आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VP &
SHRI ARUN KHODPIA, AM

I.T.A. No.3466/Mum/2025
(Assessment Year: 2012-13)

M/s Skyline Greathills, Skyline Sparkle, Opp W.M.I Cranes, Subhash Road, Bhandup Village Road, Mumbai-400078. **PAN: ABAFS1107R**	Vs.	**DCIT, Central Circle -8(2),** Room No. 658, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Assessee - अपीलार्थी / Appellant	:	**Revenue -** प्रत्यर्थी / Respondent

I.T.A. No.3904/Mum/2025
(Assessment Year: 2012-13)

DCIT, Central Circle -8(2), Room No. 658, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	**M/s Skyline Greathills,** Skyline Sparkle, Opp W.M.I Cranes, Subhash Road, Bhandup Village Road, Mumbai-400078. **PAN: ABAFS1107R**
Revenue - अपीलार्थी / Appellant	:	**Assessee -** प्रत्यर्थी / Respondent

Assessee by	:	Shri Naresh Jain, AR
Revenue by	:	Shri Arun Kanti Datta, CIT-DR
Date of Hearing	:	27.01.2026
Date of Pronouncement	:	17.04.2026

O R D E R

Per Arun Khodpia, AM:

The captioned Cross Appeals are preferred by the assessee as well as the revenue to assail their respective contentions, emanating from the order of Commissioner of Income Tax (Appeals)-50, Mumbai [in short "Ld. CIT(A)"] dated 21.03.2025 for the assessment year (AY) 2012-13, which in turn arises from the order under section 143(3) of the Income Tax Act, 1961 (the Act) dated 24.03.2014 passed by the JCIT Range-21(3), Mumbai.

2. The grounds of appeal raised by the assessee and the revenue in their respective appeals, are as under:

Assessee's Grounds

"1. On the facts and circumstance of case and in law, the Ld. CIT(A) erred in exercising the power of enhancement u/s 251 of the Act without considering the fact that the Ld. CIT(A) does not have power to enhance the assessment by discovering a new source, which was not considered by the Ld. AO in the order appealed against. In the present case, the Ld. AO has not dealt with the issue relating to capitalization of Rs. 12 Crores under WIP in the assessment order, therefore, CIT(A) has no jurisdiction to enhance the same under section 251 of the Act.

2. Without Prejudice to Ground No.1 and on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in reducing Rs. 11.97 Crore from Closing WIP without considering the fact that the assessee has offered the undisclosed income with respect to the undisclosed expenditure, which was not disputed by the revenue in the original assessment, therefore, the corresponding expenses incurred out of such income should also be allowed. Hence, the assessee has correctly increased the WIP by the expenditure incurred.

3. Without Prejudice to Ground No.1 and on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-50 erred in reducing Rs. 11.97 Crore from Closing WIP without considering the fact under double entry system of accounting, if any, undisclosed income with respect to the undisclosed expenditure is brought into the books of accounts, the corresponding undisclosed expenditure should also be recognized. Therefore, in the present case, the

undisclosed expenditure should be recognized, and increase in WIP due to increase in such expenditure should be allowed.

4. On the facts and circumstance of case and in law, the Ld. CIT(A) erred in initiating penalty proceedings u/s 271(1)(c) of the Act."

Revenue's Grounds

1. Whether on the facts and circumstances of the case and in law, the Id. CITEA) was justified in deleting the addition made u/s 2(22)(e) of the Act without appreciating the facts as mentioned in the assessment order?

2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 17,66,44,500/- being business income in the guise of security deposit received by the Respondent, as the latter had already transferred its rights of ownership by way of irrevocable covenant as also received the entire consideration by way of security deposit?

