

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'H' MUMBAI**

ITA No.4859/Mum/2009 : (A.Y. 2001-2002)
ITA No.4860/Mum.2009 : (A.Y. 2002-2003)
ITA No.4861/Mum/2009 : (A.Y. 2003-2004)
ITA No.4862/Mum/2009 : (A.Y. 2004-2005)
ITA No.4863/Mum/2009 : (A.Y. 2005-2006)
ITA No.4864/Mum/2009 : (A.Y. 2006-2007)
ITA No.4865/Mum/2009 : (A.Y. 2007-2008)

**BEEJAY SECURITY & FINANCE LTD
17, KAMER BLDG, 38, CAWASJI PATEL
STREET, FORT, MUMBAI-400023
PAN NO:AAACB2723J**

Vs

**ASST COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-9, MUMBAI**

N V Vasudevan, JM and R K Panda, AM

Dated: June 24, 2011

ORDER

Per: Bench:

These are appeals by the assessee against common order dated 3/7/2009 of CIT(A) VII, Mumbai relating to assessment year 2001-02 to 2007-08. Ground No.1 to 3 raised by the assessee which is common in all the appeals read as follows:

"1. On the facts & circumstances of the case the appellant submit that the order passed by the Learned Assessing Officer is bad in law as the basic conditions if issue of notice u/s. 153C are not satisfied.

2. On the facts and circumstances of the case the appellant prays that the order passed by the Learned Assessing Officer is unlawful, invalid and without exercise of proper jurisdiction. The appellant prays that the order may be treated as bad in law.

3. On the facts & circumstances of the case the appellant submit that the order passed by he Learned Assessing Officer is against the principle of natural justice and without giving proper opportunity of hearing."

2. The facts material for adjudication of the aforesaid grounds are as follows.

The assessee is a company. It is engaged in the business of real estate development and dealing in properties. A search and seizure operation under section 132 of the Income Tax Act, 1961 (the Act) was initiated on 4/10/2006 in the case of one M/S.Rehab Housing Pvt. Ltd., and M/S.Secure safe valuts Ltd., at Gitaneel Arcade,

5th floor, Hill Road, Bandra(W), Mumbai – 50. In the course of such search, among others, two documents were found namely a copy of the lease deed dated 6/8/2000 by which the premises bearing 401, 4th Floor Vintage Pearl Co-Op. Hsg. Society Ltd., 29th Road, Bandra (W), Mumbai owned by the assessee was given on lease to a company named M/s. Reddiff.Com India Ltd. Another document which was found was the memorandum and article of association of the assessee company. The DDI(Inv), Unit 7(2) who had conducted the search had called upon the assessee to explain the loose papers seized at the time of search in the case of M/s. Secure Safe Valuts Ltd., which is a sister company of the assessee. The assessee by its reply dated 22/3/2007 addressed to the DDIT (Inv) ,Unit 7(2) submitted on the seized documents referred to above that the income from lease of the premises covered by the seized document has already been recorded in the books of accounts of the Assessee and declared in the returns of income filed by the Assessee. The reply in this regard was as follows:

“Pages 17 to 39: Leave Licence agreement dated 6th Aug.2000 by Beejay Security and Finance Ltd. for lease of their flat to Reddif.com India Ltd. Transaction and income duly recorded in the books of account of Beejay Security & finance Ltd. during the tenure of lease agreement.”

3. Thereafter the ACIT, CC-10, Mumbai, who was the then Assessing Officer of the assessee as well the persons searched recorded the following satisfaction note on 23.3.2007 for issue of notice under section 153C of the Act.

“As per Annexure – 81 to 64 pages (as per A.R page 57) and Annexure A-7 pages 17 to 39 (as per A.R 60, a lease agreement of assessee's flat to Rediff.Com (I) Ltd. are found and seized. To verify these transactions recourse to sec. 153C are required to be taken. Therefore, notice u/s. 153C”

4. The provisions of section 153C in so far as it is relevant for the present appeal, reads as follows:

“153C. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :]

96a[Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.]

[(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which

search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]”

5. The provisions of Sec.153-A of the Act, reads as follows:

153A. Assessment in case of search or requisition.(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 ;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner :

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.-For the removal of doubts, it is hereby declared that,-

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section ;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

6. The provisions of section 153A of the Act were introduced by the Finance Act, 2003 with effect from 1-6-2003. In respect of searches carried out under section 132 of the Act or requisition of books and other documents made under section 132A of the Act after 31-5-2003 the Assessing Officer shall issue a notice calling upon assessee to furnish return of income in respect of six assessment years immediately preceding assessment year relevant to the assessment year in which search is conducted or requisition is made. The Assessing Officer is empowered to re-assess the total income in respect of each assessment year falling with such six assessment years under the second proviso to section 153A of the Act. If in respect of any assessment year falling within the six assessment years referred to earlier, any assessment or re-assessment is pending on the date of initiation of the search under section 132 of the Act or making of requisition under section 132A, the same shall abate. In terms of Sec.153-C of the Act, if in the course of search of a person u/s.132 of the Act, any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person who is searched u/s.132 of the Act, then the AO of the person in whose case search u/s.132 of the Act has been carried out has to arrive at a satisfaction that money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to some other person. On arriving at such satisfaction, he has to hand over the documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Act.

7. The ACIT, CC-10, having recorded satisfaction for proceeding against the Assessee u/s.153-C of the act, however issued a notice under section 153A of the Act which provisions are applicable to the person in whose case a search under section 132 of the Act has been conducted. This notice under section 153A is dated 26/3/2007. The case was later transferred on 19/8/2008 to the ACIT, CC 9, Mumbai to whom the case stood transferred from ACIT, CC 10, Mumbai. The order of assessment was passed by the ACIT, CC-4, Mumbai.

8. Before CIT(A) the assessee submitted that there was no search in the case of the assessee under section 132 of the Act and, therefore, the notice under section 153A issued by the ACIT, CC-10 Mumbai based on which the ultimate order of assessment under section 153C of the Act was passed was illegal. It was submitted that no notice under section 153C was issued nor any satisfaction recorded by the Assessing Officer before issue of notice under section 153C of the Act. It was further submitted that there was no satisfaction note on the file of the Assessing Officer namely ACIT,

CC-9, Mumbai. This submission was made by the assessee after taking inspection of the records of assessment. It is not in dispute that one Mr. Sankaran, the accountant of the assessee was representing before the Assessing Officer in the assessment proceedings. In remand report filed by the Assessing Officer before the CIT(A) the Assessing Officer submitted as follows:

"Regarding Point No.5 & 6 during the course of assessment proceedings notices issued u/s. 153A by the then AO, Central Circle 10 Mumbai have been corrected as 153C in both the notices as well as returns filed in agreement with the Accountant of the assessee, and the assessment have been passed u/s. 153C r.w.s. 143(3), wherein the satisfaction of the AO have been incorporated in the body of assessment order itself in first para thereof. It is also a fact that in Search loose papers mentioned above were seized pertaining to the assessee.

During the course of inspection by the assessee the satisfaction recorded by the AO was misplaced, therefore on the date of inspection. It could not be made available. However, it is traced out and found that the then AO CC 10, had kept all the satisfaction notes of the group cases in a separate folder."

9. On consideration of the remand report the CIT(A) was of the view that there was a proper satisfaction recorded for proceedings under section 153C of the Act. The CIT(A) held as follows:

"6. I have carefully considered the above facts and do not find any merit in the contentions of the appellant. There is no disputing fact that in the course of search in the group, certain papers were seized which pertained to the appellant and accordingly, it was liable to proceedings u/s. 153C of the Act. In so far as lack of recorded satisfaction is concerned, it would suffice to state here that from the body of the order, it is quite apparent that the AO took recourse to the provisions of section 153C so as to verify the transaction recorded therein. It must be understood here that recording of satisfaction so as to show existence of undisclosed income is not a pre-requisite under the provisions of section 153C which are distinguishable from the provisions of section 158BD of the Act which related to block assessments. The literal meaning of section 153C is that once documents etc. are handed over to the AO of the other person, which incidentally is the same AO, the provisions of section 153A are made applicable and therefore, even if such assets etc. are recorded or disclosed to the department by such other person, the assessment may have to be framed for all even assessment years. The other precondition is that the other person should be the owner of such assets etc. which is not disputed at all in the present case by the appellant. The requirement of section 153C with reference to satisfaction seems to be only prima facie satisfaction and not a conclusive satisfaction. Thus the AO must be prima facie satisfied that the assets etc. belong to other person than the person searched. Further, there is nothing in the provisions to show that such satisfaction has to be recorded in writing. Moreover, in the present case, such satisfaction has been stated to have been recorded as per the remand report and I have nothing to doubt the action of the AO in this respect as is being made by the appellant.

6.1 In so far as the contention that the proceedings were not initiated u/s. 153C but u/s. 153A of the Act, I do not find any merit in it. It is evident from the body of the assessment order itself that the AO has taken recourse to the provisions of section 153C and merely by mistake mentioning section 153A in the notice issued, would not

lead to the conclusion that entire order is vitiated. Moreover, as reported in the remand report such typographical mistake was duly rectified in consultation with Accountant of the appellant and such a contention has not be controverted by the appellant. Apart from such facts, it is rightly pointed out that the provisions of section 292B of the Act take care of such mistake to which the proceedings could not be considered invalid.

6.2 Considering the totality of facts and circumstances of the case and the legal position stated above, I do not find any infirmity in the action of the AO in assuming jurisdiction u/s. 153C of the Act and in framing the assessment order. The appellant has been accorded adequate opportunity of hearing and also the order is not time barred. The grounds in this respect fail."

10. Before us Id. Counsel for the assessee reiterated the same stand as was put forth before the CIT(A). Apart from the above, he also made submission that even assuming that satisfaction was recorded by the erstwhile AO, the same is not proper and will not confer jurisdiction for the AO to proceed u/s.153-C of the Act. The satisfaction contemplated by the provision of Sec.153-C is regarding existence of income or documents, which would not or have not been disclosed to the Department. The learned counsel for the Assessee in this regard pointed out that the Assessee has duly declared income from lease of the property right from the inception of the lease in the return of income filed. The same has also been accepted by the Revenue. The fact that the lease deed was found from possession of a third party in a search u/s.132 of the Act, will not confer jurisdiction to the AO to proceed u/s.153-C of the Act, unless there is atleast prima facie material to show existence of undisclosed income. In this regard, it was also pointed out that u/s.132 of the Act, search and seizure can be effected only of documents or evidence regarding income which have not been or would not have been disclosed to the Department by an Assessee. When there is disclosure of rental income received under the lease agreement prior to search by the Assessee, the AO cannot entertain any belief regarding existence of any income not disclosed to the department. If the AO is permitted to do so, then it would be giving AO power to make roving enquiries without any reference to seized material which prima facie would show existence of undisclosed income. In this regard the learned counsel drew our attention to several decisions, to which we will make a reference a little later. The learned D.R. relied on the CIT(A).

11. We have carefully considered the rival contentions. We will first consider the plea of the Assessee regarding the existence of satisfaction on the part of the Assessing Officer of the person who was searched u/s.132 of the Act, to proceed against the Assessee (who was a person who was not searched u/.132 of the Act) u/s.153-C of the Act. In doing so we are presume that there was a satisfaction note recorded by the ACIT CC-10 on 23/3/2007 and we also presume that the notice under section 153A dated 26/3/2007 was in fact a notice under section 153C and there was a typographical error in such notice. We also presume that in the course of assessment proceedings section 153A was corrected as 153C after due consent by the accountant of the assessee (in the notices as well as return filed by the assessee). We however hasten to add that we are not giving any finding on the claim of the Revenue or the Assessee regarding existence of satisfaction note or typographical error in the notice u/s.153-A of the Act.

12. The first aspect that has to be considered is as to whether any satisfaction at all is required to be arrived at by the AO of the person who was searched u/s.132 of the Act, regarding any undisclosed income of the person who was not subjected to a search to hand over the seized material to the AO of the person to whom the seized document belongs or is alleged to belong.

13. The ITAT Delhi in the case of *M/s. Jindal Stainless Steel Vs. ACIT ITA No.3480 and 3481/Del/2006* in its order dated 25/4/2008 had dealt with this issue and have held that provisions of Sec.153-C of the Act are akin to Sec.158BD of the Act. (vide para 46 of the order). The Hon'ble Tribunal further held that the AO has to follow the condition precedent for proceeding u/s.153-C of the Act in the same manner as the AO would do for proceeding u/s.158BD of the Act. The Hon'ble Tribunal in this regard referred to the decision of the Hon'ble Supreme Court in the case of *Manish Maheshwari Vs. ACIT 289 ITR 341(SC)* and have held that satisfaction that undisclosed income belongs to the person other than the one who is searched u/s.132 of the Act, has to be arrived at by the AO before proceeding to hand over seized document to the AO of the person who was not searched. We therefore hold, following the decision of the ITAT Delhi Bench referred to above, that the AO has to record satisfaction regarding existence of undisclosed income before proceeding u/s.153-C of the Act.

14. The next aspect to be examined is as to whether such satisfaction that there was undisclosed income of the Assessee can be said to have been arrived at by the AO in the present case. We have already referred to the section 153C of the Act. It was the contention of the Id. D.R that section 153C of the Act, would be applicable whenever documents seized in the course of a search belong to a person other than a person in whose case a search is being conducted. In this regard we find that the provisions of section 153C have to be read in the context of section 132 of the Act. The exercise of the power under s. 132 to initiate a search of a place and effect seizure is subject to fulfillment of two conditions (a) existence of information in possession of the authority specified in s. 132, and (b) their belief on the basis of such information that a person to whom summons is issued to produce books of accounts and, omits to produce such books of account or will not produce them or that the person is in possession of money, bullion or jewellery or other valuable articles or things which he has not disclosed or would not disclose for the purpose of the IT Act, 1961. Further a seizure of only documents which would not be produced by a person searched can be made. As far as the present case is concerned, we find that the assessee has entered into an agreement for lease of the property under lease agreement dated 6/8/2000. The assessee has been declaring income from letting out of the aforesaid property regularly in its books of account till the date of search and thereafter. Thus the factum of the assessee receiving income in the form of rent is very much in the knowledge of the department. In fact this fact has been duly informed by the assessee in its letter dated 22/1/2007 to the DDIT (Inv.), Unit 7(2). The satisfaction note under section 153C of the Act merely says that the documents were being sent to verify the transaction of lease. On the facts of the case it cannot be said that the AO was satisfied regarding existence of any undisclosed income which would warrant initiation of proceedings under section 153C of the Act. In our view the satisfaction required for proceedings under section 153C cannot be reduced to a mere formality of forwarding the documents found in the course of search which did not belong to the person searched and which belonged to the person against whom proceedings under section 153C are sought to be initiated. In the case of *Anil P.Khimani vs. DCIT ITA No.2855 to 2860/M/08 (Order dated 23.2.2010)* this Tribunal had an occasion to deal with similar issue. The Tribunal held as follows:

"13. A perusal of the assessment orders in all these cases, clearly demonstrate that the sole addition in question is on account of low withdrawals . This had not been made, based on any material found either during he course of search or during the course of assessment proceedings. Under the circumstances, we examine the legal position. The Delhi bench of the Tribunal in the case of Anil Kumar Bhatia vs. ACIT held as follows:

"S.153 provides that where a search is initiated u/s. 132 the AO shall "assess or reassess the total income of six assessment years immediately preceding the assessment year" relevant to the previous year in which the search is conducted or requisition is made. The first proviso states that the AO shall "assess or reassess the total income in respect of each assessment year falling within such six assessment years" while the second proviso state that the assessment or reassessment relating to the said six assessment years "pending" on the date of initiation of the search under section 132 shall "abate" . In the assessee's case, search action was initiated and assessment under s. 153A were frame for six assessment years making various additions. The assessee claimed that the additions were not tenable as regular returns had been filed where the particulars relating to the additions had been disclosed and the same had been accepted u/s. 143(1) and also that no material had been found during the search to justify the additions. The revenue claimed that the effect of the provisos to s. 153A was that all assessments abate and there had to be a de novo assessment in which the AO was not confined to the material found during the search. HELD rejecting the claim of the Revenue.

(i) S. 153A does not authorize the making of a de novo assessment. While under the 1st Proviso, the AO is empowered to frame assessment for six years, under the 2nd Proviso, only the assessments which are pending on the date of initiation of search abate. The effect is that complete assessments do not abate. There can be two assessments for the same assessment year. Assessments which are not pending before the AO on the date of search but are pending before an appellate authority will survive.

(ii) An assessment can be said to be "pending" only if the AO is statutorily required to do something further. If a s. 143(2) notice has been issued, the assessment is pending. However, the assessment in respect of a return processed u/s. 143(1) is not "pending" because the AO is not required to do anything further about such a return.

(iii) The power given by the Proviso to 'assess" income for six assessment years has to be confined to the undisclosed income unearthed during the search and cannot include items which are disclosed in the original assessment proceedings.

(iv) On facts, the returns had been processed u/s. 143(1), the assessment were not "pending" and as no material was found during the search, the additions could not be sustained

Respectfully following the same, we delete all the additions made and allow the appeals of the assessee."

15. In the present case we are of the view that that there was no satisfaction regarding existence of any undisclosed income which warrants proceedings under section 153 of the Act. We, therefore, hold that the necessary satisfaction does not

exist for the proceedings under section 153C of the Act. On this ground the assessment is annulled.

16. As far as merits of the addition made by the AO are concerned the facts are that the assessee has been carrying on business of dealing in property. The assessee was receiving income from some of the properties, which it owned, and which was let out, as business income. According to the Assessee, the property which it owned and which was let out was purchased in the course of its business of dealing in properties and the letting was temporary and with the intention to recover part of the expenses. The properties let out did not get good price and therefore retained and let out temporarily. Since the letting was incidental to business it was claimed that income received from letting was business income. In assessment year 2001-02 as well as A.Y 2006-07 there was income on sale of property which was declared as business income. The AO in the proceedings under section 153C of the Act, treated the income in the form of rent as income from house property. Further the AO disallowed some of the expenses debited in the P&L Account on the ground that these were not required for earning income under the head income from house property.

17. We have perused the records and find that the assessee had the following investments/stock in trade from FY 00-01 to 06-07.

S.No.	Party Name	Amount	Total
F.Y. 2000-01			
FLATS			
1.	PINKY BUILDERS Pvt. Ltd. Flat No.902/904	4,031,260	
2.	Aryston Developers P. Ltd. Flat at Vintage Pearl Co-op. Hsg. Society Ltd. Flat No.401	4,834,750	8,866,010
ADVANCE			
1	KARIA BUILDERS	140,000	
2.	SAQUIB CONSTRUCTIONS	500,000	
3.	RIZVI LAND DEVELOPMENTS P. LTD	500,000	
4.	HABIB AKBARALI MEHERALI	600,000	1,740,000
	CLOSING BALANCE		RS. 10,606,010
F.Y. 2001-02			
FLATS			
OPENING BALANCE		8,866,010	
LESS: FLAT SOLD DURING THE YEAR		4,031,260	
ADD:	SHARE	260	4,835,010

APPLICATION MONEY			
ADVANCE			
1	KARIA BUILDERS	140,000	
2.	SAQUIB CONSTRUCTIONS	500,000	
3.	RIZVI LAND DEVELOPMENTS P. LTD	500,000	
4.	HABIB AKBARALI MEHERALI	600,000	1,740,000
	CLOSING BALANCE		Rs. 6,575,010
F.Y. 2002-03			
FLATS			
OPENING BALANCE		4,835,010	4,835,010
ADVANCE			
1	KARIA BUILDERS	140,000	
2.	RIZVI LAND DEVELOPMENTS P. LTD	500,000	
3.	HABIB AKBARALI MEHERALI	600,000	1,240,000
	CLOSING BALANCE		RS. 6,075,010
F.Y. 2003-04			
FLATS			
OPENING BLANCE		4,835,010	4,835,010
ADVANCE			
1.	RIZVI LAND DEVELOPMENT P. LTD	500,000	
2.	HABIB ADBARALI MEHERALI	600,000	
3.	BHARTI & CO	100,000	
4.	OM SHIVAM CONSTRUCTION PVT. LTD.	500,000	
5.	PADIYA ASSOCIATES	200,000	
6.	BOMBAY ISLE DEVELOPMENT PVT. LTD.	600,000	2,500,000
	CLOSING BALANCE		RS.7,335,010
F.Y. 2004-05			
FLATS			
OPENING BLANCE		4,835,010	4,835,010
ADVANCE			

1.	RIZVI LAND DEVELOPMENT P. LTD	500,000	
2.	OM SHIVAM CONSTRUCTION PVT. LTD.	500,000	
3.	PADIYA ASSOCIATES	200,000	
4.	BOMBAY ISLE DEVELOPMENT PVT. LTD.	600,000	1,800,000
	CLOSING BALANCE		Rs. 6,635,010
F.Y. 2005-06			
FLATS			
	OPENING BLANCE	4,835,010	4,835,010
ADVANCE			
1.	OM SHIVAM CONSTRUCTION PVT. LTD.	500,000	
2.	PADIYA ASSOCIATES	200,000	
3.	BOMBAY ISLE DEVELOPMENT PVT. LTD.	600,000	1,300,000
	CLOSING BALANCE		Rs. 6,635,010
F.Y. 2006-07			
FLATS			
	OPENING BLANCE	4,835,010	
	LESS FLAST SOLD DURING THE YEAR	4,835,010	
ADVANCE			
1.	OM SHIVAM CONSTRUCTION PVT. LTD.	500,000	
2.	BOMBAY ISLE DEVELOPMENT PVT. LTD.	600,000	1,100,000
	CLOSING BALANCE		Rs. 1,100,000

18. It can be seen from the above that in A.Y 2001-02 and 2006-07 the assessee had income on sale of properties and in all the other AY's the Assessee has been giving advance for purchase of properties. The income from sale of properties in AY 01-02 and 06-7 has been declared as business income. In its paper book from page 244 to 533, the assessee has given a list of the various efforts it made for doing business of purchase and sale of properties. It is the plea of the assessee that business did not materialise due to various problems and the assessee continued to carry on its business and the expenses disallowed were required to be incurred by the assessee. We are of the view that in the light of the above documents it can be said that the assessee did not cease to carry on the business of purchase and sale of properties. The expenses sought to be disallowed by the AO were required to be

incurred by the assessee. Therefore, notwithstanding the fact that the rental income is to be assessed under the head income from House property, still the assessee would be entitled to the deduction of the aforesaid expenses. Therefore, the impugned additions deserve to be deleted even on merits. In our view, even on merits the assessee deserves to succeed. We, therefore, direct that the impugned addition be deleted. All the appeals of the assessee are accordingly allowed.

19. In the result, all the appeals of the assessee are allowed.