 24(b) while computing its income under the head "Income from house property", the A.O inter alia partly declined the assesse's claim for deduction of the interest expenses for the purpose of working out the LTCG on the sale of the aforesaid property. Also, the claim of repair and maintenance expenses as a part of the cost of acquisition/improvement by the assesse was also declined by the A.O It was observed by the A.O, that though 'cost of improvement' as defined in Sec. 55 of the Act included all expenditure of a capital nature incurred in making of any addition or alterations to the capital asset

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by the assessee after it had became his property, however, the same would not include any expenditure which was deductible while computing the income chargeable under the head "Income from house property". In the backdrop of his aforesaid deliberations, the A.O declined the assess's claim of the following expenses as a part of the cost of acquisition/improvement:

Particulars	Financial Year	Cost (Rs.)	Indexed Cost (Rs.)
Interest expenses	2011-12	Rs. 32,03,444/-	Rs. 38,31,890/-
Interest expenses	2012-13	Rs. 34,66,596/-	Rs. 38,20,579/-
Repairs & Maintenance	2013-14	Rs. 33,99,949/-	Rs. 33,99,949/-
		Total	**Rs. 1,10,52,418/-**

On the basis of his aforesaid reasoning the A.O scaled down the assesse's claim of Indexed cost of acquisition/improvement of Rs. 3,82,24, 590/- to an amount of Rs. 2,71,72,172/-. Accordingly, the LTCG on the sale of the aforesaid property was reworked out by the A.O at an amount of Rs. 1,73,27,828/-.

12. Aggrieved, the assessee assailed the assessment framed by the A.O vide his order passed u/s 143(3), dated 28.12.2016 in appeal before the CIT(A). It was the claim of the assesee that the A.O was in error in excluding the interest paid by the assessee on the loan funds which were utilized towards construction of the property in question, from its cost of acquisition. Also, the exclusion of the

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repair and maintenance expenses incurred on the aforesaid property was challenged before the appellate authority. Admitting, that the interest expenses were though claimed as a deduction u/s 24(b) while computing the income under the head "Income from house property in the previous years, it was the claim of the assessee that despite the said fact the interest expenditure was eligible to form part of the cost of acquisition/improvement of the property in question. In support of his aforesaid claim heavy reliance was placed by the assessee on the order of the ITAT, Chennai bench in ACIT Vs. C. Ramabrahaman [2012] 27 taxmann.com 104 (Chennai). However, the CIT(A) not finding favour with the contentions advanced by the assessee dismissed the appeal.

13. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. On a perusal of the order of the CIT(A), we find, that he had declined to accept the aforesaid claim of deduction of the interest expenses as raised by the assesee, observing as under:

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" I have carefully considered the facts of the case, discussion of the A.O in the assessment order, oral contentions and written submission of the assessee and material available on record. It is a fact of the case that the appellant in its computation of capital gain has claimed interest expense paid as cost of acquisition and further has claimed indexation on the same while computing the capital gain on the I.T building that it sold during the year. In support of its claim, the appellant has relied upon the decision of the Hon'ble ITAT, Chennai Bench in the case of ACIT Vs. C. Ramabrahaman in ITA No. 943/Mds/2012 reported in 52 SOT 130. It is the fact o the case that the appellant has claimed deduction on the interest paid u/s 24(b) in the assessment years when it offered the income from the property chargeable to tax under the head "Income from House Property". It is the contention of the appellant that the income from house property and capital gains are under two different heads of income and therefore, the interest paid should e allowed as cost of acquisition and indexation on the same should be allowed. In this regard, it is stated that the cost of acquisition cannot be fluctuating but it should be fixed, except in circumstances where the law permits substitution. Further, in the case of Captain B.L Lingaraju vs. ACIT [ITA No. 906/Bang/2014], the Hon'ble Bangalore Tribunal observed that in the case of CIT Vs. Maithreyi Pai [1985] 152 ITR 247 (Kar), Hon'ble Karnataka High Court had held that interest paid on borrowings for the acquisition of capital asset must fall for deduction as the cost of acquisition. But, if such sum was already allowed as a deduction under other heads, the same cannot be allowed as a deduction in computing capital gains. The Hon'ble High Court also held that 'No taxpayer under the scheme of the Act could be allowed deduction of the same amount twice over'. Relying on such decisions of Hon'ble Karnataka High Court, the Hon'ble ITAT, Bangalore in the case of Captain B.L Lingaraju vs. ACIT held that the tax payer was not eligible to claim interest paid on housing loan as part of the cost of acquisition in computing capital gains as the said interest was allowed as a deduction from house property. The facts of the case were that the tax payer

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has claimed a deduction on interest paid on housing loan while computing income from house property which was claimed to be self-occupied. The Tribunal also observed that even if the property had not been let out or used for the business purposes, claim of deduction of interest could be from income from house property or from business income respectively. Under these facts, the Hon'ble Tribunal relying on the rationale of the decision of Hon'ble High Court in the case of CIT vs. Maithreyi Pai (supra) held that the tax payer was not eligible to claim interest paid on housing loan as part of cost of acquisition in computing capital gains as the said interest was allowed as a deduction from house property. The case of the appellant is exactly the same as has been decided by Hon'ble Bangalore Tribunal in the case of Captain B.L Lingaraju Vs. ACIT (supra) wherein the Hon'ble Bangalore Tribunal followed the rationale behind the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Maithreyi Pai (supra) that no taxpayer under the scheme of the Act could be allowed deduction of the same amount twice over.

The appellant has relied on the decision of Hon'ble Chennai Tribunal in the case of ACIT Vs. C. Ramabrahaman (supra) which was decided earlier. The decision of Hon'ble Bangalore Tribunal in the case of Captain B.L Lingaraju Vs. ACIT (supra) is later in time and further the Hon'ble Bangalore Tribunal in this decision has followed the rationale behind the decision of Hon'ble High Court in the case of CIT Vs. Maithreyi Pai (supra). Accordingly, the decision of Hon'ble Bangalore Tribunal would get primacy over the decision of Hon'ble Chennai Tribunal in the case of ACIT Vs. C. Ramabrahaman (supra). Accordingly, the contention and submission of the assessee that it is entitled to claim the interest payment made by it to the bank and claim it as cost of acquisition together with indexation while computing the capital gain is not found to be acceptable and is accordingly, rejected."

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Further, upholding the disallowance by the A.O of the repair and maintenance expenses incurred as a part of the cost of improvement, it was observed by the CIT(A) as under:

> "12. The appellant has also contended that A.O has disallowed the cost of improvement of Rs. 33,99,949/- which was incurred by the appellant as repairs and maintenance. In this regard, it is stated that the appellant but for mentioning the same, has not given any factual details whatsoever as to where these expenses incurred and how are they for the purpose of cost of improvement. Further, the expenditure incurred towards repair and maintenance which is routine in nature does not bring in any benefit to the capital value of the building, and the same cannot be considered as cost of improvement for the purpose of computing the capital gain u/s 48 of the Act. In this view of the matter, the contention regarding the expenses incurred towards repair and maintenance of Rs. 33,99,949/- not being allowed as cost of improvement by the A.O is found to be justifiable and contention of the assessee, is accordingly rejected."

14. We have deliberated at length on the observations of the CIT(A) and given a thoughtful consideration to the issue before us. Admittedly, the assessee while computing its income in the previous years under the head "Income from House Property" had claimed deduction u/s 24(b) of the interest paid on loan raised from "Janalaxmi Co-op Bank Ltd", which funds are stated to have been utilized in construction of the property in question. In our considered view, there is substance in the view taken by the CIT(A) that now when the interest expenditure

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was allowed as a deduction to the assessee while computing its income under the head “Income from house property”, the same could not have thereafter been allowed as a deduction by allowing it to be capitalized as a part of the cost of acquisition while computing its income under the head “capital gains” at the time of sale of the property. In fact, a view to the contrary would lead to allowing of a deduction to the assessee twice. Our aforesaid view is fortified by the judgment of the **Hon’ble High Court of Karnataka** in the case of **CIT Vs. Maithreyi Pai [1985] 152 ITR 247 (Kar)**, wherein it was observed as under:

> “The interest paid on borrowings for the acquisition of a capital asset must fall for deduction under s. 48. But, if the same sum is already the subject-matter of deduction under other heads like those under s. 57, we cannot understand how it could find a place again for the purpose of computation under s. 48. No assessee under the scheme of the IT Act could be allowed deduction of the same amount twice over. We are firmly of the opinion that if an amount is already allowed under s. 57 while computing the income of the assessee the same cannot be allowed as deduction for the purpose of computing the "capital gains" under s. 48.”

As such, now when the assessee in the case before us had claimed deduction of the interest paid to “Janalaxmi Co-op Bank Ltd” while computing its income for the previous years under the head “Income from House Property”, therefore, it would not be eligible to once again claim deduction of such interest expenditure in the garb of cost of acquisition of the property while computing the income

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under the head "Capital gains" at the time of sale of the property in question. Accordingly, finding no infirmity in the view taken up the CIT(A) in context of the issue under consideration, we uphold the same.

15. We shall now advert to the claim of the assessee that the lower authorities were in error in disallowing its claim for deduction of repairs and maintenance expenses as part of the "cost of improvement" of the property while computing its income under the head "Capital gain". We have perused the observations of the lower authorities and are unable to persuade ourselves to subscribe to the same as such. As is discernible from the order of the CIT(A), the assesse's claim as regards repairs and maintenance was inter alia rejected, for the reason, that the assessee had failed to furnish any factual details as regards the expenses which were claimed to have been incurred and also as to how the same qualified as "cost of improvement". However, the assessee had taken us through the details of such expenses i.e invoices/bills evidencing the nature of the expenditure incurred [(Page 5-42) of the assesse's 'Paper book' ('APB')]. At this stage, we may herein observe that the assessee as per its certification of the 'APB', had claimed, that the copies of the aforesaid invoices/bills were furnished with the lower authorities. On a perusal of Sec. 55(2) of the Act, we find, that if an

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assessee had incurred an expenditure of a capital nature in making any addition or alterations to a capital asset after it had became his property, then the same would form part of the "cost of improvement" of such property. At the same time, there is a rider provided in the aforesaid statutory provision, which therein envisages that any such expenditure which is deductible in computing the income chargeable under the other heads of income is not to be included within the meaning of "cost of improvement". In our considered view, in all fairness, the aforesaid issue requires to be restored to the A.O with a direction to verify afresh the maintainability of the aforesaid claim of deduction so raised by the assessee. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assesee who shall remain at a liberty to substantiate his aforesaid claim on the basis of fresh documentary evidence. **Ground of appeal No. 3** is allowed for statistical purposes in terms of our aforesaid observations.

17. The appeal of the assessee is partly allowed for statistical purposes.

18. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeals was concluded on 04.03.2020, however, this

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order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners :— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result

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of directions of Hon'ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

> "We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment".

In the rule so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any "extraordinary" circumstances.

19. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai 'F' Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

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"Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

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10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by the Hon'ble High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, respectfully follow the same. As such, we are of the considered view that the period during

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which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

20. The appeal of the assessee in ITA No. 2848/Mum/2019 is dismissed, while for the appeal in ITA No. 345/Mum/2018 is partly allowed for statistical purpose.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-	Sd/-
(G. Manjunatha)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 09.06.2020

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**