2. Brief facts of the case are, that the assessee, a partnership firm, had filed its ITR for the relevant AY on 28.09.2012, declaring total income of Rs. 22.85 crores. The return was processed under section 143(1) of the Act. Thereafter, the case was selected for scrutiny, hence the statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee, in response the counsel of the assessee had attended the hearings on behalf of the assessee from time to time. Certain issues have prompted during the assessment proceedings which were responded by the assessee; however, the contentions pressed by the assessee could not impress upon the ld. AO, therefore the assessment was completed with following additions:

Business Income (as declared)		**Rs.22,84,63,844/-**
Add: Deemed dividend u/s 2(22)(e) (as per para 5.9)	Rs. 17,51,910/-	
Add: Additional value on consideration on joint development agreement (on protective basis as per para 6.9)	Rs. 17,66,44,500/-	
		Rs.17,83,96,410/-
Total Income		**Rs.40,68,60,254/-**
Total Income rounded off u/s 288A		**Rs.40,68,60,250/-**

3. Aggrieved with the aforesaid additions, the assessee preferred an appeal before the FAA, who had partly allowed the appeal of assessee along with certain enhancements to the assessed income.

3.1 While deciding the appeal of assessee, the ld. CIT(A) had decided the issue of addition under section 2(22)(e) for Rs. 17,59,910/- in favour of the assessee with the following observations:

> *"11. The AO made the addition on the grounds that the company SMPL is of the same management since all the partners of the appellant firm holds 59.66% of the shares in SMPL. Similar addition of Rs 23.63 lakhs was made u/s 2(22)(e) in the assessment order passed for the A.Y 2009-10 on the amount of security deposits received of Rs 54,68,90,000. The Ld CIT (A) vide order dated 21.09.2012 has held that the entire amount of security deposits received of Rs 54,68,90,000 cannot be said to business receipt because market value of land itself has been valued by stamp valuation authority at the time of registration at Rs 42,41,44,500. Therefore, the excess amount received by the appellant of Rs 12,27,45,500 over and above the stamp duty value cannot be considered as business receipts. Accordingly, CIT(A) directed the A.O to considered the amount of Rs 12.27 crores for the purpose of section 2(22)(e) of the Act. The Hon'ble Mumbai ITAT vide order dated 08.05.2013 has held that the amount received as security deposits is a business receipt. Relying on the decision of Universal Medicare Pvt. Ltd. it is held that since the appellant is neither the shareholder nor beneficial shareholder of SMPL, the amount in question can not be treated as deemed dividend in the hands of appellant firm.*
>
> *11.2 The Hon'ble Bombay High Court vide order dated 16.02.2016(ITA No 2299 of 2013) has upheld the decision of Hon'ble Mumbai ITAT. The relevant portion of this decision is reproduced as under-*

> ***"(f)*** *The issue as raised for our consideration in the question formulated, is no longer res integra as this Court in Universal Medicare Pvt. Ltd. (supra) has inter alia held thus:-*
>
> > *"Consequently, the effect of clause (e) of section 2(22) is to broaden the ambit of the expression 'dividend' by including certain payments which the company has made by way of a loan or advance or payments made on behalf of or for the individual benefit of a shareholder. The definition does not alter the legal position that dividend has to be taxed in the hands of the shareholder. Consequently, in the present case the payment, even assuming that it was a dividend, would have to be taxed not in the hands of the assessee but in the hands of the shareholder. The Tribunal was, in the circumstances, justified in coming to the conclusion that, in any event, the payment could not be taxed in the hands of the assessee."*
> >
> > *(emphasis supplied)*
>
> ***(g)****in the above view, the question as formulated for our consideration does not give rise to any substantial question of law. Thus, not entertained"*
>
> *12. From the above, it is evident that the security deposits received by the appellant is as per the terms of joint development agreement and not as a loan or advance. Therefore these receipts are business receipts and hence provision of section 2(22)(e) are not attracted on these receipts. Further, the appellant is neither a registered shareholder nor beneficial shareholder andhence in view of the decision of Hon'ble Jurisdictional High court in the appellant's own case for A.Y. 2009-10, the addition made under section 2(22)(e) of the Act by the AO amounting to Rs. 17,51,910 cannot be sustained. Therefore, A.O is directed to delete the same. This grounds of appeal is allowed accordingly.*

4. Further on the issue of addition made on account of additional value of consideration on Joint Development Agreement for Rs. 17,66,44,500/- being on protective basis, ld. CIT(A) had directed the ld. AO to delete the addition with his opinion, as under:

*"**19**. For the year under consideration, it is observed that the AO has relied on the findings of the Ld. CIT(A) in A.Y. 2009-10. Thus, to arrive at the consideration of the JDA, the AO has substituted Rs. 42,41,44,500 being the stamp duty value as per municipal records in place of Rs. 24,75,00,000 suo moto offered by the appellant. Thus, what the AO has failed to appreciate that the asset under consideration being development rights has been classified as a stock-in-trade by the appellant in the books of accounts and thus impliedly applied provisions of section 50C to a business asset is not justified in light of decisions rendered by the Hon'ble ITAT in the appellant's own case for A.Y. 2009-10. Nevertheless, the provisions of section 43CA of the Act could not have impugned year as the same have been inserted with effect been invoked in the impugned year as the from 01.04.2014.*

***20.** Further, it may be necessary to discuss the relevant clause of JDA which deals with the determination of the consideration. The relevant clause of the JDA wherein the consideration has been determined is as under: -*

"4. Consideration

*4.1 As and by way of consideration for the grant by the Joint Developers to the Owners/Developers of the development rights in respect of the Property described in the Third Schedule hereunder written as aforesaid, and conferring upon the Owners/Developers the rights, powers, privileges and benefits as set out herein to the Joint Developer. Owners/Developers shall **construct for and allot flats /penthouses/shops/offices/parking spaces having FSI equivalent to 16,500 sq. mts.**along with proportionate parking spaces Owners'/Developers' own cost. at the*

4.2 It is agreed that in respect of any area in the said Property required by the concerned authorities to be earmarked for any reservation, amenity open space or facilities of any nature (both present and future) including while giving permission for the Development or conversion of the said Property from Residential user to Commercial user, then, the obligations attached to providing such reservations, amenity open space or facilities shall be carried out by the Owners/ Developers at their own expense in all respects. All the

FSI/TDR and other benefits available in respect thereof shall belong to the Owners/Developers."

20.2 *On perusal of the above, it can be seen that the appellant is not receiving any monetary considerations upon transfer of development rights through the JDA. What the appellant is entitled to get is flats / penthouses /shops/offices/parking spaces having FSI equivalent to 16,500 sq. mtrs. Thus, in such a situation the appellant has quantified the consideration by applying the ready reckoner value as on 2011 to the constructed area it will receive pursuant to the JDA. The appellant has offered Rs. 24,75,00,000 as a consideration for entering the JDA. While doing so, the appellant has considered Rs. 15,000 per sq. mtr as a tentative consideration for the constructed premises that it would receive in the future i.e. 16,500 sq. mtrs.*

21. *The AO adopted Rs. 42,41,44,500 being the market value / ready reckoner value of the entire plot of land of 32,262 sq. mtrs. This in very first place appears to be an incorrect approach as what the appellant will get as a consideration is only 16,500 sq. mtrs of constructed area and what it is partying by way of the JDA is a plot of land. Thus, applying the market value of the plot of land as a consideration for the JDA is incorrect as consideration is a value that will flow to the appellant which will be in a form of FSI equivalent to 16,500 sq. mtrs of constructed area. It appears that the AO has completely ignored the consideration clause of the JDA and recomputed the income on the basis of the market value of the entire plot in place of value to be derived out of the JDA. Therefore, the addition made by the A.O cannot be sustained. The A.O is directed to delete the addition made of* ***Rs17,66,44,500. Accordingly appeal on Ground No. 3 & 4 is ALLOWED."***

