आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 498/JP/2017
निर्धारण वर्ष/Assessment Year : 2011-12

Gopal Kumar Deewan, Hotel Deewann, N.H. 8, Kotputli-303108.	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 617/JP/2017
निर्धारण वर्ष/Assessment Year : 2011-12

Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.	बनाम Vs.	Gopal Kumar Deewan, Prop.- M/s Hotel Deewan Regency, Near SBOP Bank, Kotputli, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 02/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13

Gopal Kumar Deewan, Hotel Deewann, N.H. 8, Kotputli-303108.	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 178/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13

Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.	बनाम Vs.	Gopal Kumar Deewan, Prop.- M/s Hotel Deewan Regency, Near SBOP Bank, Kotputli, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA No. 499/JP/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Gopal Kumar Deewan, Hotel Deewann, N.H. 8, Kotputli-303108.	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 618/JP/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Income Tax Officer, Ward-Behror, Behror-301701, distt- Alwar.	बनाम Vs.	Gopal Kumar Deewan, Prop.- M/s Hotel Deewan Regency, Near SBOP Bank, Kotputli, Jaipur.
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: ACOPD 0499 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya(Adv)&
Shri Hemang Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/07/2018
उदघोषणा की तारीख / Date of Pronouncement : 26/07/2018

आदेश / ORDER

PER: BENCH

These the groups of three cross appeals of the assessee and the revenue emanate from the separate orders of the ld. CIT(A), Alwar dated 11/05/2017 and 18/12/2016 respectively for the A.Y. 2011-12 to 2013-14.

2. All the appeals are being hearing together and for the sake of convenience, a common order is being passed.

3. The assessee is an individual and deriving income from Hotel and Restaurant in the name and style of M/s Hotel Deewan Regency. The assessee filed his return of income for the A.Y. 2011-12 on 18/09/2011 declaring total income of Rs. 7,21,410/-, return of income for the A.Y. 2012-13 on 14/09/2012 declaring total income of Rs. 7,48,880/- and return of income for the A.Y. 2013-14 on 01/01/2014 declaring total income of Rs. 3,73,930/-. The Assessing Officer finalized the assessments U/s 147/143(3) of the Income Tax Act, 1961 (in short the Act) at a total income of Rs. 47,22,510/- for the A.Y. 2011-12, Rs. 1,31,14,360/- for the A.T. 2012-13 and Rs. 1,00,47,453/- for the A.Y. 2013-13 respectively by making various additions and disallowances. The ld. CIT(A) has given part relief to the assessee.

4. Now both the assessee and the revenue are in appeals before the ITAT by taking following grounds of appeal:

Common grounds of assessee's appeal for A.Y. 2011-12 & 2013-14:

"1. The A.O. has erred in initiating the reassessment proceedings U/s 147 & 148 and the ld. CIT(A) has erred in confirming the action of A.O.

2. The A.O. has erred in making addition of Rs. 39,26,097/- for the A.Y. 2011-12 and Rs. 96,23,523/- for the A.Y. 2013-14 on account of difference in valuation of investment and ld. CIT(A) has erred in restricting this addition up to Rs. 4,00,000/- out of total addition of Rs. 39,26,097/- and Rs. 96,23,523/-.

3. The A.O. has erred in making lump sum trading addition of Rs. 75,000/- for the A.Y. 2011-12 and Rs. 50,000/- for the A.Y. 2013-14 and the ld. CIT(A) has erred in confirming the same addition.

4. The A.O. and ld. CIT(A) has erred in giving the telescoping benefit of trading addition of Rs. 75,000/- for the A.Y. 2011-12 and Rs. 50,000/- for the A.Y. 2013-14.

5. Any other ground of appeal at the time of hearing."

Common grounds of revenue's appeal for the A.Y. 2011-12 & 2013-14:

"1. That the ld. CIT(A), Alwar has erred on the facts and circumstances of the case in restricting the addition of Rs. 39,26,097/- to Rs. 4,00,000/- for the A.Y. 2011-12 and Rs. 96,23,523/- to Rs. 4,00,000/- which was made by the A.O. on account of undisclosed investment in construction of hotel on the basis of the DVO's report."

Grounds of assessee's appeal for A.Y. 2012-13:

"1. The Assessing Officer has erred in making lump sum trading addition of Rs. 60,000/- and CIT(A) has erred in confirming the same addition.

2. The Assessing Officer has erred in making addition of Rs. 1,23,05,399/- on account of difference in valuation of investment and CIT(A) has erred in restricting this addition up to Rs. 8,00,000/- out of total addition of Rs. 1,23,05,399/-.

3. Any other ground of appeal at the time of hearing."

Grounds of revenue's appeal for the A.Y. 2012-13:

"1. That the ld. CIT(A), Alwar has erred on the facts and circumstances of the case in restricting the addition of Rs. 1,23,05,399/- to Rs. 8,00,000/- which was made by the A.O. on account of undisclosed investment in construction of hotel on the basis of the DVO's report."

5. Ground No. 1 of the appeals for the A.Y. 2011-12 and 2013-14 is against confirming the reassessment proceedings U/s 147 and 148 of the Act. The ld. CIT(A) had dealt the issue by holding as under:

> "*4.3 I have gone through the assessment order. The appellant has not submitted any submission in support of its claim. Therefore, I rely on the reasons given by the A.O. to the initiation of reassessment proceedings. Accordingly, appellant's ground of appeal on the issue is dismissed."*

6. While pleading on behalf of the assessee, the ld AR has submitted as under:

> "1.1 The Primary Condition for initiation of proceedings under Section 147 is to have a "reason to believe". It may be submitted that even under the amended law the bedrock condition or words, which continue right since inception till date, are "reason to believe" and not "reason to suspect". The word "believe" has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. The belief of the Officer should be as to escapement of income and the belief should not be a product of imagination or speculation. There must be reason to induce the belief. The reopening should not be for mere investigating / finding out probability of escaped income. Kindly refer Chhugamal Rajpal v. S.P. Chaliha, (1971) 79 ITR 603 (SC); ITO v. Lakhmani Mewal Das, (1976) 103 ITR 437 (SC), which are direct on the subject. Further, the belief must be of an honest and reasonable based upon reasonable grounds. The officer may act on direct or circumstantial evidence, but his belief must not be based on mere suspicion, gossip or rumour. The AO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the provision of law. Kindly refer (Sheo Nath Singh v. AAC, (1971) 82 ITR 147 (SC), Gangasharan & Sons Pvt. Ltd. 130 ITR 1 (SC), Indian Oil Corpn. 195 ITR 957 (SC).

1.2 Reopening u/s 148 solely on the basis of DVO's report, not valid: In the present case, the AO initiated s.147 action merely based on the reason(PB 284-285) that there was difference in the cost of construction estimated by the DVO and cost as declared by the assessee. In fact, there was no independent application of mind by the AO. Except blindly relying on the DVO's report, there is no whisper by the AO in case he had a prima facie belief as to escapement of income. The law is well settled that the DVO's report is his own opinion and it not *per se* an information so as to be based for taking action u/s 147. No tangible, direct or even circumstantial, evidence/material was brought on record by the AO showing unexplained investment made more than declared in any manner whatsoever. This is evident from the reasons recorded by the AO.(PB 284-285)wherein, he firstly refers to the finding of A.Y. 12-13 and thereafter the DVO's report. But there is no whisper of any material/ cause indicating escarpment through unexplained investment more than declared. Further, it is wrong to say in the reason recorded that the assessee did not produce books of accounts in as much as the CIT(A) in A.Y. 2012-13 (which is the base year) in which reference u/s 142A was made to the DVO, has specifically observed *"During the assessment proceedings, book of accounts have been produced but no stock register.......".* Similarly, in the written submission filed before the AO also, there is a mention of production of books of accounts. Pertinently, the ld. AR filed a detailed written submission on the aspect of the maintenance of the books of accounts stating the same to be maintained on day-to-day basis. Even the head wise details of the expenditure with supporting evidences were also submitted. Kindly refer written submission before the CIT(A) reproduced at Pg 14 of his order for A.Y. 2012-13. In A.Y. 2013-14 even in the reasons recorded, the AO wrongly took the declared cost at Rs. 53,51,17/- as against the correct cost at Rs. 72,51,137/-, hence the amount of escaped income is factually incorrect, making the reasons recorded incorrect.

Also, notably, the rejection of the books of accounts was not upheld by the CIT(A) and there is specific ground by the Revenue challenging the same.

He has relied on the following case laws:

2.1 Covered Issue: In ACIT v. Dhariya Construction Co. (2010) 328 ITR 515 (DPB 16), the Supreme Court held as under:

"Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the DVO. Opinion of the DVO per se is not an information for the purposes of reopening assessment under s. 147 of the IT Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the civil appeal. The Department was not entitled to reopen the assessment."

2.2 The above decision has been followed in the case of CIT vs Vrindaban Real Estate (P.) Ltd. (2012) 254 CTR 10 (All.) (DPB 17-20)wherein it is held that

In the present case the Tribunal found that the DVO's report is based on his opinion, and not on any material, which could form the basis of reopening of the cases, and thus it can at best be treated as an information, which will not be sufficient material for recording 'reason to believe' to proceed in the matter. The opinion of the DVO, as to what would be reasonable percentage of architects fees and the supervision charges by the Directors, would not constitute tangible material for exercising powers of reopening the assessment.

The questions of law raised by the appellant do not arise for consideration of the Court. There is a pre-dominant opinion of the Supreme Court, and of the High Courts including this Court that the DVO's report per se is not information for the purposes of reopening assessment under Section 147 of the Income Tax Act, 1961. The Assessing Officer has to apply his mind on the information, if any, collected and must form a belief thereon on reopening the assessment.

(Para 9,10 & 12)

2.3 Further in the cases of CIT v. Darsan Singh [2005] 272 ITR 650 (P&H), CIT v. V.T. Rajenderan [2007] 288 ITR 312 (Mad) and Prakash Chand v. Dy. CIT [2004] 269 ITR 260,

it was held that the notice of re-assessment on the basis of report of the Valuation Officer is not valid. It was held that DVO's report is only an information and not the material on the basis of which the assessment may be reopened. Such a report cannot be an arithmetic appreciation of the materials used for constructions nor the expenses incurred by the assessee in that regard. The observations made by the DVO do not amount to material warranting satisfaction on the part of the Assessing Officer for reason to believe that the income had escaped assessment.

2.4 Also, kindly refer Aavkar Infrastructure Company [2016] 290 CTR 413 (Gujarat) (DPB 21-27)

Hence, the proceedings u/s 147/148 deserves to be quashed."

7. On the other hand, the ld DR has relied on the orders of the authorities below.

8. We have heard both the sides on this issue and perused the material available on the record. We have also considered the case laws relied upon by the ld. AR of the assessee. In this case, the assessee was engaged in the business of running hotel and restaurants. During the assessment proceedings, for the A.Y. 2012-13, the Assessing Officer observed that the assessee has shown amount of Rs. 1,66,58,798/- under the head new building work in progress in the schedule of fixed asset in its balance sheet. The Assessing Officer asked to furnish the head wise details of cost of construction incurred on the hotel building alongwith supporting bills and vouchers failing which the Assessing Officer made a reference U/s 142A of the Act to the DVO of I.T. department, Jaipur on 17/11/2014 and the DVO report was received back in his office on 03/3/2015. The DVO has estimated the cost of investment as under:

F.Y.	Cost of investment declared by the assessee	Estimated by the DVO	Difference
2010-11	3785819	7711916	3926097
2011-12	11865730	24171129	12305399
2012-13	5351136	14974659	9623523
2013-14	5044489	10276302	5231613
2014-15	5584435	11375794	5791359

The Assessing Officer after giving opportunity to the assessee made addition of Rs. 1,23,05,399/- and finalized the order U/s 143(3) of the Act on 25/3/2015. Thereafter he has issued notices U/s 148 of the Act for the A.Y. 2011-12 and 2013-14 on 09/6/2015. Thus, the Assessing Officer has applied his mind on the valuation report and has made basis for making assessment for the A.Y. 2012-13. Thereafter, the reasons has been recorded and issued notice U/s 148 of the Act. In such a situation, the ratio laid down in the case laws relied upon by the ld AR does not apply to the assessee's case as in these cases the reopening was based only on the basis of valuation report and nothing else. Hence, this ground of assessee's appeal for the A.Y. 2011-12 and 2013-14 has no merit and the same stand dismissed.

9. Ground No. 2 of all these three assessee's appeals and the sole ground raised by the revenue in all these three appeals are with regard to granting part relief and sustaining part addition on ad hoc basis. Since these additions were based on the basis of DVO's report in these years. The ld. CIT(A) has dealt this issue by holding as under:

"6.3 I have gone through the assessment order as well as submissions made by the appellant. Following facts have emerged;

1. That the appellant is engaged in the business of running hotel and restaurant.

2. Thatduring the year under consideration, the appellant had invested in construction of hotel building.

3. Thatduring the assessment proceedings, the A.O had referred the issue of valuation of investment to the DVO under section 142A of the Act.

4. Thatthe DVO had valued the investment made during the year under consideration at Rs. 2,41,71,129/- as against the investment shown by the assessee at Rs. 1,18,65,730/-. The A.O had added the difference i.e. Rs. 1,23,05,339/- as undisclosed investment under section 69A of the Act.
5. Thatthe assessee has claimed that the difference in valuation of investment is on account of valuation made at the CPWD rate by the DVO as against valuation done by the registered valuer applying PWD rate. The appellant has cited various judgments in support of his claim that the valuation applying PWD rate is much more relevant than CPWD rate.

6.3.2. I have considered the various court judgments on the issue and some of the judgments from the jurisdictional Hon'ble Rajasthan High Court and the Hon'ble ITAT, Jaipur Bench are as under;

The appellant has placed reliance on the judicial decisions of Hon'ble Rajasthan High Court in the case of CIT Vs. Hotel Joshi (242 ITR 478), CIT Vs. Elegant Homes Pvt. Ltd (259ITR232). It is further submitted by the appellant that Hon'ble ITAT Jaipur have in the case of Sh. Nirmal Kumar Agarwal in ITA No. 828, 829/ JP/ 2013 vide order dated 15-01- 2014, held after considering a number of decisions of the jurisdictional High Court that State PWD rates have to be applied for estimating the value of construction.

I have gone through the decisions of the jurisdictional Hon'ble High Court and of Hon'ble ITAT, Jaipur Bench cited by the appellant and find that it has been categorically held that for the purposes of valuation of property, the rates of valuation as provided by the State PWD have to be applied apart from the factual matrix of each case. Therefore, following the same, as these decisions are found to be applicable to the facts of the present case, I hold that for the purposes of valuation of property, State PWD rates have to be applied to the plinth area of construction for each floor as given by the DVO in the report. Having held that, it would also take care of the objections of the appellant on the issue of supervision expenses, no discounting in the valuation given by the DVO for the cost of windows, almirahs, sanitary fittings, electric fittings, painting, false ceiling, finishing etc. as the expenses on these items were not incurred by the appellant and also the fact that construction material has been sourced locally.

Now the issue arises as to how much is the value of the property after applying the State PWD rates and also to arrive at the year wise break-up of the same, so as to determine the quantum of unexplained investment in each year, if any. First, to ascertain the valuation of the property after applying the State PWD rates, a detailed exercise was done. Therefore, details of the floor wise investment made in the construction of the property is given in the following table as per State PWD rates as estimated by the registered valuer as against estimation made by DVO applying CPWD rate:-

			Valuation by DVO as per CPWD rates		*Valuation by registered valuer as per PWD rates*		
S. No.	*Description*	*Area*	*Rate/sq.m*	*Amount*	*Rate/sq.m*	*Amt.*	*Difference*
1.	*Basement Floor*	*350.95*	*17728/-*	*62,21,642/-*	*5343/-*	*18,75,126/-*	*43,46,516/-*
2.	*Ground Floor (area without basement)*	*934.28*	*19359/-*	*1,80,86,727/*	*11927/-*	*1,11,43,158/*	*69,43,569/-*
3.	*Ground Floor (area with basement)*	*350.95*	*18927/-*	*66,42,431/-*	*11927/-*	*41,85,781/-*	*24,56,650/-*
4.	*Double height portion at GF*	*83.89*	*21378/-*	*17,93,400/-*	*10204/-*	*8,56,014/-*	*9,37,386/-*

5.	*First Floor*	*1281.93*	*26698/-*	*3,42,24,967/*	*10700/-*	*1,37,16,651/*	*2,05,08,316/*
6.	*Machine room at terrace floor*	*5.88*	*19781/-*	*. 1,16,312/-*	*10204/-*	*60,000/-*	*53,312/-*
7.	*Front porch*	*93.37*	*13234/-*	*12,35,659/-*	*5963/-*	*5,56,765/-*	*6,78,894/-*
8.	*Passenger Lift*			*15,12,000/-*		*15,12,000/-*	*0*
9.	*Guard Room (single storeyed- load bearing structure)*	*12.25*	*10025/-*	*1,22,806/-*	*6246/-*	*76,514/-*	*46,292/-*
10.	*DG/Pump Room(single storeyed load bearing)*	*93.45*	*9070/-*	*8,47,592/-*	*6246/-*	*5,83,720/-*	*2,63,872/-*
				7,35,87,739/		*3,45,65,729/*	*3,90,22,010/*
	Rebate for self purchase of material		*-7.5%*	*-55,19,080/-*	*-7.5%*	*-25,92,430/-*	
	Add: Cost for taking electrical connection			*1,41,175/-*		*1,41,175/-*	
	Add: Consultancy/Arc hitectural fees			*3,00,000/-*		*3,00,000/-*	
Net cost of construction				*6,85,09,833/-*		*3,24,14,474/-*	*3,60,95,359/-*

I have also considered the fact that the appellant has shown a total investment of Rs. 3,36,31,809/- as compared to registered valuer valuation of Rs. 3,24,14,474/- Year-wise investment as per DVO and as shown by the assessee is as under;

F.Y.	Cost of investment declared, by the assessee	Estimated by the DVO	Difference
2010-11	3785819	7711916	3926097
2011-12	11865730	24171129	12305399
2012-13	5351136	14974659	9623523
2013-14	5044689	10276302	5231613
2014-15	5584435	11375794	5791359

6.3.3 I have also considered the following points as submitted by the appellant during the appellate proceedings;

1. Recently CPWD itself has realized that its prescribed CPWD plinth area rate 2012 is at higher side, and therefore the ministry of finance has also framed a committee in this regard for revising its rate and has requested to various department for sending their feedback vide Circular No 62/SE/(TAS)/PAR/2014/255-E dated 03/11/2014 (copy of circular is enclosed herewith). This observation of CPWD itself ratify the contention that why the local PWD BSR rate is more authenticated and realistic than the CPWD plinth area rate.

2. CPWD itself by a notification No 62/SE/(TAS)/CS-PAR-2012/2014/349-E dated 20-10-2014 has directed that its plinth area rate are only for the purpose of preparing the preliminary estimate. The estimate prepared on the basis of PAR is meant to give an idea of the likely expenditure on the work to administrative ministry/department/organization. The actual cost of construction may vary significantly depending upon the client's detailed requirements, site conditions, detailed planning and design of various structures, building and service, level of competition in the tendering services etc. The PAR rate shall not be used for assigning work to any commercial organization either private or PSU or to any other organization which do not follow the provision of CPWD code and central public work account code. This notification of CPWD itself also support the consistent view of different courts and benches of ITAT that why the local PWD BSR rate is more authenticated and realistic than the CPWD plinth area rate.

3. In the instant case, the hotel building in question is situated in Kotputli town which is well known as building material zone for producing mostly all the main ingredients of building like cement, stone grits, stone, sand, bricks , therefore cost of these building material items is much cheaper in Kotputli than the rates in other areas of Rajasthan on the basis of which PWD rates are declared. The Ld. DVO has argued at his objection No 9 (annexure) that in state PWS rate carriage cost index of building material is not considered whereas in CPWD rate it is considered. Against this our submission is that Kotputli town is well known as building material zone, hence from carriage cost of point this argument of DVO is not sustainable

4. Here, all the cements used in construction were purchased directly from the cement company in non-trade quota instead of purchase from local suppliers. There is huge difference in rate, around Rs 50 to 70 per bag between non trade quota and local market rate. Non trade quota cement price in 2010 was Rs 170-175 per bag whereas local market rate of cement in that period was Rs 230-235 per bag. Cement is major ingredient of building construction, and approximately it constitutes 14.5 % of total cost of building. If this rate difference in purchase price of cement is taken in to account, it will significantly bring down the total cost of building. (Copy of Purchase invoice Non trade quota and market rate is enclosed herewith for your kind reference.)

5. CPWD rate are inclusive of all testing expenses, whereas in the case of assessee firm no such testing were made, therefore CPWD plinth area rate should not be applied in the case of assessee firm.

6. On perusal of DVO report, we noted that he has made the adjustment @ 15 % on account of hall type construction, whereas there is no specific guidelines in this regard, and in many cases it is seen that it is made up to 25% also. If appropriate

i.e. *25%* adjustment is made, then cost assessed by DVO may come down to a significant extent.

7. The Learned DVO in his report has considered the cost of water and sanitary fitting @ 15 %. This rate is at higher side. As per local PWD rate it is to be taken @ 7%. If right rate 7% is applied. It will bring down the estimation to a significant level.

8. The learned DVO in his report has taken the internal electric installation cost @ *12.5%.* This rate is inclusive of ceiling fans. Without ceiling fan prescribed rate is *7%* instead of *12.5%* In the case of assessee firm cost of ceiling fan has been debited to a separate head "Light Fitting". In Books of account this head is under the block of plant & machinery instead of building block. Therefore, due adjustment of *5.5% (12.5%-7%)* is required.

9. CPWD rate include contractor's profit *@15%,* whereas, in the case of assessee firm construction work was made on the basis of self procurement of material and under self supervision of labour also. DVO in his report has given the rebate on this account @ 7.5 % only i.e. he has given rebate only for self procurement of material and not for labour under self supervision. Since the construction work was not done through labour contractor, therefore assessee firm rightly deserve for aggregate rebate on this account to the extent of 15% instead of 7.5%. There are consistent view of various courts and benches of ITAT that a rebate up to 15% may be given for self supervision of labour and self procurement of material.

10. The learned DVO in his report, in addition to internal electric installation cost @ 12%, has added additional cost at *4%o* to basic rate on account of power wiring and plugs, whereas in the case of assessee firm there are normal wiring except in some selected cases only. Hence this additional cost of power wiring is totally liable to be disregarded and this cost should be assumed to be included in normal rate.

11. DVO in his report has estimated the effective cost of lift at Rs 1398600/- (1512000/ minus 7.5%) whereas actual cost of lift is 567500/-. Copy of invoice is enclosed herewith for your kind reference. Further it is submitted that in the financial statement of the assessee this item is shown under a separate head known as PLANT & MACHINERY. Assessee in financial statement has not treated this item as a part of building cost. Since the matter is apparently clear, therefore he rightly deserves a due reduction of Rs 1398600/- from the total cost of building.

12. The learned DVO has taken 0.5% additional cost on account of telephone conduits whereas telephone lines are coming from the same electric conduits, hence this additional cost is liable to be disregarded.

13. Certified valuer on whose report, assessee firm has relied upon, is also a technical expert duly certified by the department, hence, his report has equal important to

DVO report. Report of certified valuer cannot be disregarded by the revenue, unless and until DVO as well as AO, notice major technical or tangible defects in his estimation. In the instant case, DVO has not pointed out such defects except application of rate (CPWD rate vs PWD rate).

14. On perusal of DVO's report, we find that DVO while estimating the cost of extra work (vide item no 1 page 11) has taken the cost of pavement with CC paver blocks I/C base @ Rs 796.92 per sqm. This work in actual is not I/C base, but it is GSB base. There is huge difference in cost of I/C base and GSB base. Cost of GSB base work is Rs 420/- per sqm. Since this mistake is apparent from record, hence the assessee rightly deserves a due adjustment on this account.

15. On perusal of DVO's report, we find that DVO while estimating the cost of extra work (vide item no 14 page 11) has taken the cost of vitrified tile flooring @ Rs 2027.97 per sqm. This cost is at very higher side. Actual cost of this work in any case does not exceed Rs. 770/- per sqm. Since this mistake is apparent from record, hence assessee rightly deserves a due adjustment on this account also.

16. On perusal of DVO's report, we find that DVO while estimating the cost of basement floor (vide page 6) has taken the floor height at 3.90 meter, and has added the extra-cost for extra height @ Rs 2335.67 per sqm, whereas actual floor height is not more than 3.35 meter. Since this mistake is apparent from record, hence assessee rightly deserves a due adjustment on this account i.e. extra cost for extra height is not liable to be added to total estimate cost of basement.

In the case of assessee, During the relevant previous year 2011-012, NHAI has acquired the old hotel building of the assessee and has paid the compensation on account of building construction at local PWD rate rather than CPWD rate. This also supports the view that building construction cost should be estimated at local PWD rate instead of PWD rate.

17. DVO while estimating the construction cost of building has applied special rate whereas construction of the assessee's building is very simple and is of commercial nature, hence normal rate should have been applied rather than special rate.

18. Apart from the above, other technical objections are as under-

i. Regarding using CPWD PAR (Plinth Area Rates), the circular issued by Director General, CPWD subject addendum in PAR 2012, Dated: 20/10/2014 states that CPWD PAR should not be used where CPWD department codes are not followed. It is just estimation used for inter-Central Government Departments. The actual cost may vary significantly in compare to estimate prepared by CPWD PAR.

ii. Regarding CPWD PAR rates approved by CBDT, this approval is for prior PAR, no further order issued by CBDT for approval CBDT PAR 2007.

iii. In CPWD PAR there is no rates for hotel buildings, the Departmental Valuation officer inadvertently applied the Rates of office & college building with very super rich specification @ Rs. 13200/- with services add ons.

iv. They also added factor of power wirings & plugs @ 4 % which should not be added as we have not make any special arrangements for this.

v. We have not installed any separate telephone conduits and factor added *@0.5%* is wrong.

vi. DVO has added factor for internal electrical installation @ 12.5% which includes fans also, whereas we have taken fans in separate account and the factor should be @ 7% as per their report's page no 10.

vii. At page no. 8 DVO has added additional rate @ Rs. 1250/- per sqm for making stronger foundation to take load of one additional floor at later date, which is totally wrong as we have planned our Building only for G+1only.

viii. The rate of lift derived at page no 9 is too high, as our purchase bill is of very low amount.

ix. The PAR applied for machine room at terrace floor & porch is @ Rs. 13200/- is too high as these constructions are very normal construction.

x. As per CPWD PAR page no 9 in the Notes section sr. no. 6, it is clearly mentioned that the Rates 1.0(A) shall be adopted for GPO & GPRA & 1.0(B) Shall be used for other buildings.

xi. The rates of Hostel Buildings in CPWD PAR is very much closer to Hotel Buildings, as in Hotels also there are series of rooms with attached toilets. Hence the basic PAR is to be Rs.8600/- instead *of Rs* 13200/- per sqm.

xii. Regarding Rajasthan PWD X-3, we are of the opinion that it is more suitable to assess building cost because there is same structure cost as structure cost does not change with change in the use of building. The things change with use of building are Flooring, staircase, railing, Joinery etc. In CPWD PAR the drastic changes according to use of buildings are too much for eg. In 1.0(A) the basic rate of office building it is Rs. 13200/- per sqm whereas for Residential type it is Rs. 9000/- per sqm. In general for same floor area the Residential structures costs more as there are more walls per sqm., more doors & windows, more nos. of toilets, kitchen etc. Hence Rate difference of Rs. 4200/- per sqm. or Rs. 390/- per sqft. for same type of specification like flooring, ss railing, joinery etc, is unrealistic. Hence Rajasthan PWD rates will give more accurate cost estimation in comparison to CPWD PAR.

6.3.4 Thus in view of the above mentioned facts and the jurisdictional Hon'ble Rajasthan High Court Judgment as mentioned above, I hold that for the purposes of valuation of property, State PWD rates have to be applied to the plinth area of construction for each floor. However, I have also taken into account that bills/vouchers related to the construction have not been produced in total before the A.O and also during the appellate proceedings. But it is also a fact that the assessee has shown cost of construction in the books of accounts which almost adheres to the valuation done as per State PWD rate. In absence of complete set of bills/vouchers for the material purchased for the construction of the hotel and also to cover the items not included in the valuation report, I consider it reasonable to restrict the additions for the unexplained investment to the extent of Rs. 8 lakhs. Accordingly, the ground of appeal on this issue is partly allowed."

10. While pleading on behalf of the assessee, the ld. A.R. has submitted as under:

1. At the outset we strongly rely upon the order of the CIT(A) and the findings recorded by him to the extent of the addition deleted.

2. Further the detailed submission filed before the ld. CIT(A) (PB 36-56 & 79-99) and reproduced in his order are strongly relied upon. However, some of the extracts are reproduced hereunder:

1. Recently CPWD itself has realized that its prescribed CPWD plinth area rate 2012 is at higher side, and therefore the ministry of finance has also framed a committee in this regard for revising its rate and has requested to various department for sending their feedback vide Circular No 62/SE/(TAS)/PAR/2014/355-E dated 03/11/2014 (copy of circular is enclosed herewith). This observation of CPWD itself ratify the contention that why the local PWD BSR rate is more authenticated and realistic than the CPWD plinth area rate.

2. CPWD itself by a notification No 62/SE/(TAS)/CS-PAR-2012/2014/349-E dated 20-10-2014 has directed that its plinth area rate are only for the purpose of preparing the preliminary estimate. The estimate prepared on the basis of PAR is meant to give an idea of the likely expenditure on the work to administrative ministry/department/organization. The actual cost of construction may vary significantly depending upon the client's detailed requirements, site conditions, detailed planning and design of various structures, building and service, level of competition in the tendering services etc. The PAR rate shall not be used for assigning work to any commercial organization either private or PSU or to any other organization which do not follow the provision of CPWD code and central public work account code. This notification of CPWD itself also support the consistent view of different courts and benches of ITAT that why the local PWD BSR rate is more authenticated and realistic than the CPWD plinth area rate.

3. In the instant case, the hotel building in question is situated in Kotputli town which is well known as building material zone for producing mostly all the main ingredients of building like cement, stone grits, stone, sand, bricks, therefore cost of these building material items is much cheaper in Kotputli than the rates in other areas of Rajasthan on the basis of which PWD rates are declared. The learned DVO has argued at his objection No 9 (annexure) that in state PWS rate carriage cost index of building material is not considered whereas in CPWD rate it is considered. Against this our submission is that Kotputli town is well known as building material zone, hence from carriage cost of point this argument of DVO is not sustainable

4. Here, all the cements used in construction were purchased directly from the cement company in non-trade quota instead of purchase from local suppliers. There is huge difference in rate, around Rs 50 to 70 per bag between non trade quota and local market rate. Non trade quota cement price in 2010 was Rs 170-175 per bag whereas local market rate of cement in that period was Rs 230-235 per bag. Cement is major ingredient of building construction, and approximately it constitutes 14.5 % of total cost of building. If this rate difference in purchase price of cement is taken in to account, it will significantly bring down the total cost of building. (Copy of Purchase invoice Non trade quota and market rate is enclosed herewith for your kind reference.) (PB 57-68)

5. CPWD rate are inclusive of all testing expenses, whereas in the case of assessee firm no such testing were made, therefore CPWD plinth area rate should not be applied in the case of assessee firm.

6. On perusal of DVO report, we noted that he has made the adjustment @ 15 % on account of hall type construction, whereas there is no specific guidelines in this regard, and in many cases it is seen that it is made up to 25% also. If appropriate i.e 25% adjustment is made, then cost assessed by DVO may come down to a significant extent.

7. The Learned DVO in his report has considered the cost of water and sanitary fitting @ 15 %. This rate is at higher side. As per local PWD rate it is to be taken @ 7%. If right rate 7 % is applied. It will bring down the estimation to a significant level.

8. The learned DVO in his report has taken the internal electric installation cost @ 12.5%. This rate is inclusive of ceiling fans. Without ceiling fan prescribed rate is 7%

instead of 12.5% In the case of assessee firm cost of ceiling fan has been debited to a separate head "Light Fitting". In Books of account this head is under the block of plant & machinery instead of building block. Therefore, due adjustment of 5.5% (12.5%-7%) is required.

9. CPWD rate include contractor's profit @ 15%, whereas, in the case of assessee firm construction work was made on the basis of self procurement of material and under self supervision of labour also. DVO in his report has given the rebate on this account @ 7.5 % only i.e. he has given rebate only for self procurement of material and not for labour under self supervision. Since the construction work was not done through labour contractor, therefore assessee firm rightly deserve for aggregate rebate on this account to the extent of 15% instead of 7.5%. There are consistent view of various courts and benches of ITAT that a rebate up to 15% may be given for self supervision of labour and self procurement of material.

10. The learned DVO in his report, in addition to internal electric installation cost @ 12%, has added additional cost at 4% to basic rate on account of power wiring and plugs, whereas in the case of assessee firm there are normal wiring except in some selected cases only. Hence this additional cost of power wiring is totally liable to be disregarded and this cost should be assumed to be included in normal rate.

11. DVO in his report has estimated the effective cost of lift at Rs 1398600/- (1512000/ minus 7.5%) whereas actual cost of lift is 567500/-. Copy of invoice is enclosed herewith for your kind reference. Further it is submitted that in the financial statement of the assessee this item is shown under a separate head known as PLANT & MACHINERY. Assessee in financial statement has not treated this item as a part of building cost. Since the matter is apparently clear, therefore he rightly deserves a due reduction of Rs 1398600/- from the total cost of building.

12. The learned DVO has taken 0.5% additional cost on account of telephone conduits whereas telephone lines are coming from the same electric conduits, hence this additional cost is liable to be disregarded.

13. Certified valuer on whose report, assessee firm has relied upon, is also a technical expert duly certified by the department, hence, his report has equal important to DVO report. Report of certified valuer cannot be disregarded by the revenue, unless and until DVO as well as AO, notice major technical or tangible defects in his estimation. In the instant case, DVO has not pointed out such defects except application of rate (CPWD rate vs PWD rate).

14. On perusal of DVO's report, we find that DVO while estimating the cost of extra work (vide item no 1 page 11) has taken the cost of pavement with CC paver blocks I/C base @ Rs 796.92 per sqm. This work in actual is not I/C base, but it is GSB base. There is huge difference in cost of I/C base and GSB base. Cost of GSB base work is Rs 420/- per sqm. Since this mistake is apparent from record, hence the assessee rightly deserves a due adjustment on this account.

15. On perusal of DVO's report, we find that DVO while estimating the cost of extra work (vide item no 14 page 11) has taken the cost of vitrified tile flooring @ Rs 2027.97 per sqm. This cost is at very higher side. Actual cost of this work in any case does

not exceed Rs. 770/- per sqm. Since this mistake is apparent from record, hence assessee rightly deserves a due adjustment on this account also.

16. On perusal of DVO's report, we find that DVO while estimating the cost of basement floor (vide page 6) has taken the floor height at 3.90 meter, and has added the extra cost for extra height @ Rs 2335.67 per sqm, whereas actual floor height is not more than 3.35 meter. Since this mistake is apparent from record, hence assessee rightly deserves a due adjustment on this account i..e extra cost for extra height is not liable to be added to total estimate cost of basement.

In the case of assessee, during the relevant previous year 2011-012, NHAI has acquired the old hotel building of the assessee and has paid the compensation on account of building construction at local PWD rate rather than CPWD rate. This also supports the view that building construction cost should be estimated at local PWD rate instead of PWD rate.

DVO while estimating the construction cost of building has applied special rate whereas construction of the assessee's building is very simple and is of commercial nature, hence normal rate should have been applied rather than special rate.

17. Apart from the above, other technical objections are as under-

a. Regarding using CPWD PAR (Plinth Area Rates), the circular issued by Director General, CPWD subject addendum in PAR 2012, Dated: 20/10/2014 states that CPWD PAR should not be used where CPWD department codes are not followed. It is just estimation used for inter-Central Government Departments. The actual cost may vary significantly in compare to estimate prepared by CPWD PAR.
b. Regarding CPWD PAR rates approved by CBDT, this approval is for prior PAR, no further order issued by CBDT for approval CBDT PAR 2007.
c. In CPWD PAR there is no rates for hotel buildings, the Departmental Valuation officer inadvertently applied the Rates of office & college building with very super rich specification @ Rs.13200/- with services add ons.
d. They also added factor of power wirings & plugs @ 4 % which should not be added as we have not make any special arrangements for this.
e. We have not installed any separate telephone conduits and factor added @ 0.5 % is wrong.
f. DVO has added factor for internal electrical installation @ 12.5% which includes fans also, whereas we have taken fans in separate account and the factor should be @ 7% as per their report's page no 10.
g. At page no. 8 DVO has added additional rate @ Rs. 1250/- per sqm for making stronger foundation to take load of one additional floor at later date, which is totally wrong as we have planned our Building only for G+1 only.
h. The rate of lift derived at page no 9 is too high, as our purchase bill is of very low amount.
i. The PAR applied for machine room at terrace floor & porch is @ Rs. 13200/- is too high as these constructions are very normal construction.
j. As per CPWD PAR page no 9 in the Notes section sr. no. 6, it is clearly mentioned that the Rates 1.0(A) shall be adopted for GPO & GPRA & 1.0(B) Shall be used for other buildings.

k. The rates of Hostel Buildings in CPWD PAR is very much closer to Hotel Buildings, as in Hotels also there are series of rooms with attached toilets. Hence the basic PAR is to be Rs.8600/- instead of Rs 13200/- per sqm.

l. Regarding Rajasthan PWD X-3, we are of the opinion that it is more suitable to assess building cost because there is same structure cost as structure cost does not change with change in the use of building. The things change with use of building are Flooring, staircase, railing, Joinery etc. In CPWD PAR the drastic changes according to use of buildings are too much for eg. In 1.0(A) the basic rate of office building it is Rs. 13200/- per sqm whereas for Residential type it is Rs. 9000/- per sqm. In general for same floor area the Residential structures costs more as there are more walls per sqm, more doors & windows, more nos. of toilets, kitchen etc. Hence Rate difference of Rs. 4200/- per sqm or Rs. 390/- per sqft for same type of specification like flooring, ss railing, joinery etc, is unrealistic. Hence Rajasthan PWD rates will give more accurate cost estimation in comparison to CPWD PAR.

In view of above facts and submission, the alleged difference is not liable to be added as undisclosed income to the income declared by the appellant, therefore entire addition is liable to be deleted

18. There is no direction mandating the estimation at CPWD Rates.
There is neither a directory provision in the Income Tax Act nor any mandatory order from the income tax department for the assessing officer to estimate the cost of construction at CPWD rates. Accordingly, the AO has to assess the facts and apply his mind to make the decision in any case. The jurisdictional High Court of Rajasthan has held in Commissioner of Income-Tax v. Hotel Joshi, (2000) 242 ITR 478 Raj, that:

"The cost of construction varies from place to place depending upon the local conditions. The Assessing Officer is required to assess the value of the asset on appreciation of material before him. It may be pointed out that the CPWD rates are based on Instruction No. 1671. Para 4 of the instruction says that the data collected by the valuation cell is in the nature of broad guidelines and in its application to individual cases, may vary on the facts of a particular case. Thus, it is ultimately for the Assessing Officer to appreciate the material on record and satisfy himself as to the correct valuation of the asset."

Thus, in view of the aforesaid judgment, it is submitted that the valuation of DVO on CPWD rates is not binding on the AO and he has to assess facts in any particular case and then make the estimation. In the present case A.O without application of his mind and appreciating the facts simply estimate the value of building at CPWD rates as suggested by the DVO

19. In absence of any mandatory law or contrary decision of apex courts, the decision of the higher courts becomes law and it is binding on the lower authorities including the AO.

There have been consistent views of High Courts and tribunals all over India, including jurisdictional High Court of Rajasthan and Jaipur bench of ITAT that State PWD rates are to be preferred over CPWD rates for estimating the cost of construction. There are no contrary decision of any high court or apex court (SC) which held that A.O should estimate of the cost of construction at CPWD rates. Since there is no contrary decision of any high court and apex court including jurisdictional HC and ITAT, hence it becomes mandatory for lower authorities to honour the judgement of HC.

Following the decision of various High courts, all the lower authorities are consistently following the decision, and are estimating the cost of construction at local State PWD rates.

Recently predecessor Hon'ble CIT (A), Alwar following the decision of jurisdictional high courts and ITAT has held that A.O has to estimate the cost of construction at State PWD rates vide his order in the case of GANPATI PLAZA, BEHROR appeal no 297/2014-15 date of order 30/3/2016. In this case A.O, DVO, and facts of the case are exactly same. Same view has been taken by ITAT (Delhi) in the case of ITO v Rajender Agarwal Appeal no 2814/2002 date of hearing 16/12/15 order date Jan 2016

20. Whenever, construction is in small town, estimation has to be based on local rates

It has been observed by the courts and tribunal that whenever construction of an asset is in a small town and local PWD rates are available for that area, estimation has to be made on the basis of those areas. It has been observed that there is no reason for the Valuation Officer to adopt the rate, which is prevalent at distant places and metropolitan cities like Delhi.

Reliance has been placed on the following decisions:

Commissioner of Income Tax v. Shri Raya R.Govindarajan (Madras HC) dated 22/07/2014

S.M. Azeez Sons, Channapatna v. Assessee dated 31 January, 2011 (ITAT Bangalore)

Shri S. Bangarappa Vs DCIT reported 155 Taxman 84 (ITAT Bang.)

CIT v. Smt Prem Kumari Murdia (2008) 296 ITR 508(Raj. HC) https://indiankanoon.org/doc/60213385/?type=print

In the present matter also the construction is in KOTPUTLI town being a small town (Tehsil Headquarter), and hence, the rate for local area should be applied for estimating the cost. Moreover, even the certified valuer has not made any comments regarding the level or size of construction to be such that it invited application of CPW rates.

Hence, it is submitted that since, it is not mandatory as per the law to follow the CPWD rates for estimation of the cost, secondly, the High Courts, including the jurisdictional High Court, have ruled in favour of the applicability of local rates and lastly, court have ruled that for constructions in small town cost should be valued at local rates, therefore the estimation should be done at local rates and not CPWD rates.

21. A comparative chart of cost of construction at CPWD rate v/s State PWD rates is enclosed herewith. In this chart, certified Valuer has applied the State PWD rates on

area measured by DVO. As per this chart total estimated cost as per State PWD rates comes at Rs. 3,24,14,774/- whereas in original report of certified valuer, it is Rs. 3,34,08,899/-. This marginal difference is due to the difference in area measured by DVO and certified valuer. DVO has measured less area than certified valuer. On perusal of the same, your honour shall find that declared cost of construction (Rs 3,36,31809/-) is much higher than cost of construction as certified by registered valuer on the basis of Rajasthan PWD x-3/2011 rates.

22. Copy of circular issued by Public works department of Government of Rajasthan (standing Order No X-3/2011) specifying rates of cost of construction in 2011 is enclosed herewith. These rates are latest rate. After this no circular as regard to rates came in to existence

3. Common Submission on the Addition made u/s 69B for AY 11-12 to 13-14:

3.1 State PWD rates against CPWD rate to be applied: 3.1.1 At the outset it is now well settled by the various decisions of the High Courts and Tribunal including those of the Hon'ble Jurisdictional High Court in the case of CIT vs. Hotel Joshi 242 ITR 478 (Raj.) (DPB 1-27) that for the purpose of valuation of property on the basis of item wise cost based on PWD rate is proper method to estimate the cost of construction in the proper and preferred manner.

3.1.2 Similarly the Hon'ble Jaipur Bench of ITAT has also been taking a consistent view on these lines Kindly Refer ITO vs Tek Chand 52 ITD 197 (JP), Mushtaque Ahmed 22 TW 25 (JP), Smt. Rekha Devi vs. ACIT (1994) 49 TTJ 0530 (JP) (DPB-8-15), Nirmal Kumar Agrawal vs. ACIT (2014) ITA No. 829/JP/2013 vide order dt. 26.02.2014 (DPB-36-41) and various other decisions cited in our submission before the CIT(A) at pg.9 & 15 of his order.

3.2 Covered Issue: In the case of CIT vs. Sunita Mansingha, (2017) 393 ITR 0121 (SC), it was held that (DPB 28-30)

"…….it was settled principle of law that in place of Central Public Works Department rates local Public Works Department rates were to be applied and adopted to determine cost of construction"

3.3 This Hon'ble bench in the case of M/s Ganapati Plaza vs ITO in ITA No. 467/JP/16 for A.Y. 2012-13 vide its combined order dated 16.02.2018 (DPB 31-35) in para 16 has upheld that the deletion made by the CIT(A) agreeing with the contention that for the estimation of cost of construction, the State PWD rates must be applied, as against the CPWD rates and following the decision of Hon'ble Rajasthan High Court in the case of Hotel Joshi, Elegant Hotels, Nirmal Kumar Agarwal of this bench, and thereafter finally following the decision in the case of Sunita Mansingha (supra) upheld the deletion. The said CIT (A) order was cited here also.

4. Part Sustenance by the CIT(A) unjustified, without any basis :

The Ld. CIT(A) has partly sustained the additions of Rs. 4,00,000/- each in A.Y. 2011-12 and 2013-14 and Rs. 8,00,000/- in A.Y. 2012-13. However, such a sustenance appears to be totally contrary to his own conviction w.r.t the applicability of the State PWD rates as against the CPWD rate and is in direct contrast to his own finding (see Pg 22 Pr. 6.3.4 in A.Y 12-13 and similar finding in other years) that the assessee has shown cost of construction in the books of accounts which almost adheres to the valuation done as per the State PWD rates. The basis given was the absence of complete set of bills and vouchers for material purchase for construction of hotel and also to include those items not included in the valuation report. However, once the CIT(A) has already upheld the contention that the construction cost has to be estimated in accordance with the State PWD rates to be applied on the plinth area, there is no further reason why he should expect the complete bills and vouchers for the material purchased for construction which is already taken care and no possibility of under estimation of the cost of construction. Further, the Ld. CIT(A) has not pointed out which particular item was not included in the valuation report. Therefore, there was valid basis yet to partly sustain the additions, for which otherwise there is no basis at all. Hence the same may be deleted in full.

The ld AR has further submitted that in the A.Y. 2013-14, the A.O. wrongly took declared cost at Rs. 53,51,17/- as against the correct cost at Rs. 72,51,137/- and consequently made excess addition of Rs. 19 lacs due to such arithmetic error.

11. On the other hand the ld. DR has relied on the orders of the authorities below.

12. We have heard the rival contentions of both the parties and perused the material available on the record. We have also considered the case laws relied upon by the ld AR. After hearing both the sides we find that the ld. CIT(A) has rightly held that the State PWD rates have to be applied to the plinth area of construction of each floor. The ld. CIT(A) has also held that the assessee has shown cost of construction in the books of account, which is almost adhere to the valuation done as per the State PWD rates. However, he has sustained the ad hoc disallowance of Rs. 4.00 lacs for the A.Y. 2011-12 and 2013-14 and Rs. 8.00 lacs for the A.Y. 2012-13 for the reason that complete set of bills and vouchers for the material purchased for construction of hotel were not available. In our view, once he has given finding that the State PWD rate has to be applied to estimate the cost of

construction and he has also given a finding that cost of construction in the books of account almost adhere to the valuation done as per State PWD rate then there is no justification in sustaining such ad hoc disallowances. Once the estimate has been made on the State PWD rates then in absence of complete set of bills and vouchers for the material, no such disallowance is justified. Hence, we direct to delete the same. In the result, ground No. 2 of all these three appeals are allowed and ground raised by the revenue in these years is dismissed.

13. Grounds No. 3 and 4 of the assessee's appeals for the A.Y. 2011-12 and 2013-14 and ground No. 1 of the assessee's appeal for the A.Y. 2012-13 are not pressed, therefore, the same are dismissed as not pressed.

14. In the result, all these three appeals of the assessee are partly allowed and the appeals of the revenue are dismissed.

Order pronounced in the open court on 26/07/2018.

Sd/-	Sd/-
(विजय पाल राव)	(भागचंद)
(VIJAY PAL RAO)	(BHAGCHAND)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 26th July, 2018.
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- Shri Gopal Kumar Deewan, Kotputli.
2. प्रत्यर्थी/ The Respondent- The ITO, Ward-Behror, Behror.

3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 498, 02 & 499/JP/2017 & 617, 178 & 618/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar