

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Jason P.Boaz, AM

ITA Nos.352, 353, 354 & 355/Bang/2014
Asst. Years : 2008-2009, 2009-2010, 2010-2011 &
2011-2012

Shri Shantilal J.Shah No.202, 12 th Main, 3 rd Phase Peenya Industrial Area Lakshmi Devi Nagar Bangalore – 560 058. PAN : AFKPS1151F.	Vs.	The Dy.Commissioner of Income-tax Central Circle 2(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Shri H.N.Khincha, CA
Respondent by : Shri Ajit Kumar Varma, CIT

Date of Hearing : 25.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per Bench

These four appeals instituted, at the instance of the assessee, are directed against the consolidated order of the CIT (A)-VI, Bangalore dated: 28.01.2014. The relevant assessment years are 2008-09 to 2011-12.

2. The assessee, in his grounds appeals for all the assessment years under dispute, has raised the following issues namely;

- (i) the CIT(A) erred in confirming that the assessee had received on money for sale of flats.

(ii) that the gross amount cannot be taxed but at best the income element on sale therein can be taxed.

Briefly stated, the facts of the issue are as follows:

3. The assessee, an individual, is engaged in manufacture of incense sticks in the name of Charu Perfumeries as its proprietor and also engaged in the business of real estate and developer under a proprietary concern, 'M/s. Charu Developers.'

3.1 There was a search operation in the case of Somashekar P Patil and Others on 18.6.2010. In the case of the assessee [Shantilal J Shah] also, a search was conducted u/s 132 of the Act on the same day i.e. 18.06.2010. In compliance to the notices u/s 153A of the Act dated 2.8.2011, the assessee had furnished copies of returns (filed u/s 139 on 30.9.2008, 30.9.2009, 30.9.2010 and 28.9.2011 with CPC, Bangalore) on 30.08.2011 admitting taxable incomes of Rs.84,17,320/-, Rs.13,68,490/-; Rs.45,40,330/- and Rs.41.70.340/- for the AYs. 2008-09 to 2011-12 respectively and requested the AO to treat the same as returns furnished in response to the above notices.

3.2 It was found by the AO during the course of assessment proceedings u/s 143(3) r.w.s. 153A of the Act that the assessee had purchased a land ad-measuring 11,000 sft in Leoneard Lane, Bangalore and commenced construction of

residential flats by developing projects, namely, Jasmine, Amythest and KRSNA, the details of which are as follows:

Name of the Project	Date of commencement	Date of completion	Total flats	Flats sold	Flats unsold
Jasmine	29.08.2007	27.02.2012	16	08	08
Amythest	14.05.2007	29.09.2010	08	06	02
KRSNA	21.05.2007	Project discontinued			

3.3 According to the AO, the assessee was following the 'project completion method' the receipts from the sale of flats were accounted for as and when the flats were registered. The first registration took place in the financial year 2010-11 and, therefore, the receipts from such sales were reflected in the AY 2011-12.

3.4 In the course of search operation, an incriminating material in the form of a computer print-out was seized in the premises of Charu Perfumery Works which had shown the considerations received/receivable from the sale of flats in Jasmine Project. It had, further, contained the flat number, number of bed rooms area in sft, rate in sft, basic cost, deposit amount, car parking amount, maintenance amount and total cost etc., When the assessee was required to explain as to why these amounts should not be taken as actual sale considerations, the assessee had contended that it was only a rough estimate before starting the project and it had no implementation at all.

3.5 After due consideration of the assessee's contentions and also extensively quoting the assessee's confession in the statement recorded u/s 132(4) of the Act on 01.07.2010 as recorded in the impugned orders under dispute, the AO had rejected the assessee's arguments and, accordingly, added the 'on money' transactions relating to the FYs 2007-08, 2008-09, 2009-10 and 2010-11, the details of which are as follows:

On money received in F.Y.2007-08:

- (1) Receipt of Rs.10 lakhs by cash on 15.01.2008
- (2) Receipt of Rs.10 lakhs by cash on 26.01.2008
- (3) Receipt of Rs.15 lakhs by cash on 05.02.2008
- (4) Receipt of Rs.08 lakhs by cash on 16.02.2008

On money received in F.Y.2008-09/ AY 2009-10:

- (1) Receipt of Rs.10 lakhs by cash on 12.01.2009
- (2) Receipt of Rs.05 lakhs by cash on 13.01.2009
- (3) Receipt of Rs.15,47,500 by cheque No.226743 dt.10.9.2008 drawn on Vijaya Bank, Residency Road, Bangalore

On money received in F.Y.2009-10/ AY 2010-11:

- (1) Receipt of Rs.23 lakhs by cash on 10.02.2010 [Flat No.CJ103]
- (2) Receipt of Rs.23 lakhs by cash on 10.02.2010 [Flat No.CJ003]

[On money amounts of Rs.46 lakhs were added to the income returned for the AY 2010-11 on substantive basis and the same need to be added for AY 2013-14 [because the flat Nos. CJ 003 & 103 were registered on 25.2.2012] on protective basis. However, the assessee had offered additional income of Rs.40,59,000/- for the AY 2010-11 which he had declared at the time of search operation on 18.6.2010 which had been reflected in the return of income filed by the assessee. Hence, the difference of Rs.5,41,000/- (Rs.46,00,000 – 40,59,000)

was added to the returned income [Refer: Pages 7 & 8 of the asst. order for AY 2010-11]

On money received in F.Y.2010-11/ AY 2011-12:

- (1) Receipt of Rs.16 lakhs by cash on 10.02.2010 [Flat No.CJ003]
- (2) Receipt of Rs.16 lakhs by cash on 24.05.2010 [Flat No.CJ003]
- (3) Receipt of Rs.16.06 lakhs by cash on 13.03.2010 [Flat No.CA202]
- (4) Receipt of Rs.08.71 lakhs by cash [Flat No.CA002]

3.6 In substance, the AO had concluded the assessments for all the assessment years under dispute on the premise that the assessee was in receipt of 'on money' or additional amounts in cash in respect of certain flats which were part of the assessee's ongoing projects. For the elaborate findings recorded in the relevant impugned assessment orders, the AO made the additions of Rs.43,00,000/-, Rs.30,47,500/-, Rs.5,41,000/- and Rs.56,77,000/- for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12 respectively.

4. Aggrieved, the assessee took up the issue for all the AYs under consideration before the first appellate authority. After due consideration of the assessee's contentions and also in pursuance of the reasoning of the AO, the CIT (A) had recorded her findings in her impugned order as under:

"6. I find that this argument of the appellant is applicable only in respect of on money received in respect of flats at Sr.No.1,2, and 3 above, i.e., CJ 304, CJ 304 and CJ 103 where the on money is received in AYs 2008-09, 2009-10, 2010-11 and 2011-12 whereas the income in respect of the said

flats has been declared in AYs 2012-13 and 2013-14.

7. As regards flats sat 4 and 5 above, i.e., CA 202, Flat No.CA 003, the facts as recorded by the assessing officer are as under:

'(iii) During the course of assessment proceedings, the details pertaining to flat No.CA 202 was questioned vide questionnaire dated 27.02.2012 was put across to the assessee, same is reproduced below:

'Page No.44-48 of annexure A2/CPH/10-11 which is material seized from factory primes (sic) premises of charul perfumery which is a sale agreement with Mr. C Sandeep DR for consideration of Rs.62,11,000/- for the flat CA 202 but the actual sale consideration shown is Rs.46,05,000/-.

The submission given by the assessee that the client had not turned up for a month and when he got back only market rate was paid was rejected. This is an afterthought explanation.

The sale agreement dated 26.03.2010 signed between M/s Charu Developers and C Sandeep in respect to flat No.CA 202 mentions the sale consideration of Rs.62,11,000/-. (the copy enclosed). While the final sale deed copy registered on 14.10.2010 signed between M/s Charu Developers and C Sandeep for flat No.CA 202 mentions Rs.46,05,000/-. Moreover, the sale agreement clearly mentions a sum of Rs.20,00,000/- is paid by the purchaser to the vendor on execution on 13.03.2010 by way of cash and the same is acknowledged by the vendor

The sale registration happened in Asst Year 2011-12 the difference of Rs.62,11,000/- and

Rs.46,05,000/- (62,11,000 – 46,05,000 =16,06,000) is added in the asst. year 2011-12.

(iv) During the course of assessment proceedings, the details pertaining to flat no CA 002 was questioned vide questionnaire dated 27.02.2012 was put across to the assessee, same is reproduced below:

‘Page Nos.39 to 43 of annexure –A2/CPH/10-11 which is material seized in the form of sale agreement seized from factory premes (sic) premises of charu perfumery which is a sale agreement with Dr.Dhanu for flat No.CA-002 for consideration of Rs.39,71,000/-. But as per sale deed, the amount recorded in the books was only Rs.31,10,000/-. This shows that the balance was received by the assessee as on money.’ The document enclosed.

The assessee in his reply vide letter dated 05.03.2013 stated, ‘the initial agreement executed for flat No.CA 002 had not reached its finality instead of flat No.002 the client purchased flat No.001.

During the course of assessment procedure the assessee failed to furnish any cancellation agreement or any documentary evidence to prove that the earlier agreement was cancelled. Therefore, the difference between the sale agreement and the sale deed that is Rs.39,71,000/- and Rs.31,00,000/- that Rs.8,71,000/- stands added in asst. year 2011-12 as the flat was registered in financial year 2010-11.’

8. The assessing officer has brought on record that evidences found during the course of search were confronted to the appellant and in his statement recorded on 01.07.2010 u/s 132(4), he had agreed that cash receipts had not been

accounted by M/s. Charu Developers in respect Charu Jasmine and Charu Amythest projects. It is clear therefore that the amounts in question represent on money received in respect of these 2 flats CA 202 and CA 002 from the said parties. Since the flats have been registered in F.Y 2010-11, these flats have rightly been brought to tax in AY 2011-12 as per appellant's own arguments. The same is upheld.

The claim with regard to flats at Sr.No.1,2 and 3 covered in AYs 2008-09, 2009-10, 2010-11 & 2011-12 that the 'on money receipts' should be considered for the A.Y relevant to the financial year in which the sale of the said flat is declared i.e., AY 2011-12 & 2012-13, as applicable is examined.

9. I find force in the alternative claim of the appellant that since income from the sale of these flats [CJ 304, CJ 003 and CJ 103] is offered to tax in a subsequent year which has been accepted by the assessing officer, the case of the assessing officer that 'on money' received in respect of the same transaction should be brought to tax in the year of receipt is not tenable. Having accepted that the receipts of these unaccounted amounts in question are on account of sale of flats (which has matured in a subsequent year), the additional income, if any, is also to be brought to tax in the year in which the accounted income is declared/ assessee.

10. With this finding, the additions made in these years in question cannot be upheld and is deleted."

5. Aggrieved, the assessee has come up before us with the present appeals. During the course of hearing the

submissions made by the learned counsel for the assessee are summarized as under:

A.Y 2008-09:

- That the assessee was following the project completion method, the income from receipts from the sale of flats were registered. Flat No.CJ 304 (Jasmine Project) was sold vide sale deed dt.10.10.2011 for a sale consideration of Rs.93,29,376/- and this income was offered to tax in the AY 2012-13 as business profits.

- in compliance to a show-cause notice dt.27.2.13, the assessee had explained to the AO that one flat in Jasmine was registered in the name of Praveen Kumar Shetty (NRI) for a sum of Rs.93,29,376/- on 10.10.2011 and, thus, a sum of Rs.15,47,500/- alleged to have been received by me on 10.9.2005 from Shetty was incorrect as by then the land was not purchased. The assessee had not received any other cash payment as it was mentioned in the letter nor was there such proof in any material. Probably the proposal had come by looking at a tentative time schedule in which it was written as received 10=00 – 15.1.08. Received 10=00 – 26.1.08; received 15=00 – 5.2.08 and so on. These figures do not in any way give any idea that they were receipt of money. Further from the above noting it cannot be inferred that 10 means 10 lakhs and 15 means 15 lakhs. There was no basis for such ad-hoc assumptions. In fact, without admitting but only for the purpose of argument, if it is

taken to be so and considering that the proposal by the department is correct, even then it would be seen that by 16.2.2008, Mr Shetty is said to have paid 43 lakhs whereas per the department interpretation of the tentative schedule the amount due by 28.2.2008 would be only 32 lakhs and no person would pay such high amount in advance. This very clearly shows that the noting do not represent amount and certainly not in lakhs.

- however, considering the search proceedings and to avoid litigation so as to buy peace and considering the overall profit in the project, the assessee offered on extra sum of Rs.40,59,,000/- as extra profit in the project.

- that merely without appreciating the facts of the case and based on the loose papers, the AO had treated Rs.43 lakhs as on money received and added the same as income of the assessee Relied on the findings of the ITAT, Ahmedabad Bench in the case of Krupesh Bhai N Patel v. DCIT 25 Taxmann.com 443 (Ahd).

- that the assessee had, in none of the proceedings, accepted the receipt of 'on money'.

A.Y 2009-10: Addition of Rs.30,47,500/-:

- that in the instant case, it is reiterated that no other extra cash or other assets was found during the course of search which fact falsify the allegations of the AO that

the assessee had received 'on money' on sale of flats and that the assessee emphasizes on the fact that in none of the proceedings, the assessee had accepted the receipt of 'on money'.

A.Y 2010-11: Addition of Rs.5,41,000/-:

- that the assessee had sold flat Nos. CJ 003 and CJ 103 being sale considerations of Rs.64 lakhs and Rs.66 lakhs respectively, the date of sale was 25.5.2012 and, accordingly, offered the income there-from to tax in the assessment year 2013-14 as business profits. However, the AO in the impugned assessment order had stated that during the course of search operation, the seized document contained acknowledgements of Bharath Kumar with regard to receipt of following amounts which were unaccounted:

- (i) Receipt of Rs.23,00,000 by cash on 10.02.2010 – Flat CJ 003
- (ii) Receipt of Rs.16,00,000 by cash on 24.05.2010 – Flat CJ 003
- (iii) Receipt of Rs.23,00,000 by cash on 10.02.2010 – Flat CJ 103
- (iv) Receipt of Rs.16,00,000 by cash on 24.05.2010 – Flat CJ 103

- That one Sri Roshan Abbas came forward to buy the flat No.CJ 003 with basic quality and ultimately was sold for Rs.64 lakhs on 25.5.2012 and that with regard to flat No.CJ 103, the first agreement was entered into with Syed Roshan Abbas and Mir Mohammed Raza for a premium apartment, but, subsequently, they refused to buy the same and, hence, the agreement got cancelled and no cash was received. However, Mir Mohammed

Raza had agreed to buy the ordinary flat with basic fittings and fixtures and MOU was entered for Rs.56,85,400/- and, however, after negotiation, he paid Rs.66 lakhs and entered into sale deed on 25.5.2012;

- The AO had, in the impugned order, stated that the seized materials clearly shown that the assessee was in receipt of advance of Rs.23 lakhs on 10.2.2010 against the flat CJ 003. Those documents were duly signed by both the parties and, therefore, considered the same as 'on money' receipts. Likewise, the 'on money of Rs.23 lakhs' was also added with respect of Flat No.CJ 103 to the income returned for the AY 2010-11 on substantive basis and for the AY 2013-14 on protective basis [Flat Nos.CJ 003 & CJ 103];

- It was the case of the assessee that the signatures in the loose papers based on which additions made were not that of the buyers. The signatures in the loose sheets do not match with the signatures of the buyers. This fact could be verified from the registered sale deeds;

- That the AO had treated a sum of Rs.46,00,000/- as 'on money' received and added a sum of Rs.5.41 lakhs as extra income of the assessee after setting off income declared at the time of search amounting to Rs.40.59 lakhs.

A.Y 2011-12: Addition of Rs.56,77,000/-:

- that the assessee had sold the following flats from Jasmine and Amythest Projects, the details of which are as follows:

Flat No.	Name of the buyer	Sale consideration	Date of sale	Offered to tax in AY
CJ 003	Roshan Abbas	64,00,000	25.05.2012	2013-14
CJ 103	Mir Md. Raza	66,00,000	25.05.2012	2013-14
CA 202	C Sandeep	46,05,000	14.10.2010	2011-12
CA 001	Dr.Dhanu	31,10,000	11.10.2010	2011-12

and the income therefrom was offered as 'business profits'.

- However the AO stated, in his impugned order under dispute, that the incriminating documents unearthed in the course of search in the assessee's premises [Charu Perfumery Works] contained acknowledgements of Bharath Kumar with regard to receipt of following unaccounted amounts, namely:

- (i) Receipt of Rs.23,00,000/- by cash on 10.02.2010 in respect of flat CJ 003
- (ii) Receipt of Rs.16,00,000/- by cash on 24.05.2010 in respect of flat CJ 003
- (iii) Receipt of Rs.23,00,000/- by cash on 10.02.2010 in respect of flat CJ 103
- (iv) Receipt of Rs.16,00,000/- by cash on 24.05.2010 in respect of flat CJ 103

- With regard to Flat No. CJ 003, the first agreement was entered into with Mrs.Syed Ajaz Banu and Mrs. Syeda Mafuraza Bhanu to sell a premium apartment. However, they have refused to buy the same and, hence, the

agreement got cancelled no cash payment was received. However, one Sri Roshan Abbas came forward to buy the flat No.CJ 003 with basic quality and ultimately was sold for Rs.64 lakhs on 25.5.2012 and that with regard to flat No.CJ 103, the first agreement was entered into with Syed Roshan Abbas and Mir Mohammed Raza for a premium apartment, but, subsequently, they refused to buy the same and, hence, the agreement got cancelled and no cash was received. However, Mir Mohammed Raza had agreed to buy the ordinary flat with basic fittings and fixtures and MOU was entered for Rs.56,85,400/- and, however, after negotiation, he paid Rs.66 lakhs and entered into sale deed on 25.5.2012;

With regard to a sale agreement with Dr Dhanu for CA 002 for consideration of Rs.39,71,000/- as the party was not interest for the same the sale agreement was understood as cancelled and no payments were received on sale agreement. Dr Dhanu had purchase flat No. CA 001 for Rs.31,10,000/- and the sale amount was shown in the P & L account for the year-ended 31.3.2011 [AY 2011-12] ;

- The AO had, in the impugned order, stated that the seized materials clearly shown that the assessee was in receipt of advance of Rs.23 lakhs on 10.2.2010 against the flat CJ 003. Those documents were duly signed by both the parties and, therefore, considered the same as 'on money' receipts. Likewise, the 'on money of Rs.23

lakhs' was also added with respect of Flat No.CJ 103 to the income returned for the AY 2010-11 on substantive basis and for the AY 2013-14 on protective basis [Flat Nos.CJ 003 & CJ 103];

- It was the case of the assessee that the signatures in the loose papers based on which additions made were not that of the buyers. The signatures in the loose sheets do not match with the signatures of the buyers. This fact could be verified from the registered sale deeds; and thus, the AO was wrong in treating the sum of Rs.32 lakhs as 'on money' received and added to the income of the assessee;

- That in regard to flat No.202 sold to C Sandeep, the first sale agreement was entered into on 20.3.2010, but, subsequently another sale agreement was entered into on 20.4.2010, as per which the sale consideration was agreed to Rs.40 lakhs. However, the AO had not considered this agreement at all. As per the latest sale agreement, there was no cash payment of Rs.20 lakhs. The AO had, by ignoring this agreement, calculated the difference between the first sale agreement and the sale deed. In fact, the sale was concluded at higher price of Rs.46.05 lakhs. Thus, the AO was wrong in considering the first sale agreement by ignoring the latter one;

- With regard to sale of CA 002 to Dr. Dhanu, it is clarified that Dr Dhanu bought CA 001 which was

registered vide sale deed dt.11.10.2010 for Rs.31.10 lakhs instead of Flat No.CA 002 for which an earlier sale agreement was entered into; .and that Dr Dhanu confirmed the same before the AO during the assessment proceedings and, thus, there was no receipt of any 'on money' as alleged.

5.1 In conclusion, the learned counsel had reiterated that the AO being erroneous on facts and law for all the assessment years under consideration , the additions made by the AO which were subsequently sustained by the CIT(A) deserve to be deleted. To substantiate his assertion, the learned counsel, during the course of hearing, furnished a paper book which contained, among others, copies of (i) various letters filed during the course of assessment proceedings; (ii) written submissions furnished before the CIT (A); and (iii) sale agreements , sale deeds etc. To support his arguments, he had also furnished copies of case laws in the form of a paper book.

5.2 On the other hand, the learned DR supported the stand taken by the authorities below. It was, further, pleaded that there were no infirmities in the stand of the AO in making such additions and subsequently sustained by the CIT (A) in her findings (supra), the appeals of the assessee require to be rejected.

6. We have carefully considered the rival submission, perused the relevant records and also the documentary

evidences produced by the learned counsel in the form of a paper book. We have, with due regards, perused the case laws on which the assessee had placed strong reliance.

7. As the issue raised by the assessee being identical for all the assessment years under consideration, these four appeals were considered together and disposed of by this consolidated order.

8. The main contention of the assessee was that the elaborate explanation offered during the courses of assessment proceedings as well as at the appellate stage have not been properly appreciated and taken into account while arriving at the conclusion by the authorities below. It was, further, stressed that on proper appreciation of facts and explanation offered, it was explicitly clear that the assessee had not received any 'on money' as alleged and, therefore, the question of addition(s) in any of the years under dispute does not arise.

8.1 On the other hand, the case of the assessing officer was based on materials seized/found during the course of search in the form of agreements of sale showing a higher rate for the flats over and above than what has been accounted for. Further, signed receipts from both the parties [the assessee as well as the clients] were found during the course of search. In addition, flat-wise noting showing the actual amounts received in respect of each flat - as detailed in the assessment orders - were found and seized. The claim of the assessee

was, however, that the additional amounts were never received in cash and that the amounts actually received were accounted for, i.e., the value at which the flats were subsequently registered. It was, further, claimed by the assessee that lesser amounts as against what were earlier agreed upon were settled on account of delay in completion of the project(s) and other considerations

8.2 However, the claim of the assessee was not accepted by the assessing officer in view of clear evidences found during the course of search operation which were duly signed by the parties concerned in the presence of witnesses and the fact that the noting in the seized documents pertained to both – accounted and unaccounted receipts.

8.3 The assessee had, further, contended that the signatures in the loose papers based on which additions made were not the buyers and that the signatures in the loose sheets do not match with the signatures of buyers and this fact could be verified from the registered sale deeds [AY 2010-11]. The incriminating papers were unearthed only in the premises of the assessee and so the assessee was legitimately required to identify the person(s) who were the signatories (parties) for such transactions. No person(s) could have affixed their signatures without the connivance/knowledge of the assessee as those seized papers were in the custody of the assessee only. The AO had, in her impugned order(s), observed that -

“(ii).....

The submission made by the assessee was examined and the observations are as under:

The seized material No.22 in Annexure – A/2/CPH clearly shows the assessee has received on advance of Rs.23,00,000/- dt 10.02.2010 against the flat CJ 103. These documents were duly signed by both the parties. Therefore, this is nothing but on money receipts appearing in the seized material as mentioned above on sale of flat no CJ 103 are assessed in relevant AYs.

The On money transactions relating to F Y 2009-10/AY 2010-11 received for flat no CJ 103 receipt of Rs.23,00,000 by cash on 10,2,2010.

Hence, the on money amt of Rs.23,00,000/- is hereby added to the income returned for AY 2010-11 on substantive basis and the same needs to be added for AY 2013-14 [because the Flat No CJ 201 was registered on 25.05.2012] on protective basis” [Refer: Page 9 of the asst order for 2010-11]

8.4 Moreover, the assessing officer’s observation has not been rebutted by the assessee with any documentary evidence even before the first appellate authority. We would like to point out that the assessee himself offered an amount of Rs.40,59,000/- at the time of search as his income. Taking this into account, the AO had rightly concluded the assessment by adding only the difference of Rs.5,41,000/- [Rs.4600000 – 4059000] to the assessee’s income. Thus, we are of the view that the assessee should not have any grievance with the stand of the AO in respect of the AY 2010-11.

8.5 It is most appropriate to refer to the sworn statement of the assessee u/s 132(4) of the Act on 01.07.2010 wherein the

assessee had specifically admitted to question No.7 that
“Ans:....*These receipts have not been recorded in the books of accounts of M/s. Charu Developers.*” For appreciation of facts, the relevant portion of the Sworn Statement is reproduced as under:

“II (On page 5) The evidences found during the search were confronted to the assessee during the search proceedings and the assessee in his reply clearly admitted that he is resorting unaccounted transactions in sale of flats. The details are as below:

During the course of search, page Nos.01 to 38 of Annexure A/S/CPH/10-11 seized at the office-cum-factory of M/s. Charu Perfumery House on 18.06.2010 certain evidences for receipts of ‘on money’ on sale of flats in ‘Charu Jasmine and ‘Charu Amythest’, the projects undertaken by M/s. Charu Developers. Mr Shantilal was examined on this issue in his statement recorded u/s 132(4) on 01.17.2010 (sic) 01.07.2010 at his residence. Extract of the relevant portions of his statement is reproduced as below:

‘Q.5. I am showing page no. 01 to 38 of evidence marked as Annexure A/2/CPH/10-11. Please go through the same and explain the transaction contained.

Ans: I have gone through the page no. 01 to 38 of evidence marked as annexure – A/2/CPH/10-11. These pages contain agreements for sale with the parties who have flats in the project by name “Charu Jasmine”, No.3, Leanard Lane, Richmone Town, Bangalore of M/s. Charu Developers. The page-wise details are mentioned under:

Flat	Name of the buyer/ date of agreement	Total area (sft)	Rate as per agreement	Page no. A/2/CPH/10-11
CJ 304	PraveenKumar Shetty 5.2.2008	1864	1,36,70,800	1 – 13
CJ 003	Mrs.SyedaAjaz Bhanu &Mrs.Syeda Mafreeza Bhanu 5.12.2009	1834	1,03,00,00	14 – 21
CJ 103	Syed Roshan Abbas & Mir Mohd Raza 14.12.2009	1894	1,06,00,000	22 – 28
CJ 301 &CJ203	Syed Hakin Raza 10.4.2007	4940	2,66,76,000	33 – 38

Q.6. I am showing page no.38 to 59 of evidence marked as Annexure –A/2/CPH/10-11. Please go through the same and explain the transaction contained therein.

Ans: I have gone through the page no.38 to 59 evidence marked as Annexure – A/2/CPH/10-11. These pages contain agreements for sale with the parties who have booked flats in the projects by name ‘Charu Amathest’, Near Bhashayam Circle, Rajajinagar, Bangalore of M/s. Charu Developers. The page-wise details are mentioned as under:

Flat No	Name of the buyer and date of agt.	Total area (sft)	Rate	Page No.A/2/CPH/10-11
CA 002	Dr.Dhanu 25.2.2010	700(commercial)	39,71,000	39-43
CA 202	C.Sandeep & R.J.Sushma	1740	62,11,000	44-48
CA 102	K.S.Mallikarjunaiah	1685	40,00,000	49-54
CA 202	C.Sandeep & R.J.Sushma 20.4.2010	1740	40,00,000	55-59(repeat pages 44-48)

During the post search procedure, in the sworn statement dated 16.8.2010 given before the Wing, the assessee Mrs.Shantilal Shah has disclosed Rs.40,59,000/- in the hands of Mr.Shantilal Shah (Indl) Prop: M/s. Charu Devellers for the asst. year 2010-11”

[Refer: Pages 5 to 7 – asst order for Asst.year 2008-09]

8.6 The sworn statement of the assessee has neither been retracted nor contradicted either during the course of assessment proceedings or before the first appellate authority.

8.7 The assessee had explicitly conceded and confessed in the sworn statement(supra) that those receipts in cash have not been recorded in the books of account or accounted for, Such being the case, the Assessing Officer and CIT(A) is justified in treating the same as ‘on money’ for sale of flats.

9. The learned AR has also contended that the only net profit element in undisclosed sale is to be taxed. This contention of the learned Counsel is devoid of any merit since the assessee is unable to prove any expenditure is incurred for the receipt of on money for the sale of the flats. Therefore, this ground raised by the assessee is rejected.

10. The learned AR further contended that the first appellate authority has exceeded jurisdiction in directing to bring to tax the on money received by the assessee in the assessment years 2012-2013 and 2013-2014 of flat No.CH304, Flat No.CJ-003, respectively. According to the learned Counsel for

the assessee, the CIT(A) was concerned with the assessment years 2008-2009 to 2011-2012 and since the assessment years 2012-2013 and 2013-2014 was not considered / dealt by her, the CIT(A) has exceeded the jurisdiction in giving the direction in para 9 of the impugned order. According to us, the CIT(A) has not given any specific direction. It is a statement while adjudicating issues before her for the assessment years 2008-2009 to 2011-2012 that the amount of on money should be brought to tax in the assessment years 2012-2013 and 2013-2014. Even assuming that the CIT(A) has given a specific direction, it is for the assessee to challenge the same in appropriate proceedings for assessment years 2012-2013 and 2013-2014 when assessment are reopened. It is ordered accordingly.

11. In overall consideration of the facts and circumstances of the issue as elaborately analyzed in the foregoing paragraphs, we are of the view that the stand of the assessing officer for all the assessment years under consideration requires to be sustained. In essence, the assessee's appeals for all the assessment years under dispute are dismissed. It is ordered accordingly.

12. Charging of interest under sections 234A, 234B and 234C of the Act are mandatory and consequential in nature and, therefore, this ground of appeal is dismissed as not maintainable.

13. In the result, the assessee's appeals for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12 are dismissed.

Order pronounced on this 03rd day of November, 2017.

Sd/-
(Jason P.Boaz)
Accountant Member

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Bengaluru.
4. CIT(A)-VI, Bengaluru
5. DR, ITAT, Bangalore
6. Guard file.

True copy
BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore