N THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.108 & 109/Bang/2012
Assessment Years: 2006-07 & 2008-09

M/s. Ind Sing Developers Pvt. Ltd. No.208, West Minister Complex 13, Cunningham Road Bangalore 560 052 **PAN NO : AABCI2107G**	**Vs.**	Deputy Commissioner of Income-tax Central Circl-2(3) Bangalore
APPELLANT		**RESPONDENT**

ITA Nos.203 & 204/Bang/2012
Assessment Years: 2007-08 & 2008-09

Deputy Commissioner of Income-tax Central Circl-2(3) Bangalore	**Vs.**	M/s. Ind Sing Developers Pvt. Ltd. Bangalore
APPELLANT		**RESPONDENT**

ITA No.348/Bang/2012
Assessment Years: 2006-07

ACIT Central Circl-2(3) Bangalore	**Vs.**	M/s. Ind Sing Developers Pvt. Ltd. Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	CA Shri G.S. Prashanth, A.R.
Respondent by	:	Shri Dilip, Standing Counsel

Date of Hearing	:	13.05.2022
Date of Pronouncement	:	18.07.2022

O R D E R

PER PENCH:

1 The appeals for assessment years 2006-07 & 2008--09 are cross appeals and appeal for 2007-08 by department directed against the common order of CIT(A) dated 30.11.2011. Certain issues in these appeals are common and thus they are clubbed together, heard together and disposed of by this common order for the sake of convenience.

Assessment Year: 2006-2007

2. **ITA No.108/Bang/2012 by the assessee and ITA No.348/Bang/2012 by the department:**

3. The first ground in this appeal is with regard to invoking the jurisdiction u/s 153A of the Income-tax Act,1961 ['the Act' for short]. The contention of the Ld. A.R. is that mandatory condition to invoke the jurisdiction u/s 153A of the Act did not exist, as such issue of notice u/s 153A of the Act is bad in law. He relied on the judgement of jurisdictional High Court in the case of C. Ramaiah Reddy Vs. ACIT (339 ITR 210).

3.1 We have heard the rival submissions and perused the materials available on record. In this case, there was search u/s 132 of the Act on 26.8.2008. Consequently, notice u/s 153A of the Act dated 11.11.2009 was issued seeking assessee to file the return of income which was served to the assessee on 20.11.2009, consequent to which assessee filed a letter dated 8.9.2010 stating that the return filed u/s 139 of the Act on 13.11.2007 may be

treated as return filed in response to notice u/s 153A of the Act. Now the contention of the Ld. A.R. is that the mandatory condition to issue notice u/s 153A of the Act were never fulfilled, as such, assessment to be quashed. In our opinion, the assessee not able to demonstrate how the condition laid down u/s 153A of the Act has not been fulfilled. More so, assessee is dis-entitled to agitate the issue with regard to the validity of the search proceedings in view of the amendment to section 132 of the Act by insertion of explanation by Finance Act, 2017 with retrospective effect from 1.4.1962, which reads as follows:-

> "Explanation - 1: For the removal of doubts it is hereby declared that the reason to believe as recorded by income tax authorities under this sub-section shall not be disclosed to any person or any authority or the Appellate Tribunal."

3.2 In view of the above retrospective amendment, we are inclined to hold that the assessee is precluded from challenging the validity of invoking jurisdiction u/s 153A of the Act. Accordingly, this ground of assessee is dismissed.

4. Next ground in assessee's appeal in ITA No.108/Bang/2012 is with regard to sustaining addition of Rs.17.64 lakhs in respect of unproved debts in the case of Shri Raghunatha (Chaitanya Properties) out of Rs.57.11 lakhs.

4.1 The revenue is also in appeal before us on this issue in ITA No.108/Bang/2012 is with regard to the deletion of Rs.39.47 lakhs out of Rs.57.11 lakhs made by the AO towards unproved credits.

4.2 Facts of the case are that assessee shown an amount of Rs.57.11 lakhs as payable to Shri Raghunatha of Chaitanya

Properties. The assessee furnished confirmation from Shri Raghunatha, which shows an amount of Rs.74.75 lakhs is due from assessee. Since there is a difference between confirmation filed from Shri Raghunatha and amount shown by assessee I.e. (Rs.74.75 lakhs - Rs.57.11 lakhs) at Rs.17.64 lakhs that amount has been sustained by Ld. CIT(A) as against Rs.57.11 lakhs addition made by AO. Against this, both the parties in appeal before us.

4.3 The Ld. A.R. submitted that the assessee owed a sum of Rs.57.11 lakhs to Mr. Raghunatha of Chaitanya Properties as on 31.3.2006. The assessee has produced the ledger extract of assessee's account in the books of Mr. Raghunatha for verification by AO, which depicted a sum of Rs.74.75 lakhs as receivable from the assessee as against Rs.57.11 lakhs shown by the assessee in his books of accounts. The AO made addition of a sum of Rs.57.11 lakhs as bogus credit as the parties has not confirmed credits. According to the Ld. A.R., the assessee has furnished all necessary details and assessee's books shows an amount of Rs.57.11 lakhs as payable to Mr. Raghunatha though Mr. Raghunatha's books of accounts shown Rs.74.75 lakhs. According to the Ld. A.R., there is no reason to make an addition of Rs.17.64 lakhs being the difference between the amount due as per assessee's books and that of Mr. Raghunatha's books. Any entry other than the entry shown in the books of accounts of the assessee cannot be considered as unexplained entry in the hands of the present assessee u/s 68 of the Act. He submitted that lower authorities without verifying the genuineness of the transaction, the additions were made in the hands of the assessee and on this reason also, the department's appeal on this issue to be dismissed.

4.4 On the other hand, Ld. D.R. submitted that the assessee has not explained the difference between the assessee's books of accounts and books of accounts maintained by Mr. Raghunatha. Hence, the addition made by AO to be sustained.

4.5 We have heard the rival submissions and perused the materials available on record. In this case, assessee's books of accounts shown the credit balance of Rs.57.11 lakhs in the name of Mr. Raghunatha of Chaitanya Properties as against this Mr. Raghunatha shown a sum of Rs.74.75 lakhs. Now the contention of the Ld. D.R. is that assessee has to explain at least the balance standing in his books of accounts in the name of Mr. Raghunatha at Rs.57.11 lakhs. It is to be noted that the creditor Mr. Raghunatha has confirmed the outstanding balance due to him from the assessee at Rs.74.75 lakhs. However, the contention of the Ld. D.R. is that the assessee has only explained Rs.17.64 lakhs out of Rs.57.11 lakhs. Hence, the addition of Rs.39.47 lakhs and the addition to be sustained. In our opinion, there is no merit in this argument of the Ld. A.R. There is no dispute that the confirmation given by Mr. Raghunatha of Chaitanya Properties shows an amount of Rs.74.75 lakhs. The Ld. CIT(A) deleted the addition of Rs.57.11 lakhs and treated only Rs.17.64 lakhs (Rs.74.75 lakhs - Rs.57.11 lakhs), which is over and above the amount shown by assessee in his books of accounts as unexplained credit. Primarily, u/s 68 of the Act, assessee has to explain any credits found in the books of accounts maintained by assessee in the previous year relevant to the assessment year concerned and assessee not required to explain the credits which are not appearing in his books of accounts. In other words, the assessee not required to explain the credits appearing in the books of accounts of some other party u/s 68 of the Act. In the present case, assessee has

already explained the credits an amount of Rs.57.11 lakhs which is appearing in its books of accounts for which Ld. CIT(A) have no quarrel and he has accepted to that extent. He has sustained the addition over and above Rs.57.11 lakhs, which has appeared in the books of accounts of the creditors. In our opinion, Ld. CIT(A) not justified in sustaining addition of Rs.17.64 lakhs which is not appearing in the books of accounts of the assessee and which is appearing in the books of accounts of the creditors. Accordingly, we delete the addition of Rs.17.64 lakhs also sustained by the Ld. CIT(A).

4.6 Regarding the revenue appeal is with regard to allowing the relief of Rs.39.47 lakhs and sustaining only Rs.17.64 lakhs by Ld. CIT(A) (Rs.57.11 lakhs – Rs.17.64 lakhs = Rs.39.47 lakhs. Since we have allowed the appeal of the assessee in its appeal, the sustaining addition of Rs.17.64 lakhs), which is part and parcel of Rs.57.11 lakhs, for which the department cannot have grievance as this has been duly explained by the assessee by filing the necessary intimation or letters to the tune of Rs.74.75 lakhs out of which the assessee has duly explained credit of Rs.57.11 lakhs in his books of accounts. Being so, we do not find any infirmity in the order of Ld. CIT(A). Accordingly, the deletion of addition by Ld. CIT(A) is justified. This ground raised by the assessee is allowed and department is dismissed.

5. Next ground of appeal by assessee is with regard to the sustaining addition of Rs.51 lakhs in case of unproved loans from Mr. Rajendra (Neriga Land) out of Rs.1.75 crores made by AO. An amount of Rs.1.75 crores has been given by Shri Rajendra Runwal from the period 9.12.2005 to 4.2.2006 by different DDs and cheques drawn on Canara Bank, SBM, Bank of India and Ing Vysya

Bank. The assessee shown total unsecured loans in the name of Shri Rajendra at Rs.2.26 crores. Out of this, assessee produced confirmation to the tune of Rs.1.75 crores from Shri Rajendra. Therefore, AO made addition of Rs.51 lakhs. The Ld. CIT(A) confirmed the same. Against this assessee is in appeal before us.

5.1 The contention of the Ld. A.R. is that Mr. Rajendra Runwal had paid to the assessee a sum of Rs.1.75 crores as advance towards sale of land at Neriga village on various dates during the assessment year under consideration and same was shown as a liability. The assessee repaid the same amount since the transactions were not materialized. The confirmation letter and ledger accounts were also furnished to the lower authorities for verification, which was kept on record in page 299 to 301 of paper book. It was further submitted that amount repayable to Mr. Rajendra as per assessee's books as on 31.3.2006 is shown as Rs.2.26 crores instead of Rs.1.75 crores due to wrong credit entry being passed in Rajendra's account in respect of some other parties account to whom flats were sold during the year. According to the Ld. A.R., the Ld. CIT(A) mentions that the same can only come as sale proceeds and not as a liability without appreciating the fact that the credit appearing in the account of Rajendra is on account of difference in group accounts. Thus, it is requested that difference in group accounts cannot be recorded as bogus credits in the facts of the case. Hence, addition confirmed to the tune of Rs.51 lakhs to be deleted.

5.2 The Ld. D.R. relied on the order of Ld. CIT(A).

5.3 We have heard the rival submissions and perused the materials available on record. It was brought to our notice that the

following entries were wrongly shown as received from Mr. Rajendra Runwal instead of other parties.

a) 11.3.2006	-	Rs.43 lakhs
b) 16.3.2006	-	Rs.5 lakhs
c) 18.3.2006	-	Rs.3 lakhs
Total	-	Rs.51 lakhs

5.4 Thus, there is excess credit in the name of Shri Rajendra Runwal. According to the assessee, these amounts were received from other party towards the sale of property survey nos.180 & 211 to 216 of Neriga village land to the extent of 17 acres 38 guntas. All these amounts received by assessee by cheque and the same were deposited by assessee into Vijaya Bank account No.CA1337. The assessee raised the issue that these entries are wrongly posted to the account of Rajendra Runwal, Bangalore and only a clerical mistake cropped up while maintaining the books of accounts of the assessee. The assessee produced a copy of ledger account and also confirmation letters which are kept on record in page nos.299 to 301. We have also carefully gone through the ledger account of Shri Rajendra Runwal. The assessee has to also explain from whom it has received this amount. Once the assessee proved that it is wrongly posted to the account of Mr. Rajendra Runwal instead of some other party, the addition to be deleted. In view of this, we delete this addition of Rs.51 lakhs. Accordingly, this ground of appeal of assessee is allowed.

6. Next ground in assessee's appeal is with regard to sustaining of addition of Rs.24,44,500/- as income from sale of lands from M/S Sapphire Infrastructure transaction. The revenue is also in appeal before us with regard to partially confirming addition of

Rs.24,44,500/-, out of total addition of Rs.3,09,40,750/- made AO towards sale of land from M/s Sapphire Infrastructure Pvt. Ltd.

6.1 Facts of the case are that the assessee had agreed to sell certain extent of lands to M/s. Sapphire Infrastructure Pvt. Ltd., which was floated by Sri. Kuppendra Reddy and Others. The assessee had received Rs.6,28,68,750/- on various dates during the FY 05-06 from the above company. According to Sri. N. Krishna, one of the Directors of the assessee company, they had entered into an oral agreement for transfer of 40 acres of land at Neriga Village at the rate of 5 to 6 lakhs per acre: Since the assessee had sold 37 acres 17 guntas of land, they had adjusted a sum of Rs.1,83,78,000/- and the balance sum of4,44,90,750/- was not adjusted. As against the assessee's version of consideration of Rs.5 to 6 lakhs per acre, Mr. Kuppendra Reddy, Director of M/s. Sapphire had stated that they had paid at the rate of Rs.15 lakhs per acre and according to them the total amount that was paid by them should have been adjusted to the extent of Rs.5,61,18,750/- for 37 acres 16 $^{1}/_{2}$ guntas (37 X Rs.15 lakhs + 16 ½ /40 XRs.15 lakhs). Accordingly, M/s. Sapphire Infrastructure had shown in their books a sum of Rs. 67,50,000/- as receivable. The A.O. noticed these aspects and had compared the outstanding shown by the assessee of Rs. 3,76,90,750/- and the receivable amount shown by M/s. Sapphire of Rs.67,50,000/- and added a sum of Rs.3,09,40,750/- as unaccounted sale proceeds.

6.2 The Ld. A.R. has argued that as per the sale deed itself, the total amount is reflected and when there is documentary evidence to show the exact amount at which it was sold, no credence should

have been given to the oral statement made by Sri. Kuppendra Reddy. It was also argued that they wanted to cross examine Sri. Kuppendra Reddy through their advocates Sri. A. Shankar and that did not materialize as on the appointed date either Sri. Kuppendra Reddy did not turn up or for whatever reasons the cross examination did not materialize. It was also argued that the A.O was not correct in mentioning that Sri. A. Shankar did not come for cross examination on the appointed day as they have submitted a letter immediately to the A.O regarding the non-appearance of Sri. Kuppendra Reddy. It was also stated that they had agreed to pay Rs. 4 lakhs for non-converted land and Rs.6 lakhs for converted land and in view of the same, Sri. M. Krishna, one of the Directors had stated that the land was agreed to be sold at an average rate of Rs.5 to 6 lakhs which is quoted by the A.O in the assessment order. It is also stated that copies of the sale deeds were produced before the A.O and when there is documentary evidence to prove their point, the A.O should not have taken cognizance of the oral statement made by Sri. Kuppendra Reddy. It was also stated that perhaps M/s. Sapphire Infrastructure Pvt. Ltd wanted to inflate their purchase expenses and hence they have stated that the lands were bought at Rs. 15 lakhs per acre. If their statement is to be believed, then it is a clear case of under valuation and the property should have been referred for under valuation which has not been done by the A.0 by writing to the Stamps and Registration Authorities. It is also stated that considering their objections, M/s. Sapphire Infrastructure initially agreed to compensate them at least to the extent of the conversion charges incurred by them for which there were some negotiations and they even refused to sign the settlement deed. The copies of the settlement deed dated 02.08.2005 signed by the assessee's representative not signed-by the representatives of M/s. Sapphire Infrastructure are

available on the records of the A.O, it is claimed. After considering the assessee's submission on this issue it is held as under:

6.3 The documentary evidences available with the A.O. and as quoted by him in his assessment order indicates receipt of Rs. 6,28,68,750/-. The ledger account of the assessee indicate receipt of only Rs.5,28,68,750/-, from M/s. Sapphire Infrastructure. The other sum of Rs.1,00,00,000/- is shown as received from Sri. Venkatramana of M/s. Sapphire Infrastructure though the entire sum of Rs.6,28,68.750/- was received from Corporation Bank, Koramangala either by cheque or DD. Out of this sum of Rs. 1,00,00,000/-, Rs.32 lakhs was adjusted towards sale of land and the balance amount of Rs.68,00,000/- was shown as payable to Sri. Venkata Ramana as reflected in the balance sheet. Out of Rs.5,28,68,750/- the assessee has accounted sale of land to the extent of Rs.1,31,78,000/- vide documents no. 5411/05-06 dated 14.07.2005 for Rs.1,03,20,000/- and document no.5408/05-06 dated 14.07.2005 for Rs.28,58,000/-. Besides the same, on 14.07.2005 the assessee has accounted Rs. 20,00,000/- receipt of land developmental expenses received to develop the land as per the advice of M/s. Sapphire. However, the assessee was willing to settle at Rs. 6lakhs per acre as per one of the sheet of paper submitted before the appellate authority. This shows a settlement amount of Rs.34,42,500/- besides sale consideration of 21,03,20,000/- for 22 acres 37 $^{1}/_{2}$ guntas of land at the rate of Rs. 6 lakhs per acre. Similarly, the assessee had offered a further sum of Rs.9,52,000/-besides sale consideration of Rs.3,58,000/- towards 6 acres 14

guntas converted agricultural land, which again works out to Rs. 6 lakhs per acre. In effect, the assessee was willing to settle for a further sum of Rs.34,42,500/-towards 22 acres 37 $^{1}/_{2}$ guntas and Rs.9,52,000/- in addition to the documented sale consideration of Rs.28,50,000/- for 6 acres 14 guntas. However, the copy of the ledger account shows settlement of sum of Rs.20 lakhs only on the same date i.e. 14.07.2005. In all probability, this should be in addition to the documented sale consideration for these 2 lands only. Though the seized document indicates receipt of sale consideration in respect of the other 2 lands vide document no.6938/05-06 dated 03.08.2005 sold by Sri. Narasimha Murthy on behalf of the assessee to the extent of 6 acres 25 guntas for a sum of Rs.19,87,500/- and a proposed settlement for a further sum Rs.6,62,500/-, which is only signed by Sri. Narasimha Murthy but not by Sri. Venkata Ramana, since that mentions the receipt of Rs.6,62,500/- by cheque no.693548 drawn on Corporation bank, Koramangala, both these amounts are to be regarded as received towards sale of the land (unfortunately the cheque no. 693548 of corporation bank, Koramangala Bangalore, dated 22.06.2005 is for a sum of Rs.1,00,00,000/- and the same no. is mentioned for Rs.6,62,500/- putting the date as 21.06.2005 - perhaps a sum of Rs.6,62,500/- was proposed to be set off against Rs. 1,00,00,000/-received on that date). Similarly, vide document no.6934/05-06 dated 03.08.2005 sold by him on behalf of the assessee Sri. Narasimha Murthy to the extent of 1 acre 20 guntas for a sum of Rs.1,50,000/- and a proposed settlement for a further sum of Rs.4,50,000/-, which is only signed by Sri. Narasimha Murthy but not by Sri. Venkataramana, since that mentions the receipt of Rs.4,50,000/- by cheque no.693548 drawn on Corporation bank, Koramangala, both these amounts are to be

regarded as received towards sale of the land (unfortunately the cheque no. 693548 of Corporation bank, Kormangala Bangalore, dated 22.06.2005 is for a sum of Rs.1,00,00,000/-and the same no. is mentioned for Rs.4,50,000/- putting the date as 21.06.2005 - perhaps a sum of Rs.4,50,000/- was proposed to be set off against Rs.1,00,00,000/- received on that date). In view of non accounting of these transactions the following picture emerges:

Sale consideration	Settlement	
(1) unaccounted sale proceeds Document no. 6398/05-06 dated 03.08.2005, Sri. Narasimha Murthy Extent : 6 acres 25 guntas	19,87,500/-	6,62,500/-
(2) unaccounted sale proceeds Document no. 6394/05-06 dated 03.08.2005 - Sri. Narasimha Murthy Extent : 1 acre 20 guntas	1,50,000/-	4,50,000/-
(3) settlement amount in respect of Document no. 544/05-06 Dated 14.07.2005 - D. Nanda Kumar Extent : 22 acres and 37 $^{1}/_{2}$ guntas	NIL	34,42,500/-
(4) Settlement amount in respect of Document no. 5408/05-06 Dated 14.07.2005 - C. Narasimha Murthy Extent : 06 acres and 14 guntas	NIL	9,52,000/-
Total	21,37,500/-	55,07,000/-
Less: accounted in books of the appellant on 14.07.2005 under the head land developmental expenses received as per advice of M/s. Sapphire (journal entry only)	NIL	20,00,000/-
Balance initially proposed to be treated as unaccounted	21,37,500/-	35,07,000/-
Less: Accounted in the case of Sri. A. Venkataramana	1,50.000/-	6,62,500/-
	19,37,500/-	4,50,000/-

BALANCE	50,000/-	23,94,500/-

6.4 Similarly, the settlement amount of Rs.55,07,000/- is accounted only to the extent of Rs.31,12,500/- thus not accounting a sum of Rs.23,94,500/-(Rs.55,07,000 - Rs.31,12,500). Also in view of arithmetical error a sum of Rs.19,37,500/- only is accounted in respect of document No.6938 instead of Rs.19,87,500/- thus not accounting Rs. 50,000/-. Hence a sum of Rs.24,44,500/(Rs.50,000/- + Rs.23,94,500/-) is confirmed in place of Rs.3,09,40,750/- added by the A.O. In holding so, the following aspects are considered.

(i) Sri. M. Krishna one of the Directors had confirmed that they had sold the land at a cost of Rs. 5 to 6 lakhs per acre.

(ii) The documents indicate sale value of less than Rs.6 lakhs per acre.

(iii) Sri. Kuppendra Reddy's oral statement that they had bought the land at Rs. 15 lakhs per acre has no evidentiary value as it is not supported by any documents.

(iv) Giving Rs. 15 lakhs per acre and registering it for a sum of Rs. 6 lakhs or less than Rs. 6 lakhs is an offence under the Stamps and Registration Act.

(v) The agricultural lands were agreed to be sold at Rs.4 lakhs per acre and non-agricultural lands were agreed to be sold at Rs.6 lakhs per acre as per the details available on record.

(vi) The detailed legal notice issued by M/s. Sapphire Infrastructure dated 12.11.2008 and the appellant's reply to them dated 29.11.2008 indicate serious differences regarding the agreed consideration per acre of land which is an indication to conclude that the

appellant did not receive Rs. 15 lakhs per acre as sale consideration.

6.5 The Ld. A.R. submitted that the assessee had an agreement with M/s Sapphire Infrastructure Pvt. Ltd. to transfer about 40 acres of land for a consideration of about Rs.5-6 lakhs per acre. In connection with the said agreement, the assessee had received Rs.6,28,68,750/- from M/s. Sapphire on various dates during the year under consideration. Out of the said amount, Rs.1,00,00,000/- was received by Mr. Venkataramana, Director of M/s. Sapphire. The copy of ledger extract of M/s. Sapphire was also produced for verification. During the year under consideration, the assessee transferred about 36 acres 20 guntas in favour of the nominees of M/s Sapphire including transfer of certain lands to Mr. Venkataramana for Rs.32,00,000/-. In respect of the lands registered in favour of the nominees of M/s Sapphire and Mr. Venkataramana, the assessee declared Rs.l,83,78,000/- as income and duly offered the same for tax. It is further submitted by Ld. A.R. that the assessee had shown Rs.3,76,90,750/- (advance of Rs.6,28,68,750 *minus* income offered of Rs.1,83,78,000 *minus* amount reflected in Mr. Venkataramana's ledger account of Rs.68,00,000/-) as a liability in the balance sheet since the entire lands were not registered in favour of M./s Sapphire. During the search proceedings in the case of Mr. Kuppendra Reddy, Director of M/s. Sapphire, he had stated that out of the advance received of Rs.6,28,68,750/-, a sum of Rs.5,61,68,750/- was apportioned towards the land registered and that only Rs.67,50,000/- was due from the assessee. The assessee had sought for the copies of statements recorded and for cross examination of Mr. Kuppendra Reddy and other directors of the company which was not provided by the assessing officer. The assessee had argued that as per the

sale deed itself the total amount is reflected and when there is a documentary evidence to show the exact amount, no credence should be given to oral statement and had furnished various details in this regard. The learned assessing officer merely based on the statement held that the amount due was only Rs. 67,50,000/- and the balance amount of Rs. 3,09,40,750/- was brought to tax. The officer failed to take cognizance of the legal notice issued by M/s. Sapphire and the assessee's reply to the said notice.

6.6 It is submitted that out of the income offered to tax, Rs. 1,31,78,000/- was towards land registered to M/s. Sapphire, Rs. 32,00,000/- towards lands sold to Mr. Venkataramana and Rs. 20,00,000/- towards settlement deeds. The CIT(A) accepted the submissions made by the assessee that the oral statement made has no evidentiary value as it is not supported by any documents. The department cannot rely on the statement recorded form Mr. Kuppendra Reddy ignoring the registered documents and that to without giving an opportunity of cross examining the said person. The said person might have given statements to suit his tax issues and reduce his liability and the statement so recorded is contrary to the legal notice issued by the said person. When documentary evidence is available which is contrary to the statement made by the said person then the oral statement has to be ignored is settled position of law. The learned Commissioner held that out of the total settlement amount of Rs.55,07,000/- the assessee had accounted only Rs.31,12,500/- and confirmed an addition to the tune of Rs.23,94,500/- [being difference between Rs.55,07,000/- & Rs.31,12,500/-] and further a sum of Rs.50,000/- was also confirmed by holding that the assessee due to arithmetical error accounted the sale consideration in respect of document No.6938 only a sum of Rs.19,37,500/- as

against Rs.19,87,500/-, in aggregate the learned CIT(A) confirmed a sum of Rs.24,44,500/- [Rs.23,94,500/- + Rs.50,000/-] on this account. It is submitted that the assessee had accounted the settlement amounts properly in the books of account and thus the addition confirmed by the learned CIT(A) to the tune of Rs. 24,44,500/- is against the facts of the case and needs to be deleted in the interest of equity and justice. Further the department has also filed an appeal for confirming an amount of Rs. 24,44,500/- as against the addition made of Rs. 3,09,40,750/-. It is submitted that the learned Commissioner has looked into the documents and has provided proper findings and the assessing officer ought to have summoned Mr. Kuppendra Reddy in order to prove the genuineness of the claim made by him. Thus, the appeal filed by the department be dismissed and that of the assessee be allowed for the advancement of substantial cause of justice.

6.7 Ld. D.R. submitted that the Ld.CIT(A) erred in holding that the oral statement of Sri. Kuppendra Reddy Director of Sapphire Infrastructure (P) Ltd has no evidentiary value, ignoring the fact that the said statement was recorded on oath and legal consequences were made aware before recording the statement. The Ld. CIT(A) ignored and overlooked the fact that his statement was further supported by way of details containing, how the amount of Rs.5,61,18,750/- was adjusted towards purchase of lands 37 Acres 17 Guntas in the books of Sapphire Infrastructure (P) Ltd. The amount adjusted of Rs.5,61,18,750/- for 37 Acres 17 Guntas works out to Rs.15 Lakh /Acre which authenticates statement of Shri Kuppendra Reddy that their company has purchased lands at Rs.15 Lakh/Acre. The Ld. CIT(A) failed to appreciate that mere and casual denial by the assessee company that they have not

received Rs.15 Lakh/Acre shall not wash away the truth and facts brought away by the assessing officer during assessment on the basis of:-

i) -Sworn statement of Shri. Kuppendra Reddy Director of Sapphire Infrastructure (P) Ltd.

ii) Amount received from Sapphire Infrastructure (P) Ltd

iii) The Manner how the amount was adjusted towards lands purchased the area of lands registered and the amount adjusted on various dates.

iv) Financial Statements

6.8 The Ld. D.R. further stated that the Ld. CIT(A) over looked the vital and relevant fact that the assessee's books of accounts did not reflect a*+ real and true picture of sale of lands. The Ld. CIT(A) ignored the reliable evidence on record that assessee has accounted a lower figure than the actual sale consideration which was correctly accounted/adjusted in the books of M/s. Sapphire Infrastructure Pvt. Ltd. The Ld. CIT(A) failed to consider the crucial and legally significant fact that the assessee has knowingly suppressed the actual receipts for sale of lands with a motive to evade payment of taxes by falsification of accounts.

6.9 We have heard the rival submissions and perused the materials available on record. In this case, assessee agreed to sale certain land to M/s. Sapphire Infrastructure Pvt. Ltd. Consequent to which assessee received an amount of Rs.6,28,68,750/- on various dates in the financial year 2005-06 from the above

company. According to assessee, there was an oral agreement for sale of 10 acres of land @ 5 to 6 lakhs per acre. Assessee has sold during the period 37 acres 17 guntas of land and adjusted an amount of Rs.1,83,78,000/- and balance amount was Rs.4,44,90,750/-. According to the ASO, M/s. Sapphire Infrastructure company has paid an amount of Rs.15 lakhs per acre. According to them the total consideration for 37 acres 16.5 guntas works out at Rs.5,61,18,750/-. Accordingly, M/s. Sapphire company shown outstanding amount of Rs.67.5 lakhs as receivable in their books of accounts. Accordingly, AO arrived profit on these transactions at Rs.3,09,40,750/- as unaccounted sale proceeds. However, Ld. CIT(A) sustained only addition of Rs.24,44,500/- out of Rs.3,09,40,750/-made by AO. In our opinion, the basis for addition made by AO is with regard to oral statement made by Shri Kuppendra Reddy. The assessee has asked for cross examination of Mr. Shri Kuppendra Reddy before AO. On the appointed day Mr. Kuppendra Reddy failed to appear before cross examination. Contrary to this, AO recorded that assessee's counsel A. Shankar failed to come for cross examination on the appointed day. The Ld. A.R. pleaded that assessee has filed a letter on the appointed day stating the non-appearance of Kuppendra Reddy. However, AO records contrary to these facts. It is also brought on record by the Ld. CIT(A) that one Mr. Shri M. Krishna who is the director of Sapphire Infrastructure company stated that they have agreed to pay sum of Rs.4 lakhs for non-converted land and Rs.6 lakhs for converted land and these facts has been recorded by AO that they agreed to sale the said land for average rate of Rs.5 to 6 lakhs. Further, copies of sale deeds shown the sale deed value as mentioned in the books of accounts of the assessee. The AO instead of considering the value mentioned in the sale deed, he has gone by the oral statement of Mr. Kuppendra Reddy for which also

no opportunity of cross examination of him has been provided by AO in respect of specific request by assessee's side. As held by Hon'ble Supreme Court in the case of Kishinchand Chellaram Vs. CIT 125 ITR 713 (SC), wherein it was held that "evidence collected from the witness cannot be considered without giving an opportunity of cross examination to the assessee". In the aforesaid case the Hon'ble Supreme Court held as under:-

> *"Held, reversing the decision of the High Court, (i) on the facts, that the two letters dated February 18, 1955 , and March 9, 1957 did not constitute any material evidence which the Tribunal could take into account for the purpose of arriving at the finding that the sum of Rs.1,07,350 was remitted by the assessee from Madras, and if these two letters were eliminated, there was no material evidence at all which could support its finding. The statements of managers in those two letters were based on hearsay, as in the absence of evidence, it could not be taken that he must have been in charge of the Madras office on October 16, 1946, so as to have personal knowledge. The department ought to have called upon the manager to produce the documents and papers on the basis of which he made the statement and confronted the assessee with those documents and papers. It was true that proceedings under the income-tax law were not governed by the strict rules of evidence, and, therefore, it might be said that even without calling the manager of the bank in evidence to prove the letter dated February 18, 1955, it could be taken into account as evidence. But before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. Nor was there any explanation regarding what happened when the manager appeared in obedience to the summons referred to in the letter dated March 9, 1957, and what statement he had made."*

6.10 Further, the Hon'ble Calcutta High Court in the case of *CIT v. Eastern Commercial Enterprises, 210 ITR 103 (Cal)* held as follows:-

> *"8. We have considered the contesting contentions of the parties. It is true that Shri Sukla has proved to be a shifty person as a witness. At the earlier stages, he claimed all his sales to be genuine but before the Assessing Officer in the case of the assessee, he disowned the sales specifically made to the assessee. This statement can at the worst show*

that Shri Sukla is not a trustworthy witness and little value can be attached to what he stated either in his affidavits or in his examination by the Assessing Officer. His conduct neutralises his value as a witness. A man indulging in double-speaking cannot be said by any means a truthful man at any stage and no court can decide on which occasion he was truthful. If Shri Sukla is neutralised as a witness what remains is the accounts, vouchers, challans, bank accounts, etc. But, we would observe here that which way lies the truth in Shri Sukla's depositions, could have been revealed only if he was subjected to a cross-examination by the assessee. As a matter of fact, the right to cross-examine a witness adverse to the assessee is an indispensable right and the opportunity of such cross-examination is one of the corner-stones of natural justice. Here Shri Sukla is the witness of the Department. Therefore, the Department cannot cut short the process of taking oral evidence by merely having the examination-in-chief. It is the necessary requirement of the process of taking evidence that the examination-in-chief is followed by cross-examination and re-examination, if necessary.

9. It is not just a question of form or a question of giving an adverse party its privilege but a necessity of the process of testing the truth of oral evidence of a witness. Without the truth being tested no oral evidence can be admissible evidence and could not form the basis of any inference against the adverse parties. We have also examined the records and we find that this Shri Sukla was examined by a number of officers. The Assistant Director of Investigation examined him on August 4, 1987, and in reply to question No. 2 in that deposition he confirmed that he was a dealer in lubricating oil since 1977. In reply to question No. 3, he confirmed having been assessed to income-tax. Again, in reply to question No. 4, he explained that he used to purchase lubricating oil from different garages as well as through various brokers. Such lubricating oil was processed by him in his factory for sale. All payments were received by him through account payee cheques. In reply to question No. 5, he stated that he had seven full-time employees whose names are mentioned by him. He also claimed to have maintained books of account like sales books, purchase books, cash books and sale bills. In reply to question No. 18, he, on his own, stated that his big customers were the Reliance Oil Mills and Eastern Commercial Enterprises, the assessee, in the present reference. As for his cash withdrawals, he explained that his business required ready cash for purchase of raw materials which explained his large drawings of cash from the bank. Learned counsel then cited a host of decisions to bring home the point that no evidence or document can be relied upon unless it is shown to the assessee. Kishanchand Chellaram v. CIT. Similarly, the requirement of cross-examination as the requirement of the rules of natural justice has been underlined by the Bombay High Court in VasanjiGhela and Co. v. CST [1977] 40

STC 544. It is trite law that cross-examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him.

10. In any case, we have nothing to rely upon to come to a decision this way or the other. The first thing is that which of the statements of Shri Sukla is correct, is anybody's guess. Therefore, it is necessary to delve out the truth from him and for that matter a cross-examination is necessary. Secondly, if the statement of Shri Sukla as a witness against the adverse party, the assessee, is relied upon as truthful, still remains the question of estimation of the profit. The assessee no doubt has given a comparative instance of gross profit rate but it is also necessary for the Department to come to a finding as to the norm of the gross profit on the basis of comparative cases. Therefore, it is the duty of the Assessing Officer to counter the comparative statement cited by the assessee before he can have the option to estimate the gross profit. Again, it is the comparative instance that alone can be the foundation of such estimate in case the accounts are really found to be unreliable and requiring to be rejected. Therefore, in the interest of justice for both the parties, the assessee and the Revenue, it is necessary for us to direct the Tribunal to remand the case to the Assessing Officer for reconsidering the whole matter in the light of the observations made by us in the foregoing and redo the assessment accordingly. All opportunities should be given to the assessee in order to lead any evidence that the assessee may feel necessary to rebut the case against him. As a result we decline to answer the question."

6.11 The Delhi Tribunal in *Vijay Kumar Aggarwal v. ACIT 2017 (5) TMI 1354* held that it is clear that the presumption of facts u/s 292C of the Act is not a mandatory or compulsory presumption but a discretionary presumption. Since, the word used in the said Section is "may be" and not "shall". Secondly, such a presumption is rebuttable presumption and not a conclusive presumption because it is a presumption of fact not a presumption of law. In the present case, the assessee from the very beginning stated that the documents found during the

course of search did not belong to him. Therefore, the addition made by the AO is only on the basis of surmises and conjecture without bringing any cogent material on record to substantiate that the assessee was engaged in the business of gold and jewelry and the AO had not brought any material on record to substantiate that the denial of the assessee was false.

6.12 The Bangalore Tribunal in the case of *Kirloskar Investments & Finance Ltd. v. Assistant Commissioner of Income-tax [1998] 67 ITD 504 (Bang.)* held that the provision of the copy of the statement or letters is not sufficient opportunity. Oral evidence of persons concerned with the transaction are important piece of evidence and before it could replace the written evidence, the party against whom such oral evidence is being used must be allowed the opportunity of examining the person because, both the types of evidences need to weighed properly before rejecting one for the other.

6.13 In *Sunrise Tooling Systems Pvt. Ltd v. ITO 2012 (11) TMI 1081 - ITAT Delhi*, the Tribunal held as under:-

> *"The opportunity of cross-examining, Sh. Nitin Aggarwal, a partner of Shree Laxmi Industrial Corporation has also been denied to the assessee on wrong basis by the authorities below that an opportunity of cross examines needs to be given only when third party is involved or a party not known to the assessee or a hostile witness is involved and further that the onus for cross examination does not lie with the department but lies with the assessee who allegedly made purchases in his books of accounts from the said concerns."*

6.14 Further it is to be noted that the Hon'ble Supreme Court judgment in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) wherein it was held that opportunity of cross-examination not given, leads to nullity and

assessment order to be quashed. It is also pertinent to mention herein the decision of Special Bench of the Tribunal in ACIT v. Vireet Investments (P) Ltd. 165 ITD 27 (Delhi – Trib.) (SB) wherein it was held that when two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted, which is in line with the Supreme Court judgment in the case of CIT v. Vegetable Products, 88 ITR 192 (SC). This is a well-accepted construction recognized by various courts. Accordingly, we also reject this argument of the ld. DR.

6.15 In view of the above discussion, we are inclined to delete the addition on the reason that there was no cross examination of parties concerned and also AO relying on only oral statement of Shri Kuppendra Reddy to make this addition deleted. Accordingly, the ground of assessee's appeal is allowed and revenue's appeal is dismissed.

7. Next ground in revenue's appeal is with regard to the deletion of addition of Rs.68 lakhs in respect of unproved loans in the name of Venkataramana without giving opportunity to the AO as required under Rule 46A of the I.T. Rules, 1962.

7.1 Facts of the case are that the assessee received Rs.1 crore vide cheque No.693548 dated 23.6.2005 drawn of Corporation Bank, Koramangala Branch, Bangalore from one Mr. Venkata Ramana. The said amount has been deposited into assessee's account No.1337 with Vijaya Bank, Infantry Road branch, Bangalore. The assessee adjusted Rs.32 lakhs and shown balance amount of Rs.68 lakhs as outstanding as on 31.3.2006 payable to Shri Venkata Ramana. Shri Venkata Ramana was an authorized representative of Sapphire Infrastructure company in whose name

the properties were registered. This amount of outstanding of Rs.68 lakhs is treated as unexplained income of the assessee by AO. The same was deleted by Ld. CIT(A). Against this revenue is in appeal before us.

7.2 The Ld. D.R. submitted that the Ld. CIT(A) given a relief after admitting the additional evidence without giving opportunity to AO as required under Rule 46A of the Act. According to Ld. D.R., the additions to be sustained.

7.3 The Ld. A.R. submitted that out of the advance received of Rs. 1,00,00,000/- from Mr. Venkataramana, the assessee had registered lands only for Rs. 32,00,000/- and had shown balance amount as payable. The learned assessing officer held that no confirmation was filed and brought to tax the sum of Rs. 68,00,000/- as unproved loans. The assessee had furnished ledger extracts of Mr. Venkataramana and had contended vide its submissions that the balance of Rs. 68 lakh reflected as payable is part of the Sapphire transaction. The Learned Commissioner after verifying the facts of the case deleted the additions made in this regard. It is submitted that the department has also filed an appeal contending that fresh evidence was considered by the Commissioner against the order of CIT(A) for deleting the additions made of Rs. 68,00,000/-. Further the department has also contended that the assessee's books of accounts did not reflect real and true picture of sale of lands. It is submitted that the powers of the Commissioner are co-terminus with that of the assessing officer and the assessee is entitled to file fresh evidence. Further the department ought to have rejected the books of account if the same do not reveal a true picture and ought to have estimated the income. Thus, the contention of the department that the books of

account do not reveal the true picture is unwarranted and unsustainable and therefore considering the facts and circumstances of the case, the appeal filed by the department be dismissed and that of the assessee be allowed.

7.4 We have heard the rival submissions and perused the materials available on record. In this case, there was an amount of Rs.68 lakhs outstanding in the name of Shri Venkata Ramana in the books of accounts of the assessee. According the Ld. D.R., assessee has not filed any details or confirmation from Mr. Venkata Ramana. Hence, it was treated as unproved loans. However, before the Ld. CIT(A) assessee filed the details of bank accounts and explained that said amount of Rs.1 crore has been received by assessee through cheque vide cheque no.693548 dated 23.6.2005 drawn on Corporation Bank, Koramangala bank, Bangalore and same was deposited into assessee's bank account No.1337, Vijaya Bank, Infantry Road, Bangalore and out of this Rs.32 lakhs has been adjusted towards sale of property and balance shown as credits in the name of Venkata Ramana. These facts have not been doubted by the AO. If he has any doubt regarding the genuineness of these credits, he could have issued summons to the concerned party before making such addition. He has not carried out necessary enquiry and Shri Venkata Ramana was the representative of Sapphire Infrastructure company. The Ld. CIT(A) at first appellate stage considered confirmation letter from that party, and to delete the addition. The assessee vide its letter dated 23.11.2011 filed before the Ld. CIT(A) confirmed that these details/information being submitted are the ones which were already filed/submitted during the search, post search and assessment proceedings and no new details/information being filed. As such the evidence furnished by the assessee before Ld. CIT(A)

cannot be considered as an additional evidence and on that basis the addition is deleted. Being so, we do not find any infirmity in the order of Ld. CIT(A) and the same is confirmed. This ground of appeal of revenue is dismissed.

7.5 In the result, assessee's appeal in ITA No.108/Bang/2012 is allowed and Revenue's appeal in ITA No.348/Bang/2013 is dismissed.

AY 2007-08:
ITA No.203/Bang/2012 by revenue:-

8. In ITA No.203/Bang/2012 assessment year 2007-08: The first ground with regard to the deletion of addition of Rs.6.25 lakhs by Ld. CIT(A).

Unsecured loan from Geeta Aggrawal Rs.6.25 lakhs

8.1 The assessee shown an amount of Rs.6.25 lakhs in the name of Geeta Aggrawal. The assessee explained before AO that it has received an amount of Rs.6.25 lakhs on 15.11.2006 towards sale of flat. The transaction was not materialized and in the assessment year under consideration the same has been shown as outstanding in the books of accounts of the assessee. The property was registered to the above party on 25.7.2008 and the details were furnished to AO vide letter dated 16.12.2010. However, the AO treated the same as unexplained loan credit and added the same. The Ld. CIT(A) observed that the said amount has been received on sale of Spring Field Apartment, opposite to Bellandur Gate, Sarjapur Main Road, Bangalore 560 102 and the flat was sold to Smt. Geeta Aggrawal and Shri Hari Om Aggrawal and the sale deed mentioned with PAN No. As ABNPA2921J and ABNPA2922M and

the sale deed was registered on 25.7.2008 and on that basis he deleted addition. Against this revenue is in appeal before us.

8.2 We have heard the rival submissions and perused the materials available on record. In our opinion, the Ld. CIT(A) considered the subsequent sale deed dated 25.7.2008 towards sale of flat in Springfield and apartment complex which was developed jointly with M/s. Parkway Developers and this is evidenced by the sale deed executed on 25.7.2008 between M/s. Parkway Developers and Geeta Aggrawal & Mr. Hari Om Aggrawal placed at paper book page Nos.403 to 411, which was duly brought to the notice of Ld. CIT(A) and as such the deletion of above addition is justified. This ground of appeal of the revenue is dismissed.

9. Next ground in revenue's appeal in ITA No.203/Bang/2012 is with regard to the deletion of addition of Rs.23.45 lakhs, which was made by AO as unexplained investment.

9.1 Facts of the case are that as per the seized document seized from the residence of Sri M. Krishna, he had acknowledgements for having given a sum of Rs.15 lakhs to Sri. Krishna Reddy and Sri Jagadish. This payment was made for a purpose of JDA. The assessee had filed a copy of the JDA with Sri. Krishna Reddy and Others and no further details were furnished. According to the A.O. a further sum of Rs.8,45,000/- was paid on 18.05.2006 to Sri. Krishna Reddy. The A.O. observed that the above sum of Rs.23,45,000/- paid towards the JDA is not reflected in the balance sheet of the appellant. The A.0 proposed to treat it has unexplained investment and in reply thereof the assessee stated that the JDA did not materialize and the amount was not received back and the same is

reflected in the balance sheet. Not accepting the assessee's reply, the A.0 added the same as undisclosed investment.

9.2 The ld. D.R. submitted that Ld. CIT(A) wrongly deleted the addition of Rs.23.45 lakhs which was made by AO on account of unaccounted investments that which may be sustained as the transaction was not accounted in the balance sheet of the assessee and AO is rightly taxed it as unaccounted investments.

9.3 The Ld. A.R. submitted that the assessee had entered into a JDA with Mr. C Krishna Reddy, Smt. Nagarathnamma & Mr. K Jagadish for the development of property in Sy. No. 72/2 at Mullur Village, Varthur Hobli. The assessee made payments to the tune of Rs.76,45,000/- on various dates during the impugned year to Mr. Krishna Reddy as per the terms of the JDA. The details of such payments together with the ledger extract were produced for the verification of the learned assessing officer and the amount was duly reflected in the balance sheet as advance for land purchase. The assessing officer based on the seized documents has arbitrarily added Rs. 23,45,000/- of payments made as undisclosed investment. It was submitted that the Joint Development agreement was not implemented and the same was cancelled and all payments were made through banking channels and were duly recorded. The assessing officer failed to appreciate that the impugned sum of Rs. 23,45,000/- was a part of overall JDA for which payments of Rs. 76,45,000/- were made. The learned Commissioner accepted the submissions made by the assessee and held that the impugned amount is part of the total amount shown in balance sheet at Rs. 76,45,000/- and thus the addition made in this regard was deleted. The department has filed an appeal by reiterating its stand that the transaction was not accounted in the balance sheet and failed to

appreciate the findings of the learned Commissioner that the amounts form part of the total amount shown in the balance sheet at Rs. 76,45,000/- and thus the appeal filed by the department in this regard be dismissed on the facts and circumstances of the case.

9.4. We have heard the rival submissions and perused the materials available on record. The assessee has received an amount of Rs.76.45 lakhs and an amount of Rs.8.45 lakhs vide cheque no.237577 of Vijaya Bank, Infantry Road, Bangalore on 18.5.2006 and Rs.15 lakhs vide cheque No.61812 dated 31.10.2006 of the same bank. These amounts were received by assessee vide JDA with M. Krishna Reddy and Smt. Naga Ratnamma and Shri K. Jagadish on 18.5.2006 for the development of property at Mullur village, Varthur Hobli. These payments were duly recorded in the books of accounts of the assessee and this amount of Rs.23.45 lakhs is part of total payment of Rs.76.45 lakhs which was recorded in the books of accounts of the assessee. These facts were brought to the notice of the AO at the time of assessment, however, he has ignored it and made addition of Rs.23.45 lakhs. The Ld. CIT(A) after considering entire facts and circumstances of the case deleted the addition of Rs.23.45 lakhs. We do not find any infirmity in the order of Ld. CIT(A) and this ground of revenue is rejected.

10. Next ground in revenue's appeal in ITA No.203/Bang/2012 is with regard to deletion of addition of Rs.7 crores on account of nomination fees from R. Nataraj (M/s. Shobha).

10.1. Facts of the case are that the assessee had entered into an MOU with M/s. Shobha Developers for acquisition of 75 acres of land at Mullur & Chikkabellandur for M/s. Shobha

Developers. The assessee acted as a confirming party for sale of land bearing 3 sy. nos. in all measuring about 18 acres 7 guntas and 20 guntas of karab land by Sri. D.K. Sharma for a total consideration of Rs.4,52,00,000 to Sri. R.B. Nataraj, nominee of M/s Shobha Developers. This land was sold vide sale deed dated 17.11.2006. In connection with this transaction the assessee had entered into a nomination agreement on 17.11.2006 with Sri. R.B. Nataraj and in pursuance thereof had received 7 crores from Sri. R.B. Nataraj, in consideration of nomination of all the rights acquired by the assessee company from the original vendors of the property. The assessee had shown the nomination fees received as advance and not as income. The A.O. held that the same is compensation received in addition to sale consideration, The AO proposed to treat it as income and issued a show cause notice. The assessee claimed that they had filed a reply on 14.12.2010 and vide their reply dated 29.12.2010 reiterated their earlier claim that is not income since the transaction could not be seen in isolation. It is stated that the assessee had entered into an MOU with M/s. Shobha Developers on 19.06.2006 for arranging about 75 acres of land at a cost of Rs.21,58,50,000/- per acre subject to various conditions stipulated therein. This was later amended to procure about 100 to 150 acres in and around the same place at the same agreed consideration vide supplementary agreement dated 17.11.2006. Amongst other conditions, the important ones are

(i) the land should be contiguous

(ii) the land should provide an access road of 40 feet width with clear 200 foot frontage

(iii) the property should have clear and marketable title

(iv) barbed wire had to be provided to the entire land

(v) super imposed drawing of the land clearly indicating all Sy. nos. and sub nos. shall be mentioned and

(vi) the land should fall in residential and transformation zone in the CDP.

10.2 Besides the above, the conditions included obtaining NOCs from the concerned authorities regarding land reform cases, removal of High tension lines, obtaining NOC from BDA, sorting out the ADLR problems regarding survey disputes and the issue of public notices and settlement of civil disputes regarding Hindu Succession Act, Minors' claims, Partition related issues, issues relating to Specific Performance had there been any earlier contracts etc,. It was argued that only some portions of the agreed areas were registered in the name of the nominees of M/s Shobha Developers. It was stated that copies of the sale deeds were produced for verification of the AO. It was claimed that they had received certain amount as advance in respect of this transaction and part of the same was given to the land owners. As only part of the lands were procured and registered in favour of the nominees of M/s Shobha and, the rest were pending they have considered the amount received as advances in view of non-performance of the agreed conditions. It was also pointed out that M/s Shobha Developers had accepted only Rs.18,88,87,750 as sale consideration

and had asked for returning the balance amount of Rs.34,19,92,250 out of Rs.53 crores received by them. Not accepting the appellant's contention that only a part of the contract was performed and income had not accrued to them in view of M/s Shobha's claim for returning about Rs.34.20 crores, the AO held that nomination rights of entire Rs.7 crores is assessable to tax. The AO rejected the appellant's further contention that Rs.5.50 crores out of Rs.7 crores were transferred to M/s E-City Developers and then to Mr. D K Sharma who had paid tax on the above sum. The AO also rejected the appellant's contention that only the surplus could be taxed and in view of payment of tax by Mr. D K Sharma taxing Rs.7 Crores would amount to taxing the same amount twice.

10.3. Ld. D.R. submitted that this transaction of Rs.7 crores cannot be viewed in isolation and Ld. CIT(A) not justified that AO is free to assess the income on completed contract or partial completion contract method. Accordingly, he relied on the order of AO.

10.4 On the other hand, Ld. A.R. submitted that the assessee had entered into a MOU with M/s. Sobha Developers Ltd. to procure 75 acres of land at a cost of Rs. 1, 58,50,000/- per acre on behalf of M/s. Sobha Developers at Mullur and Chikkabellandur Village, Varthur Hobli, Bangalore East Taluk. A supplementary agreement was also entered into between the assessee and M/s. Sobha. The copies of the sale deeds were produced for verification. This is not in dispute. It is submitted that the assessee, the landlords and other parties had received about Rs. 53 crores from

M/s. Sobha Developers towards the above MOU and the assessee could procure only about 55 acres out the agreed 75 acres of land. Even in this respect of 55 acres quite a number of issues were pending and for the lands situated in valley zone, the assessee was entitled to only Rs. 30 lakhs per acre. Further some portions of the agreed areas have been registered in the name of certain persons as per various sale deeds and M/s Sobha have made payments to the landlords directly. The assessee had submitted that they had received certain amount as advance in respect of the transaction and some amounts have been given directly to the land owners. In connection with the transaction, the assessee had entered into a nomination agreement in pursuance of which the assessee company received Rs. 7 crores in consideration of the nomination of all the rights acquired by the assessee from the original vendors of the property. It was submitted that the assessee had spent money in excess of Rs.7 crores to acquire rights in the various agreements thus enabling the assessee to nominate. Since the assessee had spent more money than what was received, the transaction resulted in a loss and no portion of the money received could be treated as income of the assessee. The assessee further submitted that entire transaction is under tremendous litigations and differences have arisen among the parties to the transaction. The assessee had contended that once the transaction materializes the real income would arise and that the income would be declared on actuals. The learned assessing officer did not accept the contention of the assessee and brought to tax a sum of Rs. 7 crores. It is relevant to mention that M/s Sobha have clearly indicated vide their letter that out of the advance of Rs. 53 crores only a sum of about Rs. 18.81 crores is on account of the value of the lands transferred to them and that the balance of Rs. 34.19 crores is repayable to them. Thus the impugned sum of Rs. 7 crores needs to be returned to M/s

Sobha and hence the overall effect is that the transaction will only result in a loss to the assessee. The learned CIT(A) agreed to the contentions made and after considering the submissions made, has given a clear finding in page 36 and 37 of the order that no income arose when the assessee received the said amount and the transaction cannot be viewed in isolation as the MOU was for arranging agricultural land of 75 acres and thus deleted the addition made in this regard. Further the department has filed an appeal for having deleted the addition made in this regard, considering the fact that the overall transaction with M/s. Sobha was under dispute and the impugned sum of Rs. 7 crores need to be returned to M/s. Sobha and hence by no stretch of imagination it can be added as income of the assessee. Thus, it is prayed that the appeal filed by the department in this regard be dismissed.

10.5 We have heard the rival submissions and perused the materials available on record. The assessee received an amount of Rs.53 crores as advance. Out of this M/s. Shobha has appropriated Rs.18.81 crores on account of value of lands transferred to them and the balance amount of Rs.34.19 crores shown as payable to M/s. Shobha Developers. The addition made by AO on this count is at Rs.7 crores is part of this consideration received by assessee. This amount of Rs.7 crores out of Rs.53 crores cannot be treated in isolation. The MOU was entered by assessee for arranging 75 acres of land to be handed over to Shobha Developers. There is a litigation between the parties, which is subject matter of arbitration which is pending for award. Further, as per MOU, assessee has to arrange total land of 75 acres out of this assessee arranged only 55 acres of land and 20 acres of land still to be procured and the issue is under litigation. The AO is

not justified in bringing an amount of Rs.7 crores to taxation unless the contract is completed.

10.6 Further, it is also brought to our notice that the assessee has not complied with the obligation under the MOU dated 19.6.2006 and supplement agreement dated 17.11.2006 entered by assessee with M/s. Shobha Developers Ltd. and he also gone through the relevant correspondence made by M/s. Shobha Developers Ltd. with the assessee vide letter dated 10.12.2010 placed at paper book page no.381 to 390. For brevity we reproduce the relevant para 26 to 32 of that letter, which shows that the translation was not completed and pending in the AY under consideration.

"26. We have so far registered 55 Acres 4.25 Guntas comprising Mullur and Chikkabellandur Villages. Out of this 55 Acr8 4.25 Guntas, an extent of 9 Acres 30 Guntas of land falls in Sensitive Zone and 22 Acres 17 Guntas falls under Agricultural zone and non conjoint. Thus leaving the balance extent of 22 Acres 37 Guntas. Accordingly for the registration done in our favour as stated above, we are liable to make the payment of only Rs.18,88,87,750/- as follows :

a) *For the land measuring 1 Acre 20 Guntas in Sy.No.70/1 registered prior to the Supplemental Agreement, the amount payable would be Rs.2,30,25,000/- calculated @1,53,50,000/- per Acre*
b) *For the lands fall under sensitive and valley zone, the amount payable would be only Rs.90,00,000/- calculated @ Rs.30,00,000/- per acre from and out of total of 9 Acres 20 Guntas falling in Sensitive & Valley Zone as we were not required to make any payments for the lands exceeding 3 acres until the terms of the MoU was complied by getting the said Valley Zone land converted into residential and/or transformation zone*
c) *For the land measuring 22 Acres 17 Guntas in Chikkabellandur Village, which are in agricultural zone and non conjoint, we are not liable to make any payment until the said lands were converted to residential and/or transformation zone and the gaps between the lands were also conveyed to us or our nominee.*
d) *For the lands measuring 16 acres 36.5 Guntas registered, between the supplemental agreement dated 17.11.2006 and the Understanding dated 23.6.2007, we are liable to make a payment of Rs.10,72,25,250/- calculated @ Rs.63,40,000/- per acre.*

e) The remaining extent of land measuring 4 acres 20.5 Guntas registered subsequent to the understanding dated 23.6.2007, we are liable to make payment of Rs.4,96,37,500/- calculated @ Rs.1,10,00,000/- per acre.

27. Though, we were liable to make payment of a sum of Rs.18,88,87,750/- only, as per your requests and being induced by your promises and representations and relying on the same, we have in good faith and in the interest of the transaction already paid a sum of Rs.53,08,80,000/-, that is to say you are at present holding a sum of Rs.34,19,92,250/- in excess. We have made the aforesaid excess payment of 34 crores due to the inducement and the specific representation made by you that everything was proper and all the obligations under the MoU and the Supplement agreement would be complied and on the specific representation made by you th, the lands falling under Valley Zone and Agricultural zone would all be converted to residential zone or transformation zone and that the gaps between the lands will also be covered by conveying the lands in out favour or in favour of our nominees. If not for the specific inducements and representations made by you as stated above, we would not have made the excess payment.

28. Once again, we have to bring to your notice that till date you have not performed your obligations. In spite of having received excess payment of Rs.34,19,92,250/-, many of the obligations as stated above are not performed and most of the lands are useless for the purpose of development as stated above. You are aware that on account of the delay caused by you in performing your obligations, we have suffered Innumerable losses and damages. Out of 55 acres 4.25 Guntas registered so far, about 25 acres fall under Agriculture and Sensitive Zone. Besides this, about 25 acres 20.75 guntas is under litigation. By virtue of this, the entire project has become useless and un-developable. Due to these defects, the lands cannot be developed conjoint and has no marketabIe value. Please note that though we have paid the amounts in excess, you have not fulfilled your obligations of making these lands conjoint, lifting them from Agricultural, Valley / Sensitive Zone status, clearing all the litigations, fencing the lands etc. though we have been are and continue to be ready and willing to discharge our obligations as and when the time for that. arises, you have been defaulting on the same, we have, to therefore once again call upon you to discharge your obligations as agreed upon.

29. You have in your letter dated 9.8.2010 falsely alleged that entire consideration has not been paid. We are unable to understand the meaning, purport and intention behind the said statement. As you are aware, in terms of the Supplemental Agreement dated 17.11.2006 we were required to make payment of 40% of the agreed consideration of ***Rs.1,58,50,000/-*** *per acre amounting to Rs.63.40 lakhs per acre. The sale deed in respect of Survey No.75/2, 76/1,*

76/3 and 80/2 in all measuring 1 Acre 35.75 Guntas were registered in our favour by way of a single sale deed dated 30.4.2007 registered in the office of the Sub-Registrar, Varthur Village as document No.646/07-08. Hence as on 30.4.2007 we are liable to make payment of a sum of Rs.63.40 lakhs per acre totally amounting to Rs.1,20,06,375/-. However, we have on the date of registration of the sale deed made payment of Rs.2,20,37,500/- i.e. an amount of Rs.1,00,31,125/-has been paid in excess of the sum agreed upon. In fact, we had made payment of nearly double of the amount required to be paid as on that date. The balance if any would be paid by us on completion of all your obligations under the MOU dated 19.6.2006 and the Supplemental Agreement dated 17.11.2006. Until then it cannot be contended by you or by the owners of these lands that full consideration has been paid. You have been from the beginning making false claims as regards the settlement of various litigations and withdrawal of the suits. However, till now we have not seen any of your promises being fulfilled as per the several litigations as indicated hereinabove which are pending and required to be closed. You had on a earlier occasion also made claims as regards settlement of the above suits as referred to in your letter and sought for time to be made though we were ready to make payment of a sum of Rs.45.00 lakhs which in fact was not due , But to our utter shock and surprise we find that none of the parties came for the settlement and the Demand Drafts were cancelled and we suffered the losses of DD charges. As stated hereinabove we had paid nearly Rs.1,00,31,125/- in excess of the amounts liable to be paid by us towards consideration of property in Survey No.75/.3, 76/1, 76/3 and 80/2 of Mullur Village, measuring an extent of 1 Acre 35.75 Guntas. Apart therefrom as stated hereinabove would have so far paid an amount of Rs.34,19,92,250/- in excess of the amount liable to be paid in respect of the entire transaction. Hence it is always open for you to make payment out of the excess amount retained by you to settle the matter Taking into account the amount already paid in excess, we are not liable to make payment of any amounts to you. It is a matter of fact and record that it is you, who are delaying the performance of the obligations. It is a matter of fact and record that we have been ready and willing, are ready and willing and continue to be ready and willing to discharge our obligations of making payment of the amounts subject to your fulfilling the obligations. It is a matter of fact and record that we have in our possession necessary amounts for making payment. It is a matter of fact and record that you have not discharged your obligations and registered 75 acres of land which are required to be registered being conjoint to each other form a compact block of land and all of them being situate in residential/transformation zone.

30. If indeed as stated by you the litigants are willing to settle the matter as stated in your letter dated 9.8.2010 you may make payment of the monies due to them from your own understanding with them and close the matter subject to reconciliation of accounts between us. This aspect of the matter has been conveyed to you on several occasions and it is again being reiterated by way of this reply.

31. The investments made by us on the basis of the promises, representation and inducements made by you has not yielded any returns and

is lying idle, in fact the same amounts if used elsewhere would have yielded tremendous returns to us and your inaction has resulted in our losing the opportunity in our business

32. Please note that we had formulated plans and developmental activities on the basis of your promises and representations that 75 acres of conjoined land would be conveyed in a time bound manner. However, on account of the various delays which have been caused by you we have not been able to make use of either of the land which are conveyed to us nor have we been able to develop the land since most of the lands are not abutting each other and scattered thus blocking the funds of our company to the extent of about Rs.53.00 crores. This tremendous amount of loss which are caused on day-to-day on account of your inaction and on account of disinterest shown by you in completing the transaction. Please note that you along with your Directors would be personally liable for any of losses that are caused to us. We hope that you comply with your obligations at the earliest and amicable resolve the matter.

10.7 In view of this, in our opinion, the Ld. CIT(A) justified in holding that the transaction has not been concluded in the AY under consideration when the assessee received nomination fee of Rs.7 crores. The transaction was not complete so as to assess the income under complete contract method. Even percentage completion method cannot be adopted in respect of the properties which were transferred, quite a number of pending issues were there as evident from the notice issued by M/s. Shobha Developers cited (supra) and it is also noted that M/s. Shobha Developers Ltd. seeking the refund of Rs.34.2 crores with interest of 18% p.a. out of Rs.53.1 crores even by them for non-fulfillment of condition laid down in MOU cited (supra). Further, the entire receipts received by the assessee cannot create any incidental tax in the hands of the assessee as per relevant accounting standards.

10.8 According to the AO the income accrued to the assessee to the extent of Rs.7 crores in the assessment year under consideration. On the other hand, the Ld. A.R. strongly contended that there is no accrual of income and there was no fulfillment of all the conditions laid down in the MOU which is subject matter of

litigation. No income could be recognized in certainty in this assessment year under consideration. The recognition of the revenue is not possible as the ultimate performance of the entire MOU in its entirety is doubtful. It is pending before the arbitration constituted for the purpose of settling the dispute between the parties and the Ld. A.R. also filed details of petition and other documents filed before the Hon'ble Arbitral Tribunal presided by Shri M.N. Shankar Bhat, Dist. Judge (Retd), No.61, 4th Cross RMV 2nd Stage, Judicial Officers Layout, Sanjay Nagar, Bangalore 560094. Accordingly, it was brought to our notice that there was dispute which is continuing till date and the recognition income in the assessment year under consideration cannot be possible and the income cannot be said to have accrued from the said project to the assessee. Further, it was noticed that as per MOU, the assesse has to fulfill the following conditions which the assessee failed to comply these conditions:-

(i) the land should be contiguous

(ii) the land should provide an access road of 40 feet width with clear 200 foot frontage

(iii) the property should have clear and marketable title

(iv) barbed wire had to be provided to the entire land

(v) super imposed drawing of the land clearly indicating all Sy. nos. and sub nos. shall be mentioned and

(vi) the land should fall in residential and transformation zone in the CDP.

10.9 Further, the conditions included obtaining NOCs from the concerned authorities regarding land reform cases,

removal of High tension lines, obtaining NOC from BDA, sorting out the ADLR problems regarding survey disputes and the issue of public notices and settlement of civil disputes regarding Hindu Succession Act, Minors' claims, Partition related issues, issues relating to Specific Performance had there been any earlier contracts etc. It was argued that only some portions of the agreed areas were registered in the name of the nominees of M/s Shobha Developers. It was stated that copies of the sale deeds were produced for verification of the AO. It was claimed that they had received certain amount as advance in respect of this transaction and part of the same was given to the land owners. As only part of the lands were procured and registered in favour of the nominees of M/s Shobha and, the rest were pending they have considered the amount received as advances in view of non-performance of the agreed conditions. It was also pointed out that M/s Shobha Developers had accepted only Rs.18,88,87,750 as sale consideration and had asked for returning the balance amount of Rs.34,19,92,250 out of Rs.53 crores received by them. Not accepting the appellant's contention that only a part of the contract was performed and income had not accrued to them in view of M/s Shobha's claim for returning about Rs.34.20 crores, the AO held that nomination rights of entire Rs.7 crores is assessable to tax. The AO rejected the appellant's further contention that Rs.5.50 crores out of Rs.7 crores were transferred to M/s E-City Developers and then to Mr. D K Sharma who had paid tax on the above sum and taxing the same

amount in the hands of the assessee amounts to double taxation.

10.10 When consideration related to assessee is not determinable with certainty, the assessee is justified in postponing the recognition of income and it is appropriate to recognize the income only when it is reasonably certain that ultimate realization is possible. Hence, income cannot be recognized at the time of sale agreement where the assessee is specifically consenting party and not the owner of the property. The department cannot thrust upon to the assessee so as to tax future income.

10.11 In our opinion, the assessee has to recognize the income in accordance with the true terms of the agreement and if there is any inconsistency in recognizing the income only then revenue authorities can disturb the same. Once the assessee recognizes the income in accordance with applicable accounting standards and provision of the Act, the AO cannot substitute the assessment to say that the assessee has postpone the tax liability. There is no basic deviation in the method followed by the assessee regarding recognition of income. However, the AO was of the opinion that there is basic flaw in the method followed by the assessee to recognize the income. When there is no deviation in recognizing the income by the assessee, the AO cannot recompute the profit of the assessee by observing that there is basic flaw in the method followed by the assessee. Further following precedents also supports the case of the assessee.

(i) R Gopinath (HUF) Vs. ACIT, 5 taxmann.com 80 (Chennai - Trib.), [133 TTJ 595] wherein the Tribunal held as under:-

"In the present case, the business profit arises to the assessee on the sale of the stock-in-trade only when the constructed apartments were sold and not at the time when the development agreement was entered into. Moreover, in the development agreement, the assessee has not agreed for sale of the entire constructed property on the land, the assessee has agreed only to a portion of the constructed property for sale for the purpose of recovery of the cost of construction and margin of the developer. The assessee has executed all the sale deeds for transfer of the constructed apartments in favour of the end-user/purchaser, therefore the transfer of the proportionate land took place only when the assessee transferred the constructed property by way of sale deeds and offered the business income which was accepted by the Department. In any case, when the assessee has retained the portion of the land being proportionate to the constructed area to be retained by the assessee, then there is no question of transfer of the entire land to the developer. In view of the above discussion, orders of the lower authorities are set aside, qua this issue and the AO is directed to tax the capital gain arising from the conversion of the land and building into stock-in-trade proportionately into the previous years in which the constructed property was sold by the assessee or retained for self-use and corresponding business income was offered .-Vania Silk Mills (P) Ltd. vs. CIT (1991) 98 CTR (SC) 153 : (1991) 191 ITR 647 (SC),Ghanshyamdas Kishan Chander vs. CIT (1980) 121 ITR 121 (AP), Alapati Venkataramiah vs. CIT (1965) 57 ITR 185 (SC), Octavius Steel & Co. Ltd. vs. Asstt. CIT (2003) 78 TTJ 170 (Kol)(SB) : (2002) 83 ITD 87 (Kol)(SB) and Dy. CIT vs. Crest Hotels Ltd. (2002) 75 TTJ (Mumbai) 771 : (2001) 78 ITD 213 (Mumbai) relied on."

(ii) B.L Subbaraya Vs. DCIT, 9 SOT 297 (Bang. – Trib.), wherein the Tribunal held as under:-

(iii) "The fact which is undisputed is that the entire settlement is still a subject-matter of dispute being sub judice and there is no finality attained even during the year under consideration. This is clear from the following facts. Subsequent to the deed of settlement between the assessee and Smt. S on 9th Aug., 1997, the disputes arose on its implementation. The assessee filed a company petition against E under s. 433 of the Companies Act, 1956, seeking winding up for its failure to pay the dues to the assessee. Incidentally, subsequent to the deed of settlement dt. 9th Aug., 1997, the business of the partnership firm E was taken over by a private limited company, E Ltd. The said winding up petition came to be dismissed by the High Court of Karnataka on 2nd March, 2000 on the plea that there was no sum due from the company inasmuch as the settlement was between the assessee and the individual, Smt. S. Subsequently, the assessee instituted a suit or recovery for the amount in terms of the settlement before the Civil Court. Therefore, undisputedly the entire settlement agreement dt. 9th Aug., 1997 is in jeopardy. Of course, the assessee has withdrawn a sum of Rs. 23 lakhs from the firm. Therefore, where an amount was in dispute, it could not be treated as income, there is no infirmity in the conclusion of the CIT(A) that a sum of Rs. 77 lakhs cannot be brought to tax during the year under consideration as the matter had not attained finality. However, the CIT(A) went wrong in not applying the same principle to the amount of Rs. 23 lakhs received by the assessee. Even this amount of Rs. 23 lakhs is disputed and the right of the assessee in the said amount is inchoate and

therefore, the same also cannot be brought to tax during the year under consideration.- CIT vs. Hindustan Housing &. Land Development Trust Ltd. (1986) 58 CTR (SC) 179 : (1986) 161 ITR 524 (SC) relied on.

Conclusion
Where the entire amount payable under the agreement was in dispute, no part of it could be brought to tax in the hands of assessee, even if the part payment is actually received."

(iii) Bhavesh Estates (India) Pvt. Ltd., Vs. ITO, 1 DTR 366 (Mum. – Trib.), wherein the Tribunal held as under:-

"Assessee had entered into the development agreement with AB (SC). The FSI on the said plot was revised, but the project could not be completed. Therefore, no interest was paid by the owner to the assessee company on its deposit at the rate of 12 per cent per annum. It is undisputed fact that the assessee had paid the amount of Rs. 99.90 lakhs as on 31st March, 2003, but no interest was paid to the assessee because the project was legally not feasible and due to legal restriction the whole amount invested might not have been realized in the said project. Accordingly, the owner did not make any payment to the assessee. Under the facts and circumstances, the assessee cannot be subjected to be taxed on notional income. There is nothing on record to suggest that any such interest income was materialized. The assessee has pointed out that because of non-availability of FSI on the said plot of land for which the assessee had entered into development agreement with AB (SC), the assessee company could not develop the said property in view of the statutory restrictions and, therefore, the whole project has become unviable to continue. Hence, no interest had accrued to the assessee in the year under consideration. Accordingly, the addition of Rs. 4,99,260 is directed to be deleted.

Conclusions:
Because of non-availability of FSI on the plot of land for which assessee had entered into development agreement, assessee could not develop the said property in view of statutory restrictions and thus, the whole project having become unviable, no interest accrued to the assessee on its deposit with the owner, hence the addition of notional interest was liable to be deleted."

10.12 In our opinion, the assessee received only an advance amount and treated it as a liability in its books of accounts. The mere receiving of amount does not create any legal enforceable right to receive the same. Hence, without any right to receive the said amount, it cannot be treated as income of the assessee only on receipt basis. Such a right accrues only when the other party

has either agreed to pay the amount in accordance with terms of MOU or as per verdict by an appropriate forum or arbitration, only then the income could be charged to tax as there was accrual of income. Where an assessee does not have any legal enforceable claim on the amount so received, the basis of taxability cannot be receipt basis. Even if the assessee treated it as income in its books of accounts, it is not material where the income is not accrued to the assessee to tax the same on receipt basis.

10.13 The conduct of the assessee in treating an income in a particular manner is a material fact whether income had accrued or not. Although the conduct of the assessee is relevant whether income had accrued or not, yet the ipse dixit of the assessee cannot be the last word. What had accrued must be considered from the point of view of the probability of improbability of accrual in realistic manner. The amount if it is received without entitlement to receive the same, it has to be held that there was no accrual of income to the assessee as the necessary events for accrual of income has not materialized. In the present case in our opinion it is to be held that the income will accrue to the assessee only when the assessee acquires right to receive that income by completion of project undertaken by the assessee and by simply receiving the amount from the parties itself cannot be treated as income of the assessee. It is only advance received by assessee which is nothing but liability and cannot be treated as income of the assessee in these asst. years.

10.14 In view of the above, we are of the opinion that the lower authorities are not justified in taxing an amount of Rs.7 crores as accrued income in the hands of the assessee. The same is deleted and this ground of the appeal of the assessee is allowed.

11. Next ground in revenue's appeal in ITA No.203/Bang/2012 is regarding deletion of addition of Rs.70 lakhs and Rs.30 lakhs received towards sale consideration.

11.1. Facts of the case are that during the year, Sri D. Nanda Kumar one of the Directors of the assessee had sold land measuring 32 guntas (+1 gunta karab land) in Sy. No. 64/3 and 1 acre 8 guntas (+1 gunta karab land) in Sy. No. 65/2 to Sri. R.B. Nataraj nominee of M/s. Shobha Developers vide sale deed dated 15.02.2007. It was observed by the A.0 that in addition to the sale consideration of Rs. 30 lakhs further sum of Rs. 70 lakhs was paid by Sri. Nataraj, to the vendor Sri. D. Nanda Kumar towards full and final settlement. The A.0 further observed that this was not accounted by the assessee. When questioned, Sri. Nanda Kumar stated that it was the receipt of the assessee and M/s. Ind-Sing had shown in their books as the receipts from M/s. Shobha Developers which is also confirmed by M/s. Shobha Developers. Not accepting the assessee's explanation the A.0 added the entire sum of Rs. 1 crore i.e. Rs. 30 lakhs + Rs. 70 lakhs. The assessee in their grounds of appeal has objected to both these additions and has stated that these receipts were part of the overall consideration received from M/s. Shobha Developers. No portion of money received by Sri. Nanda Kumar was taxable either in his individual hands or in the hands of the assessee. However, it was stated that the overall income or loss arising on the above transaction would be offered to tax on conclusion of the contract. It was also stated that entire transaction with M/s. Shobha Developers was in litigation and once the transactions materialize the income arising on the

transaction would be offered for taxation. After considering the assessee's arguments on this issue, it was held by the Ld. CIT(A) that in the earlier paragraph while deciding the issue of taxation of nomination fees it was discussed at length that the income or loss arising on the transactions with M/s. Shobha Developers could not be assessed at this stage as the contract was not completed either as on 31.03.2007 or even now. Also, in view of various pending issues even after transfer of certain lands it was held that the income could not be computed even adopting percentage completion method. In the light of the same, it was seen that Rs.30,00,000/- was received on 13.03.2007 and Rs.70,00,000/- received on 21.03.2007 from M/s. Shobha Developers to Sri. Nandakumar pertaining to 32 guntas in Sy. No. 64/3 and 1 acre 8 guntas in Sy no. 65/2 of Mullur Village but accounted in the subsequent year for the period ending 31.03.2008 and is part of the total sum received from M/s. Shobha Developers amounting to Rs.52,59,80,000/-, since it was held that income/loss pertaining to the transaction with M/s. Shobha Developers is to be computed either on completed contract method or when all the terms and conditions in respect of specified lands are fulfilled in parts it is to be assessed on percentage completion method. In this transaction neither of the two are fulfilled it is held that income did not accrue on the sale of these properties pending various terms of the contract to be fulfilled. However, it was noticed that these transactions though had not reflected for the year ending 31.03.2007, it was shown in the overall sum received from M/s. Shobha Developers as on 31.03.2008 amounting to

Rs.52,59,80,000/- and hence it is held that no income arose on these transactions for the year ending 31.03.2007. Against this, revenue is in appeal before us.

11.2 The Ld. D.R. submitted that Ld. CIT(A) ought to have sustained this addition and he has erred in holding that income or loss cannot be assessed at this stage as transaction is under litigation and he also submitted that the sale consideration of Rs.30 lakhs is not included in the overall sum of Rs.52,59,80,000/-. The Ld. CIT(A) not justified in not sustaining additions even though the assessee has sold the lands and handed over physical possession also.

11.3 On the other hand, Ld. A.R. submitted that during the year under consideration, Mr. Nandakumar, director of the assessee Company on behalf of the assessee had transferred lands in Sy. Nos. 64/3 and 65/2 at Mullur Village to the nominee of M/s Shobha Developers for a consideration Rs. 30 lakhs. Mr. Nandakumar further received Rs. 70 lakhs as additional consideration for the lands transferred as part of the agreement. The learned assessing officer had alleged that the sum of Rs. 1 crore was the undisclosed income of Mr. Nandakumar. The assessee had contended that the sale of land was part of the overall transaction with M/s Sobha and that no portion of the money received by Nandakumar was neither taxable in Nandakumar's hands nor in the hands of assessee since the said amount was not at all receivable on account of lack of performance of assessee's duties. The assessee had further submitted that once the transaction materializes the real income would arise and that the income would be declared on actuals by the assessee. The learned assessing officer did not accept the contention of the assessee and

brought to tax the entire sum of Rs. 1 crore. The learned CIT(A) deleted the additions made by holding that the transactions with M/s. Shobha Developers could not be assessed at this stage as the contract was not completed and income could not be computed even adopting percentage completion method. It was also noted that the transactions though had not reflected for the year ending 31.03.2007, it was shown in the overall sum received as on 31.03.2008 amounting to Rs. 52,59,80,000/- and hence it was held that no income arose on these transactions. The department has filed an appeal for having deleted the additions made in this regard. It is submitted that the assessing officer picked certain transactions from the basket of transactions with M/s. Sobha and made additions by treating them as independent transactions which is not permissible in law and thus it is prayed that the appeal filed by the department in this regard be dismissed.

11.4 We have heard the rival submissions and perused the materials available on record. These impugned receipts are part and parcel of consideration received from M/s. Shobha Developers as evidenced from MOU entered with M/s. Shobha Developers vide MOU cited (supra), wherein assessee received an amount of Rs.52,59,80,000/- and we have already held that this condition laid down in MOU has not been fulfilled and there is a pending litigation between the parties as discussed in immediate earlier ground with regard to deletion of addition of Rs.7 crores. On similar lines, we are of the opinion that Ld. CIT(A) is justified in deleting the addition of Rs.1 crore. Thus, we confirm the order of Ld. CIT(A) on this issue.

12. Next ground in ITA No.203/Bang/2012 in revenue's appeal is with regard to deletion of Rs.1.05 crores. Facts of the case are that the AO called for details from M/s Shobha Developers regarding various payments made by the nominees for acquiring land for which the assessee had entered into MOU with M/s Shobha Developers. The AO observed that the entire consideration paid by M/s Shobha Developers was treated in the books as advances. The AO observed that Smt. Rajyalakshmi had sold a property at Sy no.68 at Mullur Village, Varthur, Hobli measuring 1 acre 19 guntas and 4 guntas of Karab land to Sri R B Nataraj vide sale deed dated 28.12.2006 for a total consideration of Rs.37,50,000. In respect of this sale-there was a nomination agreement between M/s Klene Pack Limited represented by Sri Karthik Krishna and Sri R B Nataraj, Purchaser of the property. In pursuance of this nomination agreement, M/s Klene pack received a nomination fee of Rs.1.05 cr from Shri R B Nataraj through pay orders of 260,00,000 and 245,00,000. As per para 2 of the nomination agreement Smt. Rajyalakshmi had entered into an agreement with M/s Klene pack to dispose of the property through the said company to Shri RB Nataraj. The AO summoned Shri Karthik Krishna but he stated that he was neither a director nor had any idea about the existence of such company. He denied having signed any such documents. AO held that Smt. Rajyalakshmi was desirous of disposing of the property through M/s Klene pack in favour of Shri R B Nataraj. AO issued notice to Smt. Rajyalakshmi asking her to state as to why the said nomination should not be treated as bogus and the nomination fee of 21.05 cr received in the name of M/s Klene Pack should not be treated as part of the total consideration received by her towards sale of the property and assessed

accordingly. She submitted her reply on 16.12.2010 and claimed that she received only Rs.37.5 lakhs as sale consideration and she had no knowledge of any such nomination deed. She has denied that the bank accounts maintained by her or her children do not reflect any such receipt. The AO issued notice to Axis Bank and obtained details and found that the payments were encashed by M/s Klene Pack at Kotak Mahindra Bank, MG Road on 10.01.2007 Rs.45 lakhs and on 17.01.2007 Rs.60 Lakhs. M/s Klene Pack's account was opened on 31.01.2006 and was operated by Shri Vimal Sipani. The AO issued another notice to M/s Klene Packs Limited since it was bearing similar name as that appearing on the nomination agreement with different address and different directors. On 29.10.2010 reply was received stating that the payments were received from two parties from M/s Jyothika Polypacks, Satara and M/s Sonica Plastics, Madras. These payments were adjusted against the sales made by them. The company denied having any idea of the transaction with either the assessee or Smt. Rajyalakshmi. The AO held that the pay orders are the same, amounts are matching, the name of the company tallied except for the spelling of 'PAKS'. No entity had claimed the benefits of these transactions though the payments have been made by M/s Shobha Developers through Shri R B Nataraj. The company whose name is appearing in the nomination agreement was claimed to be non existing by the director whose name was appearing as Shri Karthik Krishna and the second company in whose account the pay order has been encashed has received for business transaction i.e purchase of woven fabrics. The AO asked M/s Shobha Developers to clarify the transactions and they denied having any business transaction with M/s Klene Packs or M/s Jyothika Polypacks or M/s Sonica Plastics. They had

reiterated that the payment was made on account of nomination agreement which was duly signed and the copy was produced by them. They had also given a copy of the bank statements where these payments were realized. The AO requested the assessee to clarify their position. Both Smt. Rajyalakshmi and Shri Karthik Krishna denied to have signed the nomination deed or having knowledge of the company called M/s Klene Pak or about the payments. The assessee had treated all these payments as advance in their books and subsequent transactions being closed i.e at the end of the MOU to treat all these payments as expenses to offer only the net proceeds to tax. Hence the AO concluded that M/s Ind Sing Developers is the direct beneficiary of such payments. The assessee gave an evasive reply and hence the AO concluded that they were very much aware about the ambiguity and concluded that they were trying to state that the reversal of the entry will set the things right. The AO also held that it was not the case of wrong accounting entry but the fact that the payment had been made was treated as cost of consideration for the land and even the appellant had treated it as advance it should be reduced from the total consideration received at the time of the closure of the MOU. The AO concluded that the direct beneficiary is the appellant and it has received the amount though it had no role to play. The assessee had stated it to be a wrong journal entry but the AO did not agree that the explanation justifies the transaction. The AO finally concluded that there had been an attempt to camouflage the entire transaction and concluded that it was their income.

12.1 The assessee in their grounds of appeal has stated that the AO is not correct in assessing the same as income and

neither they had claimed it as expenditure as it was an advance amount received from M/s Shobha Developers. In their statement of facts they have again repeated details of the transactions with M/s Shobha Developers and have stated that no income arose with the transactions with M/s Shobha Developers. It is also stated that the total amount received from M/s Shobha Developers of Rs.55,22,68,346 up to the end of 31.03.2007 and the closing balance of Rs.44,18,75,596 includes these two amounts of Rs.60 lakhs and Rs.45 lakhs as on 27.12.2006. It is also mentioned by the assessee that when they re-casted the ledger account for FY 07-08 they have accounted under the head "by Smt. Rajyalakshmi (Sy 68 (1 acre 19 guntas)) being the amount paid by M/s Shobha Developers to M/s Klene Pack on 27.12.2006 (Previous year transaction brought to books)" both the amounts Rs.60 lakhs and Rs.45 Iakhs. The assessee has also submitted it to the AO on 10.11.2010 and the same is also available in the AO's records, it was stated. After considering the assessee's submissions on this issue it is held as under.

12.2 It is seen from the account copy of M/s Shobha Developers for the period from 01.04.2006 to 31.03.2007 that these two amounts amounting to Rs.60 lakhs and Rs.45 Iakhs were shown as paid to the assessee's accounts on 27.12.2006 under the head "issued in favour of Klene Pack Ltd towards the settlement agreement for land in Chikabellandur and Mullur (5A, 37.5G) (4A 10 G) and Mullur (1A 19G) as per NOC SBL/LGL1/284/2006 dated 27.12.2006. It is also seen from the assessee's ledger account in the name of M/s Shobha Developers which is submitted for the period from 01.04.2007 to 31.03.2008wherein the assessee has brought into their books all the previous

year's transactions. The assessee has accounted under the head *"by Smt Rajyalakshmi (Sy 68 (1 acre 19 guntas)) being the amount paid by M/s Shobha Developers to M/s Klene Pack on 27.12.2006 (Previous year transaction brought to books)"*. Since the above amount is shown by the appellant as part of the overall receipt amounting to Rs.52,59,80,000 as on 31.03.2008 and is separately held that the income arising on the transaction from M/s Shobha Developers is to be assessed either on completed contract method or when part of the contract is completed complying all the conditions of the contract, on percentage completion method, it is held that the AO shall take into account these amounts in subsequent years when the income actually arose either under completed contract method or percentage completion method. For this reason, it is held that the receipt of Rs.1.05 Cr is not to be assessed as income during the year.

12.3 The Ld. D.R. submitted that assessee received an amount of Rs.1.05 crores though assessee was not the party to the contract. Same is to be considered as income of the assessee and he supported the order of AO.

12.4 On the other hand Ld. A.R. submitted that the assessee had entered into a MOU with M/s Sobha Developers Ltd to procure 75 acres of land on behalf of M/s Sobha at Mullur and Chikkabellandur Village. It is submitted that some portions of the agreed areas have been registered in the name of certain persons as per various sale deeds and M/s Sobha have made payments to the landlords directly. The amount paid by M/s Sobha to landlords have been debited to land advance account and credited to Sobha account in the assessee's books. It is submitted that M/s Sobha

had made payments to the tune of Rs. 1,05,00,000/- directly to M/s Klene Pak in connection with the procurement of lands and the assessee duly recorded the entries during the year 2007-08 after receiving the details from M/s Sobha Developers . The impugned amount of Rs. 1,05,00,000/- was not claimed as expenses in its books by the assessee but was reflected as land advance and debited in the assessee's books. There is no provision in law to add debit as income. It was submitted that the transactions with M/s Sobha was a comprehensive transaction of several activities. The compliance has to be performed on a total basis and all the amounts have been disbursed by M/s Sobha directly to various parties and M/s Klene Pak is one among them. This aspect was totally ignored by the assessing officer and the assessee further contended that it had not claimed it as an expense in its books and that there was no credit balance to be explained. The learned assessing officer did not accept the contention of the assessee and brought to tax a sum of Rs. 1,05,00,000/- as income from other sources. The learned Commissioner after considering the submissions made held that the amounts of Rs. 60 lakhs and Rs. 45 lakhs were shown as paid to the assessee's accounts in the books of M/s. Sobha for the period 01.04.2006 to 31.03.2007 and since the above amount is shown as part of overall receipt, the same shall be taken into account when the income actually arises in subsequent years. The department has filed an appeal for having deleted the additions made in this regard. It is submitted that the Commissioner after considering all the documents on record has given a clear finding that the amounts cannot be added as income and the transaction cannot be viewed in isolation. Thus considering the facts and circumstances of the case, it is prayed that the appeal filed by the department in this regard be dismissed.

12.5 We have heard both the parties and perused the materials available on record. The contention of the assessee is that this amount is part and parcel of the consideration received from M/s. Shobha Developers Ltd. at Rs.55,22,68,346/- up to the end of 31.3.2007 and closing balance of Rs.44,18,75,596/- includes these two amounts of Rs.60 lakhs and Rs.45 lakhs as on 27.12.2006. This was accounted by assessee in the financial year 2007-08 under the head "by Smt. Rajyalakshmi (Survey no.68)(1acre 19 guntas) being amount paid by M/s. Shobha Developers to M/s. Klene Pack on 27.12.2006 (previous year transaction brought to books)" both the amounts Rs.60 lakhs and Rs.45 lakhs. In our opinion, this amount is properly disclosed in the books of accounts by the assessee as it was part and parcel of receipt of an amount of Rs.52,59,80,000/- as on 31.3.2008 from M/s. Shobha Developers and it cannot be considered as an independent transaction so as to treat it as income of the assessee. Accordingly, Ld. CIT(A) rightly deleted the addition on this count. The finding of Ld. CIT(A) on this issue is confirmed. This ground of appeal of revenue is dismissed.

13.5 In the result, revenue's appeal in ITA No.203/Bang/2012 for the A.Y. 2007-08 is dismissed.

AY 2008-09:-

ITA Nos.109/Bang/2012 (Assessee's appeal for AY) & 204/Bang/2013 (Revenue's appeal) for AY 2008-09

13. Ground Nos.2 to 3 in assessee's appeal are with regard to invoking jurisdiction u/s 153A of the Act in assessee's appeal. As discussed in ITA No.108/12 in earlier appeal for assessment year 2006-07, these grounds are dismissed on similar lines.

14. Next ground in assessee's appeal in ITA No.109/Bang/2012 i.e. ground no.4 (a), (b) & (c) are with regard to sustaining addition of Rs.58,55,245/- towards sale of land by Nanda Kumar.

14.1. Facts of the case are that the A.O. observed that the land in Sy No. 64/2 of Mullur Village was sold by Sri. D. Nanadakumar on 10.04.2007 for a consideration of 298,55,245/- to Smt. Rajalakshmi. This land was subsequently sold by Smt. Rajalakshmi to Sri H.G. Sandesh nominee of M/s. Shobha Developers for a consideration of 21,08,62,500/-. The A.O observed that the assessee had not offered any sale consideration towards this transaction. It is also observed by the A.O that Smt. Rajalakshmi had offered the difference between 21.09 crore and 20.98 crores to tax. It is also observed by the A.O that the entire amount of 21.09 crores is shown as cost of the property apart from the advances from M/s. Shobha Developers. The A.O held that the land has been sold by the company to Smt. Rajalakshmi and at that point of time the transfer took place which was chargeable to tax. The assessee had replied that it was not proper to bifurcate the transactions and it was claimed that this was part of the transaction with M/s. Shobha Developers and there was loss in the said transaction which is also claimed to have been explained earlier. The A.O held that the role of the assessee was only that of a facilitator for procurement of land to M/s. Shobha. It is also observed by the A.0 that the sale proceeds of the land that was transferred by Sri. D.K. Sharma to M/s. Shobha Developers nominee has been offered to tax in the hands of the AOP M/s. Ever Glades. The land in question in this case is stated to be sold by Sri. Nanda Kumar on behalf of the company to Smt. Rajalakshmi. The A.O. observed that the

appellant was nowhere responsible as to how the land was held by Smt. Rajalakshmi and to whom she finally sold. The A.O has also mentioned the conditions in the MOU wherein it was stipulated that Z 1.585 crores per acre was to be the sale consideration. A.O. held that the completion of the terms of MOU could not be treated as the completion of the sale of the land individually and the tax is to be computed at that stage when the transfer took place. It was also observed by the A.O that the appellant had not furnished the details of the cost since as per the books the details furnished was regarding 3 Sy nos. 64/2, 65/2 & 66/2 consolidated. It is observed by the A.O that though cost of 21,05,68,326/- is claimed, the breakup of Sy. No. wise detail of the cost was not given and hence treated the entire sale consideration as income. The assessee in their grounds of appeal has stated that the A.O was not correct in making this addition and it is stated that the transfer of lands were part of the transactions with M/s. Shobha Developers. Elaborating further in their statement of facts, it is claimed that in view of litigation with the M/s. Shobha Developers no income arose and income arises only on completion of the transaction. It was also stated that the total cost of the land was 21,05,68,326/- wherein the same was sold for a consideration of 98,55,245/- incurring losses. It is also stated that the same is submitted to the department as part of the schedule to the Balance Sheet as on 31.03.2008 and is part of schedule 9 under the head purchases. At the time of hearing when it was pointed out to them that the sum of Rs.1,05,68,326 is shown as cost of land in SY no.64/2,65/2 and 66/2, the assessee clarified that inadvertently instead of 64/4 they have mentioned 66/2 and the same-is requested to be corrected accordingly. After considering the assessee's submission on this issue, it is held as under from schedule 9 of the Balance Sheet as

on 31.03.2008, it is seen that the assessee had shown cost of the land at SY no.64/2, 65/2 and 66/2 at Rs.1,0⁴5,68,326. Since the assessee has now clarified that 66/2 should have been 64/4, taking that into consideration the land holding and the purchase cost in respect of these three survey nos. are as under:

Survey No.	Acreage	Amount
Sy.64.2	1A0G	NA
Sy.65/2	1A08G	NA
Sy.64/4	0A17.5G	NA
Total	2A 25.5G	1,05,68,326

Average price per acre = 1,05,68,326/105.5 x 40 = 100173 x 40 = 40,06,948 rounded off to 40 lakhs per acre. [1 Acre = 40 guntas]

14.2 Considering the fact that the assessee has sold 1 acre in Sy 64/2 to Smt. Rajyalakshmi, it is directed to adopt the cost at Rs.40 lakhs per acre to work out the profit arising on this transaction. Since a sum of Rs.98,55,245 is shown as sale consideration on this transaction, it is directed to allow Rs.40 lakhs towards cost and balance Rs.58,55,245 is directed to be assessed as income as against Rs.98,55,245 assessed by the AO.

14.3 The Ld. A.R. submitted that during the year under consideration, Mr. Nandakumar, director of the assessee-company on behalf of the assessee had transferred lands in Sy. No. 64/2 at Mullur Village to Smt. Rajyalakshmi for a sum of Rs.98,55,245/-. The lands were further transferred to the nominee of M/s Sobha for a consideration of Rs.1,08,62,500/-. The learned assessing officer had contended that sale consideration by the assessee to Smt. Rajyalakshmi is taxable as income of the assessee since the role of the assessee is only of a facilitator for procurement of land to M/s.

Sobha. The assessee had submitted that the sale of land was part of the overall transaction with M/s Sobha and that the entire transaction with M/s Sobha Developers is under tremendous litigation. The department is in complete knowledge of the fact that the transactions with M/s. Sobha are under litigation and that M/s. Sobha have demanded back Rs. 34.19 crores which they had paid as part of overall advance of about Rs. 53 crores. The assessee had further submitted that once the transaction materializes the real income would arise and that the income would be declared on actuals by the assessee. In fact there was a loss from the impugned transaction as the total cost of the land was Rs. 1,05,68,326/- wherein the same was transferred for Rs. 98,55,245/-. The learned Commissioner rejected the contention made by the assessee that no income arises unless the transaction is complete, however allowed the deduction of cost of the land at Rs. 40 lakhs thereby retaining additions to the extent of Rs. 58,55,245/-. It is submitted that the CIT(A) grossly erred in considering the cost only at Rs. 40 lakhs whereas the cost as per schedule 9 of the balance sheet was Rs. 1,05,68,326/- most of it being paid through banking channels. It is submitted that when the primary transaction with M/s Sobha itself is under tremendous litigations, it is not correct in law to pick out an isolated transaction from amongst a basket of transactions and bring it to tax. Without prejudice, it is submitted that if the impugned transaction was taxable as income, the cost incurred towards acquisition of Rs. 1,05,68,326/- must be allowed as deduction on the facts and circumstances of the case. Further the department has also preferred an appeal contending that the CIT(A) is not justified in computing the cost of land at Rs. 40 Lakhs based on fresh evidence. It is submitted that the cost computed by the CIT(A) was based on the cost of the land as per schedule 9 of the balance sheet and the details of the same were already available

with the authorities below and thus the appeal filed by the department in this regard be dismissed and that of the assessee may be allowed for advancement of substantial cause of justice.

14.4. Ld. D.R. relied on the order of Ld. CIT(A) and submitted that the Ld. CIT(A) not justified in computing the cost of land at Rs.40 lakhs per acre based on the fresh evidence without providing opportunity of being heard to the AO. The assessee has not given the details of cost of land before AO. Thus, he relied on the order of AO.

14.5. We have heard the rival submissions and perused the materials available on record. This impugned transfer of land was part of the transaction in M/s. Shobha Developers. This property was purchased by Nanda Kumar on behalf of assessee company from Chikka Muniappa and it is the part of the transaction with M/s. Shobha Developers. Total amount incurred by the assessee on this count was Rs.1,05,68,326/-. Late, the land in question was sold to Smt. Rajya Lakshmi and these transactions duly reflected in the books of accounts of the assessee as sold to Smt. Rajya Lakshmi at Rs.98,55,245/- and Rajya Lakshmi further transferred the land to the nominee of M/s. Shobha Developers for a consideration of Rs.1,08,62,500/-. Since this transaction is part of the total transaction with M/s. Shobha Developers, this cannot be taxed in the hands of assessee isolated as the transaction with M/s. Shobha Developers is under litigation. Being so, the addition cannot be made on this count. Accordingly, this ground of appeal of the assessee is allowed.

14.6 The revenue is also in appeal before us in ITA No.204/Bang/2012 with regard to computation of cost of land at

Rs.40 lakhs per acre based on fresh evidence without providing opportunity of hearing to the assessee. As we have held in assessee's appeal that this is the part of transaction with M/s. Shobha Developers no income to be taxed in the hands of the assessee in assessment year under consideration. Further, we note that the cost of land in the hands of the assessee to be at Rs.1,05,68,326/- as discussed in earlier para and the adoption of value of the said land at Rs.40 lakhs per acre by taking the average price as discussed by Ld. CIT(A) in para 6.1.3 have no basis. Accordingly, this ground of appeal of the revenue has become infructuous and dismissed.

15. Next ground No.5 in assessee's appeal in ITA No.109/Bang/2012 is with regard to confirming addition of Rs.78,12,333/- towards sale of land by Narasimha Murthy.

15.1 The A.O. observed that Smt. Rajalakshmi had purchased lands in sy no. 18 from Sri. Narasimha Murthy vide registered sale deed dated 27.07.2007 for a sale consideration of Z 26, 00,000/- for 26 guntas. In addition to the above, a registered sale agreement and power of attorney giving the possession of another land in the same sy. No. to the extent of 3 acres 8 guntas was made on 20.06.2007 for a consideration of Rs.1,34,00,000/- The details were submitted with regard to a claim made by Smt. Rajalakshmi in her return u/s 54B. It was claimed by the assessee that the land was held by the company in the name of Sri. C. Narasimhmurthy since it was an agricultural land. The appellant's books show amounts received from Sri! Narasimhamurthy towards the sale of land in Sy no. 18 for a consideration of 21.06 crores only. The A.O observed that no sale proceeds were offered in respect of this transaction. The appellant had claimed that only 26 guntas

of land was registered to her vide sale deed dated 27.07.2007 for a consideration of Rs.26 lakhs. The appellant had claimed that the profit had to be worked out after taking into consideration further requirements of funds for laying road which requires Rs. 4,64,635/-. It was stated that they wanted to complete all aspects of transactions and after the other portion is registered they wanted to offer for taxation. it was also claimed that lot of expenditure are to be booked pertaining to land settlement account which is shown under the head advance for land purchase. It was also stated that they were not able to link the other items which have a bearing on the working of profit. It was claimed that a sum of Rs.1 lakh was to be paid to Sri. Gopallappa which should have been reduced from this Rs.26 lakhs received for 26 guntas. It was claimed that the transaction resulted in loss and left to the discretion of the A.0 to decide the issue. The A.O summed up their arguments which stated that the property was not yet registered and the balance property of 3 acres 8 guntas khata was still in the name of Sri. Narasimha Murthy, provisions of Section 2(47) is applicable only to capital assets and not for computation of business income and the land was situated beyond 15 kms from the municipal limits. The A.O held that the sale deed was already executed for a consideration of Rs.26 lakhs for 26 guntas. In respect of the balance, consideration of 21.34 crores was already received but the registration was not over. It is also observed by the A.O that in respect of Sy. No. 18 Chikkawodeyarapura there was no land appearing in the books after the sale agreement of the said Sy. No. The A.O. did not accept the appellant's arguments that the land was not sold and if that were to be so, land should have been continued to be shown as an asset which has not been done. The A.0 held

that since the GPA is already given, the transaction is completed and hence treated the entire sale consideration of 21.60 crores as sale proceeds liable for tax. However, the total cost shown by the appellant regarding this transaction was 290,87,667/- which includes the cost of the land of 281,87,667/-. In addition to this, the appellant had shown developmental expenditure of Rs.9.25 lakhs which is aced to have been made by cash. The A.O held that the appellant violated the provisions of section 40A(3) of the Act and allowed expenditure of only Rs.72,62,667/- disallowing a sum of Rs.29,25,000/- from Rs.81,87,667/- Deducting this sum from the total sale consideration of Rs.1.60 crores the A.O computed the profit at Rs.87,37,333/-.

15.2 The assessee in their grounds of appeal has stated that the A.0 is not correct in assessing income of Rs.87,37,333/-. In their statement of facts it is stated that the appellant was ready to offer Rs.4, 64,635/- being profit on the sale of said land. It was also claimed that the appellant had received Rs.1.34 crores from Smt. Rajalakshmi as advance for sale of property measuring 3 acres 8 guntas at chickawodeyarpura. It is claimed that the same was shown as liability in their books since the sale had not taken place. It is also claimed that provision of section 2(47) of the Act are applicable only for computing capital gains and not for business income. After considering the appellant's arguments on this issue it is held as under:

15.3 Sri Narasimhamurthy, one of the Directors of the assessee company had executed sale deed dated 27.07.2007

having sold 26 guntas of land at Sy. No. 18, chickawodeyarpura village for a sum of Rs.26,00,000/- which is reflected as per seized document A/RLK/HDFC/01/08-09. Similarly, he had registered an agreement for sale and power of attorney was given on 20.06.2007 regarding Sy. No. 18 of the sar1he village to the extent of 3 acres 8 guntas for which the appellant through Sri. Narasimhamurthy had received Rs.1,34,00,000/-. Since the appellant had executed the registered sale deed, received consideration and had handed over the possession of the property by executing the GPA, it is to be regarded as sale in the hands of the appellant. It is also seen from the records of Smt. Rajalakshmi that she had claimed exemption u/s 54B on the purchase of these agricultural lands. In view of the same, it is held that the appellant should have shown sale consideration of Rs.1,60,00,000/-. It is held that the A.0 has appreciated the facts properly and A.O's finding that - the appellant should have shown the sale proceeds and computed the income - is upheld. However, while allowing the cost, the A.0 in para 7.5 of assessment order has held that the total cost debited is Rs.90,87,667/-out of which cost of the land is Rs.81,87,667/-. The difference is stated as claimed towards developmental expenditure. (The difference comes to Rs.9 lakhs only but A0 took it as Rs.9.25 lakhs). However, A.O held that Rs.9.25 lakhs is spent by way of cash and hence it is violation u/s 40A(3) of the Act and disallowed the same. However, the A.0 reduced it from the cost of the land of Rs.81,87,667/- rather than from the total cost of Rs.90,87,667/-. The A.O made 2 mistakes, one in stating that the developmental expenditure as Rs.9.25_lakhs wherein it should have been only Rs.9 lakhs (Rs.90,87,667/- minus Rs.81,87,667/-) and other in reducing Rs. 9.25 lakhs from the cost of the land being Rs.81,87,667/- rather than reducing a from the total cost

claimed of Rs. 90,87,667/-. Correcting these 2 mistakes the allowable cost works out to Rs.81,87,667/- which is as under:

Total cost debited	Rs.90,87,667/-
Developmental expenditure claimed disallowed u/s 40A(3) for having spent in cash	Rs. 9,00,000/-
Cost of the land	Rs.81,87,667/-

15.4 Hence, the income being profit on the sale of the above said land is directed to be computed at Rs.78,12,333/- (Rs.1,60,00,000/- minus Rs.81,87,667/-) instead of Rs.87,37,333/- computed by the AO. The addition is confirmed to the extent of Rs.78,12,333/- as against Rs.87,37,333/- made by the A.O. Against this assessee is in appeal before us.

15.5 The Ld. A.R. submitted that the transaction of the land sold in Sy. No. 18 has 2 limbs. The first one pertains to the sale of 26 guntas at Chikawodeyarapura to Smt. Rajyalakshmi for a consideration of Rs.26,00,000/-. The second transaction pertains to the amount of Rs.1,34,00,000/- received from Smt. Rajyalakshmi as advance for sale of property measuring 3 acres 8 guntas at Chikawodeyarapura. The total cost of the entire 3 acres 34 guntas was Rs. 90,87,667/- which includes cost of the land of Rs. 81,87,667/- as per the books and development expenditure of Rs. 9.25 lakhs. The assessee had submitted that in respect to the land of 26 guntas, surplus will work out to Rs. 4,64,635/- and for the remaining 3 acres 8 guntas the surplus will amount to Rs. 8,46,614/- after deducting the cost of acquisition and other costs that will be incurred and the same would be offered to tax after

fulfilling all the obligations towards the purchaser. This was clearly explained by the assessee, however the assessing officer brought to tax a sum of Rs. 87,37,333/- as surplus and the learned Commissioner confirmed additions to the tune of Rs. 78,12,133/-. It is submitted that the assessee had received a sum of Rs.1,34,00,000/- from Smt. Rajyalakshmi as advance for sale of property measuring 3 acres 8 guntas. The same was reflected as a liability in the books of accounts since the sale had not taken place. The assessee vide its letter filed before the assessing officer, contended that the provisions of section 2(47) relating to transfer of capital asset were not applicable to business income. Reliance is placed on the decision of the Bombay High Court in the case of CIT vs. Ace Builders Pvt. Ltd., 281 ITR 210. The learned CIT(A) without understanding the facts of the case brought to tax an amount of Rs.78,12,333/- (Rs. 1,60,00,000/- *minus* Rs. 81,87,667/-) by holding that since the assessee had executed the registered sale deed, received consideration and handed over the possession of the property by executing GPA, it is to be regarded as sale. The assessee had stated and it is reiterated that in respect of the balance portion, the assessee had not registered the property and hence there is no question of treating the same as completed and that the provisions of section 2(47) are not applicable business income. Thus, the action of the authorities below is bad in law and contrary to facts of the case and the addition confirmed in this regard needs to be deleted in the interest of equity and justice.

15.6 The Ld. D.R. relied on the order of AO

15.7 We have heard both the parties and perused the materials available on record. The contention of the Ld. A.R. is that this issue has two limbs. The first one pertains to sale of 26 guntas

at Chikkawodeyrapura to Smt. Rajya Lakshmi for a consideration of Rs.26 lakhs. Other one pertains to amount of Rs.1.34 crores received from Smt. Rajya Lakshmi as advance for sale of property measuring 3 acres 8 guntas at Chikkawodeyrapura. The same has been shown as liability in the books of accounts of the assessee. According to assessee, there was no transfer of capital asset in this case. We noticed that the assessee has not executed sale deed dated 27.7.2007 in respect of 26 guntas sold at Rs.26 lakhs. On the other hand, it has been executed by Sri C. Narasimha Murthy vide registered sale deed dated 27.7.2007 for a consideration of Rs.26 lakhs. The contention of the Ld. D.R. is that Sri C.N. Murthy was the representative of the assessee since the assessee could not buy the agricultural land in its own name, it has been bought in the name of Sri C.N. Murthy. Before the A.O., the assessee has accepted that it has been the transaction of assessee carried out by Sri C.N. Murthy on its behalf. The only argument of the assessee before the lower authorities that only the net income from this transaction is to be computed after working out the further expenditure of construction of road and also there are various other expenditure to be considered to arrive at net income from this transaction. In our opinion, this plea of the assessee is valid. The A.O. cannot overlook certain expenditure incurred relating to this transaction and he has to give due deduction to all the expenditure incurred in relation to the receipt of this sale consideration of Rs.26 lakhs. The Ld. A.R. submitted that the net income arouse from this transaction only at Rs.4, 64,635/-. In view of this, we direct the AO to give due credence to the all expenditure incurred by assessee in relation to impugned property purchased by Smt. Rajya Lakshmi vide sale deed dated 27.7.2007. The assessee has to furnish all the details to the AO with regard to the expenditure incurred with regard to this receipt of Rs.26 lakhs. The AO has to

decide it fresh after giving opportunity of hearing to the assessee and to tax the only net income arise out of this transaction This ground of appeal of assessee is partly allowed for statistical purposes.

15.8 In case of 3 acres and 8 guntas wherein the possession taken vide registered sale agreement and power of attorney dated 20.6.2007 for a consideration of Rs.1.34 crores. The contention of the assessee is that the net income from this transaction is only Rs.8,64,614/- and even this amount cannot be taxed in the assessment year under consideration since there was no sale of property by absolute sale deed and in view of the judgement of Hon'ble Supreme Court in the case of Balbir Singh Maini (398 ITR 531), the income to be taxed only on execution of registration of sale deed. In our opinion, there was no execution of absolute sale deed in this case, as such, we direct the AO to tax the net income from this transaction only on actual registration of sale deed of said property. In our opinion, since there was no registered sale deed was executed in the case of 3 acres and 8 guntas there is only registered sale agreement and execution of GPA along with handing over of possession of property. Thus, after receiving entire sales consideration and execution of sale deed, it is to be considered as a transfer and the gain on this account to be brought to tax in that assessment year only. However, the lower authorities have been brought to tax the gain by in this assessment year under consideration which is incorrect. This part of the ground of appeal of the assessee is allowed.

16. The revenue in ITA No.204/Bang/2012 is in appeal before deletion of addition of Rs.3,09,40,750/- made on protective basis. As discussed in earlier assessment year 2006-07, the Ld.

CIT(A) deleted the addition made on protective basis of Rs.3,09,40,750/-. Against this revenue is in appeal before us.

16.1 Ld. D.R. submitted that the substantive addition has been made in assessment year 2006-07 and protective assessment year has been made in assessment year 2008-09 the Ld. CIT(A) deleted both which is against the law.

16.2 We have heard the rival submissions and perused the materials available on record. We have given findings in assessment year 2006-07 in para 6.9 &6.14that addition is not based on any seized material and on the basis of oral statement given by Kuppendra Reddy for which an opportunity of cross examination has not been given to the assessee as such the sustentative addition cannot be sustained. Similarly, the protective assessment in assessment year 2008-09 also cannot be sustained on similar line. The deletion of addition made by Ld. CIT(A) on this issue is confirmed. This ground of appeal of the revenue is rejected. The contract between the assessee and M/s. Shobha Developers has not materialized and it is subject matter of litigation before arbitration and it is pending for award as such addition cannot be made even on protective basis. Accordingly, we dismiss this ground raised by revenue. The assessee's appeal in ITA No.109/Bang/2012 is partly allowed and the revenue's appeal in ITA No.204/Bang/2012 is dismissed

17. In the result, the assessee's appeal in ITA Nos.108 is allowed & 109/Bang/2012 is partly allowed and revenue's appeals in ITA No.348/Bang/2012, ITA No.203 & 204/Bang/2012 are dismissed.

Order pronounced in the open court on 18th Jul, 2022

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 18th Jul, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.