5. As both the additions made by ld. AO are deleted by the ld. CIT(A), the revenue is in appeal before us, whereas the ld. CIT(A) had referred to a survey action under section 133A of the Act on the business premises of the assessee, conducted on 20.01.2012 and observed that during the course of survey by statement of Shri Narottam Sharma, partner of the assessee firm was recorded, wherein an admission was made to declare unaccounted income of Rs. 12 crore

on account of unexplained cash expenditure found during the survey. While going through the computation of income of the assessee for AY 2012-13 the ld. CIT(A) has observed that, though the assessee had made the declaration of Rs. 12 crores, but at the same time the amount offered has been capitalized as work-in-progress in the books of account, thus indirectly the effect of declaration of additional income has been nullified. The ld. CIT(A) issued a show cause notice under section 251(1) of the Act on 10.01.2025, to explain as to why the additional income offered during the survey should not be reduced from the WIP of the assessee to the extent it has been capitalized.

6. In response, it has been clarified by the ld. AR, that the issue raised for enhancement of income by the ld. CIT(A) during the course of appellate proceedings was never dealt with by the ld. AO during the course of assessment, therefore the ld. CIT(A) has no jurisdiction to enhance the same under section 251(1) of the Act. Ld. AR relied on the judicial pronouncements in the case of **Edelweiss Asset Management Ltd. vs. ACIT (2024) 1 TMI-650, ITAT, Mumbai, CIT vs. Sardari Lal & Co. (2001) 9 TMI-1130, Hon'ble Delhi High Court**. The aforesaid contention of the assessee could not convince the ld. CIT(A), thus had decided the issue against the assessee by reducing the amount of work-in-progress by Rs. 11,96,87,000/-.

7. Being aggrieved with the aforesaid enhancement assessee preferred the present appeal before us.

8. First, we shall be taking up the appeal of assessee raising the issue that enhancement of income by the ld. CIT(A) was not in accordance with the mandate of section 251(1) of the Act. The ld. AR representing the assessee submitted that there are various case laws according to which an issue which was not dealt with by the ld. AO cannot be picked up by the ld. CIT(A) by invoking the powers under section 251(1) of the Act, as he does not assume valid jurisdiction to make such enhancement. The ld. AR placed his reliance on various judgments, discussed the findings of ITAT and Hon'ble Courts therein. The first case quoted by ld. AR was in the case of **Shapoorji Pallonji Mistry vs. CIT (1958) 34 ITR 342 (Bom.) decided by Hon'ble Bombay High Court**, which was further challenged by the revenue before the **Hon'ble Supreme Court,** reported in **(1962) 44 ITR 891 (SC),** wherein the issue of powers of FAA to make enhancement of income was discussed and the appeal of revenue dismissed, by enshrining the following principle of law.

> *"Section 251 of the Income- Act, 1961 (Corresponding to section 31(3) of the Indian Income-tax Act, 1922) - Commissioner (Appeals) - Powers of - Assessment year 1947-48 - Whether it would not be open to AAC to introduce into assessment new sources, as his power of enhancement is restricted only to income which was subject-matter of consideration for purposes of assessment by ITO - Held, yes"*

9. The ld. AR further placed his reliance on the decision of **CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443(SC)**, wherein Hon'ble Supreme Court has held as under:

"Section 251 of the Income-tax Act, 1961 [Corresponding to section 31(3) of the Indian Income-tax Act, 1922] - Commissioner (Appeals)- Power of Assessment year 1952-53 - Whether power of enhancement of AAC under section 31(3) of 1922 Act is restricted to subject matter of assessment or source of income which have been considered expressly or by clear implication by ITO from point of view of taxability of assessee - Held, yes - Whether, therefore, AAC had no jurisdiction under section 31(3) of 1922 Act, to assess a source of income which had not been processed by ITO and which was not disclosed either in return filed by assessee or in assessment order - Held, yes"

10. The ld. AR further relied upon the decision of Co-ordinate Bench of ITAT, Mumbai in the case of **Edelweiss Asset Management Ltd. (supra)** wherein the issue of powers of the ld. CIT(A) was discussed at length and concluded as under:

"11. When we consider the provisions of section 251 and the above judicial pronouncement or the principles emerge as to that the power to enhance is restricted to the subject matter of assessment or the source of income which have been considered expressly or by clear implications by the AO from the point of view of the taxability of the assessee. In other words, the CIT(A) can exercise the power to enhance under section 251(1) in a case where the AO has considered a particular issue of disallowance or addition and while doing so has under assessed the income of the assessee. In cases where the AO has not dealt with the issue at and has not applied his mind on the taxability or non-taxability of a certain matter then the CIT(A) has no jurisdiction to enhance under section 251(1), but should resort to alternate course of action either under section 263 or 147 or 154 as the case may be. The Hon'ble Supreme Court in the case of Rai Bahadur Hardutroy Motilal Chamaria (supra) held that powers of enhancement conferred on the appellate authority extends only to matters considered by the Income-tax Officer. Therefore, it becomes important to analyze whether the AO has considered the issue but has determined" in the course of assessment by deciding not to make any addition/disallowance on that account thereby

empowering the CIT(A) to invoke the provisions in respect of enhancement under section 251 of the Act.

12. In the given case, from the perusal of the assessment order we notice that the AO has not recorded the fact that the assessee has filed a revised return anywhere in the assessment order. In body of the assessment order where the AO has determined the assessed income, it is the loss as per the original return of income that has been considered by the AO and not the loss as per revised return. It is not the case where the revised return is filed beyond the time limit under section 139(5) for the AO to ignore the revised return since the assessee has filed the revised return on 17.03.2019 which is well within the time limit. The AO considering the loss as per revised return in the computation, in our view cannot be a reason to argue that the AO has under assessed the income after considering the issue of allowability of ESOP expenses. Given this, in assessee's case the CIT(A) has decided the issue of allowability of ESOP expenses which has not earlier been considered by the AO. In this regard we notice that the Hon'ble High Court of Delhi in the case of CIT v Sardari Lal & Co. [2002] 120 Taxman 595/[2001] 251 ITR 864 has considered a similar issue wherein it is held that-

> *"The inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority."*

13. Taking into consideration the ratio laid down by the above judicial pronouncements and the facts of the present case we are of the view that the CIT(A) has acted beyond his jurisdiction enhancing the income of the assessee by disallowing the ESOP expenses for the reason that the AO while completing the assessment has not taken into consideration the revised return of income and has not examined the taxability of ESOP expenses which the assessee has claimed in the revised return of income. While holding so we would like to add that the

decision is based on the facts unique to the assessee's case. This ground of the assessee is allowed accordingly."

11. In view of aforesaid submissions, it was the prayer by ld. AR that, since the issue which have been raised by the ld. CIT(A) was never considered or dealt with by the ld. AO, the ld. CIT(A) was not empowered to assume jurisdiction under section 251(1) of the Act to enhance the income of assessee on account of such issue, which was alien to the issues in assessment order / proceedings. The addition, therefore, by way of reducing the working capital of the assessee cannot sustain.

12. Per contra, the ld. CIT-DR representing the revenue submitted that the ld. CIT(A) has rightly assumed the powers under section 251(1) of the Act, the case laws relied upon by the assessee are distinguishable on facts. That in present case the disclosure which ought to have been made by the assessee as per the statement of partner during the survey was made by the assessee, however a counter entry by increasing the WIP was made in the books of account and therefore had nullified the effect of enhancement. It is further submitted that the issue could not come in the knowledge of ld. AO, as the assessee has mentioned the amount of declaration of income on the face of Profit & Loss A/c, whereas its adjustment in WIP was not apparent. It is submitted that WIP was not shown in the Profit & Loss A/c, further no documentary evidence for capitalization of such amount, which was not accounted for or utilization of such WIP were made available to the ld. AO. It is argued that the assessee has only challenged the

issue on account of legality that a new issue cannot be taken up by the appellate authority under section 251(1) of the Act unless the same is dealt with by the ld. AO, whereas nothing could be established on merits so as to support the capitalization of unaccounted expenditure in WIP. Under such circumstances ld. CIT(A) has correctly enhanced the income of assessee by reducing the amount of work-in-progress.

13. In rebuttal the ld. AR submitted that once the assessee has accepted unaccounted expenditure in the construction activities of the assessee and have offered the said unaccounted amount as income of the assessee in the Profit & Loss A/c, the assessee is entitled to increase the work-in-progress on account of expenditure incurred. The ld. AR placed his reliance on the decision of ITAT, Rajkot in the case of **Aaryaland Enterprises & Co. vs. DCIT Circle-(1), Rajkot (2022) TMI 1311-ITAT, Rajkot**, wherein the issue of declaration of income, disclosed under a survey under section 133A of the Act was offered by the assessee and also have increased the work-in-progress by the construction expenses which was denied by the ld. AO, while the deduction has been claimed by the assessee. The Tribunal has allowed such increase in work-in-progress.

14. We have considered the rival submissions, perused the material available on record and case laws relied upon by the parties. Admittedly the issue for enhancement was neither emerged from the finding of Ld. AO nor as per

assessment order and facts on records, it is ostensive that he had look into it. Such fact is visible from the impugned order of Ld. CIT(A), having observation that "*the AO did not examine other components of the financial statement*". We thus find force in the submissions of Ld. AR, on first principle, that section 251(1) of the Act restricts the CIT(A) to assume jurisdiction for enhancement of income, on an issue or new source of income, which was not dealt with or considered by the Ld. AO, during the assessment proceedings, at the most such issue can be taken up by invoking provisions of section 263, section 147 or section 154, if law permits to do so. In view of such ratio of law in place, we are of the considered opinion that in the facts and circumstances of the present case the proceedings for enhancement by the Ld. CIT(A) are not in consonance with the mandate of law, vitiates and proposed enhancement, hence is liable to and directed to be reversed. In result the **ground no 1** raised by the assessee, **stands allowed**.

15. On merits we are not expressing any view, as the facts of case relied upon and facts of present matter are subject to further verification. Also, once the enhancement is held as invalid, **ground no. 2 and 3** of the present appeal became **academic** only.

16. Ground No 4, *qua* the penalty u/s 271(1)(c) is consequential in nature and Ground No. 5 is general, does not warrants separate adjudication.

17. In result the appeal of assessee in **ITA 3466/M/2025 stands allowed**, in terms of our aforesaid observation.

ITA 3904/MUM/2025 revenues appeal

18. **Ground No.1 : regarding addition made under section 2(22)(e) of the Act.**

19. The ld. CIT-DR submitted that the addition made by ld. AO under section 2(22)(e) of the Act was deleted by the ld. CIT(A) without appreciating the facts of the case in proper perspective, the same needs to be reversed.

20. Per contra, the ld. AR representing the assessee submitted that the issue in hand regarding addition made under section 2(22)(e) of the Act is squarely covered by the decision of ITAT, Mumbai in the case of **Universal Medical Pvt. Ltd.** wherein it is held that since the assessee is neither the shareholder not beneficial of shareholder of the lender company, the amount in question cannot be treated as the dividend. It is further submitted that the issue has been taken before the Hon'ble Bombay High Court by the revenue, wherein Hon'ble High Court had dismissed the appeal of assessee stating that the question as formulated does not give rise to a question of law, thus not entertained while granting the aforesaid decision, the question before the Hon'ble High Court was as under:

"*Consequently, the effect of clause (e) of section 2(22) is to broaden the ambit of the expression 'dividend' by including certain payments which the company has*

made by way of a loan or advance or payments made on behalf of or for the individual benefit of a shareholder. The definition does not alter the legal position that dividend has to be taxed in the hands of the shareholder. Consequently, in the present case the payment, even assuming that it was a dividend, would have to be taxed not in the hands of the assessee but in the hands of the shareholder. The Tribunal was, in the circumstances, justified in coming to the conclusion that, in any event, the payment could not be taxed in the hands of the assessee."

21. It is further submitted by the ld. AR that since the assessee has received security deposits in terms of Joint Development Agreement and not as a loan or as advance, therefore such receipts are business receipts, would not be the subject matter of provisions of section 2(22)(e) of the Act. Accordingly, the addition made by the ld. AO in contravention of the provisions of section 2(22)(e) cannot be survive.

22. We have considered the rival submissions, perused the material available on record and the case laws relied upon by the assessee referred to supra in the decision of ld. CIT(A). In present case admittedly the amounts were deposited by the company M/s Skyline Mention Pvt. Ltd. (SMPL) to the tune of Rs. 84.95 crores out of which an amount of Rs. 21 crore are received during the relevant year. It is undisputed fact which is revealed by ld. AO that the partners of assessee firm are shareholders of SMPL who cumulatively holds 59.66% shares in the SMPL. The ld. AO further alleged that the deposits received by the assessee are nothing but loans and advances which has been camouflaged as security deposit. The ld. AO noted that the similar issue for AY 2009-10

wherein the addition of Rs. 23,63,010/- was made under section 2(22)(e) of the Act which though Hon'ble ITAT had deleted, however the Department has not accepted such decision and has preferred an appeal before the Hon'ble Bombay High Court. As per order of ld. CIT(A), the ITAT, Mumbai vide order dated 08.05.2013 in **ITA No. 6616/Mum/2012 for AY 2009-10 in assessee's own case** has held that the amount received as security deposit constitutes a business receipt. The issue was further challenged before the Hon'ble Jurisdictional High Court of Bombay, wherein the question raised by the revenue was dismissed by the Hon'ble Bombay High Court vide order dated **16.02.2016 (ITA No. 2299 of 2013) [2016] 68 Taxmann.com 188 (Bom.),** the issue has been decided by the ITAT regarding addition under section 2(22)(e), challenged by revenue was dismissed by the Hon'ble High Court with the observation that no addition in the hands of assessee can be made, at the most if any dividend in terms of provisions of section 2(22)(e) has to be added the same can be taxed in the hands of shareholders only. As the assessee company is neither a registered shareholder nor beneficial shareholder, therefore the issue is squarely covered by the decision of ITAT and Hon'ble Bombay High Court in the assessee's own case.

23. We, thus, respectfully following the aforesaid decision in assessee's own case on the same issue emerging from the part payment of security deposits which has been decided in favour of assessee for AY 2009-10, *de hors* any fresh

material, decision or argument by the Department, are of the considered opinion that the ld. CIT(A) has rightly and judiciously adjudicated the issue in favor of the assessee following the decision of ITAT, which was approved by the Hon'ble Bombay High Court in assessee's own case. Accordingly, we approved the decision of ld. CIT(A) with no modification to the same.

24. In result, Ground No. 1 of the revenue's stands dismissed.

25. **Ground No. 2 regarding the addition of Rs. 17,66,44,500/- being Business Income in the guise of security deposit received by the assessee.**

26. At the outset ld. CIT-DR reiterated the facts of issue, referred to P&L A/c of the assessee, stating that the aforesaid addition was not treated as income by the assessee, whereas the possession of project was already handed over to the partners and the assessee do not have any authority to sell the constructed premises. The ld. AO has adopted the stamp duty value of the property, whereas the assessee has declared income based on FSI, which it will fetch in lieu of land as per Joint Development Agreement (JDA). It is submitted that on the same issue that has come up before the ITAT in assessee's own case for AY 2009-10, the addition was deleted observing that the assessee has already offered the income to tax on aforesaid transaction in AY 2012-13, therefore the addition made by ld. AO in AY 2012-13 justifies. Under such facts and circumstances, it

is prayed that the order of ld. CIT(A) on the issue is liable to be reversed and the addition made by the ld. AO deserves to be upheld.

27. Per contra, ld. AR representing the assessee submitted that the assessee firm is engaged in the business of development of real estate whereas M/s SMPL is owner of a large parcel of land at Powai, Mumbai, the assessee is entitled for development rights in respect of 32,26,268/- sq. mtrs. Of land contiguous to the land owned by M/s SMPL, out of entire land which was on lease under 60 different leases. It is further submitted, that a JDA was executed on 04.04.2008 according to which the assessee has received a security deposit of Rs. 54,68,90,000/-. Since, the subject land at the relevant point of time was in No Development Zone (NDZ), therefore the certain actions were required to be completed, before any development can be commenced. In due course of time requisite permission/sanctions in the form of approval plans were obtained and the possession was granted to SMPL only on 25.04.2011. As per said agreement the assessee is entitled to receive 16500 sq. mtrs of constructed area upon completion of the development of the premises. In view of aforesaid facts, the consideration arising from the JDA was offered to tax by the assessee in FY 2011-12 & 2012-13. The issue of security deposit received by the assessee under the JDA was a purported business consideration on sale of development rights as raised by the ld. CIT(A) during the appellate proceedings for AY 2009-10 was dealt with by the ITAT and has held that the provisions of section 53A of the

Transfer of Property Act cannot be made applicable to the land under consideration, the said land is stock-in-trade and it is not a capital asset. It is further held that the business profit arises to the assessee on the sale of stock-in-trade only when the constructed premises are sold and not at the time when development agreement was entered into. ITAT has held that the development rights can be said to be transferred only in the FY 2011-12 relevant to AY 2012-13 and not in the year when JDA was entered into. Accordingly, the amount received by assessee for Rs. 24,75,00,000/-, which was *suo moto* offered as income by the assessee shall be the income of assessee for the relevant year, which cannot be substituted by the stamp duty value of land which is of entire land parcel consisting of 32262 sq. mtrs. Therefore, the ld. CIT(A) has rightly adjudicated the issue in favour of the assessee with observation that the assessee will get consideration for only 16500 sq. mtrs of constructed area out of the JDA, therefore market value of plot of land as a consideration for JDA is incorrect approach to adopt as income of the assessee and therefore the addition made by ld. AO by completely ignoring the consideration clause of JDA and re-computing the income on the basis of market value of the entire plot in place of value to be derived in terms of JDA was bereft of substance and devoid of merits, the same therefore rightly deleted by the ld. CIT(A).

28. We have considered the rival submissions and perused the material available on record and the decision of ITAT in assessee's own case wherein the

Tribunal has decided the issue in AY 2009-10 in assessee's own case, from where the main outcome of the finding are, that the subjected land is stock-in-trade and not a capital asset. The amount received as deposit by the assessee under JDA should not be considered as sale consideration received by the assessee. The nature of transaction between the parties by way of development agreement cannot be considered to be a sale of immovable property which is stock-in-trade or otherwise as provided in the Transfer of Property Act. It was held that the business profit arises to the assessee on sale of stock-on-trade only when the constructed premises were sold and not at the time when development agreement was entered into. We thus find substance in the decision of ld. CIT(A) that the actual FSI which is available to the assessee as a consideration of JDA was only 16500 sq. mtrs for which the actual amount to be taxed was Rs. 24,75,00,000/- and the value of total plot of land admeasuring 32262 sq. mtr. as per market value /ready reckoner cannot be added in the hands of assessee. We, thus, approve the decision of ld. CIT(A), which is based on the findings of ITAT in assessee's own case for AY 2009-10.

29. In result, **Ground No. 2** of the revenue is rejected, in terms of our aforesaid observations.

30. Ground No.3 of the revenue appeal is general wherein no further arguments were raised by the Department, therefore stands dismissed.

31. In result, the appeal of revenue is dismissed.

32. In combined result, appeal of assessee in **ITA No. 3466/Mum/2025** is **allowed**, whereas the appeal of revenue in **ITA No. 3904/Mum/2025**, stands **dismissed**, in terms of our aforesaid observations.

Order pronounced in the open court on 17-04-2026.

Sd/-	**Sd/-**
(SAKTIJIT DEY)	**(ARUN KHODPIA)**
Vice-President	**Accountant Member**

Mumbai, Dated :17-04-2026.
**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai