

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**[Heard through the Virtual Hearing Mode]**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.24/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Bareilly 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Range 3 Lucknow
TAN/PAN:ABZFS2472C		
(Appellant)		(Respondent)

ITA No.25/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Amritsar 2, Sahara India Centre	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS4654E		
(Appellant)		(Respondent)

ITA No.26/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Kanpur(I) 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ACIT Range 3 Lucknow
TAN/PAN:ABZFS2468Q		
(Appellant)		(Respondent)

ITA No.27/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Guwahati 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ACIT Range 3 Lucknow
TAN/PAN:ABZFS2462E		
(Appellant)		(Respondent)

ITA No.28/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Devas 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS4676C		
(Appellant)		(Respondent)

ITA No.29/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Chennai 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ACIT Range 3 Lucknow
TAN/PAN:ABZF4653D		
(Appellant)		(Respondent)

ITA No.30/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Kurukshetra 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2467B		
(Appellant)		(Respondent)

ITA No.31/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Moradabad 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2483B		
(Appellant)		(Respondent)

ITA No.32/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Aligarh 2, Sahara India Centre	v.	ITO-3(4) Lucknow
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Kapoorthala Complex Aliganj, Lucknow		
TAN/PAN:ABZFS4667F		
(Appellant)		(Respondent)

ITA No.33/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Vadodara 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2487F		
(Appellant)		(Respondent)

ITA No.34/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Ambala 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2461H		
(Appellant)		(Respondent)

ITA No.35/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Muzaffar Nagar, 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS4678N		
(Appellant)		(Respondent)

ITA No.36/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Karnal 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2476G		
(Appellant)		(Respondent)

ITA No.37/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Jamnagar 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2489M		
(Appellant)		(Respondent)

ITA No.38/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Rajkot 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS4659K		
(Appellant)		(Respondent)

ITA No.39/LKW/2019  
Assessment Year: 2012-13

M/s Sahara City Homes – Anand 2, Sahara India Centre Kapoorthala Complex Aliganj, Lucknow	v.	ITO-3(4) Lucknow
TAN/PAN:ABZFS2473D		
(Appellant)		(Respondent)

Appellant by:	Shri Vijay Mehta, C.A.
Respondent by:	Shri Sushil Madhuk, CIT (DR) (on 4.2.2020 and 5.2.2020) & Smt. Sheela Chopra, CIT (DR)(on 2.11.2021)
Date of hearing:	As above
Date of pronouncement:	31   01   2022

**ORDER**

**PER BENCH:**

These are Sixteen appeals filed by different assesseees against the respective orders of the Id. CIT(A), Varanasi, for

assessment year 2012-13. Since the issues involved in all the sixteen appeals are common, they were heard together and are being disposed of by this consolidated order. They were heard through the Virtual Hearing Mode.

2. During the course of proceedings, certain queries arose and, accordingly, the assessee was asked to give clarification in respect of observations of the ld. CIT(A) in respect of the second Remand Report and also in respect of assessee's letter dated 10.12.2018, addressed to the Assessing Officer and the ld. CIT(A), which was found to be after the date of the passing of the order of the ld. CIT(A). The hearing was refixed for the said purpose, during the course of which, the assessee filed its clarification vide submission dated 7.7.2021. It was submitted that the assessee has duly replied to the observations of the ld. CIT(A) in respect of the second remand report, vide its earlier submission dated 16.12.2019. As regards letter dated 10.12.2018, it was submitted that the orders passed by the ld. CIT(A) in this group of cases on 27.11.2018, 28.11.2018 and 14.12.2018 were all served on 14.12.2018/24.12.2018 and hence on 10.12.2018, the assessee was not aware of the order of ld. CIT(A). It was submitted that in any case, the contents of the letter dated 10-12-2018 were already available with the A.O. and the ld. CIT(A), vide earlier communications and as such, there is nothing new which has been submitted in the above-said letter.

3. All the assessees have taken the following common Additional Ground:

1. *The ld. CIT(A) ought to have held that the additions made by the Assessing Officer are beyond the jurisdiction of 'CASS', the assessment scrutiny proceedings and hence illegal and bad in law.*

4. This Additional Ground raises a legal issue going to the root of the matter, not requiring any fresh material to be gone into. Accordingly, it was admitted.

5. All the assesseees have moved a common worded application, dated 5.2.2020, stating as under:

1. With respect to the additional grounds of appeal filed, the appellant would pray not to press for the additional ground as filed vide our letter dated 16.12.2019.
2. Your honours may be pleased to accept the appellant's prayer and to take the aforesaid request on record for adjudication and disposal of the captioned appeals.

6. With regard to the Additional Ground, the assessee, M/s Sahara City Homes, Bareilly, i.e., the assessee in ITA No.24/LKW/2019, has filed written submissions, stating that the case of the assessee was selected for scrutiny under CASS, the Assessing Officer having stated in his letter dated 9.10.2019 (copy filed on record) that the reason for selecting the case for limited scrutiny was "difference in opening stock figure of the current year with the closing stock figure of the previous year"; that the assessee, vide letter dated 11.12.2014 (extracted at page 3 of the assessment order), offered its explanation in this regard; that the Assessing Officer did not reject the assessee's explanation regarding the difference in the opening stock figure of the current year and the closing stock figure of the previous year, inasmuch as at page 6 of the assessment order, the Assessing Officer has observed that the reply of the assessee was silent on the issue of acquisition of WIP within a short span of time; that still, the Assessing Officer went on to make additions by invoking the provisions of sections 69C and 68 of the Income Tax Act ('the Act', for short); and that the additions made to the

income of the assessee are at a total variance with the reason for which the case of the assessee was selected for limited scrutiny.

7. During the course of hearing before us, the ld. D.R. contended that the assessment was not selected for limited scrutiny. The copy of screen shot showing the reason for selection of scrutiny and the type of selection for scrutiny under CASS has been produced and highlighted by the ld. D.R. Therefore, we are satisfied that the present case is not a limited scrutiny case and hence, we do not find any infirmity in the additions made by the Assessing Officer on account of want of jurisdiction. In any case, the assessee has filed a letter stating that it does not want to press the Additional Ground of appeal. The Additional Ground of Appeal is, accordingly, rejected.

8. Now we take up the original grounds of appeal taken by the assessee. The issue being common in all the appeals, for the sake of convenience, facts are being taken from ITA No.24/LKW/2019, wherein, the assessee is Sahara City Homes, Bareilly. The concise Grounds of Appeal taken by the assessee are as follows:

- 1. The learned CIT (A) has erred in law and on facts in confirming the addition of Rs.9,12,631/- on account of capital expenditure incurred / during the year for purchase of fixed asset made during the year.*
- 2. The learned CIT (A) has erred in law and on facts in confirming the addition of Rs.36,96,539/- under section 68 on account of closing balance in customer advances account.*
- 3. The learned CIT (A) has erred in law and on facts in confirming the addition of Rs.5,42,86,466/- under section 69C of the Act on account of expenses incurred during the year which were capitalized to WIP.*
- 4. The learned CIT (A) has erred in law and on facts in confirming the addition of Rs.50,91,92,350/- under section*

*69C of the Act on account of opening balance of WIP brought forward from last year.*

*5. The learned CIT (A) has erred in law and on facts in directing the Assessing Officer to issue notice under section 148 of the Act for A.Y. 2011-12 on protective basis.*

*6. The learned CIT (A) has erred in law and on facts in confirming the assessment order determining the total income of the appellant at Rs.56,78,273/-.*

9. The assessee is a partnership firm, having come into existence on 28.3.2011. It is in the business of construction and development of townships, housing projects and multi-storeyed buildings (residential/commercial/malls). It consists of ten partners. Eight of them are land owning companies ('LOC', for short) who brought in rights over the land owned by them. Mangalya Township Private Limited, the ninth partner, provided finance. The tenth partner, M/s Sahara Prime City Limited ('SPCL', for short) brought in rights over its land as well as work-in-progress ('WIP', for short). The assets brought in by the partners into the partnership firm, were so brought in vide the Partnership Deed dated 28.3.2011, i.e., in the previous year relevant to the Assessment Year 2011-12. These assets stand recognized in the books of account of the assessee on the date of execution of the Partnership Deed, i.e., on 28.3.2011.

10. During the year under consideration, the assessee had also acquired certain fixed assets, amounting to Rs.9,12,631/-. The Assessing Officer disbelieved this transaction and made addition of an amount of Rs.9,12,631/-, as unexplained expenditure, which was confirmed by the ld. CIT(A). Ground no.1 has been taken by the assessee against the same.



11. Further, the assessee had taken over from SPCL, certain advances received from customers by SPCL, along with the acquisition of project WIP, amounting to Rs.42,15,716/-. In the year under consideration, no fresh advances were received. Rather, a part of the amount was refunded. The closing balance in the 'Customer Advance' Account for the year under consideration was of Rs.36,96,539/-. This closing balance was added by the Assessing Officer, under section 68 of the Act, as unexplained cash credit, which was confirmed by the Id. CIT(A). This has been challenged by way of Ground no.2 before us.

12. Further, during the year under consideration, the assessee had also spent an amount of Rs.5,42,86,466/- towards WIP, as reflected in the assessee's financials for the year under consideration. Disbelieving this transaction, the Assessing Officer made an addition of Rs.5,42,86,466/-, under section 69C of the Act, which was confirmed by the Id. CIT(A). This forms the basis of Ground no.3 before us.

13. At the time of formation of the Partnership, i.e., in Assessment Year 2011-12, WIP of Rs.4,07,72,868/- was contributed by SPCL to the assessee firm. This was disputed by the Assessing Officer. Other than this WIP, the assessee had also acquired WIP from Sahara India Commercial Corporation Ltd. ('SICCL', for short), vide Memorandum of Understanding ('MoU', for short) dated 30.3.2011, in Assessment Year 2011-12, amounting to Rs.46,84,19,842/-. Such acquisition had also been called into question, and was added by the Assessing Officer. The Assessing Officer thus made an aggregate addition of Rs.50,91,92,351/- (Rs.4,07,72,868/- + Rs.46,84,19,842/-) of WIP acquired by the assessee during Assessment Year 2011-12,

under section 69C of the Act, which was confirmed by the ld. CIT(A). This forms the issue in Ground No. 4.

14. The ld. CIT(A) directed the Assessing Officer to issue notice under section 148 of the Act, for Assessment Year 2011-12, on a protective basis. Ground no.5 challenges this action of the ld. CIT(A).

15. The ld. CIT(A) confirmed the determination of the total income of the assessee at Rs.56,78,273/-. Ground no.6 has been raised against this.

16. Concerning Ground nos.1 to 4, succinctly, the Assessing Officer, while making these additions, observed that the assessee had not given the details of acquisition of WIP, fixed asset acquisition, customer advance, etc., and that so, the transactions could not be accepted as genuine.

17. Before the ld. CIT(A), the assessee contended that it had produced substantial details before the Assessing Officer. The assessee also furnished these details before the ld. CIT(A) and besides, further details in the form of additional evidence, to contend that the additions were not called for.

18. The ld. CIT(A) forwarded these details to the Assessing Officer, asking for his remand report. Vide letter (pages 258 to 261 of the assessee's paper book), ('APB, for short) dated 08.05.2017, the Assessing Officer furnished his Remand Report before the ld. CIT(A). Therein, the Assessing Officer stated that:

*"i) The first issue is regarding addition of Rs.509,192,350/- as unexplained expenditure the same being opening balance of work-in-progress. The same has been stated to be the WIP amounting to Rs.468,419,482/- acquired from M/s. Sahara India Commercial Corporation Ltd. (SICCL) Kolkata pursuant to Memorandum of Understanding (MOU) signed by the assessee firm with it and the balance amount of Rs. 40,772,868/- having been contributed by M/s. Sahara Prime*

*City Ltd, Lucknow as partner in the partnership deed incorporated on 28.03.2011. For ascertaining the same the audited financial statements of SICCL, Kolkata, SPCL Lucknow and Sahara City Homes-Bareilly for the A.Y. 2011-12 and 2012-13 were examined. Further the related ledger accounts pertaining to the above transactions in the books of accounts of the above parties and their respective confirmatory statements as per the paper book were also perused. Besides the additional evidences adduced in the above-said explanation by the appellant by way of audited statements and ledger accounts of SICCL and SPCL Lucknow for the A.Y. 2010-11 were also perused and the above-said WIP are found to be duly accounted for therein preceding their transfer to the assessee firm pursuant to the above-said MOU and the partnership deed. Thereafter the cumulative WIP amounting to Rs.509,192,350/- appears in Schedule 3 forming part of inventory totaling Rs.622,315,822/- appearing in the Balance Sheet of Sahara City Homes-Bareilly for the year ended 31<sup>st</sup> March, 2011 and not being routed through the related P & L Account as closing stock since the firm was in operation for only 3 days during the F.Y. 2010-11 pursuant to execution of the partnership deed on 28.03.2011. Subsequently, the above said WIP of Rs.509,192,350/- appears as part of opening inventories totaling Rs.622,315,822/- in the P & L account for the year ending 31<sup>st</sup> March 2012. Further, by way of a specific query letter dated 17.04.2017 (copy enclosed) the assessee firm was directed to furnish details of any construction/development activities resulting in the said WIP, real estate projects carried on by it and relevant approvals, permits regarding change of land use, environmental clearances etc. relating thereto. Vide its reply dated 24.04.2017 (copy enclosed) the assessee firm stated having carried out activities relating to site cleaning, levelling, land filling, removal of boulders, excavation, watering etc. to consolidate the land holdings contributed by different partners etc. Relevant approvals, permits etc. from the concerned authorities in respect of the said project were also furnished along with the above reply and are being enclosed herewith for your kind perusal. By the same reply it has been informed that transfer of WIP by M/s. Sahara India Commercial Corporation Ltd. (SICCL) to the assessee firm during the FY 2010-11 has been accepted during scrutiny assessment proceedings by the assessing officer viz. Dy. Commissioner of Income Tax, Circle 1, New Delhi and he has added notional profit on the said transfer vide his order*

*dated 20.11.2014 passed u/s. 143(3)/142(2A) subsequent to special audit of the said concern's accounts u/s. 142(2A) of the I.T. Act, 1961. Likewise as per the same reply it has been informed that no adverse finding as regards the WIP transfer by M/s. Sahara Prime City Ltd to the assessee firm has been given in its assessment order dated 27.03.2014 for the A.Y. 2011-12 passed by Dy. Commissioner of Income Tax, Central Circle-6, New Delhi. Copies of these assessment orders are enclosed with the above reply dated 24.04.2017.*

*However, on-site physical verification of the project carried out by the assessee firm to ascertain genuineness of any construction or development activity carried out in the said project by the above concerns resulting in the above-mentioned WIP has not been possible keeping in view the location of the project in another city and the attendant logistical and jurisdictional problems and the time constraint as stated earlier. Also no documentary evidence has been furnished in respect of the said construction or development activity pertaining to the WIP under consideration and findings regarding the same have been given purely on the basis of audited accounts and statements of the above mentioned entities and other explanations furnished through the paper-book and in response to query letters issued by this office.*

*ii) Regarding the second issue of unexplained expenditure of Rs.54,286,466/- having been incurred for work-in-progress during the F.Y. 2011-12 relevant to A.Y. 2012-13 under consideration the relevant ledger statements of SPCL Lucknow, who had incurred the said expenses, was perused and test checked with the relevant bills/vouchers.*

*iii) The Third issue pertains to disallowance of capital expenditure of Rs. 912,631 appearing as addition to Fixed Assets. During the course of remand proceedings it was explained by the ARs that the same were incurred on purchase of light vehicle and electrical equipment during the financial year under consideration. The relevant purchase order, tax invoice, receipt and cheque payment detail, insurance receipt and copy of related ledger account were furnished by way of evidentiary details and examined and found to be in order. Accordingly, no adverse inference is being drawn in respect of this issue.*

*The fourth issue relates to addition of Rs. 3,696,539/- under the head Customer Advances as being unexplained credit*

*u/s. 68 of I.T. Act, 1961. The explanation furnished by the assessee along with relevant audited financial statements, TDS certificates in respect of payments made to customers and confirmatory statements of Sahara City Homes-Bareilly and SPCL Lucknow were examined. An amount of Rs.4,215,716/- by way of customer advances was acquired by the assessee firm from SPCL Lucknow pursuant to the deed of incorporation of the partnership firm. The same appears as Advance from customers under the head current Liabilities & Provision in Schedule 5 of the audited Balance Sheet of Sahara City Homes-Bareilly for the year ending 31.03.2011. Thereafter no fresh advances were received during the F.Y. 2011-12 and after accounting for the accrued interest of Rs.241,955/- and refunds to customers totaling Rs.761,132/- the net customer advances of Rs.3,696,539/- appear as closing balance under the head current Liabilities & Provisions in Schedule 6 of the Balance Sheet of Sahara City Homes-Bareilly as on 31.03.2012. Further the assessment order dated 27.03.2014 of M/s. Sahara Prime City Limited (enclosed with the reply dated 24.04.2017) for the A.Y. 2011-12, relevant to the F.Y. 2010-11 passed by DCIT, Central Circle 6, New Delhi does not record any adverse findings in respect of the issue of customer advances as reflected in its balance sheet for the year ending 31.03.2011 subsequent to transfer to the various partnership firms including SCH – Bareilly in pursuance of the partnership deed dated 28.03.2011. Accordingly no adverse inference is being drawn as regards the objection raised by the assessee.*

*However, again as stated in para (iii) above, no examination of the customers as such has been possible at this end in view of their residing in another city and the resultant problems as stated in para (i) above.”*

19. However, the ld. CIT(A) did not agree with the Remand Report of the Assessing Officer, observing that the valuation report of the WIP had not been obtained. The ld. CIT(A) directed the Assessing Officer to send a fresh remand report and to obtain a valuation report of the WIP from the DVO. However, the Assessing Officer reported in his second Remand Report that the valuation by the DVO could not be

carried out due to non-co-operation by the assessee. The ld. CIT(A) took an adverse view in the matter, for want of valuation by the DVO. The ld. CIT(A) also observed that as per the MoU entered into by the assessee with SICCL on 30/3/2011, the assessee was supposed to get the valuation report of the WIP and this having not been done, the transaction could not be accepted. The ld. CIT(A) thus confirmed all the additions made by the Assessing Officer, bringing the assessee in further appeal before us.

20. Apropos Ground Nos.1 to 4, the ld. Counsel for the assessee has contended that the MoU dated 30.3.2011 (APB:36-42) deals with transfer of WIP and related land and development rights; that the WIP was an existing asset, for which, the consideration had been fixed at Rs.46,84,19,482/-; that the land and development rights were to be acquired by the transferor within a period of one year and the price thereof was to be determined mutually; that the valuation of the WIP was not mandatory; that in any case, no addition under section 69C of the Act was called for; that the consideration mentioned in the MoU tallies exactly with the assessee's financials; that the Ledger Account of the WIP (APB:43), as on 31.3.2011, also duly reflects the WIP acquired; that the details (APB:178-256) of the WIP were duly produced, beside other supporting evidence, before both the authorities below; that the Assessing Officers of the transferors, respectively, have accepted, in the concerned assessments, that the WIP was transferred; that the Assessing Officer had submitted his first Remand Report dated 08.05.2017 only after having duly verified all these evidences, accepting the WIP; that the Assessing Officer had also taken into consideration the assessment orders passed in the cases of the respective transferors of the WIP, apart from having issued summons under

section 133(6) of the Act; that the Id. CIT(A) erred in directing the Assessing Officer to send a fresh remand report and to obtain a valuation report of the WIP, from the DVO; that since nothing incorrect/adverse had been found in the evidences furnished by the assessee and the Remand Report of the Assessing Officer, there was no occasion for any physical examination of the work done, particularly when the adjudication was of additions under sections 69C and 68 of the Act; that other than this, such physical examination would not help the DVO in valuing the expenditure incurred for WIP, since the project of the assessee being in its initial stage, only the expenditure incurred was debited to the WIP Account; that the nature of the expenditure incurred rendered valuation by the DVO infeasible; that otherwise too, valuation of the WIP would obviously effect no impact under section 69C; that all the details were duly furnished before the Assessing Officer, who found no mistake/discrepancy in the same; that all the details had also been furnished before the Id. CIT(A) vide letter (APB:297-305) dated 10.12.2018; that apropos the customers' advances, all the details about such advances had been duly furnished, along with confirmations from the customers, to both, the Assessing Officer, as well as the Id. CIT(A); that the Assessing Officer, after due verification, confirmed the correctness of the assessee's claim, observing in his Remand Report that no new advances had been received during the Financial Year 2011-12, relevant to the year under consideration; that the assessee had also furnished before both the authorities below, complete details with regard to the fixed assets, which were also found correct by the Assessing Officer, as stated by him in his Remand Report; that the additions under section 68 and 69C of the Act have been incorrectly made, since the concerned transactions did not relate

to the year under consideration; that moreover, neither had the assessee failed to offer an explanation, nor did the source of the expenditure remain unproved; and that the transactions pertaining to the opening inventory (WIP) and those of advances from customers did not pertain to the year under consideration. It has been specifically pointed out that the following are the details, forming part of the Paper Book filed before us, submitted by the assessee before the authorities below:

- a) *Financial statements of SPCL and SICCL for F.Ys. 2010-11 and 2011-12 (APB 306, 391, 453 and 573).*
- b) *Assessment orders in the case of SPCL and SICCL for A.Ys. 2011-12 and 2012-13 (APB 381, 444, 487 and 602).*
- c) *Details of WIP with supporting evidences (APB 178-256).*
- d) *Confirmation certificate of SICCL and SPCL confirming transfer of WIP and advances from customers to the assessee (PBP 84 and 85).*
- e) *Break-up of WIP and advances from customers, confirmations, etc., vide letter dated 12.04.2017 (APB 99.)*
- f) *Details of land (APB 66-72).*
- g) *Reasons for putting development on hold, vide letter dated 12.04.2017 (APB 101).*
- h) *Approvals granted for projects developed by the assessee (PBP 106-145).*
- i) *Details of fixed assets (APB 146-162).*
- j) *Details of advances from the customers together with IDS Certificates (APB 163-177).*
- k) *Ledger Account of SPCL in the books of the assessee, for the year ended 31.03.2012 (APB-60).*
- l) *Ledger Account of the assessee in the books of SPCL, for the year ended 31.03.2011 (APB 62).*
- m) *Summary of investments made in partnership firms in the books of SPCL, for the year ended 31.03.2012 (APB 61).*



21. Apropos Ground no.5, it has been contended that the ld. CIT(A) has erred in directing the Assessing Officer to issue notice under section 148 of the Act in the case of the assessee, for Assessment Year 2011-12, on a protective basis, to protect the interests of the Revenue; that this, despite the fact that the ld. CIT(A) has confirmed the additions in Assessment Year 2012-13; that this being so, no such direction was called for, for transactions concerning Assessment Year 2011-12; that such direction is beyond the ld. CIT(A)'s jurisdiction under section 251 and, therefore, it is bad in law; that otherwise too, the ld. CIT(A), after having confirmed the additions for the year under consideration, cannot hold that the income has escaped assessment in the preceding assessment year; and that in any case, the direction given by the ld. CIT(A) is barred by the limitation prescribed by the provisions of section 150 of the Act. Qua all these issues, case laws have been relied on by the assessee.

22. Ground No.6 is stated to be general, concerning the confirmation of determination of total income at Rs.56,78,43,273/-.

23. On the other hand, the ld. D.R., strongly supporting the impugned order, has contended that as per the MoU entered into between the assessee and SICCL, the first party to the MoU, i.e., SICCL, within a period of one year from the date of the signing of the MoU, or the period mutually decided by both the parties, subject to due diligence and clear title of the land, agreed to provide related Land and Development rights; that the MoU clearly mentioned that the first party agreed to transfer the work-in-progress of the project immediately, amounting to Rs.46,84,19,482/- and agreed to make available related land or

development rights into the project within a period of one year at a price/consideration mutually decided and agreed upon between the parties; that as per the MoU, till such time, the second party was to be under no obligation to pay any consideration under the MOU and it was to have the right to verify the valuation of the work-in-progress and if there was found to exist any difference in the valuation and the consideration agreed upon mutually, the consideration was to be adjusted for the difference accordingly; that as per the MOU, the first party was to furnish to the second party, all the relevant papers and all necessary documents pertaining to the related land or development rights brought into the project on or before the acquisition of the land; that as per the MoU, the first party was to submit the entire record to the second party, and in case after perusal thereof, it appeared to the second party that there was some defect or discrepancy in the title pertaining to the land with regard to its marketability, it would have been the discretion of the second party to refuse to enter into the agreement to sell, and the decision of the second party in this regard would have been final and binding on the first party; and that as per the MoU, the definitive agreement and the final consideration payment was to be subject to valuation and due diligence and the parties had agreed that if any variance was found in the agreed consideration and the market value, then, either party would compensate the other party for the difference.

24. The Id. D.R. has next contended that further, as per the MoU, before arriving at the correct value of the work-in-progress, the valuation of the project was required to be got done by the assessee, which was never so done by the assessee; that there was no evidence to support the work-in-progress which was recorded in the books of account in utter violation of the MoU;

that the Id. CIT(A) was well justified in proceeding on the basis of the second Remand Report, in view of the fact that the first Remand Report of the Assessing Officer stood prepared on the sole basis of the audited Balance Sheet and the Profit and Loss Account, rather than on the basis of on-site physical examination of the work done, which, indubitably, is the only rational basis on which any work-in-progress can be examined; that despite the Assessing Officer having asked the assessee to submit the valuation report, the assessee refused to /did not do so; that the assessee never assisted the DVO in getting the valuation of the property done; that it was solely due to the utter non-cooperative attitude of the assessee in assisting the DVO, that the valuation of the property could not be done; that the value of the work-in-progress, as projected by the assessee, was never substantiated by any hard documentary evidence; and that neither any detail of the customers' advances, nor that of additions to fixed assets, was filed by the assessee, either before the Assessing Officer, or before the Id. CIT(A).

25. The DR has averred that in this manner, the assessee had neither been able to prove the liabilities which it had acquired from SICCL, nor the work-in-progress, thereby rendering the additions as made by the Assessing Officer and confirmed by the Id. CIT(A), to be entirely correct, not calling for any interference/deletion. It has been contended that in this view of the matter, the Id. CIT(A) cannot be faulted for upholding the additions correctly made by the Assessing Officer. It has been submitted that this being so, the Grounds raised by the assessee against the additions, are required to be rejected outright.

26. The Id. D.R. has contended that without prejudice and in the alternative, since the role of the DVO is crucial in this

matter and no details were furnished by the assessee, the matter may be remitted to the Assessing Officer for on-site verification and valuation.

27. Apropos the directions issued by the ld. CIT(A) to the Assessing Officer to issue a notice for reopening the completed assessment for Assessment Year 2011 – 12, on a protective basis, to safeguard the interests of the Revenue, the ld. D.R. has contended that a notice under section 148 of the Act may be issued at any time for the purpose of making an assessment or reassessment in consequence of, or to give effect to, any finding or direction contained in an order passed in appeal; that however, it cannot be so done where the completed assessment relates to an assessment year in respect of which re-assessment could not have been made at the time when the order appealed against was made by reason of another provision limiting time for taking action for reassessment; that in the case at hand, the reassessment proceedings could have been initiated by issuance of a notice under section 148 of the Act, at the time when the assessment order for Assessment Year 2012 – 13 was passed by the Assessing Officer; that it was in consonance with this, that the impugned direction was, and correctly so, issued by the ld. CIT(A); that such direction was definitely required to be issued in order to protect the interests of the Revenue, the assessee itself having claimed that the alleged liability of SICCL on account of the work-in-progress and the customers' advances had been accepted and that the assessee had made addition to the fixed assets in Assessment Year 2011 –12, that is, the earlier year; that the assessee had failed to prove the genuineness of the liability; that the ld. CIT(A) had confirmed the action of the Assessing Officer in making the additions; and that considering all these facts and the legal position, the ld. CIT(A) was well

within his rights to issue the direction under challenge. It has been argued that therefore, there is no reason whatsoever why the well-versed direction issued by the ld. CIT(A) be called in question, much less interfered with at our hands.

28. We have heard the both parties and have perused the material on record. The issue concerning Ground nos. 1 to 4 is as to whether the ld. CIT(A) is correct in confirming the addition of Rs.9,12,613/- (Ground No.1), on account of capital expenditure incurred by the assessee during the year, for purchase of fixed assets, the addition of Rs.36,96,539/- (Ground No.2), on account of closing balance in the Customers' Advances Account, the addition of Rs.5,42,86,466/- (Ground No.3), on account of expenses incurred during the year and capitalized to work-in-progress, the addition having been made under section 69C of the Act, and the addition of Rs.50,91,92,350/- (Ground No.4), under section 69C of the Act, on account of opening balance of work-in-progress brought forward from the earlier year.

29. Ground No.5 challenge the ld. CIT(A)'s direction to the Assessing Officer to issue, on a protective basis, a notice under section 148 of the Act, for Assessment Year 2011-12.

30. We had requested the ld. CIT(DR) to check from the record of the ld. CIT(A) and to confirm as to whether the documentary evidences stated to be filed before the ld. CIT(A), which are part of the APB, were actually filed before the ld. CIT(A). The ld. CIT(DR) has fairly stated that it is indeed so.

31. The ld. CIT(A) has observed that as per the MoU, the assessee was required to get valuation of the project done before arriving at the correct value of the work-in-progress, which was not got done. Let us see as to what the MoU dated 30.3.2011 (APB:36-42) says about this.

32. The relevant clauses of the MoU are as follows:

(1) That the First Party shall provide **related land or development rights** into the Said Project in the manner and mode as may be decided mutually by both the parties to this MOU.

(2) That the First Party shall provide **related land or development rights** into the said Project to the Second Party within a period of one year from the date of signing this MOU (or Period mutually decided by both the Parties) subject to the due diligence and clear title of the said land.

(3) That the First Party has agreed to provide free, clear and marketable title of the related land or development rights into the said project along with the WIP in favour of the Second Party as mentioned herein, within a period of one year from the date of execution of this MOU or such further period(s) as may be extended by the Second Party at its sole discretion.

(4) That the Party of the First Part agrees to transfer the WIP of the said project immediately amounting to Rs.46,84,19,482/- (Rupees Forty Six crore Eighty Four Lakh(s) Nineteen Thousand Four Hundred Eighty Two Only) **and** agreed to make available **related land or development rights** into the said Project within a period of one year at a price mutually decided and agreed between the parties, hereinafter referred to "**Consideration**". Till such time, party of the second part shall be under no obligation to pay any consideration under this MOU and second party shall have the right to verify the valuation to WIP. If, any difference in the valuation is found and agreed mutually, then the "**Consideration**" shall be adjusted for the difference, accordingly" (Emphasis supplied).

33. It is apparent from the above, that the aforesaid clauses of the MoU deal with transfer of two assets (i) transfer of WIP and (ii) transfer of "related land and development rights".

34. The first asset which is being transferred under the MoU, is work-in-progress, which is an existing asset, for which,

the consideration has been fixed at Rs.46,84,19,482/-. The second asset which is agreed to be transferred, is related land and the development rights, which were to be acquired by the transferor. The said rights were to be transferred within a period of one year and the price thereof was to be determined mutually. Further, the valuation of the WIP is to be at the instance of the second party, who has been given the right to do so, if required. The valuation is not mandatory and, hence, the conclusion of the CIT(A) is not only irrelevant, but also incorrect. It is interesting to note that the ld. CIT(A) has raised his objection of valuation of WIP as per the agreement between the assessee and SICCL. This agreement, however, is applicable to acquisition of WIP, amounting to Rs.46,84,19,482/- only. However, in the process, the ld. CIT(A) has confirmed the addition in respect of WIP acquired from SPCL as well as expenditure incurred during the year and debited to the WIP.

35. In any case, it is beyond comprehension as to how, if the party to the agreement does not exercise the right of carrying out valuation, it becomes a case of addition under section 69C of the Act, and that too, in a year other than the year of the transaction.

36. The ld. CIT(A) has further observed that the WIP was entered in the books of the assessee without any supporting evidence.

37. The assessee had filed before the Assessing Officer as well as the ld. CIT(A), its Balance Sheet (APB:46) for the year ended 31.3.2011. In Schedule 5 thereto, the amount due (Rs.47,26,37,956/-) stands shown under "Current Liabilities and Provisions."

38. Likewise, the assessee submitted Ledger Account (APB:43) of WIP as on 31.3.2011. The WIP acquired by the assessee from SICCL and SPCL has been entered therein.

39. Then, the details of the WIP along with the evidences supporting the same (APB:178-256) were also furnished before both, the Assessing Officer and the Id. CIT(A). the Assessing Officer, in the first remand proceedings, examined (even as mentioned in the first Remand Report dated 08.05.2017) the audited financial statements of SICCL, SPCL and the assessee, for Assessment Years 2011-12 and 2012-13, the related Ledger Accounts in the books of all these three parties, the respective confirmatory statements of these parties, and the audited statements and Ledger Accounts of these parties, and the audited statements and Ledger Accounts of SICCL and SPCL, for Assessment Year 2010-11. The Assessing Officer found the WIPs to have been duly accounted for in the aforesaid voluminous documentary evidences, preceding the transfer of these WIPs to the assessee. The Assessing Officer has stated this in para (i) of his Remand Report dated 08.05.2017 [APB:259].

40. The Id. CIT(A) has also not made any adverse remark with regard to the above evidences.

41. The Assessing Officer also examined, and did not find any discrepancy therein, the relevant approvals and permits, etc., from the concerned authorities, regarding the assessee's activities relating to site clearing, levelling, land filling, removal of boulders, excavation, etc. These evidences were also furnished before the Id. CIT(A), who too did not find any fault therein.

42. The assessee also furnished before the authorities below, assessment orders in the cases of SPCL and SICCL, for Assessment Years 2011-12 and 2012-13 (APB:381, 444, 487 and



602). He intimated that the DCIT, Circle 1, New Delhi, i.e., the Assessing Officer of SICCL, had, in scrutiny assessment, accepted the transfer of WIP by SICCL to the assessee during Financial Year 2010 – 11, and had added notional profit on the said transfer, by virtue of order dated 20.11.14, passed under sections 143 (3)/142 (2A) of the Act, subsequent to special audit of the accounts of SICCL. The assessee also stated that the DCIT, Central Circle – 6, New Delhi, the Assessing Officer of SPCL, had, in his order dated 27.3.14, passed for Assessment Year 2011 – 12, not recorded any adverse finding concerning the WIP transferred by SPCL to the assessee. The AO, in his Remand Report dated 08.05.17, has taken due note of these assessment orders passed in the cases of SICCL and SPCL, by their respective Assessing Officers. The Id. CIT (A) has also not made any adverse comment thereon.

43. The above evidences have also been filed before us and having gone through the same, we do not find any reason whatsoever to disbelieve the same. The A.O has not, on verification, found any error therein, as available from his Remand Report dated 08.05.17. The WIP, in the light of the afore-discussed evidences, is found to have been correctly entered in the books and the Balance Sheets of SICCL and SPCL, the transferors of the WIP to the assessee, and the respective Assessing Officers of SICCL and SPCL have accepted that the WIP had been transferred. In the order under appeal, the Id. CIT(A) too has not recorded any finding adverse to all this voluminous documentary evidence. Still, the Id. CIT(A) observes that the WIP was entered in the assessee's book without any supporting evidence. It is beyond comprehension as to how the Id. CIT(A) could arrive at such a finding in the face of all the above discussed documentary evidence, without rebutting even a

single piece thereof. This finding recorded by the Id. CIT(A) thus stands vitiated by the vice of a complete misreading and non-reading of material and voluminous documentary evidence brought on the record by the assessee. This finding is, hence, a wrong finding, unsustainable in the eye of the law, and we hold it to be so. As a consequence, the DR's alternative request of remitting the matter to the Assessing Officer for on-site verification and valuation, the role of the DVO being statedly crucial and no details having allegedly been filed by the assessee, is rejected.

44. The Id. CIT(A) has next observed that the Remand Report (dated 08.05.17) submitted by the A.O carries no force as the same has been prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account, and not on the basis of physical on-site examination of the work done.

45. First of all, a bare perusal of the Remand Report dated 08.05.2017 shows that the same has not been prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account, as erroneously observed by the Id. CIT(A). The Remand Report makes mention of, nay states categorically [Para (i)], that for ascertaining the WIP of Rs.50,91,92,350/-, comprising of WIP of Rs.46,84,19,482/- acquired by the assessee from SICCL, pursuant to the MoU signed by the assessee with SICCL, and the balance amount of Rs.4,07,72,868/, contributed by SPCL, through the Partnership Deed dated 28.3.2011, the audited financial statements of SICCL, Kolkata, SPCL, Lucknow and Sahara City Homes, Bareilly, for Assessment Years 2011 - 12 and 2012 - 13 were examined [Para(i)].

46. The Remand Report further notes that other than the above, the additional evidences adduced by the assessee, by way

of audited statements and Ledger Accounts of SICCL and SPCL, for assessment year 2010 – 11, were also perused [para (i)].

47. It is only after having recorded the fact of examination/perusal of the above documentary evidences filed by the assessee (some of them on the requisition of the AO himself), that the AO notes in the Remand Report, that the cumulative WIP amounting to Rs.50,91,92,350/- appears in Schedule 3 forming part of the inventory, totaling to Rs.62,23,15,822/- appearing in the Balance Sheets of Sahara City Homes, Bareilly, for the year ended 31.3.2011 and not being routed through the related Profit and Loss Account as closing stock, since the firm was in operation for only three days during Financial Year 2010 – 11 pursuant to execution of the Partnership Deed on 28.3.11, and that subsequently, the WIP of Rs.50,91,92,350/- appears as part of opening inventories totalling to Rs.62,23,15,822/- in the Profit and Loss Account for the year ending 31.3.2012 [Para (i)].

48. And the Remand Report does not conclude the issue at that! It goes on to state that further, by way of a specific Query Letter dated 17.4.2017 [a copy whereof was also enclosed with the Remand Report and submitted to the Id. CIT (A)], the assessee firm was directed to furnish the details of any construction/development activities resulting in the WIP in question, the real estate projects carried on by it, and the relevant approvals and permits regarding change of land-use, and environmental clearances, etc., relating thereto. The Report states that in its Reply (a copy of which was enclosed with the Remand Report dated 24.4.17), the assessee firm had said that it had carried out activities relating to site clearing, levelling, landfilling, removal of boulders, excavation and watering, etc., to consolidate the land holdings contributed by the transferors, etc.

The Report states that the relevant approvals and permits, etc., from the concerned authorities, in respect of the projects under consideration, which are relevant approvals and permits, etc., and which were being enclosed with the Remand Report, for the perusal of the Id. CIT(A), had also been furnished by the assessee. The Report states that in the same reply, the assessee had informed that the transfer of WIP by SICCL to the assessee firm during Financial Year 2010 – 11 had been accepted during scrutiny assessment proceedings by SICCL's AO, viz., the DCIT, Circle 1, New Delhi, and that he had added notional profit on the said transfer, vide his order dated 20.11.14, passed under sections 143(3)/142(2A) of the Act, subsequent to special audit of the accounts of SICCL, under section 142(2A) of the Act. The Report states that likewise, as per the same Reply, the assessee had informed that no adverse finding, as regards the WIP transferred by SPCL to the assessee firm, had been given in its assessment order dated 27.3.14, for Assessment Year 2011 –12, passed by the DCIT, Central Circle – 6, New Delhi. The Report states that copies of the said assessment order had been enclosed by the assessee with its Reply dated 24.4.17.

49. Thus, the Remand Report dated 08.05.2017 has certainly and evidently not been prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account. Conversely, it has been prepared after taking into consideration, the following documentary evidences, as furnished by the assessee, some (as indicated) on the asking of the AO himself:

- (a) The Audited Financial Statements of SICCL, for assessment year 2011-12.
- (b) The Audited Financial Statements of SICCL, for assessment year 2012-13.
- (c) The Audited Financial Statements of SPCL, for assessment year 2011-12.

- (d) The Audited Financial Statements of SPCL, for assessment year 2012-13.
- (e) The Audited Financial Statements of Sahara City Homes, Bareilly, for assessment year 2011-12.
- (f) The Audited Financial Statements of Sahara City Homes, Bareilly, for assessment year 2012-13.
- (g) The Related Ledger Account, concerning the WIP transaction, in the books of SICCL.
- (h) The Related Ledger Account, concerning the WIP transaction, in the books of SPCL.
- (i) The Related Ledger Account, concerning the WIP transaction, in the books of Sahara City Homes, Bareilly.
- (j) Confirmatory statement of SICCL.
- (k) Confirmatory statement of SPCL.
- (l) Confirmatory statement of Sahara City Homes, Bareilly.
- (m) The Audited financial statements of SICCL, for assessment year 2010-11.
- (n) The Audited financial statements of SPCL, for assessment year 2010-11.
- (o) Ledger Account of SICCL, for assessment year 2010-11.
- (p) Ledger Account of SPCL, for assessment year 2010-11.
- (q) Relevant approvals and permit from concerned authorities (summoned by the Assessing Officer himself).
- (r) Assessment order dated 20.11.2014, in the case of SICCL, for assessment year 2011-12.
- (s) Assessment order dated 27.3.14, in the case of SPCL, for assessment year 2011-12.
- (t) Assessee's reply dated 24.4.17, filed by the assessee before the Assessing Officer in response to the Assessing Officer's query letter dated 17.4.17, in the remand proceedings.

50. Therefore, on the face of it, the finding of the ld. CIT(A) that the Remand Report dated 08.05.2017 was prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account, is ipso facto incorrect.

51. Apropos the ld. CIT(A)'s observation that the Remand Report is not based on physical on-site examination of the work done, the voluminous documentary evidences filed by the assessee before the AO in support of the WIP, as discussed hereinabove, were furnished before the ld. CIT(A) too. We had, as stated hereinabove, requested the ld. D.R. to check from the ld. CIT(A)'s record and confirm as to whether these documentary evidences were actually filed before the ld. CIT(A), which, on having seen such record, she has not been able to deny. The ld. CIT(A) has not made any adverse comments on even a single piece of all these evidences, meaning thereby, that he did not find anything which could have countered or rebutted or contradicted these evidences. They remained unshaken. And this being so, in order to decide the correctness or otherwise of the additions made under sections 69C and 68 of the Act, there arose no need of physical examination of the work done. It remained undisputed that the works-in-progress had been acquired by the assessee as they were and nothing had been, as could not have been, added to them by the assessee firm in its life span of a mere three days during the relevant year. Even as per the Remand Report dated 08.05.2017, the works-in-progress were found to have been duly accounted for in the audited financial statements and Ledger Accounts of SICCL and SPCL, for assessment year 2010 – 11, preceding the transfer of the works-in-progress to the assessee firm pursuant to the MoU and the Partnership Deed, respectively. Thereafter, the cumulative WIP, amounting to Rs.50,91,92,350/- was found to appear in Schedule 3, forming part of the inventory totalling to Rs.62,23,15,822/- appearing in the Balance Sheet of the assessee, Sahara City Homes, Bareilly, for the year ended 31.3.11, and not routed through the related Profit and Loss

Account as closing stock, since the assessee firm had remained in operation for only three days during the Financial Year 2010-11, pursuant to execution of the partnership deed on 28.3.11. The WIP of Rs.50,91,92,350/- was found to subsequently appear in the Profit and Loss Account for the year ending 31.3.2012, as part of the opening inventories totalling Rs.62,23,15,822/-. No fault was found therein, and it cannot be gainsaid that rightly so, in the presence of all the aforesaid voluminous documents of clinching unshaken evidentiary value. Therefore, in the absence of anything opposed to this evidence coupled with the undisputed fact that the assessee had not added anything further to the works-in-progress acquired by it, in its short existence of just three days during the relevant year, and despite the fact that in the next year also, the assessee had carried out only activities of site cleaning, levelling, landfilling, removal of boulders, excavation and watering, etc., so as to consolidate the land holdings contributed by its transferors, which also remained unchallenged in view of the evidences produced in the shape of the relevant approvals and permits, etc., no physical examination of the work done was called for. Rather, it would have been an exercise in futility. Only the expenditures incurred had been, the project being in its initial stage, and so, no addition having made to the physical assets, debited to the WIP Account. When the WIP thus, in fact, comprises only of expenditure like that incurred on levelling of the land, survey, fees of the municipality, salary of the staff and security charges, etc., indubitably, getting the valuation of such WIP from the DVO is infeasible. It is well settled that nomenclature is not decisive of nature. Just because expenditure was debited to the WIP Account, it could not have been concluded that the WIP Account pertained to buildings under construction, or any other asset. It is not the Revenue's case that

such debiting of expenditure to the WIP Account is not permissible. Moreover, the transfers of the works-in-progress stand accepted in the respective assessments framed in the cases of SICCL and SPCL, which fact, again, stands proved on record and remains unquestioned. As such, neither would physical examination of the work done help in adjudicating the issues, nor could the DVO carry out the valuation of the expenditure incurred on WIP. This also supports our rejection of the Department's request to remand the issue to the file of the Assessing Officer for valuation at the hands of the DVO.

52. Then, otherwise also, the requirements for making additions under sections 69C and 68 of the Act are specific and entirely peculiar thereto. They have no interplay with valuation of the works-in-progress. They operate separately in their respective distinct areas. That being so, valuation of the works-in-progress could not have any bearing whatsoever, on the additions made.

53. Therefore, even this observation of the Id. CIT(A) cannot be sustained.

54. The Id. CIT(A) further observed that when the Assessing Officer required the assessee to submit the valuation report and/or to assist the DVO in getting the valuation of the property done to ascertain the exact WIP, the assessee, for reasons best known to it, did not give any detail/assistance to the DVO, and the valuation could not be done, and that it is thus clear that the rationale of the value of the WIP has not been substantiated by the assessee.

55. It is seen, as above, that in the remand proceedings, the assessee provided full cooperation to the Assessing Officer. This fact stands acknowledged by the Assessing Officer in his Remand Report dated 08.05.2017. The assessee placed before the



Assessing Officer, all material facts and details along with the relevant documentary evidences, which were duly examined by the Assessing Officer. All these voluminous documentary evidences were also filed before the Id. CIT(A).

56. To elaborate, as stated above, the assessee had filed before the Assessing Officer as well as the Id. CIT(A), its Balance Sheet (APB:46) for the year ended 31.3.2011, Ledger Account (APB:43) of WIP as on 31.3.2011, the details of the WIP along with the evidences supporting the same (APB:178-256), etc. The Assessing Officer, in the first remand proceedings, examined the audited financial statements of SICCL, SPCL and the assessee, for Assessment Years 2011-12 and 2012-13, the related Ledger Accounts in the books of all these three parties, the respective confirmatory statements of these parties, and the audited statements and Ledger Accounts of these parties, the audited statements and Ledger Accounts of SICCL and SPCL, for Assessment Year 2010-11. The Assessing Officer found the WIPs to have been duly accounted for in the aforesaid voluminous documentary evidences, preceding the transfer of these WIPs to the assessee. The Id. CIT(A) has not made any adverse remark with regard to the said evidences.

57. The Assessing Officer also examined, and did not find any discrepancy, in the relevant approvals and permits, etc., from the concerned authorities, regarding the assessee's activities relating to site clearing, levelling, land filling, removal of boulders, excavation, etc. These evidences were also furnished before the Id. CIT(A), who too did not find any fault therein.

58. The assessee also furnished before the authorities below, assessment orders in the cases of SPCL and SICCL, for

Assessment Years 2011-12 and 2012-13 (APB:381, 444, 487 and 602). He intimated that the DCIT, Circle 1, New Delhi, i.e., the Assessing Officer of SICCL had, in scrutiny assessment, accepted the transfer of WIP by SICCL to the assessee during Financial Year 2010 – 11, and had added notional profit on the said transfer, by virtue of order dated 20.11.14, passed under sections 143 (3)/142 (2A) of the Act, subsequent to special audit of the accounts of SICCL. The assessee also stated that the DCIT, Central Circle – 6, New Delhi, the Assessing Officer of SPCL, had, in his order dated 27.3.14, passed for Assessment Year 2011 – 12, not recorded any adverse finding concerning the WIP transferred by SPCL to the assessee. The AO, in his Remand Report dated 08.05.17, has taken due note of these assessment orders passed in the cases of SICCL and SPCL, by their respective Assessing Officers. The Id. CIT (A) has also not made any adverse comment thereon.

59. As stated above, the Remand Report has not been prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account, as erroneously observed by the Id. CIT(A). The Remand Report has been prepared after examination of the several documents as stated therein.

60. Thus, the Remand Report dated 08.05.2017 has certainly and evidently not been prepared merely on the basis of the audited Balance Sheet and the Profit and Loss Account. Conversely, it has been prepared after taking into consideration, the documentary evidences, listed in 49 hereinabove.

61. Thus, the assessee had explained fully to the Assessing Officer about, and had furnished complete details related to, the

land development carried out by SICCL, SPCL, explaining how valuation was done, etc.

62. In these facts and circumstances, even this observation of the Id. CIT(A) is baseless and incorrect.

63. The CIT(A) has further observed as under:

“.....Further, no detail of customer advance with evidence has been filed before appellate stage also....”

64. The complete details about advances received from the customers, together with confirmations, had been furnished to the Assessing Officer as well as the Id. CIT(A). This has been verified by the Assessing Officer. In the Remand Report dated 08.05.2017, he has discussed this issue, and has confirmed the correctness of the claim of the assessee in the following words:

*"The fourth issue relates to addition of Rs.36,96,539/- under the head Custom or Advances as being unexplained credit u/s. 68 of IT. Act, 1961. The explanation furnished by the assessee along with relevant audited financial statements, TDS certificates in respect of payments made to customers and confirmatory statements of Sahara City Homes-Bareilly and SPCL Lucknow were examined. An amount of Rs.42,15,716/- by way of customer advances was acquired by the assessee firm from SPCL Lucknow pursuant to the deed of incorporation of the partnership firm. The same appears as Advance from customers under the head current Liabilities & Provision in Schedule 5 of the audited Balance Sheet of Sahara City Home Bareilly for the year ending 31.03.2011. Thereafter, no fresh advances were received during the F. Y. 2011-12 and after accounting for the accrued interest of Rs.2.41,955/~ and refunds to customers totaling Rs.7,61,132/- the net customer advances of Rs.36,96,539/- appear as closing balance under the head current Liabilities & Provisions in Schedule 6 of the Balance Sheet of Sahara City Homes-Bareilly as on 31.03.2012. Further, the assessment order dated 27.03.2014 of M/s. Sahara Prime City Limited (enclosed with the reply dated*

24.04.2017) for the A.Y 2011-12, relevant to the F.Y. 2010-11 passed by DCIT, Central Circle 6, New Delhi docs not record any adverse findings in respect of the issue of customer advances as reflected in its balance sheet for the year ending 31.03.2011 subsequent to transfer to the various partnership firms including SCH - Bareilly in pursuance of the partnership deed dated 28.03.2011. Accordingly no adverse Inference is being drawn as regards the objection raised by the assessee.

However, again as stated in para (iii) above, no examination of the customers as such has been possible at this ends, in view of their residing in another city and the resultant problems as stated in para (i) above.”

65. He has also confirmed that no new advances had been received during the F.Y. 2011-12. It was, therefore, that no adverse inference was drawn by the Assessing Officer. Even the Id. CIT(A) himself has not made any adverse comment on these evidences.

66. Thus, the above referred observation of the Id. CIT(A) is factually incorrect.

67. The Id. CIT(A) has further observed as under:

“....Further no detail of additions to fixed assets has been filed even at the appellate stage.”

68. In respect of additions to the assets, the assessee had furnished the complete details, which had been verified by the Assessing Officer. In the Remand Report dated 08.05.2017, he has discussed this issue and has confirmed the correctness of the claim of the assessee in the following manner:

*“(iii) The Third issue pertains to disallowance of capital expenditure of Rs.9,12,631 appearing as addition to Fixed Assets. During the course of remand proceedings it was explained by the ARs that the same were incurred on purchase of light vehicle and electrical equipment during 'the*

*financial year under consideration. The relevant purchase order, tax invoice, receipt and cheque payment detail, insurance receipt and copy of related ledger account were furnished by way of evidentiary details and examined and found to be in order. Accordingly, no adverse inference is being drawn in respect of this issue.”*

69. Here too, no adverse observation is forthcoming from the Id. CIT(A). Thus, the above referred observations of the Id. CIT(A) is also factually incorrect.

70. In respect of the expenditure incurred on W.I.P. during the year under consideration, amounting to Rs.5,42,86,466/-, it is observed that the said expenditure had been incurred on Security Expenses, Salary, Taxes paid to Local Authorities, etc. We find that the complete particulars, vouchers, bills, etc. have been verified by the Assessing Officer and the documents are available in the Paper Book filed before us. The Assessing Officer has reported in his Remand Report dated 08.05.2017 that he has examined the relevant Ledger Statements, Bills and Vouchers. Nothing adverse has been pointed out by the Id. CIT(A) in this regard too and thus, there is no ground to uphold this addition.

71. Apart from this, the conclusion of the CIT(A) is legally unsustainable, as the Assessing Officer has made additions under sections 68 and 69C of the Act, whereas the requirements of the same do not stand satisfied in the present case. The relevant portions of these sections are reproduced hereunder for the sake of ready reference:

*‘Cash credits*

*68. Where any sum is found credited **in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature & source thereof** or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so*

*credited may be charged to income-tax as the income of the assessee of that previous year:*

*Unexplained expenditure, etc.*

*69C, Where **in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure** or part thereof, or the explanation, if any, offered by him is not:, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year' (Emphasis supplied)*

72. From the above, it is amply clear that the additions under sections 68 and 69C of the Act can be made provided the transaction takes place during the previous year / financial year. Further, for making addition under section 68 of the Act, the assessee must fail to offer explanation and for making addition under section 69C of the Act, the source of the expenditure must remain unproved. In the present case, the assessee had duly explained the sources of the credit and the expenditure, respectively.

73. Further, it is apparent that the transactions pertaining to the additions made by the Assessing Officer, i.e., (i) Rs.36,96,539/- in respect of advances from customers and (ii) Rs.50,91,92,350/- in respect of opening inventory (WIP)] did not pertain to the previous year relevant to A.Y. 2012-13, but the same are related to the previous year relevant to A.Y. 2011-12. Therefore, these additions are not in accordance with the provisions of Sections 68 and 69C of the Act.

74. For all the above reasons, we are not satisfied about the correctness of the additions made by the Assessing Officer and confirmed by the Id. CIT(A) in respect of Capital Expenditure of Rs.9,12,631/-, Closing Balance of Customer Advance of

Rs.36,96,539/-, Expenses incurred on W.I.P. during the year of Rs.5,42,86,466/- and Expenses incurred on W.I.P. in the last year, i.e. assessment year 2011-12 of Rs.50,91,92,350/-. Accordingly, we direct the deletion of the same by accepting Ground Nos.1 to 4 of the Concise Grounds of Appeal.

75. Now we take up Ground no.5 of the Concise Grounds of Appeal, which deals with the directions of the Id. CIT(A) to the Assessing Officer to reopen the assessment for Assessment Year 2011-12.

76. In para 15 of the appellate order, the CIT(A) has directed the Assessing Officer to issue notice under section 148 of the Act in the case of assessee for A.Y. 2011-12 on a protective basis to protect the interests of the Revenue. In this regard, the assessee has raised the following contentions:

(I) The direction issued by the CIT(A) is beyond his jurisdiction as per section 251 of the Act and hence, such direction is bad in law.

77. It is stated that the first appellate authority has no jurisdiction to direct the Assessing Officer to bring the amount to tax in another assessment year. The appellate authority has to decide the matter relating only to the assessment year before him and not to any other year which he is not in seisin of. The CIT(A) has no power to give direction to the Assessing Officer for reopening of the completed assessment. Such directions are entirely uncalled for and are required to be expunged. In this respect reliance has been placed on the following case laws:

- a. Mrs. R. H. Dave v CIT [140 ITR 1035 (Cal)] (ABP 640-645).
- b. ITO v Murlidhar Bhagwan Das [52 ITR 335 (SC)] (ABP 646-666).

- c. N. Kt. Sivalingam Chettiar v CIT [66 ITR 586 (SC)] (ABP 667-671).
- d. Bakshish Singh v ITO [93 ITR 178 (Cal)] (ABP 721-729).
- e. Order of the ITAT, Kolkata Bench, in the case of ITO v. Sri Biswajit Chatterjee in ITA no. 565/Kol/2013 dated 10.11.2017 (ABP 672-679).
- f. Order of the ITAT, Indore Bench, in the case of ACIT v. Shri Mukesh Sharma and others in ITA(SS) no, 88/Ind/2013 dated 04.06.2019 (ABP 680-712).
- g. Order of the ITAT, Delhi Bench, in the case of Shri Sanjay Thakur v. DCIT in ITA no. 3785/DeS/2015 dated 12.07.2018 (ABP 713-720).

(II) The CIT(A), after confirming the addition in the year under consideration, cannot hold that the income has escaped assessment in the preceding assessment year.

78. It is contended that once the addition has been made as well as confirmed in A.Y. 2012-13, it cannot be said that the impugned additions constitute "escaped income" for A.Y. 2011-12, warranting issue of notice under section 148 of the Act, and that too, so as to make protective additions. Therefore, the direction issued by the CIT(A) is bad in law. In this respect, reliance has been placed on the following decisions:

- a. KIIC Investment Company v. DCIT [101 taxmann.com 19 (Mum)] (ABP 730-738).
- b. DCIT v. Bullion Investments & Financial Services (P.) Ltd. [123 ITD 568 (Bang)] (ABP 739-745).

(III) The direction given by the CIT(A) is barred by limitation as per section 150 of the Act.

79. It has been averred that the order of the ld. CIT(A) was passed on 27.11.2018 and the Assessing Officer could issue notice under section 148 of the Act for A.Y. 2011-12 only upto



31.03.2018. Therefore, the direction issued by the ld. CIT (A) is barred by limitation. In this respect, the following decisions have been cited:

- a. Order of the Tribunal, Lucknow Bench, in the case of Allahabad Bank Karamchari Co-operative Credit Society Ltd. vs. ITO [200 TTJ 905 (Luck)] (ABP 746-754).
- b. Order of the Tribunal, Lucknow Bench, in the case of Sandeep Jain vs. ITO in ITA no. 811 & 812/Lkw/2017 dated 24.08.2018 (APB 755-770).
- c. Order of the Tribunal, Lucknow Bench, in the case of Smt. Neelam Gupta vs. ITO [110 TTJ 714 (Luck)] (ABP 771-775).

80. We have carefully considered all the above contentions of the assessee. We have also considered the argument of the ld. D.R. on this issue. The first issue to be decided is as to whether, while disposing of the assessee's appeal for Assessment Year 2012-13, whether the ld. CIT(A) has power to give directions to the Assessing Officer to reopen the assessment for Assessment Year 2011-12. We find that a similar question was referred to the Hon'ble Calcutta High Court in the case of 'Mrs. R.H. Dave vs. CIT' (supra). This question was:

*"Whether, on the facts and in the circumstances of the case, the Tribunal having held that the Appellate Assistant Commissioner had no jurisdiction to direct the Income-tax Officer to bring the amount to tax in an assessment year not involved in the appeal before him, was justified in law in refusing to delete such direction given by the Appellate Assistant Commissioner?"*

81. On the above question, the Hon'ble Calcutta High Court gave the following findings:

*"The Tribunal, as we have mentioned before, came to a categorical finding that the AAC had no jurisdiction to direct*

*the ITO to bring the amount to tax in the correct assessment year, for, he could only decide the matter relating to the assessment year before him and not otherwise. This view of the Tribunal is corroborated by several decisions of the Supreme Court We may refer to the latest decision of the Supreme Court in the case of Rajinder Nath v. CIT , where the Supreme Court categorically observed that the expressions "finding" and "direction", in Section 153(3) were limited in meaning. The Supreme Court observed that a finding given in an appeal, revision or reference, arising out of assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the assessee and in relation to the particular assessment year; to be a necessary finding, the Supreme Court observed, that it must be directly involved in the disposal of the case ; it was possible in certain cases that in order to render a finding in respect of A, a finding in respect of B might be called for; for instance where the facts showed that the income could belong to either A or B and to none else, a finding that it belonged to B or did not belong to B, would be determinative of the issue as to whether it could be taxed as A's income ; a finding respecting B was initially involved as a step in the process of reaching the ultimate finding respecting A; if, however, the finding as to A's liability could be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B was an incidental finding only and it was not a finding necessary for the disposal of the case pertaining to A.”*

82. The Hon'ble Calcutta High Court finally held that the Tribunal was in error in declining to delete the directions contained in the order of the AAC.

83. A similar view has been taken by the Hon'ble Calcutta High Court in the case of 'Bakshish Singh vs. ITO' (supra), under similar facts.

84. We also find that the following observations of the Hon'ble Supreme Court in the case of 'ITO vs. Murlidhar Bhagwan Das' (supra) are directly on the issue:

*“That the expressions “finding” and “direction”, in the second proviso to section 34(3), meant respectively, a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which the appellate or revisional authority,, as the case may be, was empowered to give under the sections mentioned in that proviso. A “finding”, therefore, could only be that which was necessary for the disposal; of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner might hold, on the evidence, that the income shown by the assessee was not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context was that the income did not belong to the relevant year. He might incidentally find that the income belonged to another year, but that was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.”*

85. Following its above ratio, the Hon'ble Supreme Court, in its decision in the case of 'N. KT. Sivalingam Chettiar vs. CIT' (supra), observed that a finding within the second proviso to section 34(3) must be necessary for giving relief in respect of the assessment of the year in question; and that the word “finding” only covers material questions which arise in a particular case for decision by the authority hearing the case or appeal which, being necessary for the subject of the controversy between the interested parties, or on which the parties concerned have been given a hearing.

86. Similar is the view taken by the Kolkata Bench of the Tribunal in the case of 'ITO vs. Sri Biswajit Chatterjee' (supra).

87. Rejecting the argument of the Revenue that the ld. CIT(A) ought to have given directions to reopen the case of the earlier year, the Tribunal referred to the power of the ld. CIT(A) under section 251 of the Act, and following the decision of the

Hon'ble Supreme Court in the case of 'ITO vs. Murlidhar Bhagwan Das' (supra), it categorically held that the ld. CIT(A) has no power under the provisions of the law for giving any direction to the Assessing Officer for reopening of the assessment. It was further held that the appeal before the ld. CIT(A) is confined to the particular assessment year which is before him.

88. The Indore Bench of the Tribunal, in the case of 'ACIT vs. Mukesh Sharma' (supra), held that the ld. CIT(A) has powers to decide the appeal against the assessee, of a particular assessment, which he may confirm/reduce or enhance or annul. The order of the assessment relates to a particular assessment year or assessment years. The ld. CIT(A) is bound to adjudicate the issues emanating from the appeal for the respective assessment years. Giving directions to the Assessing Officer to consider for re-assessment for other assessment year/s, for which, no appeal is pending before the ld. CIT(A), is out of his/her jurisdiction.

89. Since no decision contrary to the above case laws has been brought to our notice, respectfully following the above decisions of the Hon'ble Supreme Court, High Courts and the Tribunal, we are of the view that the ld. CIT(A) had no power to issue directions to the Assessing Officer to reopen the assessment for Assessment Year 2011-12. Apart from this, we fail to understand as to how, having confirmed all the items of additions in Assessment Year 2012-13, the ld. CIT(A) can still come to a conclusion that the income has escaped assessment. The directions given by the ld. CIT(A) are, thus, not only beyond jurisdiction, but also self-contradictory. We find our this view to be supported by the direct decisions in the cases of 'KIIC

Investment Company vs. DCIT' (supra) and 'DCIT vs. Bullion Investments and Financial Services Pvt. Ltd.' (supra).

90. Accordingly, Ground No.5 is accepted. The direction issued by the Id. CIT(A) to the Assessing Officer to reopen the assessment for Assessment Year 2011-12 is held to be unsustainable and is hereby expunged.

91. Ground No.6 is general in nature and is covered by Ground Nos. 1 to 4.

92. In respect of the other appeals (Fifteen), the assesseees have filed identically worded concise grounds of appeal. Both the parties agreed that the facts are, mutatis mutandis, exactly similar. In the light of the above discussion, we decide as under:

- (1) Ground No. 1, in respect of addition to Fixed Assets is accepted. This Ground is involved only in respect of ITA No. 31, 33, 34 & 38/LKW/2019.
- (2) Ground No. 2, in respect of addition of Closing Balance of Customer Advance, is accepted. This Ground has been raised in all the appeals, except ITA Nos. 25 & 30/LKW/2019.
- (3) Ground No. 3, in respect of addition of Expenses Incurred on W.I.P. during the year, is accepted. This Ground is involved in all the appeals.
- (4) Ground No. 4, in respect of addition of Expenses Incurred on W.I.P. during the previous year, i.e., Assessment Year 2011-12, is accepted. This Ground stands taken in all the appeals.
- (5) Ground No. 5, in respect of the directions given by the Id. CIT(A) to the Assessing Officer for reopening the

assessment of Assessment Year 2011-12, is accepted.  
This Ground is also involved in all the appeals.

(6) Ground No. 6 is general in nature and is covered by the earlier grounds of appeals.

93. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open Court on 31/01/2022.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
VICE PRESIDENT  
[A. D. JAIN]

DATED:31/01/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar