



M/s Navkar Realtors  
Assessment Years: 2010-11 & 2011-12

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकर अपील सं. / I.T.A. No.2683/Mum/2015  
(निर्धारण वर्ष / Assessment Year:2010-11)  
&  
2. आयकर अपील सं. / I.T.A. No.2686/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2011-12)

<b>M/s. Navkar Realtors</b> C-1/12, Hari Om Apartments Behind M/s. Vijay Sales S.V. Road, Borivali (W) Mumbai-400 092.	<b>बनाम/ Vs.</b>	<b>DCIT-19(3)</b> Piramal Chamber Lalbaug Mumbai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAGFN-5226-P</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

3. आयकर अपील सं. / I.T.A. No.7196/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2011-12)

<b>ACIT-23(2)</b> Matru Mandir, Room No.122 Tardeo Mumbai-400 008.	<b>बनाम/ Vs.</b>	<b>M/s. Navkar Realtors</b> C-1/12, Hari Om Apartments Behind M/s. Vijay Sales S.V. Road, Borivali (W) Mumbai-400 092.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAGFN-5226-P</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

पीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri Bhupendra Shah-Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	25/09/2019
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	21/11/2019



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## आदेश / ORDER

### Manoj Kumar Aggarwal (Accountant Member): -

1.1 As evident from cause-titles, the assessee is under appeal for Assessment Years (AY) 2010-11 & 2011-12 whereas the revenue is under appeal for AY 2011-12. The assessee's appeal for AY 2010-11 is recalled matter since the appeal was originally disposed-off *ex-parte* qua the assessee vide order dated 17/07/2018. However, this order has subsequently been recalled, upon assessee's application, vide MA No. 38/Mum/2019 order dated 07/06/2019. Accordingly, the appeal has come up for fresh hearing before this bench.

### The grounds raised by the assessee in AY 2010-11 reads as under: -

The Learned Commissioner of Income Tax (Appeal) has erred in sustaining the disallowance made by A.O. i.e. the total expenses of Rs.24,96,647/- claimed against the additional income disclosed by the appellant in the revised return on income."

### The grounds raised by the assessee in AY 2011-12 reads as under: -

#### [AI Grounds of Appeal:

1) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming the order u/s 143(3) even though statement recorded u/s 133A has no evidentiary value.

2) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming addition of Rs.4,58,17,422/- in respect of alleged sales consideration.

#### Without **prejudice to the above and alternatively**

3) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming Rs.4,58,17,422/- out of the total addition of Rs.5,58,17,422/- made by the AO by stating that Rs.1,00,00,000/- has been added on protective basis since the Appellant has already disclosed the same in the return of income for AY 2010-11 which has been confirmed by him and also a set off of Rs.1,00,00,000/- has been given by him against Rs.5,58,17,422/-.

4) In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(l)(c) and charging interest u/s 234A, B & C.



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5) In the facts and circumstances of the case and in law, the Commissioner of Income Tax(A) erred in confirming the above additions.

[B] Relief Prayed:

- 1) To quash the assessment made u/s 143(3) passed on the basis of statement u/s 133A.
- 2) To delete the addition of Rs. 4,58,17,422/- in respect of sales consideration.
- 3) To delete interest charged u/s 234 and initiation of penalty u/s 271(1) (c),

[C] General:-

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion,
- This appeal is filed late for which petition for condonation of delay is enclosed,
- A Detailed paper book along with case laws will be submitted at the time of hearing.”

The grounds raised by the revenue in AY 2011-12 reads as under: -

(1) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the protective addition income of Rs 1 crore when in fact the A.Y 2010-2011, wherein substantive addition were made , has not yet reached finality as the assessee is contesting the substantive addition before Hon'ble ITAT.

(2) The Appellant prays that the order of the C.I.T (A)-33, Mumbai on the above ground be set aside and that of the A.O be restored."

2.1 Facts from assessment records for AY 2010-11 would reveal that the assessee being resident firm stated to be engaged as builder was assessed for year under consideration u/s 143(3) on 28/03/2013 wherein the income was determined at Rs.125.42 Lacs after certain additions as against returned income of Rs.23.17 Lacs filed by the assessee on 21/09/2010 which was later on revised to Rs.83.39 Lacs on 28/09/2011. The revised return was filed subsequent to survey operations u/s 133A being carried out by the revenue at assessee's premises on 15/02/2011.

2.2 During assessment proceedings, it transpired that the assessee had developed a project namely *Brij Apartment* at Borivali. During survey operations, statement of one of the partners namely Shri Satish Raut was recorded. In reply to question No. 10, the said partner admitted that cash



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received against sale of flats was not accounted for in the books of accounts. The cash was stated to be received over and above the agreement value entered into by the assessee with the purchasers of the flats. Accordingly, the said partner offered aggregate cash receipts of Rs.318.74 Lacs as additional income from the project for AYs 2010-11 & 2011-12. The said disclosure was stated to be net of all expenditure including salary to partners or any other miscellaneous expenditure. The disclosure was stated to be made after consulting all the partners of the firm. The relevant extract of the statement recorded during the course of survey operations has already been reproduced in the quantum assessment order. Subsequent to survey operations, the assessee revised its return of income by enhancing original returned income of Rs.23.17 Lacs to Rs.83.39 Lacs. In other words, the income was enhanced by Rs.60.22 Lacs in the revised return of income.

2.3 The assessee submitted that it has filed revised return so as to disclose additional income of Rs.100 Lacs for year under consideration out of total disclosure of Rs.318.74 Lacs made during survey operations. The Ld. AO, noticing that the revised returned income should have been enhanced by Rs.100 Lacs as against Rs.60.22 Lacs actually enhanced by the assessee in the revised return of income, show-caused the assessee to explain the same. The assessee submitted that it claimed additional expenditure of Rs.24.96 Lacs as per WIP method and the expenditure was allowable since the income was to be assessed on net basis. However, rejecting the same, the Ld. AO added an amount of Rs.39.78 Lacs to the



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income of the assessee, being differential of Rs.100 Lacs and enhancement of Rs.60.22 Lacs already offered by the assessee in the revised return of income.

3. The learned first appellate authority confirmed the stated addition made by Ld. AO by observing as under: -

13. I have gone through the assessment order passed by the AO as well the above submissions made by the appellant carefully.

14. As can be gathered from the facts stated in the assessment order, the appellant was subjected to survey u/s.133A at its business premises on 15.02.2011. During the course of survey in the statement recorded, the partner of the appellant firm Shri Satish Raut, at question no. 10 of the statement, had admitted that the cash amounts received against sale of flats were not accounted in the books of accounts and he further agreed to offer the cash receipt of Rs. 3,18,74,808/- as additional income of the project for the F.Y.2010-11 relevant to A.Y. 2011-12. The income disclosed was over and above the income already offered in the returns filed for A.Y.2008-09 to 2010-11.

15. The partner of the appellant firm further in response to question No.14 of the statement, stated that the additional income disclosed was net of all expenditure including salary to partners or other miscellaneous expenditure and all these expenditures have already been accounted for in the regular books of accounts.

16. During the course of survey u/s 133A, the appellant firm had declared the additional income of Rs.3,18,74,808/- and offered it for taxation for the period relevant to A.Y. 2011-12. But later on during the course of assessment proceedings, the appellant firm revised the return of income for the year under consideration i.e. A.Y. 2010-11 and offered an amount of Rs. 1 crore for taxation by including this amount in the total income as declared in the revised return of income filed. While offering the additional income of Rs. 1 crore for taxation in the revised return of income, the appellant has also claimed expenses to the extent of Rs.24,96,650/- as per WIP method and thus reduced the additional income offered for taxation during the course of survey. The above action of the appellant firm now claiming the additional expenses against the additional income declared during the survey cannot be accepted.

17.It is clear from the facts outlined in the assessment order of the AO that the additional income of Rs.1 crore offered for taxation for the period under consideration was over and above the regular income and secondly net of all the expenses. The partner of the appellant firm Shri Satish Raut, in the statement recorded during the course survey had categorically admitted in the answer to question no. 14 that the additional income disclosed was net of all expenditure including salary to partners or other miscellaneous expenditure and all these expenditures have already been accounted for in the regular books of accounts. Therefore, there is no question of now claiming any additional expenses of Rs.24,96,650/- against the additional income offered for taxation, As mentioned above, the partner of the firm has categorically stated



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in the statement recorded during the course of survey that the additional income declared was net of all expenditure and now claiming the expenditure on the additional income is just an afterthought to reduce the already admitted tax liability. Such tactics of evasion of taxes cannot be allowed to the appellant. Moreover the expenditure claimed is not supported by any credible documentary evidence and therefore the same cannot be allowed.

18. In view of the facts and circumstances explained above, I do not find any infirmity in the order of the AO disallowing the expenditure claimed and making an addition of Rs.39,77,990/- to the income of the appellant for the period under consideration. The addition made is confirmed. This ground of appeal of the appellant is accordingly dismissed.

Aggrieved, the assessee is under appeal before us.

4.1 In AY 2011-12, the assessee was similarly assessed u/s 143(3) on 05/03/2014 wherein the income was determined at Rs.634.14 Lacs after certain additions as against returned income of Rs.45.96 Lacs filed by the assessee on 30/09/2011 which is subsequent to the date of survey u/s 133A i.e. 15/02/2011. The assessment order takes note of the fact that incriminating documents were found during survey operations indicating cash receipts over and above agreement values reflected in books of accounts and the same was impounded. The disclosure of Rs.318.74 Lacs was supported by the loose paper which was found and impounded during survey. However, in this AY, the assessee did not incorporate the balance disclosure of Rs.218.74 Lacs i.e. Rs.318.74 Lacs Less Rs.100 Lacs already declared in AY 2010-11. Accordingly, the assessee was show-caused and confronted with the statement made by the aforesaid partner wherein it was admitted that cash received against sale of flats was not accounted for in the regular books of accounts and the said cash was over and above the agreement value entered into between the assessee and the purchasers.



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4.2 The assessee failed to defend the same and also failed to comply with various notices u/s 142(1) calling for requisite information. Finally, a letter was submitted in *Tapal* on 28/02/2014 stating that the disclosed amount of Rs.318.74 Lacs formed part of sale consideration reflected in the books of accounts and the income was declared as per reckoner value and therefore, there would be no declaration to be made other than that made in the return of income submitted by the assessee. In other words, the assessee defended its return of income. However, the assessee failed to supply any information as to the total number of flats constructed by it and sold on year to year basis and also failed to submit the details of flats remaining unsold at the end of each year.

4.3 After due consideration of factual matrix, Ld.AO proceeded to make additions of Rs.588.17 Lacs in the hands of the assessee which were crystalized in the following manner: -

The following issues emerge from this case.

**4. Additional expenditure claimed by Assessee which was not there in books at the time of survey.**

As per the profit and loss account of the assessee there was direct expenses of Rs.6,96,420/- and indirect expenses of Rs.4,83,420/- as per profit loss account prepared on the date of survey. The above figures was certified during survey by the management (copy of profit and loss account is made out of order as Annexure-Y) while in the return filed for A.Y. 2011-12 the assessee has claimed direct expenses of Rs.1,63,11,847/- and indirect expenses of Rs.24,19,134/- which is contrary to the details found during course of survey.

**5. Amount received shown in books at the time of Survey and its comparison with page No. 26 of Ann.AI impounded during survey.**

Further as on date of survey the amount received from various customers as per trial balance was as under (The trial balance as on date of survey is made part of order as Annexure-Z):

Flat No.	Name	Amount
1002	Mansukh Shah	3377738
1003	Vithal Ghag	1000000



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203	Chetan Shah	15,00000
204	Damji Charla	1400,000
303	Sunil Apte	2117600
402	Kannu Sharma	619,000
403	Chetan Vora	1900,000
501	Kotian	100,000
502	D. S. Tonse	1448581
601	Rajan Rikame	3238077
602	Suhas Pawar	3115000
603	Rajendra Shah	3500,000
701	Dehia	19,00,000
702	Vora	21,000
703	Krishna Kadur	1200000
802	Shrikant Jaiswal	550000
803	Kevin Tank	1918012
901	Kejal Bhube	250000
902	Shushil Patere	800000
903	Jignesh tank	1918012

5.2 If details appearing in the Trial Balance of assessee is compared to page no 26 of the Annexure A1 impounded during survey it can be ascertained that figure shown against Flat No. 903 in Trial Balance at Rs.19,18,012 is appearing as 19.18 under the head 'received cheques' on Page 26 of Ann.- A1 impounded during survey. Further Flat No. 901 shows Rs.2,50,000 which is shown as 2.5 in column 'cheque received' on page no 26 (Trial Balance is made part of order as Annexure-Z), This means that all figures mentioned on page No. 26 are reflected in lakhs i.e. 19.18 stand for 19,18,012/- and 2.5 stands for 2,50,000/-. There were column for total area saleable area, amount and consideration on page No 26 which is reproduce below: (Enclosed as Annexure-X to Assessment order)



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Flat	Name	Total Area	Saleable Area	Amt.	Consideration	Agreement	Rcvd Cash	Rcvd Cheque	Amt. Remaining
101	Mawani	640	0		0	0	0	0	0
102	Chatbar	660	0		0	0	0	0	0
104	Santosh Ajnarlekar	345	490		20	13.39	8	1	11
103	Rajubahi	500	710	5400	38.34				38.24
201	Shetty	640	0		0	0	0	0	0
202	Nayak	660	0		0	0	0	0	0
203	Raghupathy/Navkar	1000	1420	7000	99.4		0	5	99.4
301	Desai	640	0		0	0	0	0	0
302	Nadkarni	660	0		0	0	0	0	0
303	Apte	1000	482	5400	24	24	1	20.466	0.534
401	Shah	640	0		0	0	0	0	0
402	Dr. Sathe/ Sharma	660	938	6300	59	35.4	23	30.19	5.81
403	Navkar	1420	1420	7000	99.4				99.4
501	Kotain	640	0		0	0	0	0	0
502	Tonse	830	270		12.56	15		12.65	-0.09
503	Navkar	830	1178	7000	82.46				82.46
601	Rikame	640	908		60	32	26	30.38077	3.61923
602	Pawar	660	938		43.15	32	11.15	30.15	1.85
603	Usha Shah	1000	1420	5900	85.2	52	33	35	17.2
701	Vedhia	685	972		58	26	37	19	2
702	Vora	660	938		3.5		3.3	0.21	0
703	Kadur	1000	482	5400	26.08			12	14.08
801	Refuse	0	0	0	0	0	0	0	0
802	Shrikant Jaiswal	660	938	5400	50.65	26	16	5	29.65
802a	Shrikant Jaiswal	182	255	5400	13.77	4		0.5	13.27
803	Kevin Naran Tank	1000	1420	5900	83.78	35.52	48	19.18012	16.59988
901	Kejal Bhube	921	370		10	10		2.5	7.5
902	Sushil Patere	300	426		20	12.81	6.38	3	5.67
903	Jignesh Naran Tank	1000	1420		83.78	35.52	48	19.18012	16.59988
1001	I H Desai	640	908		0				0
1002	Navkar	660	938	7000	99.4				99.4



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1003	Ghag	1000	1420	5400	19.44				19.44
					1091.91	353.64	260.78	250.40701	585.73299

5.3 Total sale consideration is shown at 10.91 on page No. 26 which means that total sale consideration of assessee is Rs 10,91,91,000/- as per page No. 26 of Annexure AI impounded during the course of survey, while the assessee has shown sale consideration of Rs.5,33,73,578/- in P&L A/c. for A.Y. 2011-12 and therefore consideration of Rs.5,58,17,422/- (10,91,91,000-5,33,73,578) being difference of two found is not reflected in books of accounts of assessee which was disclosed by the assessee partly during survey by disclosing amount of Rs.3,18,74,808/-. There was a column showing remaining amount of Rs.5,85,73,299/- on Page No. 26 of the Annexure AI, which was neither considered at the time of survey nor it was considered by assessee while filing return of income for A.Y. 2011-12. Since in the return of income for A.Y. 2011-12 there is no unsold stock it is to be held that entire sale was executed and entire amount is received by assessee by the year end. The arguments forwarded by assessee that cash receipts are included in turnover is thus not found acceptable.

5.4 Therefore in view of the above, it is clear that as per Page No. 26 of loose paper total consideration for sale of flats in the case of the assessee is Rs. 10,91,91,000/- while assessee has shown total consideration of Rs. 5,33,73,578/- in return filed for A.Y. 2011-12 and therefore the total consideration out of books is Rs. 5,58,17,422/- which is required to be added.

5.5 As per column showing received cash' there is a total cash receipt of Rs. 2,60,78,000/- (260.78). In addition to which there is one another head amount remaining which shows Rs.5,85,73,299/- which means that Rs.5,85,73,299/- was yet to be received by the assessee. Since assessee has accounted turnover of Rs.5,33,73,578/- in P&L A/c. of A.Y. 2011-12 and turnover under the column 'received cheque' as shown on page No. 26 was Rs.2,50,40,701/- it is to be believed that out of 'amount remaining' shown at Rs. 5,85,73,299/- amount of Rs. 2,83,32,877 (5,33,73,578-2,50,40,701) is received by cheque and remaining amount of Rs.3,02,40,422 (5,85,73,299-2,83,32,877) is received in cash and therefore Rs.5,63,18,422 (2,60,78,000+3,02,40,422) is required to be treated as consideration received in cash which is out of books and the same is required to be added in the income of the assessee.

#### **6. Disclosure made during the Survey.**

Without prejudice to the above it is also found that the assessee has not offered income disclosed during the survey of Rs. 3,18,74,808/- in return of income though there was no retraction on the part of the assessee. The assessee with an intention to reduce tax liability has submitted that cash receipt is also included in turnover. However, it is observed that misleading facts are submitted by the assessee. On one hand it is claimed that cash receipts are included in turnover and on other hand to reduce tax liability assessee has incurred expenses which were not there in P&L A/c. prepared at the time of survey. As discussed earlier, the expenses are inflated by the assessee to offer less income. Further during survey the assessee had made disclosure of net income after all expenses (refer statement). Further, it is proved beyond doubt in earlier paras that cash receipts are not accounted in books. Question of including cash receipt in turnover as claimed by assessee does not arise. Page No. 26 shows clear pictures of affairs of assessee and figures quoted on this page gets tallied with regular books where amount received from cheque is duly accounted. Therefore, the credentials of page No. 26 cannot be denied. When amount received in cheque gets tallied with this page there is no reason for not believing facts of amount received in cash and amount of total consideration shown on this page.

6.2. Thus, the assessee has failed to prove that the disclosure made in survey was not correct and has failed to offer income disclosed in survey for taxation purpose in return. The disclosure made was duly supported with evidences and therefore it was having binding nature. In view of the above without prejudice to finding given in earlier para of this order income of Rs.3,18,74,808/- is added in the income



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of the assessee being unaccounted cash receipts on sale of Flat which was disclosed during survey. Out of this Rs.1,00,00,000/- which was offered in A.Y. 2010-11 is treated as protective addition till it is confirmed in A.Y. 2010-11.

6.3 However, as discussed in earlier para total difference in consideration of Rs.5,58,17,422/- (10,91,91,000-5,33,73,578) is added in the income of the assessee as unaccounted income which includes disclosure of Rs. 3,18,74,808 made during the survey. **(Addition Rs. 5,88,17,422)**

The above addition was subsequently revised to Rs.563.18 Lacs u/s 154.

4.4 Upon further appeal, learned CIT(A) provided partial relief to the assessee by observing as under: -

15. I have carefully gone through the impugned assessment order, submissions filed by the Id. AR of the appellant and the material available on record. My observations are as discussed in the following paragraphs.

16. In this case, a survey u/s 133A of the I.T. Act. has taken place at the premises of the appellant firm on 15.02.2011. During the course of survey, various incriminating documents reflecting cash receipts by the assessee were found and impounded. Further, at the time of survey, statement of Shri Satish Raut, partner of the firm was recorded wherein he had admitted that the cash amounts received against sale of flats were not accounted for in the books of accounts. He has further agreed to offer the cash receipt of Rs.3,18,74,808/- as additional income of the project for the F.Y.2010-11 relevant to A.Y. 2011-12. The income disclosed was over and above the income already offered in the returns filed for A.Y.2008-09 to 2010-11. It is on record that the statement by the partner with respect to ownership of the documents, genuineness of the content and correctness of the figures mentioned were never disputed. The partners of the firm have never retracted the disclosure made during the survey proceedings. These facts are never contested during the appellate proceedings.

17. In the light of the above facts, the basis of addition made by the AO and claim of the AR of the appellant need to be examined. The AO has initiated the assessment proceedings after observing that income of Rs.45,96,590/- was only shown in the return filed by the assessee. Hence, he came to the conclusion that the disclosure was not entirely incorporated in the return of income. In this regard, the first argument of the AR that what was disclosed by the partner was the "income" and not the profit on sale of the apartments in the project named 'Brij Apartment' in Borivali. However, I find no merit in the above argument of the AR. While accepting the unaccounted cash receipts from the project, Mr. Satish V. Raut, one of the partners of the appellant firm, during the course of survey u/s 133A, on 15/02/2011 admitted that the cash receipt of Rs. 3,18,74,808/- is the firm's additional income of the project for the F.Y.2010-11 relevant to A.Y. 2011-12. The income disclosed was over and above the income already offered in the returns filed for A.Y.2008-09 to 2010-11. Therefore, it is clear that the disclosure was with respect to cash receipts and offered as undisclosed income which was tantamount to acceptance of unexplained profit from the project. This is further reinforced by the fact that out of the disclosed amount, Rs. 1 crore was offered for taxation during A.Y. 2010-11, which had been accepted by the AO and confirmed by the Ld. CIT(A) for the respective year. Hence, the aforesaid claim-of the AR is got disproved.



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18. From the above referred submission of the AR, it is observed that the appellant has also admitted during the appellate proceedings that disclosure of Rs.3,18,74,808/- was made during the survey based on cash receipts recorded on the loose paper file inventorised and impounded. The content and genuineness of the impounded papers and documents are never been in doubt. In this regard, from assessment order, it observed that the AO has found from the impounded material that if the details appearing in the trial balance submitted during the survey proceedings are compared with impounded page no. 26 of Ann.AI, it is apparent that the figures shown against different flats in the trial balance perfectly matches with that shown in the impounded. It is exemplified with figures of flat No.901 and 902. According to the AO, all figures mentioned on page no. 26 are reflected in lakhs i.e. 19.18 stand for Rs. 19,18,012/- and 2.5 stands for Rs. 2,50,000/-. Page no. 26 also reflects column wise total area, saleable amount and consideration which is reproduced in page 11 of the assessment order. In the light of the above findings, there is no merit in the claim of the AR that the solitary matching of the figure is just a coincidence. There are no. of figures which have matched and cannot be termed merely as a coincidence. At the time of survey proceedings, these are correlated by the partners and accepted as such. Hence, the claim made in this regard is rejected.

19. In the light of above discussion, it is observed that there are findings of the AO that the total sale consideration as shown in page No.26 of Ann. AI impounded during the course of survey, represented by 10.91 would mean total sale consideration of Rs.10,91,91,000/-, while the assessee has just shown sale consideration of Rs. 5,33,73,578/- in P & L A/c. for A.Y. 2011-12. Hence, I find merit in the findings of the AO that the consideration of Rs.5,58,17,422/- (Rs.10,91,91,000 - Rs.5,33,73,578/- ) being the difference of two as undisclosed income for the project, not found reflected in the regular books of accounts of assessee. Therefore, the actual undisclosed income from the project would be Rs. 5,58,17,422/- instead of the disclosing amount of Rs.3,18,74,808/-. This is further supported by the fact that there was a column showing remaining amount of Rs.5,85,73,299/- on page no.29 of Ann.AI, which was neither considered at the time of survey nor by the assessee-while filing return of income for A.Y. 2011-12. The aforesaid fact has not been disproved by the AR during appellate proceedings. Since in the return of income for A.Y.2011-12 there was no unsold stock, the AO has correctly come to the conclusion that entire sale was executed and entire amount was received by the assessee by the year end. Accordingly, the argument of the assessee that cash receipts were included in the turnover was not accepted by the AO. The AO has further analysed the various entries made in the impounded material with the trial balance prepared by the appellant during survey proceedings and came to the conclusion the actual undisclosed income from the project for the year under consideration will be Rs.5,58,17,422/-. Looking to the overall facts and circumstances of the issue involved and after carefully perusing the statements recorded during survey proceedings and content of the impounded material, I do not find any infirmity in the conclusion arrived by the AO that the undisclosed income in this case , from the project involved, would be Rs. 5,58,17,422/-.

20. It is further observed that out of the above amount, Rs.1,00,00,000/- has been added on protective basis, since the appellant has already disclosed this amount in the return of income of A.Y. 2010-11, which has also been confirmed by the Ld. CIT(A) for the relevant year, a set off of Rs. 1,00,00,000/- is given from the undisclosed income of Rs. 5,58,17,422/-.



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Consequently, addition of Rs.4,58,17,422/- is confirmed. Thus grounds of appeal are partly allowed.

Aggrieved, the assessee as well as revenue is under further appeal before us.

5. The Ld. Authorized Representative for Assessee (AR) advanced argument to submit that the additions were made solely on the basis of statement given by one of the partners of the assessee firm. The statements made during the course of survey u/s 133A would hold no evidentiary value and therefore, in the absence of any corroborative material found during the course of survey operations, the additions would not be sustainable in law. Our attention has been drawn to the fact that statement was recorded u/s 133A under oath against the mandate of law and no cognizance of the same could be taken of by revenue authorities. It has also been submitted that the partner whose statement was recorded already expired on 03/04/2016 and therefore, no retraction could have been done by the said partner. Reliance has been placed, *inter-alia*, on the decision of Hon'ble Apex Court in **CIT V/s S.Khader Khan & Sons (25 Taxmann.com 413)**, Mumbai Tribunal in **DCIT V/s Premsons (ITA No. 4698/Mum/2006 dated 15/01/2009)**, Hon'ble Delhi High Court in **Pr.CIT V/s Meeta Gutgutia (ITA Nos. 306 to 310 of 2017 25/05/2017)**, Agra Tribunal in **ACIT V/s Maya Trading Co. (34 Taxmann.com 144)** and Hon'ble Madras High Court in **CIT V/s P.Balasubramanian (33 Taxmann.com 130)** for various submissions. Per Contra, Ld. DR submitted that assessee honoured only partial disclosure and miserably failed to substantiate its stand during assessment proceedings. The objections that the statement



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was recorded under oath was never agitated before lower authorities at any time during proceedings.

6. We have carefully heard rival submissions, perused relevant material on record including documents placed in the paper-book and deliberated on judicial pronouncements as cited before us. After going through the facts as enumerated in the preceding paragraphs, the undisputed position that emerges is that the assessee was subjected to survey proceedings on 15/02/2011 wherein certain incriminating documents indicating receipt of cash on sale of flats over and above the declared / agreement value were found, impounded and inventorized. The statement on oath was recorded from one of the partners of the assessee firm wherein the partner admitted disclosure of Rs.318.74 Lacs against sale of flats in the project. It was categorically admitted that aforesaid cash receipt of Rs.318.74 Lacs was not accounted for in the books of accounts and the same was over and above the agreement values reflected in the books of accounts as well as net of expenditure. The said additional income was declared under the project for AYs 2010-11 & 2011-12. It is further noted that cash amounting to Rs.15.06 Lacs was also found and inventorized during survey proceedings. It was admitted that the same represented cash receipts against sale of flats and was a part of the disclosure of Rs.318.74 Lacs already made by the assessee. Keeping in line with the said statement, the assessee revised its return of income for AY 2010-11 enhancing its income by Rs.60.22 Lacs as against Rs.100 Lacs stated to be disclosed for that year out of total disclosure of Rs.318.74 Lacs made during survey



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operations. It is noteworthy that this statement was never retracted by the assessee even up-to the date of death of the statement giving partner which event took place on 03/04/2016 i.e. more than 5 years from the date when the statement was given. In fact, the assessee partially honoured the said statement by offering the additional income for AY 2010-11 and therefore, we find no substance in the argument of Ld. AR that the statement made by the assessee would have no evidentiary value. The statement was backed by incriminating documents which was further corroborated by excess cash found in the course of survey operations which was categorically admitted to by one of the partners of the assessee firm. Therefore, the case laws being relied upon by Ld. AR, in this regard, in our considered opinion, would not help the cause of the assessee and would not apply to the factual matrix of the case. We are also of the opinion that the complete onus to negate the contents of the statement was on assessee and we find that no material was brought on record by the assessee to controvert the said statement. In fact, the statement was partially honored by offering additional income for AY 2010-11. Thus, arguments raised by Ld. AR would not find favor with us.

7. The Ld. AR has advanced argument that no excess stock was found during survey operations. However, we find that assessee's inventory was in the shape of flats in the projects and there would be no occasion of excess stock at assessee's premises at the time of survey operations and therefore, the said plea was to be rejected.



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8. The Ld. AR has also asserted that the statement taken under oath u/s 133A would be nullity since the revenue had no authority to record the statement under oath. However, in our opinion, the statement was taken in the course of survey operations and merely because the oath was administered to the partner before recording statement, the same would not render the statement nullity. For all intent and purposes, it was statement under survey operations which was backed by incriminating material, excess cash was found and admitted. The assessee partially honoured the statement by revising the return of income. Therefore, stated facts would not inspire any confidence in us to accept the arguments of Ld. AR.

9. At the same time, we find that the partner, in the statement, made a disclosure only to the extent of Rs.318.74 Lacs, which was duly tabulated at the time of survey operations and the same forms the basis of making additions in the hands of the assessee. Beside this material, no further efforts have been made by the revenue to corroborate the statement of the partner or bring on record any material that the disclosure should have been more than Rs.318.74 Lacs. Therefore, in line with the statement, the total additions were to be restricted to Rs.318.74 Lacs for AYs 2010-11 & 2011-12. Hence, the additions made by Ld. AO in AY 2010-11 stand confirmed. The additions made in AY 2011-12 should be for the balance amount of Rs.218.74 Lacs i.e. Rs.318.74 Lacs Less Rs.100 Lacs assessed in AY 2010-11. Accordingly, the addition in AY 2011-12 stand restricted to Rs.218.74 Lacs.



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10. Resultantly, assessee's appeal for AY 2010-11 ITA No. 2683/Mum/2015 as well as revenue's appeal for AY 2011-12 ITA No. 7196/Mum/2016 stands dismissed whereas assessee's appeal for AY 2011-12 ITA No. 2686/Mum/2018 stands partly allowed to the extent indicated in the order.

*Order pronounced in the open court on 21<sup>st</sup> November, 2019*

Sd/-  
**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 21/11/2019

Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop		Sr.PS/PS
2	Draft dictated on	Not Applicable/		Sr.PS/PS
3	Draft Placed before author	Not Applicable		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			