IN THE INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCH "E" MUMBAI

BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER)
AND SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.1732-1733/MUM/2019

(Assessment Years: 2013-14& 2016-17)

M/s Ekta Housing Pvt. Ltd 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACE2460K	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA No.2186/MUM/2019

(Assessment Year: 2016-17)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta Housing Pvt. Ltd 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACE2460K

(Appellant) (Respondent)

ITA No.1734 to 1737 /MUM/2019

(Assessment Years: 2013-14 to 2016-17)

M/s Ekta Parksville Homes Pvt. Ltd.,401, Hall mark Business Plaza,Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACW4316N	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA No.2194 & 2195/MUM/2019

(Assessment Years: 2014-15 & 2015-16)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta Parksville Homes Pvt. Ltd., 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACW4316N

(Appellant) (Respondent)

ITA No.1738 to 1740 /MUM/2019

(Assessment Years: 2014-15 to 2016-17)

M/s Ekta Supreme Corporation.,401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AABFE8308G	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA No.2202 to 2204/MUM/2019

(Assessment Years: 2014-15 to 2016-17)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta Supreme Corporation.,401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001.

		PAN No. AABFE8308G

(Appellant) (Respondent)

ITA No.1741 & 1742 /MUM/2019

(Assessment Years: 2015-16 & 2016-17)

M/s Ekta Shelters Pvt. Ltd.,401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACE3017G	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA Nos. 2197 & 2198/MUM/2019

(Assessment Years: 2015-16& 2016-17)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta Shelters Pvt. Ltd.,401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAACE3017G

(Appellant) (Respondent)

ITA No.1744 & 1745 /MUM/2019

(Assessment Years: 2015-16 & 2016-17)

M/s Ekta Shubham Venture; 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AADFE1333R	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA Nos. 2201 & 2196/MUM/2019

(Assessment Years: 2015-16 & 2016-17)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta Shubham Venture; 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AADFE1333R

(Appellant) (Respondent)

ITA Nos. 2199 & 2200/MUM/2019

(Assessment Year: 2016-17)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Ekta World Pvt. Ltd; Gopal Floor, Near Gopal Sharma School, Off. Adi Shankracharya Marg, Powai, Andheri East, Mumbai – 400 076. PAN No. AABCE9770F

(Appellant) (Respondent)

ITA No.1743/MUM/2019

(Assessment Year: 2014-15)

M/s Pahli Hill Developers; 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAAFP5949A	Vs.	Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.

(Appellant) (Respondent)

ITA Nos. 2193/MUM/2019

(Assessment Years: 2014-15)

Dy. Commissioner of Income-tax-Central Circle 6(2), 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021.	Vs.	M/s Pahli Hill Developers; 401, Hall mark Business Plaza, Off. Western Express Highway, Kalanagar, Bandra East, Mumbai – 400 001. PAN No. AAAFP5949A

Assessee by : Shri Naresh Jain, A.R
Revenue by : Shri Sunil Umap, CIT D.R

Date of Hearing : 01.04.2021
Date of pronouncement : 24.05.2021

ORDER

PER BENCH:

The presentcross-appeals/appeals are directed against the respective orders passed by the CIT(A)-54, Mumbai. As certain

common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first take up the appealfiled by the assessee, viz. M/s Ekta Housing Pvt. Ltd for A.Y. 2013-14 in ITA No. 1732/Mum/2019. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @20% of the on-money in this year without considering the fact – that the appellant offered the income of Rs. 3.48 lakhs @ 12% of on-money of Rs. 29 lakhs in A.Y 2016-17 when the project was completed and sale was recognized in P&L A/c.
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> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 29 lakhs which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
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> 3. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

2. Briefly stated, the assessee company which is engaged in the business of a builder and developer had filed its original return of income for A.Y. 2013-14 on 30.09.2013, declaring a total income of 16,53,43,100/-. The return of income was thereafter revised on 06.06.2014 at an income of Rs.17,11,54,520/-. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group" and the assessee company was covered in the said proceedings. Incriminating documents revealing receipt of unaccounted amounts by way of on-money by the assessee company and its group concerns against sale of residential and commercial properties had surfaced in the course of the search proceedings. Notice under Sec. 153A was issued and duly served upon the assessee for the year in question i.e A.Y 2013-14. Return of income in compliance to the notice issued u/s 153A was filed by the assessee company on 13.01.2017, declaring a total income of

Rs. 17,11,54,520/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

3. During the course of the assessment proceedings, it was gathered by the A.O from a perusal of the seized material that the assessee company had inter-alia received on-money on sale of flats w.r.t its projects, viz. Maple Wood/Cornel ANDCalifornia, as under:

Project Name	Flat No.	Amount (in lacs)	Financial Year (of receipt)	Assessment Year
Maple Wood/Cornel	801/802	Rs. 197	2015-16	2016-17
California	**1101**	**Rs. 29**	**2012-13 (registration on 04.03.2013)**	**2013-14**

Observing that the assessee had not offered the on-money of Rs.29 lacs that was received by it during the year in question as its income in the return filed u/s 153A of the Act, the A.O called upon it to put forth an explanation as regards the same. In reply, it was submitted by the assessee that the net income of Rs. 3.48 lac i.e 12% of the on-money of Rs. 29 lac received w.r.t its project, viz. "California" had been offered by it as income in the computation of income for A.Y 2016-17i.e the year in which the project was completed and sale was recognised in the Profit & loss account. However, the A.O did not find favour with the aforesaid explanation of the assessee. Observing, that the registration of the Flat No. 1101 was done in March, 2013, the A.O was of the view that as the sale transaction stood concluded during the year under consideration and the correlating income arising therefrom had accrued during the period relevant to A.Y 2013-14 thus, there was no justification on the part of the assessee to account for the same in A.Y 2016-17. Also, the A.O being of the view that the entire amount of on-money of Rs. 29

lac was to be brought to tax in the hands of the assessee u/s 68 of the Act, therefore, rejected the assessee's offer for accounting foronly 12% of the on-money receipt as its income. Although the A.O had in his assessment order categorically observed that the entire amount of on-money of Rs. 29 lac was to be added to the assessee's income under Sec. 68 of the Act, however, the consequential addition to the said effect inadvertently remained omitted to be made in the assessment order passed by him under Sec. 153A r.w.s 143(3), dated 15.12.2017. Subsequently, the A.O passed a rectification order under Sec. 154 wherein the addition of Rs. 29 lac was made by him.

4. As the A.O in the impugned assessment order had categorically observed that the entire amount of on-money of Rs. 29 lac received by the assessee w.r.t its project "California" was to be added to the assessee's income u/s 68 during the year in question i.eA.Y 2013-14 thus, the assessee assailed the said observation of the A.O before the CIT(A). It was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from its business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted in some loose sheets and in the data retrieved from mobile phones therefore, the same could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element of the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money

receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% of such receipts could not be substantiated by the assessee therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the disallowance to the said extent.

5. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. We shall first advert to the grievance of the assessee that the CIT(A) had erred in estimating the income element embedded in the on-money receiptof Rs. 29 lac @20% which is on the higher side, and the same should have been estimated by her @12% of the said receipts as was offered by the assessee. Before proceeding any further, we may herein observe that the revenue on the other hand in the case of the assesee for the succeeding year, viz. A.Y 2016-17 as well as in the case of the other group concerns had assailed the confining of the addition w.r.t the on-money receipts by the CIT(A) at 20% of the amount of such unaccounted receipts, as against the addition of the entire amount made by the A.O in the said respective cases. Insofar the year in question i.e A.Y 2013-14 is concerned, the revenue apparently considering the low tax effect therein involved had not carried the matter any further in appeal before us. As observed by us hereinabove, the A.O on a perusal of the seized material observed that the assessee had during the year in question i.e A.Y 2013-14 received on-money of Rs. 29 lac w.r.t sale of Flat no. 1101 in its project, viz. “California”. It was further observed by the A.O that the sale agreement for the aforesaid Flat no. 1101 was registered on 04.03.2013 i.e during the year under consideration itself.

Admittedly, the aforesaid factual observations of the A.O are not in dispute. Observing, that the assesse had not offered the on-money of Rs. 29 lac received by it as its additional income for the year in question i.eA.Y 2013-14 the A.O called for an explanation as regards the same from the assessee. In reply, it was submitted by the assessee that it had offered the net income element embedded in the on-moneyreceipt i.e @12% of Rs. 29lac in its computation of income for A.Y 2016-17 i.e the year in which the project was completed and sale of the aforesaid flat was recognised in its Profit & loss account. However, the A.O was of the view that the entire amount of the on-money of Rs. 29 lac was to be brought to tax in the hands of the assessee in the year of receipt itself. Also, the A.O was of the view that as the registration of the flat in question i.e Flat No. 1101 was done in March, 2013, therefore, the correlating income arising from the sale transaction had accrued to the assessee during the period relevant to A.Y 2013-14 and there was no justification on the part of the assesseein accounting for the same as its income in A.Y 2016-17. To sum up, the A.O dislodged both the quantification of the income relatable to the on-money receipt as well as the year of taxability of the said amount, as was claimed by the assessee. On appeal, the CIT(A) found favour with the claim of the assessee that only the income element embedded in the on-money receipt was liable to be assessed in the hands of the assessee. But then, the claim of the assessee wherein he had sought deferring of accounting for the on-money receipt as its income to A.Y 2016-17i.ethe year when the project was completed and sale was recognized in Profit & Loss A/c was rejected by the CIT(A).

6. Supporting its claim that the CIT(A) had rightly restricted the addition w.r.t the on-money of Rs. 29 lac received by the assessee as regards sale of Flat no. 1101 in its project, viz. "California", it was submitted by the ld. A.R that the CIT(A) had rightly observed that as regards the on-money received by the assessee what could be brought to tax was the profit embedded in such receipts and not the entire receipts. In support of his aforesaid contention the ld. A.R had relied on the judgment of the Hon'ble High Court of Gujarat in the case of Dy. CIT Vs. Panna Corporation (2012) 82 CCH 266 (Guj). It was submitted by the ld. A.R that the Hon'ble High Court in its said order had observed that upon detection of on-money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts. Further, reliance was placed by the ld. A.R on the judgment of the Hon'ble High Court of Gujarat in the case of PCIT, Surat Vs. Anupam Organiser(2020) (9) TMI 973 (Guj). It was submitted by the ld. A.R that the Hon'ble High Court relying on its earlier order passed in the case of Panna Corporation(supra), had observed, that as the Tribunal was justified in considering that the assessee ought to have spent reasonable amount for the purpose of receiving the amount of on-money thus, what could be brought to tax was the profit embedded in such receipts and not the entire receipts themselves. Support was also alsodrawn by the ld. A.R from the judgment of the Hon'ble High Court of Gujarat in the case of CIT Vs. Abhishek Corporation (2000) 158 CTR 374 (Guj). Further, reliance was placed by the ld. A.R on the order of the ITAT, Mumbai in the case of Guruprerna Enterprises Vs. ACIT (2011) 30 CCH 17 (Mum). It was, thus, submitted by the ld. A.R that the CIT(A) was principally correct in restricting the addition to the extent of the income

element embedded in the on-money that was received by the assessee company. But then, it was submitted by the ld. A.R that the CIT(A) had estimated the income element embedded in the on-money receipts at a high pitched figure i.e @20% of the amount of on-money received by the assessee as against that offered by the assessee @12% of the amount of such receipts. In order to drive home his aforesaid claim, it was submitted by the ld. A.R that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which had been accepted by the commission. It was, thus, submitted by the ld. A.R that the estimation of the profit element embedded in the on-money receipts @20% by the CIT(A) be substituted by that shown by the assessee @12%. It was further submitted by the ld. A.R that as the assesssee had recognised the sales of the housing project, viz. "California" in the period relevant to A.Y 2016-17 hence, the A.O was not correct in assessing the on-money of Rs. 29 lac received by the assessee w.r.t Flat No. 1101 in the said project in A.Y 2013-14. It was submitted by the ld. A.R that as the assessee was following the project completion method of accounting therefore, the income element embedded in the on-money receipts of Rs. 29 lac received by the assessee w.r.t Flat No. 1101in its project, viz. "California" was to be considered in the relevant year of completion of the project. It was, thus, submitted by the ld. A.R that the CIT(A) had erred in upholding the view of the A.O that the on-money receipt in question was to be brought to tax during the year of receipt itself i.eA.Y 2013-14. In support of its claim that in a case where an assessee is following project completion method the on-money received is to be brought to tax in the year of completion of the project the ld. A.R relied on the order

of the Hon'ble High Court of Gujaat in the case of CIT(Central), Surat Vs. Happy Home Corporation (2018) 94 taxmann.com 292 (Guj). It was submitted by the ld. A.R that the said order of the Hon'ble High Court had thereafter been upheld by the Hon'ble Supreme Court and the SLP filed by the revenue had been dismissed. Also, reliance was placed by the ld. A.R on the order of the ITAT, Ahmedabad in the case of M/s D.R Construction Vs. ITO, Ward 2(3), Surat, ITA No. 2735/Ahd/2010, dated 08.04.2011. On the basis of his aforesaid contentions, it was submitted by the ld. A.R that the income element embedded in the on-money received by the assessee company be worked out @12% of such receipts and subjected to tax in A.Y 2016-17 i.e when the project was completed and sale was recognized by the assessee in its Profit & Loss A/c.

7. Per contra, the ld. Departmental representative (for short "D.R") relied on the assessment order. It was submitted by the ld. D.R that as the amount of the on-money received by the assessee w.r.t Flat No. 1101 of its project, viz. "California" was an unaccounted receipt, therefore, the A.O had rightly subjected the entire amount of such receipt to tax. It was submitted by the ld. D.R that the CIT(A) had most arbitrarily restricted the addition to the extent of the impugned income element embedded in the on-money received by the assessee. It was further submitted by the ld. D.R that as the sale agreement for the aforesaid property in question i.e Flat No. 1101 was executed in March, 2013 thus, the CIT(A) had rightly observed that the sale transaction in question having been concluded during the period relevant to A.Y 2013-14 itself, there was no justification on the part of the assessee in accounting for the same in A.Y 2016-17. On the basis of his aforesaid contentions it was submitted by the ld. D.R that though the CIT(A) had rightly

observed that the sale transaction in question was liable to be accounted for by the assessee during the year in question, but she had erred in scaling down the addition to the extent of the income element embedded in the on-money received by the assessee company, as against the addition of the entire amount of on-money that was made by the A.O.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, the assessee during the year in question i.e A.Y 2013-14 had received on-money of Rs. 29 lac w.r.t sale of Flat no. 1101 in its project, viz. "California". Insofar the quantification of the income assessable as regards the amount of on-money received by the assessee is concerned, we find that the same was confined by the assessee upto the extent of the income element embedded in the amount of such on-money and was accordingly taken on an ad hoc basis i.e @12% of such receipt at Rs. 3.84 lac. However, the A.O subjected the entire amount of on-money of Rs. 29 lac to tax in the hands of the assessee in the year of receipt itself i.e A.Y 2013-14. On appeal, the CIT(A) principally agreed with the assessee that the entire amount of on-money could not be subjected to tax and she restricted the addition to the extent of the income element embedded in such receipts, which however was estimated by her @20% of the amount of on-money received by the assessee, observing as under:

> "5.5. The assessee had submitted during the assessment proceedings and appellate proceedings that it had incurred

expenses out of these cash receipts which have not been accounted for in the books of account, He requested to allow these expenses and tax only the net income. For this he relied upon the judgments as could be seen from his submissions supra.

5.6 The Learned counsel further contended that the group case of the appellant which have approached the Income Tax Settlement Commission have offered 15% of on-money to tax which has been accepted by the Hon'ble ITSC. The percentage of profit offered before the ITSC and the acceptance by the Settlement Commission is applicable only to the cases before the Commission and is in no way binding on the other cases which are not before it. At best it can only be a guiding factor. According to the Learned counsel, in the case of the appellant a profit of only 12% is feasible and the same is offered to tax. The reason for offering 12% is not substantiated with any basis or evidence. On the other hand the Hon'ble Bombay High Court in the case of CIT Vs. Prime Developers ITA No. 2452 of 2013, held as under :

> "(e). The grievance of the revenue before us is that the adoption of net profit of 17.08% as determined by the Tribunal is not correct. Although the questions as formulated does not state that the adoption of any particular rate of net profit, in submissions it is submitted that it has to be replaced/submitted by 65% as net profit as arrived at by the Assessing Officer.
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> (f). We find that the revenue seeks to substitute the estimated net profit arrived at by the Tribunal with a new figure of net profit. This without in any manner showing that the estimate arrived at by the Tribunal in the impugned order is perverse. It is a settled position of law that in estimated net profit arrived at by the authorities is a question of fact and if the material on record does support the estimate arrived at by the Tribunal then it does not give rise to any substantial question of law (see CIT Vs. Piramal Spinning and Weaving Mills Ltd. 124 ITR 408). In this case, we find that the net profit estimated at 17.08% is a very possible view on the facts found.
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> (g). In the above view, question no. 1 as proposed does not give rise to any substantial question of law. Thus, not entertained."

Therefore, the percentage of profit has to be estimated on case to case depending on the facts and circumstances of the case.

5.7 In view of the facts and circumstances of the case, it is felt reasonable to estimate the profit of the assessee at 20% of the on-money received during the year. The A.O is directed to restrict the disallowance to 20% of the on-money received. In view of the above, these grounds of appeal are partly allowed."

On the one hand the assessee is aggrieved with the working of the income element embedded in the on-money received by it @20% of such receipts by the CIT(A) as against that shown by it @12%, while for the revenue is aggrieved with the confining of the addition w.r.t the on-money received by the assesseeupto the extent of the impugned income element therein embedded i.e @20% of such receipts as against the addition of the entire amount of on-money made by the A.O. It is the claim of the assessee that as a reasonable amount would have been spent for the purpose of receiving the amount of on-money thus, what could be brought to tax was the profit embedded in such receipts and not the entire amount of on-money receipt. As is discernible from the orders of the lower authorities, the assessee had in the course of the assessment proceeding and also before the first appellate authority submitted that as it had incurred expenses out of the cash receipts which have not been accounted for in its books of account thus, only the net income element involved in such on-money receipts be subjected to tax. Aforesaid claim of the assesseethat it had incurred cash expenses out of the on-money receipts, we find,had been accepted by the A.O in the assessment order wherein he had observed that in the course of the search proceedings documents relating to certain cash expenses were also found which were maintained by Shri. Vivek Mohanani, promoter of the "Ekta group". It is further observed by the A.O that the source of the cash expenses were the unaccounted cash receipts i.ethe amount of on-money that was received by the assessee. For the sake of clarity the relevant observation of the A.O admitting the aforesaid factual position is reproduced as under:

> "5.4 It was also found that one of the directors, Shri. Vivek Mohanani used to maintain the records of such unaccounted transactions in his two blackberry mobile phones in "notes" folders so as to keep track of various payments received in cash. Documents relating to certain cash expenses were also found which were maintained by Shri. Vivek Mohanani. The source of the cash expenses was unaccounted sales receipts."

Further, as observed by the A.O in the assessment order, Shri. Vivek Mohanani (supra) in his statement recorded u/s 132(4) of the Act, dated 12.10.2015 had on being confronted with the seized documents admitted that the same have records of cash transactions, both receipts and expenses, which are not accounted in the regular books of accounts. In the backdrop of the aforesaid facts, we find that is a matter of an admitted fact that the incriminating documents seized in the course of the search proceedings contained records of cash transactions, both receipts and expenses, which were not accounted for in the regular books of accounts of the assessee. As observed by us hereinabove, the A.O while framing the assessment had categorically observed that the unaccounted transactions w.r.t cash expenses incurred by the assessee from the unaccounted sales receipts i.e on-money receipts had surfaced in the course of the search proceedings. It is, thus, in the backdrop of the aforesaid factual position that the assessee had incurred expenses out of the on-money receipts that we shall herein adjudicate the sustainability of the view taken by the CIT(A) that the addition w.r.t the on-money received by the assesseewas liable to be restricted to the extent of the income element embedded in such receipts and the entire amount of the on-money could not be added in the hands of the assessee company. We find that the Hon'ble High Court of Gujarat in the case of Dy. CIT Vs. Panna Corporation (2012) 82 CCH 266 (Guj),had observed, that consistently the Courts have been following the principle that even

upon detection of on-money receipt or unaccounted cash receipt what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. It was further observed by the Hon'ble High Court that what should be estimated as a reasonable profit out of such receipts must bear an element of estimation. For the sake of clarity the observations of the Hon'ble High Court are reproduced as under:

> 9. Having heard the learned counsel for the parties and having perused the orders under consideration, what emerges is that the findings arrived at by the Assessing Officer that the respondent - partnership firm received on money of Rs.62 lakhs during the block period for sale of the flats, is not seriously in dispute. The Tribunal confirmed such findings arrived at by the Assessing Officer. However, the Tribunal did not permit the revenue to collect the tax on the entire receipt believing the it was only the income embedded in such receipt which can be subjected to tax.
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> 10. As pointed out by the counsel for the respondent, this Court in the case of Commissioner of Income Tax v. President Industries, reported in (2002) 258ITR 654 had taken a similar view. In the said case, during the course of survey conducted on the premises of the assessee, from the excise records found, an inference was drawn by the Assessing Officer that sales accounting to Rs.29 lakhs and odd had not been disclosed in the books of account. The Assessing Officer made addition of the entire sum of the said undisclosed sales as income of the assessee for the assessment year 1994-95. Such addition was confirmed by the Commissioner (Appeals). The Tribunal, however, held that the entire sales could not have been added as income of the assessee, but only to the extent the estimated profits embedded in the sales for which the net profit rate was adopted entailing addition of income on the suppressed amount of sales. Such decision was carried in appeal by the revenue before the High Court. The High Court rejected the appeal, observing that unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed, such addition could not be sustained. It was observed that in absence of such findings of fact, the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The High Court rejected the appeal holding that no question of law which requires to be referred arises.
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> 11. In the case of commissioner of Income Tax v. Gurubachhan Singh J. Juneja, reported in (2008) 302 ITR 63 (Guj.), once again a somewhat similar issue came up before this Court. In the said case, the assessee was engaged in the business of trading of tyres. Search proceedings were carried out at the residential and business premises of the assessee. On the basis of loose sheets which were seized during such search operation, the Assessing Officer held that sales to the extent of Rs.10.85 lakhs was not found in the books of account. Such amount was included in the total income of the assessee. The Commissioner (Appeals) gave substantial relief to the assessee and reduced the income on the basis of gross profit rate. The Tribunal confirmed the order of the Commissioner (Appeals). On further appeal before the High Court by the revenue, the High Court refused to refer any question holding that in absence of

any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged undisclosed sales, the finding of the Tribunal that only the gross profit on the said amount can be brought to tax does not call for any interference.

12. Counsel also relied on the decision in the case of Commissioner of Income Tax v. Samir Synthetics Mill, reported in (2010) 326 ITR 410, wherein the High Court confirmed the view of the Tribunal accepting only the profit of unaccounted sale for the purpose of collecting tax.

13. Our attention was also drawn to the decision of the M. P. High Court in the case of Man Mohan Sadani v. Commissioner of Income Tax, reported in (2008) 304 ITR 52, wherein referring to and relying upon the decision of this Court in the case of Commissioner of Income Tax v. President Industries (supra) and other decisions of other High Courts, the M. P. High Court had also taken a similar view. It was observed that entire sale proceeds of the assessee should not be added in his income and that the Tribunal has erred in doing so.

14. We may recall that the Tribunal, in the impugned judgement, relied on its previous judgement in case of Kishor Mohanlal Telwala. The said judgement of the Tribunal was apparently carried in appeal by the revenue. The High Court by a speaking order dated 24.4.2000, dismissed the appeal holding that no question of law was involved. Significantly, in case or Kishor Mohanlal Telwala, the assessee was engaged in the business of construction. In his case, unaccounted receipt of Rs.1.47 crores was detected. In this background, the Division Bench confirmed the view of the Tribunal and did not accept the contention of the revenue that as no accounts had been maintained to substantiate the expenditure incurred by the assessee, the entire amount received by the respondent should be treated as income. The Court concluded that the Tribunal was justified in considering that the respondent - assessee ought to have spent reasonable amount for the purpose of receiving such gross receipt.

15. It can, thus, be seen that consistently, this Court and some other Courts have been following the principle that even upon detection of on money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that be the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation.

16. In view of the legal position that not the entire receipts, but the profit element embedded in such receipts can be brought to tax, in our view, no interference is called for in the decision of the Tribunal accepting such element of profit at Rs.26 lakhs out of total undisclosed receipt of Rs.62 lakhs. In other words, we accept the legal proposition, the Tribunal accepting Rs.26 lakhs disclosed by the assessee as profit out of total undisclosed receipt of Rs.62 lakhs, would not give rise to any question of law.

17. In the result, the tax appeals are dismissed."

Also, as observed by us hereinabove, a similar view had been taken by the Hon'ble High Court of Gujarat in the case of PCIT, Surat Vs. Anupam Organiser(2020) (9) TMI 973 (Guj). In its said order the Hon'ble High Court relying on its earlier order passed in the case of

Panna Corporation (supra), had observed, that as the Tribunal was justified in considering that the assessee ought to have spent reasonable amount for the purpose of receiving the amount of on-money thus, what could be brought to tax was the profit embedded in such receipts and not the entire receipts.Similar view had also be drawn by the Hon'ble High Court of Gujarat in the case of CIT Vs. Abhishek Corporation (2000) 158 CTR 374 (Guj). Relying on the order of the ITAT, Ahmedabad in the case of Abhishek Corporaton Vs. DCIT 63 TTJ 651 (Ahd) the ITAT, Mumbai in the case of ACIT Vs. Guruprena Enterprises, ITA Nos. 255 to 257, 544 & 545/Mum/2010 and 4836/Mum/2009 [affirmed by the Hon'ble High Court of Bombay in CIT Vs.Guruprerna Enterprises in ITA 1849 of 2011] had observed as under:'

> "Even though it is established from seized documents that assessee was receiving premium/on-money on booking of flats belonging to third parties, entire receipts of on-money/premium cannot be treated as undisclosed income of assessee; only net profit rate can be applied on unaccounted sales/receipts for making addition."

Also, relying on the aforesaid judicial pronouncements the ITAT, Mumbai 'F' Bench in the case of M/s Sumer Builders Vs. Dy. CIT, Central Circle-5(3), Mumbai, ITA No. 4915/Mum/2016; dated 09.01.2021 had observed as under:

> "Further, admittedly the on-money is merely receipts of sale proceeds as noted by the Assessing Officer in his order at Page No. 3 and what could be taxed is only income and not receipts. We further note that in various judgments relied on above it has been categorically held that on-money receipts are in the nature of sale price and not income per se. In the case of CIT vs. President Industries [258 ITR 654 (Guj)] it has been held that the entire sum of undisclosed sale proceeds cannot be treated as income. Similar view has been taken by the Hon'ble Bombay High Court in the case of CIT vs. Hariram Bhambhani in ITXA No. 313 of 2013. Further in the case of GuruprernaEnterprises (supra) relying on Abhishek

Corporation vs. DCIT [63 TTJ (Ahd) 651] it has been held as under :-

> "Even though it is established from seized documents that assessee was receiving premium/on-money on booking of flats belonging to third parties, entire receipts of on-money/premium cannot be treated as undisclosed income of assessee; only net profit rate can be applied on unaccounted sales/receipts for making addition."

The other judgments relied on by the assessee also support its case. The ld. D.R has not brought on record any contrary judgments. We, therefore, agree with the consistent view expressed in these judgments that on-money receipts are in the nature of undisclosed receipts and not income per-se and therefore only profit element embedded therein are liable to be taxed and not the entire on-money receipts."

In the case before us, in the backdrop of the fact admitted by the A.O while framing the assessment that the incriminating documents seized in the course of the search proceedings contained records of cash transactions, both receipts and expenses, which were not accounted for in the regular books of accounts of the assessee, and that the unaccounted transactions w.r.t cash expenses incurred by the assesseeout of the unaccounted sales receipts i.e on-money receipts had surfaced in the course of the search proceedings, we are of the considered view that no infirmity arises from the order of the CIT(A) who drawing support from the judicial pronouncements that were relied upon by the assesseee before him, had concluded, that the addition as regards the on-money received by the assessee was to be made to the extent of the income element embedded in such receipts and the entire amount of on-money could not have been added in the hands of the assessee. We, thus, agreeing with the consistent view taken in the aforesaid judicial pronouncements, therein respectfully follow the same, and thus, finding no infirmity in the view taken by the CIT(A), uphold the same.

9. We shall now advert to the grievance of the assessee that the CIT(A) had erred in estimating the income element embedded in the on-money of Rs. 29 lac received by the assessee@20% of such receipt, which is on higher side, and the same should have been estimated @12% of the amount of such on-money receipt as was offered by the assessee. Insofar the quantification of the income element embedded in the on-money received by the assessee is concerned, we find that it was the claim of the assessee that the same in all fairness be taken @12% of the said receipts as was offered by it. However, the CIT(A) being of the view that the assessee could not substantiate the very basis for estimating the income element embedded in the on-money receipts @12% thus, held a conviction that the same could reasonably be taken @20% of the said receipts. Admittedly, both the assessee and the CIT(A) had resorted to an estimation of the income element embedded in the on-money receipts, which we are afraid in neither case is backed by any basis or reasoning. As observed by us hereinabove, the Hon'ble High Court of Gujarat in the case of Dy.CIT Vs. Panna Corporation (2012) 82 CCH 266 (Guj),had held, that for the purpose of estimating the income element embedded in the on-money receipts what should be estimated as a reasonable profit out of such receipts must bear an element of estimation. Admittedly, the quantification of the income element embedded in the on-money receipts has to be on the basis of a process of estimation, but then, there has to be to the extent possible some logical reasoning explaining the basis for arriving at such estimate. As is discernible from the order of the CIT(A), it was the claim of the assessee company that its group concerns which had approached the Income-Tax Settlement Commission (for short "ITSC") had offered for tax the income

element embedded in the on-money received by them @15% of such receipts and the same had been accepted by the commission. However, the CIT(A) was of the view that the percentage of profit offered by the group concerns before the ITSC and accepted by the latter was applicable only to the cases before the commission and was in no way binding on the other case which were not before it. At the same time, it was observed by the CIT(A) that the percentage of profit offered by the group concerns before the ITSC and accepted by the latter could be taken as a guiding factor. In the backdrop of the aforesaid observation of the CIT(A), we are of the considered view that she in all fairness for the purpose of estimating the income element embedded in the on-money receipts could have safely taken it at the same figure i.e @15% of the amount of on-money receipts as was accepted by the ITSC. Our aforesaid conviction is all the more supported by the fact that no reason or logic had been given by the CIT(A) for taking the income element embedded in the on-money receipts@20%. We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts.The **Ground of appeal No. 2** raised by the assessee is partly allowed in terms of our aforesaid observations.

10. We shall now take up the grievance of the assessee that the CIT (Appeals) had erred in confirming the addition w.r.t the income element embedded in the on-money in the year in question i.e A.Y 2013-14 without considering the fact that it had offered the same in A.Y 2016-17i.e the year when the project was completed and sale was recognized in the Profit & loss A/c. In order to drive home his aforesaid claim the ld. A.R had relied on the order of the Hon’ble

High Court of Gujarat in the case ofCIT(Central), Surat Vs. Happy Home Corporation (2018) 94 taxmann.com 292 (Guj). It was submitted by the ld. A.R that the said order of the Hon'ble High Court had thereafter been upheld by the Hon'ble Supreme Court and the SLP filed by the revenue had been dismissed in CIT (Central) Vs. Happy Home Corporation(2019)103 taxmann.com 22 (SC). Also, reliance was placed by the ld. A.R on the order of the ITAT, Ahmedabad in the case of M/s D.R Construction Vs. ITO, Ward 2(3), Surat, ITA No. 2735/Ahd/2010, dated 08.04.2011. On the basis of his aforesaid contentions, it was submitted by the ld. A.R that the income element embedded in the on-money received by the assessee company be worked out @12% of such receipts and the same be subjected to tax in A.Y 2016-17i.ein the year when the project was completed and sale was recognized by it in the Profit & Loss A/c.

11. We have heard the authorised representative for the assesseeand also the rebuttal of the ld. D.R in context of the issue in question, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As observed by the Hon'ble Supreme Court in the case of CIT Vs. Bilhari Investment (P) Ltd. (2008) 299 ITR 1 (SC) that an assesseehaving all along followed the completed contract method, and the Department having accepted the same over several years, the completed contract method adopted by the assessees is not required to be substituted by percentage completion method in the absence of any finding of the A.O that the completed contract method distorts the profits of a particular year. Same view had been arrived at by the Hon'ble High

Court of Gujarat in the case of CIT(Central), Surat Vs. Happy Homes Corporation (2018) 94 taxmann.com 292 (Guj) that where the assessee before them which was engaged in construction business was following project completion method, its income could be brought to tax only in the year when sale deeds of units sold were registered even though sale consideration might have been received earlier from the buyer. The said order of the Hon'ble High Court was thereafter approved by the Hon'ble Supreme Court in CIT, (Central) Vs. Happy Home Corporation (2019) 103 taxmann.com 22 (SC) and the SLP filed by the revenue was dismissed. Admittedly, there is no dispute on the issue that where an assessee had all along been following the completed contract method and the Department had accepted the same over several years, then, the said method of accounting cannot be substituted by percentage completion method in the absence of any finding by the A.O that the completed contract method distorts the profits of a particular year.In fact, the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India P. Ltd. (2009) 312 ITR 254 (SC) had observed that a system of accounting consistently followed is ordinarily expected to be accepted unless the system does not reflect true profits. It is, thus, in the background of the aforesaid settled position of law that we shall deal with the view taken by the CIT(A) that the income element embedded in the on-money on sale of flat was to be brought to tax in the year in question i.eA.Y 2013-14 and not in A.Y 2016-17 i.ewhen the project was completed and sale was recognized by the assessee in its Profit & loss A/c. In our considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot

be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee to tax in terms of our aforesaid observations.The **Ground of appeal No. 1** raised by the assessee is allowed in terms of our aforesaid observations

12. The appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

13. The **Ground of appeal No. 3** being general is dismissed as not pressed.

ITA No. 1733/Mum/2019 (assessee's appeal)
ITA No. 2186/Mum/2019 (revenue's appeal)
A.Y 2016-17

(A). ITA No. 1733/Mum/2019
(assessee's appeal)

14. We shall now take up the appeal filed by the captioned assessee for A.Y 2016-17. The assessee has assailed the impugned

order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in theyear of receipt as against in the year of completion of project "Maplewood" or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting the project completion method for this project.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 197 lakhs, which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 3. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

15. Briefly stated, the assessee company had filed its return of income for A.Y 2016-17 on 15.10.2016, declaring a total income of 4,36,34,320/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

16. During the course of the assessment proceedings, it was gathered by the A.O from a perusal of the seized material that the assessee company had inter alia received on-money on sale of flats w.r.t its projects, viz. Maple Wood/Cornel AND California, as under:

Project Name	Flat No.	Amount (in lacs)	Financial Year (of receipt)	Assessment Year
Maple Wood/Cornel	**801/802**	**Rs. 197**	**2015-16**	**2016-17**
California	1101	Rs. 29	2012-13 (registration on 04.03.2013)	2013-14

Observing, that the assessee had not offered the on-money of Rs.197 lacs that was received by it during the year in question as its income in the return filed u/s 153A of the Act, the A.O called upon it to put forth an explanation as regards the same. In reply, it was submitted by the assessee that the on-money receipt of Rs. 197 lac

pertaining to the project "Maple Wood/Cornell" shall be considered for computing the income in the year of completion of the project. However, the A.O did not find favour with the aforesaid explanation of the assessee. It was observed by the A.O that during the year under consideration revenue was already recognised by the assessee. As regards the claim of the assessee that the on-money receipt would be considered in the year when the project was completed, the same did not find favour with the A.O. The A.O was of the view that as per the accounting guidelines issued a builder was obligated to follow the percentage completion method. As such, it was observed by the A.O that the on-money received by the assessee was required to be offered for tax in the year of receipt itself. Further, it was observed by the A.O that no part of deduction towards expenses was to be allowed to the assessee out of its on-money receipts. As the asseseee had accounted for an amount of Rs. 3.48 lac i.e 12% of on-money of Rs. 29 lac that was received byit in A.Y 2013-14 w.r.t its project "California", the same was reduced by the A.O while computing the total income of the assessee for the year in question i.eA.Y 2016-17. Accordingly, the A.O on the basis of his aforesaid deliberations made an addition u/s 68 of Rs. 193.52 lac [Rs. 197 lac (on-money received as regards the project "Maple Wood/Cornel") (minus) Rs. 3.48 lac (income element @12% of on-money of Rs. 29 lac that was received by the assessee in A.Y 2013-14 w.r.t its project "California and was offered for tax during the year in question)]

17. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as

the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element of the on-money received by the assessee could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the amount of their on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% could not be substantiated by the assessee therefore, she substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. Insofar the claim of the assessee that as it was following project completion method and the income from the project, viz. "Maple Wood/Cornell" would be offered on the completion of the project, the same did not find favour with the CIT(A). It was observed by the CIT(A) that the asssee had been following Percentage Completion Method in the past and had shifted to Project Completion Method only during the year in question i.e A.Y 2016-17. Holding a conviction that as the assessee had been following Percentage Completion Method which too was in accordance with the guidelines issued by ICAI, the CIT(A) was of the view that there was no justification on the part of the assessee to shift to Project Completion Method. It was, in fact noticed by the CIT(A) that certain group concerns of the assessee had been following Percentage Completion Method and were offering income worked out on the said basis. Being of the view that the

assessee company which was unable to justify shifting to Project Completion Method was trying to tweak with the revenue recognition methods to suit its purpose, the CIT(A) declined the aforesaid claim of the assessee. It was, thus, observed by the CIT(A) that the on-money receipts could not be deferred till the completion of the project and had to be taxed in the year of receipt.

18. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. We shall first deal with the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received @20% of the amount of on-money of Rs. 197 lakhs received by the assessee, which is on the higher side and should have been estimated @12% of the amount of on-money as was offered by the assessee company. Both the ld. Authorised representatives for the parties are in agreement that the facts and the issue pertaining to the aforesaid grievance of the assessee are the same as were there before us in the assessee's appeal for A.Y 2013-14 in ITA No. 1732/Mum/2019. Accordingly, as the facts and the issue in context of the aforesaid grievance of the assessee remains the same as were there before us in its appeal for A.Y 2013-14 in ITA No. 1732/Mum/2019, therefore, our order therein passed and also the reasoning adopted shall apply mutatis mutandis for the purpose of disposal of the said issue involved in the captioned appeal filed by the assessee.We, thus, are of the considered view that the net income element embedded in the on-money of Rs. 197 lac received by the assesseecan safely be taken @15% of the said amount. The **Ground of appeal No. 2** raised by the assessee is partly allowed in terms of our aforesaid observations.

19. We shall now deal with the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition w.r.t the income element of the amount of on-money of Rs. 197 lakhs that was received by the assessee during the year in question i.e A.Y 2016-17 without considering the fact that the same was assessable in the year of completion of the project, viz. "Maple wood/Cornel" as per the Project Completion Method followed by the assessee. Admittedly, the incriminating material seized in the course of the search proceedings inter alia revealed that the assessee during the year in question had reeived on-money of Rs. 197 lac on sale of Flat Nos. 801/802 of its project, viz. "Maple wood/Cornel". It was the claim of the assesseethat the income element of the on-money of Rs. 197 lac would be offered for tax in the year in which the aforesaid project is completed. However, the A.O was of the view that the on-money of Rs. 197 lac received by the assessee w.r.t the aforesaid Flat Nos. 801/802 was liable to be brought to tax in the year of receipt itself. On appeal, though the CIT(A) restricted the addition as regards the on-money of Rs. 197 lac that was received by the assessee w.r.t Flat Nos. 801/802(supra) to the extent of the income element embedded in such receipts, however, she concurred with the view taken by the A.O that the said income was to be subjected to tax in the year of receipt itself i.eA.Y 2016-17. Before us, it was submitted by the ld. A.R that as the assessee was following the Project Completion Method, therefore, the income element pertaining to the amount of on-money of Rs. 197 lac received w.r.t of Flat Nos. 801/802,as rightly claimed by the assessee, was to be offered for tax when the project in question, viz. "Maple wood/Cornel" was completed.

20. We have given a thoughtful consideration to the aforesaid issue in the backdrop of the observations of the lower authorities. It is the claim of the assessee that the CIT(A) had erred in failing to appreciate that the on-money received by the assessee w.r.t Flat nos. 801/802 of its project, viz. "Maplewood/Cornell" as per the Project Completion Method was to be brought to tax in the year of completion of the said project, or alternatively in theyears when conditions of revenue recognition are satisfied as per percentage completion method. Before us, it is the claim of the assessee that the project in question, viz. "Maplewood/Cornel" during the year under consideration i.e A.Y 2016-17 was at its very nascent stage and no income had been offered during the year in question i.e A.Y 2016-17. It is further stated by the assessee that it is following Project Completion Method for the aforesaid project, viz. Maplewood/Cornel which is likely to be completed in F.Y 2018-19. Rebutting the observation of the A.O that the assessee had already recognised therevenue for the aforesaid project, viz. Maplewood/Cornel during the year under consideationi.eA.Y 2016-17 and it is not its case that income had not been offered by it on its regular profit during the said year, the assessee vide its written submissions, dated October 9th, 2008, had submitted before the CIT(A) that the A.O had misreported the aforesaid fact. It is, thus, submitted by the assessee that as the addition had been made by the A.O on the basis of wrong reporting of facts thus, the same cannot survive.

21. As is discernible from the order of the CIT(A), the assessee in order to drive home its claim that as it was following the Project Completion Method, therefore, the on-money received by it was to be considered in the year of completion of the project, viz. "Maple

wood/Cornel" had filed "Written submissions" which have been reproduced by the CIT(A) at Page 11- Para 6.2 of her order. It was the claim of the assessee before the CIT(A) that the project in question, viz. "Maple wood/Cornel"that was just started during the year in question was in its nascent stage and the assessee had chosen to follow Project Completion Method forthe said project. It is further stated by the assesse that it had chosen to change its method of accounting to Project Completion Method w.e.f A.Y 2016-17. Further, the assessee had furnished exhaustive reasons for change in the method of accountingfrom Pecentage Completion Method that was followed by it in the past to Project Completion Method w.e.f A.Y 2016-17. However, we find that the CIT(A) after reproducing the exhaustive reasons given by the assessee to explain as to why it had changed the method of accounting to Project Completion Method w.e.f A.Y 2016-17had wrongly observed in her order that no reason had been given by the assessee to explain as to why it had shifted from the Percentage Completion Method that it was following in the past to Project Completion Method w.e.f A.Y 2016-17. Further, loosing sight of the reasons that had led to the change in the method of accounting by the assessee company, it was observed by the CIT(A) that as the Percentage Completion Method that was being followed by the assessee in the past was in accordance with the guidelines issued by the ICAI, therefore, there was no justifiable reason for shifting to Project Completion Method in A.Y 2016-17. Apart from that, it was the claim of the assessee before the CIT(A) that the A.O had misreported in the assessment order that the assessee during the year in question i.e A.Y 2016-17 had offered the income of its project, viz. "Maple wood/Cornel" in its regular books of accounts.

Also, the ld. A.R had drawn our attention to the observation of the A.O that as per the accounting guidelines issued the builder should follow percentage completion method. It is the claim of the assessee, that though the change in the method of accounting from Percentage Completion Method that was being followed by it in the past to Project Completion Method w.e.f A.Y 2016-17 was duly backed by bonafideresaons, the same, however, had not even been looked into by the lower authorities which had procedeed on the basis of misreported facts. Accordingly, it is the claim of the assessee that the rejection by the lower authorities of the Project Completion Method that was being followed by it during the year in question i.e A.Y 2016-17 was liable to be vacated.

22. We have given a thoughtful consideation to the issue in hand, and find substantial force in the claim of the assessee that its exhaustive reasoning demonstrating the bonafide reasons for change in the method of accounting from Percentage Completion Method that was being followed by it in the past to Project Completion Method w.e.fA.Y 2016-17 had not been appreciated by the CIT(A). Apart from that, we find that though theassessee vide its written submissions, dated 08.10.2018, had submitted before the CIT(A) that the A.O had misreported in the assessment order that the assessee during the year in question i.eA.Y 2016-17 had offered the income of its project, viz. "Maplewood/Cornel" in its regular books of accounts, however, the said aspect had not been addressed by the CIT(A) while upholding the view taken by the A.O.Further, it was also the claim of the assessee before the CIT(A) that it had consistently adopted and followed the Project Completion Method of accounting in the subsequent years, which had been accepted by the A.O and no error was pointed out in the same. In

the backdrop of the aforesaid facts, it was submitted by the assessee that the rejection by the lower authorities of the Project CompletionMethod that was being followed by it during the year in question i.e A.Y 2016-17, and consistently thereafter, could not be sustained and was liable to be vacated.

23. In our considered view, where the change in the method of accounting adopted by the assessee is for a bonafide reason and such new method of accounting is thereafter regularly employed by the assessee, no fault can be found with the same. Our aforesaid viewis fortified by the judgment of the Hon'ble High Court of Bombay in the case of Bajaj Auto Ltd. Vs. CIT (2016) 389 ITR 259 (Bom).Also, the Hon'ble High Court of Bombay in its earlier judgment passed in the case of Melmould Corporation Vs. Commissioner of Income Tax, 202 ITR 789 (Bom), relying on the decision of Karnataka High Court in Commissioner of Income Tax Vs. Corporation Bank Ltd. (1988) 174 ITR 616 (Kar) had held that where the change in the method of accounting is a bonafide one which was thereafter consistently followed by the assessee year after year, then, the change would have to be accepted irrespective of the fact that during the year when the change wsa brought about a deteriment was caused to the revenue. The Hon'ble High Court had observed as under:

> "The change was a bona fide one and was a permanent arrangement which was to be followed year after year, the change would have to be accepted notwithstanding the fact that during the assessment year in question, which was the first year when the change of method was brought about, a prejudice or detriment might be caused to the revenue, because the opening stock was valued at total cost while closing stock was valued at direct cost."

In fact, the Hon'ble High Court of Madras in the case of Sundaram & Co. Ltd. Vs. CIT (1959) 36 ITR 162 (Mad) had observed that the

fact that the method has been employed regularly may, for the first year of accounts, be proved by showing the regularity from accounts of subsequent years. In the backdrop of the aforesaid factsr.w the settled position of law, we are of the considered view that the CIT(A) had grossly erred in failing to appreciate the exhaustive reasoning given by the assessee to support its claim that it had w.e.f A.Y 2016-17 changed the method of recognising its revenue from Percentage Completion Method that was being followed by it in the past to Project Completion Method. Also, we find that the CIT(A) had failed to address the claim of the assessee that the A.O had misreported in the assessment order that the assessee during the year in question i.e A.Y2016-17 had offered the income of its project, viz. "Maplewood/Cornel" in its regular books of accounts. Apart from that, we find that the categorical claim raised by the assessee before the CIT(A) that it had consistently adopted and followed the Project Completion Method of accounting in the subsequent years which had been accepted by the A.O and no error was pointed out in the same had also not been loked into by the said first appellate authority. As observed by us at length herinabove while disposing off the appeal in the case of the assesseefor A.Y 2013-14 in ITA No. 1732/Mum/2017, that an assesseehaving all along followed the completed contract method, and the Department having accepted the same over several years, the completed contract method adopted by the assessees is not required to be substituted by percentage completion method in the absence of any finding of the A.O that the completed contract method distorts the profits of a particular year. In order to fortify our aforesaid view, we had drawn support from certain judicial pronouncements. Accordingly, in the backdrop of our aforesaid

observations, we are of the considered view that the aforesaid claim of the assessee requires to be looked into by the A.O. We, thus, for the limited purpose of considering the reasoning given by the assessee for change of its method of accounting from Percentage Completion Method that was being followed by it in the past to Project Completion Method w.e.f A.Y 2016-17, and also making necessary verifications as regardsits claim that it had consistently adopted and followed the Project Completion Method of accounting in the subsequent years, which had been accepted by the A.O and no error was pointed out in the same restore the matter to thefile of the A.O. In case, it is found that the assessee had for a bonafide reason changed its method of accounting from Percentage Completion Method that was being followed by it in the past to Project Completion Method w.e.f A.Y 2016-17, and the same thereafter hadconsistently been followed over the years, then, in the absence of any finding of the A.O that the completed contract method distorts the profits of a particular year the completed contract method adopted by the assesseeswould not be substituted by percentage completion method. Needles to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. At the same time, as observed by us hereinabove while disposing off the assessee's appeal for A.Y 2013-14 in ITA No. 1732/Mum/2019, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the corresponding sale transaction had been accounted for or would be accounted for by

the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to consider our aforesaid observations while subjecting the income element embedded in the on-money received by the assessee to tax. The **Ground of appeal No. 1** is allowed for statistical purposes in terms of our aforesaid observations.

24. The **Ground of appeal No. 3** being general is dismissed as mot pressed.

25. The appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2186/Mum/2019
<u>(revenue's appeal)</u>

26. We shall now take up the cross-appeal of the revenue for A.Y 2016-17. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,93,52,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,93,52,000/- made u/s 68, in disregard to the inclusive definition of

books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?

(iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?

(iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

27. As observed by us hereinabove, the A.O had brought to tax the entire amount of the on-money receipts of Rs. 197 lac u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. It is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Lastly, the revenue is aggrieved with the restriction of

the addition of the on-money receipts to 20% of the entire amount by the CIT(A).

28. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. We shall first deal with the grievance of the revenue that the CIT(A) is in error in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Before us, it was the claim of the ld. Departmental Representative (for short "D.R") that the CIT(A) while arriving at the aforesaid view had absolutely lost sight of the material fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition and not an exhaustive one. It was further submitted by the ld. D.R that as the term used in Sec. 68 is "books" and not the regular "books of account", therefore, the support drawn by the CIT(A) from the definition of "books of account" as contemplated in Sec. 2(12A) was misplaced and in fact misconceived. It was further submitted by the ld. D.R that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Also, it was submitted by the ld. D.R that the CIT(A) had most arbitrarily dislodged the addition of the entire amount of on-money made by the A.O and had arbitrarily restricted the same to the extent of 20% of such receipts.

29. Per contra, the ld. A.R relied on the order of the CIT(A). It was submitted by the ld. A.R that the basis for the addition of the on-money receipts by the A.O were the notings on some loose sheets and the data that was retrieved from the mobile phones found in the course of the search proceedings. It was submitted by the ld. A.R that as the impugned amounts were not found credited in the books of the assessee, therefore, the CIT(A) observing that the sine qua non for invoking the provisions of Sec. 68 was absent, had thus, rightly vacated the addition therein made by the A.O. In support of his contention that where the requirement of Sec. 68, i.e the amount being credited in the books of account is not satisfied, no addition can be made u/s 68 of the Act, the Ld. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom). Also reliance was placed on the order of the ITAT, Mumbai in the case of Mehul V. Vyas Vs. Income-Tax Officer (2017) 80 taxmann.com 311 (Mum) and that of the ITAT, Bangalore in the case of DCIT Vs. Raja Udayshankar (2006) 7 SOT 680 (Bang).

30. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. After deliberating at length on the issue in question i.e whether notings in loose sheets and data retrieved from the mobile phones in the course of the search proceedings would justify an addition by the A.O u/s 68 of the Act, we find substantial force in the contentions advanced by the ld. A.R. We are persuaded to subscribe to the claim of the ld. A.R that as notings in loose sheets and data retrieved from the mobile phones

cannot be held as the "books" of an assessee maintained for any previous year, hence no addition in respect of such notings as regards on-money received by the assessee could have been made under Sec.68 to the Act. Our aforesaid observation is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand H. Gandhi (1983) 143 ITR 67 (Bom.). Also, a similar view had been arrived at by a coordinate bench of the Tribunal viz. ITAT, Mumbai in the case of Mehul V. Vyas Vs. ITO (2017) 764 ITD 296 (Mum).Further, a fine distinction between "books of account" and "documents" can safely be gathered from the definition of the term "Undisclosed income" as contemplated in Sec. 158B(b) of the Act. As observed by the ITAT, Bangalore in the case of DCIT Vs. Raja Udayshankar (2006) 7 SOT 680 (Bang), that a separate usage of the words "books of account" and "documents" in the definition of the term "Undisclosed income" in Sec. 158B(b) therein clearly provides for a distinction between the two. Backed by its aforesaid observation, the Tribunal had concluded that as Sec. 68 is applicable to any entry credited in the books of account thus, the same would not be applicable to any entry in a document. In the backdrop of our aforesaid observations we concur with the view taken by the CIT(A) that as the notings of on-money were found in the loose sheets and data retrieved from the mobile phones and did not form part of the books of account of the assessee, the same, thus, could not have been added u/s 68 of the Act. Insofar the claim of the revenue that the additions of on-money made u/s 68 by the A.O on the basis of notings in loose sheets and data retrieved from the mobiles was in order, for the reason, that the said section uses the term "books" and not "regular books" of account is concerned, we are afraid that the same does not find favour with us. As is

discernible from Sec. 2(12A) of the Act, the same therein defines "books or books of accounts". We are unable to comprehend that as to on what basis the revenue is seeking inclusion of loose sheets and data retrieved from mobile phones within the scope and gamut of the definition of "books or books of accounts" as provided in Sec. 2(12A) of the Act. Alternatively, we also find substance in the observation of the CIT(A), that as both the Investigation wing and the A.O had held that the impugned notings were the on-money received by the assessee on sale of flats/shops in the building projects undertaken by it thus, in absence of any dispute as regards the nature of such receipt, the same, was liable to be assessed as a "business receipt" and not as an income u/s 68 of the Act. We concur with the view taken by the CIT(A) that now when the A.O had in the assessment order mentioned the flat wise and year wise receipts of on-money thus, the same leaves no iota of doubt that the same were in the nature of "business receipts" which were inseparable from the assessee's business of a builder and developer. Accordingly, on the basis of our aforesaid deliberations, we are of a strong conviction that no infirmity arises from the order of the CIT(A) who in our considered view had rightly concluded that the impugned additions could not have been made u/s 68 of the Act. We, thus, uphold the order of the CIT(A) to the extent he had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos.(i) to (iii)** raised by the revenue are dismissed.

31. As we had while disposing off the assessee's appeal in ITA No. 1733/Mum/2019 for A.Y 2016-17 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts were liable to be restricted to the extent of the element of net income therein

embedded and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

32. The appeal filed by the revenue is dismissed.

33. Resultantly, the appeals filed by the assessee are partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

M/s Ekta Parksville Homes Pvt. Ltd.

ITA No. 1734/Mum/2019
(assessee's appeal)
A.Y 2013-14

34. We shall now deal with the appeal filed by the captioned assessee, viz. M/s Ekta Parksville Homes Pvt. Ltd. for A.Y 2013-14. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of project "or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting the project completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the appellant received on-money of Rs. 22 lakhs without appreciating the fact that the group director Mr. Vivek Mohanani of appellant denied for the same. She ought to have deleted the addition.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 22 lakhs, which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

35. Briefly stated, the assessee company which is engaged in the business of a builder and developer had filed its original return of income for A.Y. 2013-14 on 29.09.2013, declaring a loss of (Rs. 5,25,48,651/-). Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group" and the assessee company was covered in such proceedings. Incriminating documents revealing receipt of unaccounted amounts by way of on-money by the assessee company and its group concerns towards sale of residential and commercial properties had surfaced in the course of the search proceedings. Notice under Sec. 153A was issued and duly served upon the assessee for the year in question i.e A.Y 2013-14. Return of income in compliance to the notice issued u/s 153A was filed by the assessee company on 12.01.2017, declaring a loss as originally returned of (Rs. 5,25,48,651/-). Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

36. During the course of the assessment proceedings, it was gathered by the A.O that in the course of the search proceedings conducted u/s 132 on "Ekta Bhoomi group" the statement of Shri. DilipBoradewho was an employee of the assese company, viz. M/s Ekta Parksville Pvt. Ltd. and was engaged in liasioning and handling of cash at the instructions of Shri. Vivek Mohanani, Joint Managing director and Shri Prateek Arora was recorded on 05.10.2015 at his residence at 107/4 Swapana CHS, Sector 1, RSC-21, Charkop, Kandivili West, Mumbai, wherein he had admitted that he had handled cash for "Ekta group" and had provided complete details as regards the same alongwith the respective dates, which inter alia to the extent related by the A.O to the case of the assesseefor the year in question read as under :

Sr. No.	Date	Amount	Cash collected from (name)	Cash handed over to	Remarks
9	In Sept, 2012	22 lacs	Certain Hawala Party named Suraj Bhai from Road No. 2 Kalaba Devi	Pratik Arora	Here I had carried torn currency note of Rs. 10 for collecting money. Pratik Arora can only explain this transaction

On being confronted with the aforesaid statement of Shri. DilipBorade (supra), Shri. Vivek Mohanani, Jt. Managing Director of the assessee company in his statement recorded by the DDIT on 27.01.2016 denied the same. However, the A.O acted upon the details provided by Shri. DilipBorade in his statement recorded under Sec. 132(4), dated 05.10.2015, for the reason that he being an employee of the assessee company, viz. M/s Ekta Parksville Pvt. Ltd. had in his statement recorded on oath u/s 132(4) provided complete details of cash that was handled by him for "Ekta group" alongwith quantity, dates, details of cash collected, name of the person to whom the same was handed over alongwith the financial years/dates to which the cash collected pertained. Accordingly, on the basis of the aforesaid details provided by Shri. DilipBorade in his statement recorded u/s 132(4), dated 05.10.2015 the A.Oadded the aforesaid amount of Rs. 22 lac u/s 68 of the Act.

37. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from themobile phones, the same, thus,

could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that the A.O de hors any incriminating material had made an addition of Rs. 22 lac on the basis of the standalone statement of Shri. DilipBorade, the same did not find favour with the CIT(A). It was observed by the CIT(A) that as Shri. DilipBorade was a key employee of the assessee company, and the assessee group was habitually receiving on-money on sale of properties, therefore, it could safely be presumed that the aforesaid amount of Rs. 22 lac was received by the assessee as on-money on sale of flats of its "Parksville project". Accordingly, the CIT(A) rejected the claim of the assessee that the addition of Rs. 22 lac on the basis of a standalone uncorroborated statement of Shri. Dilipborade could not be sustained and was liable to be vacated. At the same time, the claim of the assessee that only the net income element of the on-money receipt could be brought to taxwas principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing set-off of business loss of current year of Rs. 5,25,48,651/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from 01.04.2017,

therefore, the same would not be applicable to the case of the assesse for the year in question i.e A.Y 2013-14. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by him as business income and not an income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE would also not be applicable on the said count too. Accordingly, the CIT(A)directed the A.O to allow set-off of current years business loss and brought forward losses after due verification.

38. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. The ld. A.R assailed the impugned additions which were made by the A.O towards on-money allegedly received by the assessee company on the basis of an unsubstantiated statement of it employee, viz. Mr. DilipBorade that was recorded u/s 132(4) of the Act. It was submitted by the ld. A.R that Shri. Vivek Mohanani, Jt. Managing director of the assessee company on being confronted with the impugned statement of Mr. DilipBorade had clearly denied the receipt of any such amount of on-money by the assessee company on sale of flats in its project, viz. "Parksville project". It was vehemently submitted by the ld. A.R that though neither any incriminating material was found in the course of the search proceedings nor any evidence proving the receipt of the alleged amount of on-money by the assessee company had been brought on record, the A.O, had however merely on the basis of the unsubstantiated statement of Shri.DilipBorade drawn adverse inferences in the hands of the assessee. It was further submitted by the ld. A.R that the A.O was not justified in making the impugned additions in the hands of the assessee company solely on the basis of a third party statement. In order to drive home his aforesaid contention the ld. A.R relied on the judgment of the Hon'ble High

Court of Madras in the case of CIT Vs. Smt. S. Jayalakshmi Ammal (2016) 74 taxmann.com 35 (Mad). It was further averred by the ld. A.R that the statement of Shri. DilipBorade recorded u/s 132(4) could not be construed as an incriminating material. In support of his said contention reliance was placed on the order of the ITAT, Jodhpur in the case of Shree Chand Soni Vs. DCIT (2006) 101 TTJ 1028 (Jodhpur). Further, relying on the judgment of the Hon'ble High Court of Calcutta in the case of CIT Vs. Tara Chand Mahipal (2016) 65 taxmann.com 29 (Cal), it was submitted by the ld. A.R that additions could not be made on the basis of uncorroborated documents seized from a third party in the course of the search proceedings. It was submitted by the ld. A.R that an addition could not be made in the hands of an assessee merely on the basis of a bald statement of a third party without there being any corroborative evidence. In order to fortify his aforesaid contention the ld. A.R had relied on the judgments of the Hon'ble High Court of Andhra Pradesh in CIT Vs. Naresh Kumar Aggarwal (2014) 369 ITR 171 (AP); Hon'ble High Court of Madras in the case of CIT Vs. K. Bhuvanendran and Co. (2008) 303 ITR 235 (Mad); and that of the Hon'ble High Court of Gujarat in the case of Dy. CIT Vs. Mahendra Ambalal Patel (2010) 78 CCH 377 (Guj). It was, thus, submitted by the ld. A.R that the additions made by the A.O towards on-money allegedly stated to have been received by the assessee company in A.Y 2013-14, A.Y 2014-15 & A.Y 2015-16 had no legs to stand upon and were liable to be vacated.

39. Per contra, the ld. D.R relied on the orders of the lower authorities. It was submitted by the ld. D.R that as Shri. Dilip Borade, employee of the assessee company, had in his statement recorded u/s 131 of the Act provided details as regards the on-

money that was recieved/collected by him thus, the A.O had rightly made additions towards on-money received by the assessee company in the respective years.

40. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As observed by the A.O in the assessment order, Shri. DilipBorade, employee of the assessee company was involved in doing liaison work for the group as well as handled cash of the group on the instructions of Shri. Vivek Mohanani, Shri. Ashok Mohnani, promoters of the "Ekta group" and Shri. Prateek Arora. In his statement recorded u/s 131, dated 05.10.2015 Shri DilipBorade was called upon to furnish details of cash handled by him for Ekta Group. Relevant extract of the statement of Shri. DilipBoradeis reproduced as under :

> "During the course of search u/s 132 in the Ekta Bhoomi group at the residence of Shri. DilipBorade on 05/10/2015 at 107/4, Swapana CHS, Sector 1, RSC-21, Charkop, Kandivili West, Mumbai 400 067 in his statement recorded u/s 131, he was asked to give the details of cash handled by him for Ekta Group. His reply is reproduced below :
>
> "Q.11. Please give the details of cash handled by you for Ekta Group alongwith details of quantity and dates. Please explain detail.
>
> Ans:

Sr. No	Date	Amount	Cash collected from (name)	Cash handed over to	Remarks
1.	F.Y 2014-15	5 crore in various instalments	Pratik Arora, Vivek Mohanani	Shri Purandare from HDIL and certain lady named Smt. Sushama on 2nd floor of Viva Group office at Virar.	Pratik Arora and Vivek Mohnani had called. They can only explain this transaction.
2.	F.Y 2013-14	1.5 Cr. In	Ysahwant	Vivek	Vivek Mohanani had

		various instalments.	(9820475111) Lamington Road, Near Police Station.	Mohanani	called to confirm my identity to collect cash. Vivek Mohnani can explain.
3.	F.Y 2013-14	4.5 Cr	Collected from site office, Meadows, Nagothane, Sidharth Nagar.	Vivek Mohanani and Pratik Arora	Harish Bhai, Sales person from Ekta Bhumi Garden, Borivil site, called me to collect the cash from site. Vivek Mohanani and Pratik Arora can only explain this transaction.
4.	F.Y 2014-15	80 Lacs on various dates	Collected from party name no known Thane West from flat purchasers.	Pratik Arora	Pratik can only explain this transaction.
5.	F.Y 2013-14	15 Lacs	Vivek Mohanani	Deshpande and associates	Vivek Mohnani can explain.
6.	March, 2015	36 Lacs	Vivek Mohanani	Vrushabh in Bhoomi Developer	Vivek Mohnani can explainTDR purchased.
7.	25th Dec, 2014	55 Las	KausalChedda 9892362551	Vivek Mohnani	Vivek Mohnani can only explain here. Shri Pratik Arora had given his visiting card as token of identity to collect cash.
8.	Oct, 2014	25 Lacs	Party from Hiranandani, Powai	Pratik Arora	Pratik had called for collection, Pratik can only explain.
9.	In Sept, 2012	22 Lacs	Certain Hawala Party named Suraj Bhai from Road No. 2 Kalaba Devi	Pratik Arora	Here, I had carried torn currency note of Rs. 10 for collecting money. Pratik Arora can only explain this transaction.

We may herein observe, that the aforesaid details provided by Shri. DilipBorade was pursuant to the query raised by the A.O therein calling upon him to furnish details of cash handled by him for Ekta groupalongwith quantity and dates. In other words, the A.O had queried as regards the details of cashwhich he had handled for Ekta

group. For sake of clarity the query raised by the A.O in pursuance to which the aforesaid details were provided by Shri. DilipBorade (supra)is reproduced as under:

> "Q.11. Please give the details of cash handled by you for Ekta Groupalongwith details of quantity and dates. Please explain detail."
>
> (emphasis supplied by us)

Although Shri DilipBorade was an employee of the assesee company, viz. M/s Ekta Parksville Homes Pvt. Ltd., but as observed by the A.O in the assessment order he used to do liasioning work for Ekta group and used to deliver and receive cash on the instructions of Mr. Vivek Mohanani, Mr. Ashok Mohanani and Mr. Prateek Arora. To sum up, it is a matter of fact borne from the records that Shri. DilipBorade was though an employee of the assessee company but he used to do liasioning work for Ekta group and also delivered and received cash as per the instructions of Mr. Vivek Mohanani and Mr. Ashok Mohanani, promoters and Shri. Prateek Arora, a key employee of the Ekta group. Apart from that, as observed by us herinabove, the details furnished by Shri. Prateek Arora was in context of the cash that was handled by him for Ekta Group and not only for the assessee company in question, viz. M/s Ekta Parksville Homes Pvt. Ltd. It is, thus, in the backdrop of the aforesaid material fact that we shall advert to the details furnished by Shri. DilipBorade and therein test the sustainability of the view taken by both the lower authorities that the same pertained to the on-money that was received in respect of sale of flats in the project of the assessee company, viz "Parksville project".

41. As is discernible from the assessment order, the A.O had concluded that all the alleged receipts of money by Shri. Dilip

Borade, viz. Sr. No. 2, Sr. No. 3, Sr. No. 4, Sr. No. 7, Sr. No. 8&Sr. No. 9as culled out in the aforesaid chart were towards on-money received as regards sale of flats by the assessee company in its project "Parksville project". Basis for arriving at such conclusion was the standalone fact that Shri. DilipBoarde was on record an employee of the assessee company. We are, however, unable to subscribe to the aforesaid view so taken by the A.O. As observed by us hereinabove, not only the A.O had admitted that Shri. DilipBorade was doing liasioning work for the Ekta group and was delivering and receiving cash as per the instructions of Mr. Vivek Mohanani and Mr. Ashok Mohanani, promoters and Shri. Prateek Arora, a key employee of the Ekta group, but in fact the details furnished in response to Q.No. 11 of his statement recorded u/s 131, dated 05.10.2015 was as regards the cash that was handled by him in respect of the entire Ekta group. On a careful scrutiny of the aforesaid reply of Shri. DilipBorade, we find that at no stage he had at any instance stated that the cash handled by him was as regards the transactions of the assessee company, viz. M/s Ekta Parksville Homes Pvt. Ltd. or its project, viz"Parksville project". Accordingly, in the totality of the aforesaid facts, we find no reason much the less any justification to relate the impugned transactions to the assessee company, viz. M/s Ekta Parksville Homes Pvt. Ltd.

42. Be that as it may, we find that majority of the impugned transactions pertaining to collection of cash by Shri. DilipBorade makes a reference to the name of the person from whom the impugned amount was collected by him. In fact, in two instances even the mobile numbers of the concerned persons are given. However, we find that the A.O had not even done the bare minimum by attempting any verification which would have revealed a clear

cut nexus between the aforementioned persons and the transactions of sale/receipt of advance by the assessee company w.r.t its project, viz."Parksville project". The A.O without placing on record any material which would reveal that the persons from whom the impugned amounts were received/collected by Shri. DilipBorade figured in the list of the persons from whom advances were received or flats were sold by the assessee in its project, viz. "Parksville project" or were in any way connected to the said transactions, had hushed to conclude that the impugned amounts was the on-money that was received by the assessee w.r.t sale of flats in its project, viz. "Parksville project".We, thus, are of the considered view that the A.O had hushed through the issue and de hors placing on record any material held the alleged receipts as on-money received by the assessee on sale of flats of its project, viz."Parksville project".

43. We shall in the backdrop of te aforesaid factual matrix advert to the sustainability of the additions made by the A.O, which thereafter had been upheld by the CIT(A) on the basis of the standalone statement of Shri. DilipBorade (supra). As observed by us hereinabove, it is a matter of fact that no incriminating material had surfaced in the course of the search proceedings which would corroborate the receipt of the impugned amounts as on-money on sale of flats by the assesseee company in its project "Parksville project. In fact, except for the standalone statement of Shri. DilipBorade (supra) there is nothing available on record which would support the factum of receipt of the impugned amounts in question. Insofar the statement of Shri. DilipBorade (supra) recorded u/s 131 of the Act alleging receipt of the amounts, the same, in our considered view cannot be held to an incriminating material. Our aforesaid view is fortified by the order of the ITAT, Jodhpur in the

case of Shree Chand Soni Vs. DCIT (2006) 101 TTJ 1028 (Jodhpur). In the said order, it was observed by the Tribunal that as a statement recorded under Sec. 132(4) does not tantamount to unearthing of any incriminating evidence during the course of search therefore, no addition could be made only on the basis of statement under s. 132(4) made by the assessee admitting bogus capital formation. As such, in the present case before us, the only basis for making of the impugned additions by the A.O towards alleged on-money received by the assessee is the standalone uncorroborated statement of the assessee's employee, viz. Shri.Dilip Borade (supra), who we may herein reiterate was rendering his services not only for the assessee company but for the entire Ekta group. In our considered view additions cannot justifiably be made on the basis of uncorroborated documents seized from a third party in the course of search proceedings. Our said view is supported by the judgment of the Hon'ble High Court of Calcutta in the case of CIT Vs. Tara Chand Mahipal (2016) 65 taxmann.com 29 (Cal). In its said judgment, it was observed by the Hon'ble High Court that addition made to the assessee's income merely on the basis of papers seized from the possession of the assessee's brother was unjustified when the material sought to be relied on was not corroborated. Also, a similar view was taken by the Hon'ble High Court of Madras in the case of CIT Vs. Smt. S. Jayalakshmi Ammal (2017) 390 ITR 0189 (Mad). In the case before the Hon'ble High Court, the assessee's son in the course of the search proceedings was examined on 29.12.1999 under Section 132 of the Income Tax Act, 1961. As per the statement of the assessee's son, there was a payment of Rs.31,00,000/-towards purchase of property, and that such payment was made in the presence of his father, namely, the

assessee. According to him, a sum of Rs.31,00,000/- was paid to Shri. Babu. However, the revenue authorities did not seek any clarification as regards the aforesaid statement of his son. It is in the backdrop of the aforesaid facts that the Hon'ble High Court had observed as under:

> "19. While adverting to the above, we are of the considered view that, for deciding any issue, against the assessee, the Authorities under the Income Tax Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under Section 132(4) of the Income Tax Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the Income Tax Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore, under Judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred.
>
> 20. In the case on hand, statement recorded on 29.12.1999 from the son of the assessee under Section 132(4) of the Act is not corroborated by any material document. Admittedly, Revenue has also not confronted the assessee, with the said statement of his son. If that be the case, it can be safely concluded that, there was no material documentary evidence, to substantiate and corroborate the statement of Mr.Natarajan, son of the assessee. If the assessee makes a statement under Section 132(4) of the Act, and if there are any incriminating documents found in his possession, then the case is different. On the contra, if mere statement made under Section 132(4) of the Act, without any corroborative material, has to be given credence, than it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterised as undisclosed and on the facts and circumstances of the case, we are of the view that mere statement without there being any corroborative evidence, should not be treated as conclusive evidence against the maker of the statement."

Facts involved in the case of the assessee before us more or less remains the same. As observed by us hereinabove, the adverse inferences drawn by the A.O regarding receipt of on-money by the assessee company on sale of flats in its project "Parksville project" are backed not by any incriminating material that had surfaced in the course of the search proceedings but by a standalone uncorroborated statement of its employee, viz. Shri. Dilip Borade (supra). Apart from that, we find that Sh. Vivek Mohanani, director of the assessee company on being confronted with the aforesaid

statement of Shri. Dilip Borade (supra) had categorically denied the receipt of any such amounts by the assessee company. In the backdrop of the aforesaid facts, we are of a strong conviction that the A.O without placing on record any material corroborating the statement of Shri. DilipBorade (supra) and disproving the claim of Shri. Vivek Mohnani (supra), had most arbitrarily drawn adverse inferences as regards receipt of on-money on sale of flats by the assessee company.Similar view was arrived at by the Hon'ble High Court of Gujarat in the case of Dy. CIT Vs. Mahendra Ambalal Patel (2010) 40 DTR 243 (Guj). In its order, it was inter alia observed by the Hon'ble High Court that an addition cannot be made in the hands of an assessee merely on the basis of a bald statement of a third party without there being any corroborative evidence. In our considered view, now when it is an admitted fact that the revenue had failed to place on record any material which would corroborate receipt of on-money by the assessee company on sale of flats in its project, viz. "Parksville project", therefore, no addition on the said count could have validly been made in the hands of the assessee. Reliance is placed on the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. K. Bhuvanendran&Ors. (2008) 303 ITR 235 (Mad). In its said order, it was observed by the Hon'ble High Court that as the revenue had not brought on record any material to establish that consideration shown in the sale deed was understated, and no material was found during search to show that assesseehad paid an amount over and above the stated consideration, no addition could have been made on the basis of a retracted statement of theassessee recorded during search. In the backdrop of the aforesaid factual matrix r.w the settled position of law, we are of the considered view that the A.O in the absence of

any incriminating material found in the course of the search proceedings or any such 'material' which would prove to the hilt that the assessee had received on-money on sale of its flats in its project, viz. "Parksville project", had erred in making additions in the hands of the assessee company merely on the basis of an uncorroborated standalone statement of Shri. DilipBorade (supra) recorded u/s 131 of the Act. At this stage, we may herein observe, that as deliberated by us at length hereinabove, even the details furnished by Shri. DilipBorade (supra) in reply to Q.No. 11 of his statement recorded u/s 131, dated 05.10.2015 does not reveal that the impugned transactions of receipt of cash by him pertained to the assessee company, viz. M/s Ekta Parksville Homes Pvt. Ltd. Accordingly, on the basis of our aforesaid observations we are unable to persuade ourselves to uphold the order of the CIT(A) to the extent he had sustained the addition pertaining to the alleged receipt of on-money by the assessee company on sale of flats in its project, viz. "Parksville project" during the year in question, viz. A.Y 2013-14. We, thus, set aside the order of the CIT(A) and vacate the addition to the extent the same was sustained by him in context of the aforesaid impugned receipt of on-money of Rs. 22 lac. The **Ground of appeal No. 2** is allowed in terms of our aforesaid observations.

44. As we have concluded that no part of addition pertaining to the impugned amount of on-money of Rs.22 lacs can be sustained in the hands of the assessee, therefore, we refrain from adverting to and therein adjudicating the **Grounds of appeal Nos. 1 & 3** which having been rendered as academic in nature are left open.

45. The **Ground of appeal No. 4** being general in nature is dismissed.

46. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA No. 1735/Mum/2019 (assessee's appeal)
ITA No. 2194/Mum/2019 (revenue's appeal)

A.Y 2014-15

(A). ITA No. 1735/Mum/2019
(assessee's appeal)

47. We shall now take up the appeal filed by the captioned assessee for A.Y 2014-15.The assessee has assailedthe impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of project "or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting the project completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the appellant received on-money of Rs. 600 lakhs without appreciating the fact that the group director Mr. Vivek Mohanani of appellant denied for the same. She ought to have deleted the addition.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 600 lakhs, which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

48. Briefly stated, the assessee had filed its original return of income for A.Y. 2014-15 on 17.11.2014, declaring a loss of (Rs.8,67,72,453-). Notice under Sec. 153A was issued and duly served upon the assessee for the year in question i.e A.Y 2014-15. Return of income in compliance to the notice issued u/s 153A was filed by the assessee company on 12.01.2017, declaring a loss as

originally returned of (Rs. 8,67,72,453/-). Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

49. During the course of the assessment proceedings, it was gathered by the A.O that in the course of the search proceedings conducted u/s 132 on "Ekta Bhoomi group" the statement of Shri. DilipBorade who was an employee of the assese company, viz. M/s Ekta Parksville Pvt. Ltd. and was engaged in liasioning and handling of cash at the instructions of Shri. Vivek Mohanani, Joint Managing director and Shri Prateek Arora was recorded on 05.10.2015 at his residence at 107/4 Swapana CHS, Sector 1, RSC-21, Charkop, Kandivili West, Mumbai, wherein he had admitted that he had handled cash for "Ekta group" and had provided complete details as regards the same alongwith the respective dates, which inter alia to the extent related by the A.O to the case of the assessee for the year in question read as under :

Sr. No.	Date	Amount	Cash collected from (name)	Cash handed over to	Remarks
2.	F.Y 2013-14	1.5 Cr in various installments	Yashwant (9820475111) Lamington Road, Near Police Station	Vivek Mohnani	Vivek Mohnani had called to confirm my identity to collect cash. Vivek Mohnani can explain.
3.	F.Y 2013-14	4.5 Cr	Collectedfrom the office. Meadows, Nagothane, Siddharth Nagar.	Vivek Mohnani and Pratik Arora	Harish Bhai Sales person from Ekta Bhum Garden, Borivilli Site, called me to collect the cash from site. Vivek Mohnani and Pratik Arora can only explain this transaction.

On being confronted with the aforesaid statement of Shri. DilipBorade (supra), Shri. Vivek Mohanani, Jt. Managing Director of the assessee company in his statement recorded by the DDIT on 27.01.2016 denied the same. However, the A.O acted upon the details provided by Shri. DilipBorade (supra) in his statement recorded under Sec. 132(4), dated 05.10.2015, for the reason that he being an employee of the assessee company, viz. M/s Ekta Parksville Pvt. Ltd. had in his statement recorded on oath u/s 132(4) provided complete details of cash handled by him for "Ekta group" alongwith quantity, dates, details of cash collected, name of the person to whom the same was handed over alongwith the financial years/dates to which the cash collected pertained. Accordingly, on the basis of the aforesaid details provided by Shri. DilipBorade in his statement recorded u/s 132(4), dated 05.10.2015 the A.O added the aforesaid amount of Rs. 6 crore [Rs. 1.5 crore (+) Rs. 4.5crore]u/s 68 of the Act.

50. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that the A.O de hors any incriminating material had made an addition of Rs. 6 crore on the basis of a standalone statement of Shri. DilipBorade, the same did not find favour with the CIT(A). It was observed by the CIT(A) that

as Shri. Dilip Borade (supra) was a key employee of the assessee company, and the assessee group was habitually receiving on-money on sale of properties, therefore, it could safely be presumed that the aforesaid amount of Rs. 6 crore was received by the assessee as on-money on sale of flats in its "Parksville project". Accordingly, the CIT(A) rejected the claim of the assessee that the addition of Rs. 6 crore on the basis of a standalone uncorroborated statement of Shri. Dilip borade could not be sustained and was liable to be vacated. At the same time, the claim of the assessee that only the net income element embedded in the on-money receipt could be brought to tax was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, she substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the disallowance to the said extent. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing set-off of business loss of current year of Rs. 8,67,72,453/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from 01.04.2017, therefore, the same would not be applicable to the case of the assesse for the year in question i.e A.Y2014-15. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by him as business income and not an income u/s 68 of the Act, therefore, the provisions of Sec.

115BBE would also not be applicable on the said count too. Accordingly, the CIT(A)directed the A.O to allow set-off of current years business loss and brought forward losses after due verification.

51. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Both the ld. Authorised representatives for the parties are in agreement on the point that the facts and the issue involved in the captioned appeal are the same as were there before us in the appeal of the assessee for the immediately preceding year i.e A.Y 2013-14 in ITA No. 1734/Mum/2019. As the facts and issue involved in the present appeal of the assessee for A.Y 2014-15 in ITA No. 1735/Mum/2019 remains the same as were there before us in context of the issue in hand in the assessee's appeal for the immediately preceding year i.e A.Y 2013-14 in ITA No. 1734/Mum/2019, therefore, our order therein passed shall apply mutatis mutandis for the purpose of disposal of the present appeal. Accordingly, on the basis of our aforesaid observations we are unable to persuade ourselves to uphold the order of the CIT(A) to the extent he had sustained the addition pertaining to the alleged receipt of on-money by the assessee company on sale of flats in its project, viz. "Ekta Parksville" during the year in question, viz. A.Y 2014-15. We, thus, set aside the order of the CIT(A) and vacate the addition to the extent the same was sustained by him in context of the aforesaid impugned receipt of on-money of Rs.6 crore by the assessee company. The **Ground of appeal No. 2** is allowed in terms of our aforesaid observations.

52. As we have concluded that no part of addition pertaining to the impugned amount of on-money of Rs.6 crore can be sustained

in the hands of the assessee, therefore, we refrain from adverting to and therein adjudicating the **Grounds of appeal Nos. 1 & 3** which having been rendered as academic in nature are left open.

53. The **Ground of appeal No. 4** being general in nature is dismissed.

54. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

(B).ITA No. 2194/Mum/2019
(revenue's appeal)

55. We shall now deal with the appeal filed by the revenue for A.Y 2014-15. The revenue has assailed the impugned order passed by the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 6,00,00,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 6,00,00,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?
>
> (v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

56. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipt of Rs.6 crore u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not

found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. It is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Also, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to the A.O to allow set-off of the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

57. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the

amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group entity of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

58. As we had while disposing off the assessee's appeal in ITA No. 1735/Mum/2019 for A.Y 2014-15 concluded that no part of the addition upheld by the CIT(A) w.r.t the impugned amount of on-money receipts is liable to be sustained, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is accordingly dismissed.

59. We shall now deal with the grievance of the revenue that the CIT(A) has erred in vacating the view taken by the A.O who as per the mandate of Sec. 115BBE of the Act had declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act. As is discernible from the records, the A.O while framing the assessment had declined the assessee's claim for set-off of the current year business loss of Rs. 8,67,72,453/- against the income assessed. On appeal, the CIT(A) observed that as the provisions of Sec. 115BBE had came into effect from 01.04.2017, the same, thus, would not be applicable to the case of the assessee for A.Y 2014-15. Alternatively, it was observed by the CIT(A) that as the on-money received by the assessee was held by him to be in the nature of a business receipt and was not to be treated as its income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE on the said count too would not be applicable. Accordingly, the CIT(A) on the basis of her aforesaid observations dislodged the abovementioned view of the A.O and directed him to allow the business loss of current year and brought forward losses against the assessed income after due verification.

60. Aggrieved with the directions of the CIT(A) to allow the business loss of current year and brought forward losses against the assessed income after due verification, the revenue has assailed her order before us. Before proceeding any further, it would be relevant to cull out Sec. 115BBE of the Act, which reads as under:

> "SECTION 115BBE.
>
> Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.
>
> [(1) Where the total income of an assessee,—

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause *(a)* and clause *(b),* at the rate of sixty per cent.; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [3524][or set off of any loss] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) [3525][and clause (b)] of sub-section (1).]"

As observed by us hereinabove, the aforesaid Sec. 115BBE was made available on the statute vide the Finance Act, 2012 w.e.f 01.04.2012. However, the embargo as regards not allowing of any set-off of any loss while computing the assessee's income as referred to in clause (a) of sub-section (1) to Sec. 115BBE i.eincome referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, that was included in the return of income filed by the assessee u/s 139 of the Act was made available on the statute only vide the Finance Act, 2016 i.ew.e.f 01.04.2017. Further, the legislature in all its wisdom had thereafter as per an amendment to sub-section (2) to Sec. 115BBE that was made available on the statute vide the Finance Act, 2018 w.r.e.f 01.04.2017, had therein extended the aforesaid restriction also to set-off of any loss while computing the assessee's income as referred to in clause (b) of sub-section (1) to Sec. 115BBE i.eincome referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D that was determined by the A.O and did not form part of the returned income. Be that as it may, the restriction on set-off of any loss as against an addition inter alia made u/s 68 of the Act had been made available on the statute only

w.e.f 01.04.2017. We, thus, concur with the view taken by the CIT(A) that the provision of Sec. 115BBE was not applicable to the case of the assessee for the year in question i.eA.Y 2014-15. At this stage, we may herein clarify that theamendment brought in sub-section (2) of Sec. 115BBE by the FinanceAct, 2016, whereby set-off of losses against income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, was applicable prospectively i.ew.e.f 01.04.2017. Our aforesaid view is fortified by the order of the ITAT, Jaipur in the case of ACIT, Central Circle-2, Jaipur Vs. Sanjay Bairathi Gems Ltd. (2017) 84 taxmann. Com 139 (Jaipur). Alternatively, we also concur with the view taken by the CIT(A) that now when the on-money received by the assessee on sale of flats/shops in its project had been held to be the business receipts of the assessee which are inseparable from its business as that of a builder and developer and are not to be treated as an income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE on the said count too would not stand invoked in the case of the present assessee. We, thus, in the backdrop of our aforesaid observations find no infirmity in the view taken by the CIT(A), who rightly observing that the provisions of Sec. 115BBE would not be attracted in thecase of the assessee for the year in question had directed the A.O to allow the business loss of current year and brought forward losses against the assessed income of the assessee after due verification. Accordingly, we herein principally uphold the aforesaid view taken by the CIT(A) in context of the issue in question. Before parting, we may herein observe that aswe had while disposing off the assessee’s appeal in ITA No. 1735/Mum/2019 for A.Y 2014-15 concluded that no part of the addition upheld by the CIT(A) w.r.t the impugned amount of on-

money receipts is liable to be sustained, therefore, the grievance of the revenue in hand is even otherwise rendered as merely academic in nature. Be that as it may, the**Ground of appeal no. (iv)** raised by the revenue is dismissed.

61. The appeal filed by the revenue is dismissed.

62. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1736/Mum/2019 (assessee's appeal)
ITA No. 2195/Mum/2019 (revenue's appeal)

A.Y 2015-16

(A). ITA No. 1736/Mum/2019 (assessee's appeal)

63. We shall now take up the appeal filed by the captioned assessee for A.Y 2015-16. The assessee has assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of project "or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting the project completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the appellant received on-money of Rs. 160 lakhs without appreciating the fact that the group director Mr. Vivek Mohanani of appellant denied for the same. She ought to have deleted the addition.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 160 lakhs, which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

64. Briefly stated, the assessee had filed its original return of income for A.Y. 2015-16 on 29.09.2015, declaring an income Rs. 2,29,20,150/-. Notice under Sec. 153A was issued and duly served upon the assessee for the year in question i.e A.Y 2015-16. Return of income in compliance to the notice issued u/s 153A was filed by the assessee company on 11.01.2017, declaring an income as originally returned of Rs. 2,29,20,150/- Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

65. During the course of the assessment proceedings, it was gathered by the A.O that in the course of the search proceedings conduced u/s 132 on "Ekta Bhoomi group" the statement of Shri. DilipBorade who was an employee of the assese company, viz. M/s Ekta Parksville Pvt. Ltd. and was engaged in liasioning and handling of cash on the instructions of Shri. Vivek Mohanani, Joint Managing director and Shri Prateek Arora was recorded on 05.10.2015 at his residence at 107/4 Swapana CHS, Sector 1, RSC-21, Charkop, Kandivili West, Mumbai, wherein he had admitted that he had handled cash for "Ekta group" and had provided complete details as regards the same alongwith the respective dates, which inter alia to the extent related by the A.O to the case of the assessee for the year in question read as under :

Sr. No.	Date	Amount	Cash collected from (name)	Cash handed over to	Remarks
4.	F.Y 2014-15	80 lacs on various dates	Collected from party name not known Thane west from flat purchasers.	Pratik Arora	Pratik can only explain this transaction.
7.	25th Dec, 2014	55 lacs	KausalChedda 9892362551 Kalina Est.	Vivek Mohanani	Vivek Mohanani can only explain her. Shri Pratik Arora had given his visiting card as token of

					identity to collect cash.
8.	Oct 2014	25 lacs	Party from Hiranandani Powai.	Pratik Arora	Pratik had called for collection. Pratik can only explain.

On being confronted with the aforesaid statement of Shri. Dilip Borade (supra),Shri. Vivek Mohanani, Jt. Managing Director of the assessee company in his statement recorded by the DDIT on 27.01.2016 denied the same. However, the A.O acted upon the details provided by Shri. Dilip Borade (supra) in his statement recorded under Sec. 132(4), dated 05.10.2015, for the reason that Shri. DilipBorade (supra)being an employee of the assessee company, viz. M/s Ekta Parksville Pvt. Ltd. had in his statement recorded on oath u/s 132(4) provided complete details of cash handled by him for "Ekta group" alongwith quantity, dates, details of cash collected, name of the person to whom the same was handed over alongwith the financial years/dates to which the cash collected pertained. Accordingly, on the basis of the aforesaid details provided by Shri. DilipBorade (supra) in his statement recorded u/s 132(4), dated 05.10.2015 the A.O added the aforesaid amount of Rs1.60 crore [Rs. 80 lac (+) Rs. 55 lac (+) Rs. 25 lac] u/s 68 of the Act.

66. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been

brought to tax u/s 68 of the Act. As regards the claim of the assessee that the A.O de hors any incriminating material had made an addition of Rs. 1.60 crore on the basis of a standalone statement of Shri. DilipBorade, the same did not find favour with the CIT(A). It was observed by the CIT(A) that as Shri. DilipBorade (supra) was a key employee of the assessee company, and the assessee group was habitually receiving on-money on sale of properties, therefore, it could safely be presumed that the aforesaid amount of Rs. 1.60 crore was received by the assessee as on-money on sale of flats in its project, viz. "Parksville project". Accordingly, the CIT(A) rejected the claim of the assessee that the addition of Rs. 1.60 crore on the basis of a standalone uncorroborated statement of Shri. Dilipborade could not be sustained and was liable to be vacated. At the same time, the claim of the assessee that only the net income element of the on-money receipt could be brought to tax was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% could not be substantiated by the assessee, therefore, she substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing set-off of brought forward business loss of Rs. 8,67,72,453/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from

01.04.2017, therefore, the same would not be applicable to the case of the assesse for the year in question i.eA.Y 2015-16. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by him as business income and not an income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE would also not be applicable on the said count too. Accordingly, the CIT(A)directed the A.O to allow set-off of current years business loss and brought forward losses after due verification.

67. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Both the ld. Authorised representatives for the parties are in agreement on the point that the facts and the issue involved in the captioned appeal are the same as were there before us in the appeal of the assessee for A.Y 2013-14 in ITA No. 1734/Mum/2019. As the facts and issue involved in the present appeal of the assessee for A.Y 2015-16 in ITA No. 1736/Mum/2019 remains the same as were there before us in context of the issue in hand in the assessee's appeal for A.Y 2013-14 in ITA No. 1734/Mum/2019, therefore, our order therein passed and also the reasoning adopted shall apply mutatis mutandis for the purpose of disposal of the present appeal. Accordingly, on the basis of our aforesaid observations we are unable to persuade ourselves to uphold the order of the CIT(A) to the extent he had sustained the addition pertaining to the alleged receipt of on-money by the assessee company on sale of flats in its project, viz. "Ekta Parksville" during the year in question, viz. A.Y 2015-16. We, thus, set aside the order of the CIT(A) and vacate the addition to the extent the same was sustained by him in context of the aforesaid alleged receipt of impugned amount of on-money of Rs 1.60 crore

by the assessee company. The **Ground of appeal No.2** is allowed in terms of our aforesaid observations.

68. As we have concluded that no part of addition pertaining to the impugned amount of on-money of Rs.1.60 crore can be sustained in the hands of the assessee, therefore, we refrain from adverting to and therein adjudicating the **Grounds of appeal Nos. 1 & 3** which having been rendered as academic in nature are left open.

69. The **Ground of appeal No. 4** being general in nature is dismissed.

70. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

(B). ITA No. 2195/Mum/2019 (revenues appeal)

71. We shall now take up the cross-appeal filed by the revenue for A.Y 2015-16. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,60,00,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,60,00,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?

(v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

72. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipt of Rs.1.60 crore u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Further, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to set-off the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

73. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group entity of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

74. As we had while disposing off the assessee's appeal in ITA No. 1736/Mum/2019 for A.Y 2015-16concluded that no part of the addition upheld by the CIT(A) w.r.t the impugned amount of on-money receipts is liable to be sustained, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to

20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is accordingly dismissed.

75. Insofar the grievance of the revenue that the CIT(A) has erred in vacating the view taken by the A.O who had as per the mandate of Sec. 115BBE of the Act declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act is concerned, the same, we find had been adjudicated while disposing off the appeal in the assessee's own case for A.Y 2014-15 in ITA No. 2194/Mum/2019. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the assessee's appeal for A.Y 2014-15 in ITA No. 2194/Mum/2019 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the provisions of Sec. 115BBE would not be applicable to the case of the assessee for the year in question and had directed the A.O to allow set-off of the business losses of the assessee against additions made u/s 68 of the Act. The **Ground of appeal No. (iv)** raised by the revenue is dismissed.

76. The appeal filed by the revenue is dismissed.

77. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1737/Mum/2019
(assessee's appeal)

A.Y 2016-17

78. We shall now deal with the appeal of the captioned assessee for A.Y 2016-17. The assessee has assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the appellant received on-money of Rs. 33.77 lacs without appreciating the fact that the group director Mr. Vivek Mohanani of the appellant denied for the same. She ought to have deleted the addition of Rs. 33.77 lakhs in full.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @ 20% of the on-money amount of Rs. 9 lakhs in this year without considering the fact- that the appellant offered the income @12% of on-money of Rs. 9 lakhs in A.Y 2017-18.
>
> 3. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of project or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting the project completion method.
>
> 4. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 46.77 lacs which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 5. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

79. Briefly stated, the assessee had filed its return of income for A.Y. 2016-17 on 15.10.2016, declaring a loss of (Rs. 5,41,67,564/-). Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

80. During the course of the assessment proceedings, it was observed by the A.O that in the course of the survey action conduced u/s 133A(1) at the site office of Ekta Tripolis, Sidharth Nagar Road, Road No. 2 & 9, Near Mega Mall, Off. Link Road, Goregaon West, Mumbai on 05.10.2015 certain loose papers were found and impounded as Annexure A-1 – Page Nos. 1-9. Statement of Shri Hardeep S. Bajwa, Sales Manager for "Ekta Tripolis" was recorded on oath u/s 131 on 05.10.2015. On being queried as

regards the content of Annexure A-1 – Page 3 and 5, it was stated by him that the same pertained to a proposed deal calculation for Shop nos. 29 and 30 which he had noted down (for the purpose of understanding) as was telephonically dictated by a client whom he had earlier attended at Virar. It was further stated by him that as the assessee company had a rule of not accepting cash component, therefore, the proposed deal was declined and did never see the light of the day. However, the A.O was not inclined to accept the aforesaid explanation of the assessee. Holding a conviction that the notings of cash component on the aforesaid impounded document, viz. (i). Shop no. 29: Rs. 16.67 lacs; and (ii). Shop No. 30 : Rs. 17.10 lacs pertained to the on-money that was received by the assessee as regards its "Parksville project" but had not been offered for tax, the A.O, brought the aggregate sum of Rs. 33.77 lacs [Rs. 16.67 lac (+) Rs. 17.10 lacs] to tax u/s 68 of the Act. Further, it was observed by the A.O that the assessee had received on-money of Rs. 4 lac as regards a Shop No. 150 in the project "Ekta Parksville", against which net income @12% of the amount of on-money was offered for tax by it in the computation of income for the year in question. Also, it was observed by the A.O that the assessee had received on-money of Rs. 9 lac w.r.t sale of shop no. 158 in its project, viz. "Parksville project", against which it had offered net income @12% for tax in its computation of income for A.Y 2017-18. However, the A.O was of the view that the entire amount of on-money was liable to be brought to tax in the hands of the asseseee. Also, the A.O rejected the claim of the assessee for accounting of the on-money of Rs. 9 lac pertaining to Shop No. 158 in "Parksville project" in A.Y 2017-18. Observing, that evidence as regards receipt of on-money of Rs. 9 lac by the assessee had surfaced in the course

of the proceedings conducted during the F.Y 2015-16, the A.O, thus, was of the view that there was no justification in subjecting the same to tax in A.Y 2017-18 i.e in the year in which the sale transaction was registered and revenue arising therefrom was recognised. On the basis of his aforesaid observations the A.O after allowing deduction for 0.4 lac (i.e 12% of 4 lac) that was already offered for tax by the assessee during the year in question i.e A.Y 2016-17, therein made an addition of Rs. 46,37,000/- [Rs. 33,77,000/- (+) R. 12,60,000/-] u/s 68 of the Act.

81. On appeal, it was observed by the CIT(A) that the factum of having received on-money of Rs. 13 lac w.r.t Shop No. 150 and Shop No. 158in the project "Ekta Parksville" had been admitted by Shri.VivekMohnani, Jt. Managing Director of the assessee company. As regards the addition made by the A.O towards on-money of Rs. 33.77 lac w.r.t Shop Nos. 29 & 30, it was observed by the CIT(A) that the assessee group was as a matter of practice receiving on-money in the course of its business of sale of properties. As such, the CIT(A) was of the view that the statement of Shri. Hardeep S. Bajwa that the assessee company as a matter of rule did not receive cash component did sound absurd. Further, the CIT(A) was of the view that in case the proposed deal w.r.t the noting of Rs. 33.77 lacs had never materialised, then, there would have beenno need on the part of Shri. Hardeep S. Bajwa to have reduced it in writing much the less retained the same. Backed by his aforesaid observations the CIT(A) rejected the claim of the assessee that the A.O was in error in making the impugned addition on the basis of unsubstantiated documentary evidence. At the same time, the claim of the assessee that only the net income element embedded in the on-money receipt could be brought to tax was principally accepted

by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. Observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% could not be substantiated by the assessee, the CIT(A) substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing 'set-off' of the current business loss of Rs. 5,41,67,564/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from 01.04.2017, therefore, the same would not be applicable to the case of the assesse for the year in question i.e A.Y 2016-17. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by her as business income and not an income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE would also not be applicable on the said count too. Accordingly, the CIT(A) directed the A.O to allow set-off of the current years business loss and brought forward losses after due verification.

82. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. The ld. Authorised representative (for short "A.R") for the assessee assailed the additions made by the A.O on the basis of rough notingsin certain loose sheets viz Annexure A-1 – Page 3 and 5impounded in the course of survey action conducted u/s 133A(1) at the site office of Ekta Tripolis, Sidharth Nagar Road, Road No. 2 & 9, Near Mega Mall, Off. Link Road, Goregaon West, Mumbai on 05.10.2015. It was submitted by the ld. A.R that Shri

Hardeep S. Bajwa, Sales Manager for "Ekta Tripolis" in his statement recorded on oath u/s 131 on 05.10.2015 had categorically stated that the impugned notings pertained to a proposed deal calculation for Shop nos. 29 and 30 which he had noted down (for the purpose of understanding) as was telephonically dictated by a client whom he had earlier attended at Virar. It was submitted by the ld. A.R that though the author of the impugned notingsi.e Shri. Hardeeep S.Bajwa had in his statement recorded u/s 131 on 05.10.2015 clarified that the impugned deal had never materialised, however, the A.O merely on the basis of the said dumb notingshad held the same as on-money received by the assssee on sale of Shop nos. 29 and 30. It was submitted by the ld. A.R that the impugned addition of Rs. 33.77 lacs [Shop no. 29: Rs. 16.67 lacs (+)Shop No.30: Rs.17.10 lacs] made by the A.O on the basis of the dumb and unsubstantiated notings cannot be sustained and was liable to be vacated. As regards the addition made by the A.O towards on-money of Rs. 4 lac and Rs. 9 lac that was received w.r.t Shop Nos. 150& 158, respectively, in the project "Ekta Parksville", it was submitted by the ld. A.R that the assessee had offered net income @12% of the amount of said on-money for tax in its computation of income for A.Y 2016-17 and A.Y 2017-18, respectively,i.e the years in which the registration of the shops in question was done and the saleswere recognised in the books of account. It was submitted by the ld. A.R that though the CIT(A) had principally accepted the assessee's claim that the entire amount of on-money could not be assessed as its income, however, she had erred in working out the income element at an exorbitant figure i.e@ 20% of the amount of on-money and bringing the same to tax in the year of receipt itselfi.eA.Y 2016-17.

83. Per contra, the ld. D.R relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the notings in the impounded document, viz. Annexure A-1 – Page 3 and 5clearly revealed the receipt of on-money by the assessee on sale of Shops nos. 29 and 30, therefore, the A.O had rightly made addition w.r.t the on-money so received by the assessee. It was further submitted by the ld. D.R that the CIT(A) had erred in restricting the addition to 20% of the amount of on-money of Rs. 33.77 lac received by the assessee. As regards the on-money of Rs. 13 lac [Shop No. 150: Rs. 4 lac (+) Shop No. 158 : Rs. 9 lac] it was submitted by the ld. D.R that the CIT(A) had though rightly held that the same was liable to be brought to tax in the hands of the assessee in the year of receipt i.eA.Y 2016-17, but at the same time she had erred in scaling down the addition to 20% of the amount of the on-money.

84. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. We shall first deal with the grievance of the assessee that the CIT(A) had erred in holding that the assessee company had received on-money of Rs. 33.77 lacs loosing sight of the fact that Shri. Vivek Mohanani, director of the assessee company had categorically denied of having received any such amount. As observed by us hereinabove, in the course of the survey action conducted u/s 133A(1) at the site office of Ekta Tripolis, Sidharth Nagar Road, Road No. 2 & 9, Near Mega Mall, Off. Link Road, Goregaon West, Mumbai on 05.10.2015 certain loose papers were found and impounded as Annexure A-1 – Page Nos. 1-9. Statement of Shri Hardeep S. Bajwa, Sales Manager for "Ekta

Tripolis" was recorded on oath u/s 131 on 05.10.2015. On being queried as regards the contents of Annexure A-1 – Page 3 and 5, it was stated by him that the same pertained to a proposed deal calculation for Shop nos. 29 and 30 which he had noted down (for the purpose of understanding) as was telephonically dictated by a client whom he had attended at Virar. It was further stated by him that as the assessee company had a rule of not accepting cash component thus the proposed deal was declined and did never see the light of the day. However, the A.O not finding favour with the aforesaid explanation of Shri. Hardeep S. Bajwa and being of the view that the notings of cash component in the aforesaid impounded document, i.eAnnexure A-1 – Page 3 and 5 referred to the on-money that was received by the assessee w.r.t sale of its shops, viz. Shop no. 29 : Rs. 16.67 lacs; and Shop No. 30 : Rs. 17.10 lacs in its "Parksville project" but had not been offered for tax thus, brought the aggregate sum of Rs. 33.77 lacs [Rs. 16.67 lac (+) Rs. 17.10 lacs] to tax in the hands of the assesee company u/s 68 of the Act.

85. It is in the backdrop of the aforesaid facts that we shall herein adjudicate as to whether or not the view taken by the lower authorities that the assessee had received on-money of Rs. 33.77 lacs can be sustained. For a fair appreciation of the facts pertaining to the issue in hand, we herein cull out the relevant extract of the statement of Shri. Hardeep S. Bajwa, Sales manager of Ekta Tripolis, who admittedly had authored the notings of the impounded document, i.eAnnexure A-1 – Page 3 and 5, which reads as under:

> "Q.15 Your attention is hereby drawn on Page 3 and 5 of Annexure A1. Please go through the same and offer your comments.
>
> Ans. I would like to explain detail the actual scenario for the Page 3 and Page No. 5. I was shifted to Ekta Trip[olis since November 2014 and a client whom I had attended at

> Virar was telephonically dictating a proposed deal calculation for shop No. 29 and 30 while I was operating from Ekta Tripolis this in turn was duly declined keeping in mind the company rule against the cash component. This note was written in my diary while talking to the client on the phone to understand his request."

As is discernible from the aforesaid statement of Shri. Hardeep S. Bajwa that was recorded u/s 131 on 05.10.2015, he had categorically stated that the impugned notings of Annexure A-1 – Page 3 and 5 were the calculations pertaining to a proposed deal for Shop Nos. 29 & 30 which a client whom he prior to being shifted to Ekta Tripolis had attended had dictated on telephone. It was stated by Mr. Hardeep S. Bajwa that he had jotted down the details only for the purpose of understanding what the proposed customer was trying to telephonically convey. It was further stated by Mr. Hardeep S. Bajwa that the impugned deal was declined by the assessee company and thus had not materialised. Shri. Vivek Mohanani, director of the assessee company on being confronted with the impugned notings recorded in Annexure A-1 – Page 3 and 5had categorically denied of receipt of the aforesaid amounts by the assessee company. However, the A.O neither being inspired by the explanation of Shri. Hardeep S. Bajwa, author of the impugned notingsnor by the denial by Shri. Vivek Mohanani (supra) of receipt of the impugned amounts by the assessee company,therein held that the impugned notings referred to the on-money that was received by the assessee company w.r.t Shop Nos. 29 & 30 of its project, viz. "Parksville project". On a perusal of the assessment order, we find that the primary issue that had weighed in the mind of the A.O while rejecting the claim of the assessee that it had not received the impugned amounts as on-money was that the assessee could not produce any other document as a corroborative evidence which would prove its claim that cash was not received in the above

transaction and the same was only a proposal. In our considered view, the very basis for drawing of adverse inferences and presuming receipt of on-money by the assessee company is fallacious. As observed by us hereinabove, Shri. Harpeep S. Bajwa, author of the impugned notings of Annexure A-1 – Page 3 and 5 had clearly explained the circumstances under which the notings were made by him and also stated that the impugned deal had thereafter not materialised. Also,Shri. Vivek Mohanani, director on being confronted with the impugned notings had categorically declined of receipt of any such amount by the assessee company. In the backdrop of the aforesaid facts, we are unable to find ourselves in agreement with the A.O who without dislodging the explanation given by Sh. Hardeep S. Bajwa in his statement recorded u/s 131, and dispensing with the dislodging of the denial of Shri. Vivek Mohanani (supra) as regards receipt of any such amount by the assessee company, had merely gone by the dumb notings of the impounded documents, viz. Annexure A-1 – Page 3 and 5and had concluded that the assesse had received the impugned amounts therein mentioned as on-money w.r.t its Shop Nos. 29 & 30. Not only that, we are unable to comprehend that as to how the A.O could have expected the assessee to produce documents which would corroborate that cash was not received in the impugned transaction and the same was only a proposal. We hold a strong conviction that in case the explanation given by the assessee's employee who had made the impugned notings and the denial of Shri. Vivek Mohanani (supra) of receipt of the impugned amount by the assessee company did not instill any confidence with the A.O, then, it was for him to place on record material to disprove the aforesaid explanation/statement. Our aforesaid view is supported

by the judgment of the Hon'ble High Court of Calcutta in the case of CIT Vs. Tara Chand Manipal (2016) 65 taxmann.com 29 (Cal). In its said order it was held bythe High Court that addition made to the assessee's income merely on the basis of papers seized from possession of assessee's brother was unjustified when the material sought to be relied on was not corroborated. Also, reliance is placed on the order of the ITAT, Jodhpur in the case of J.R.C Bhandari Vs. ACIT (2003) 79 TTJ 1 (Jd). It was held by the tribunal that in the absence of any iota of evidence in respect of receipt of the amounts mentioned in the entry noted on a loose sheet which was found in the possession of a third person, addition cannot be made in the hands of an assessee. Be that as it may, as the A.O had failed to substantiate the receipt of the impugned amounts by the assesse company by placing on record any material thus, the presumption on his part as regards receipt of on-money by the assessee cannot be sustained and is liable to be vacated. Accordingly, we herein set-aside the order of the CIT(A) and vacate the addition to the extent sustained by him as regards the impugned on-money of Rs. 33.77 lac that was made by the A.O. The **Ground of appeal No. 1**raised by the assessee is allowed in terms of our aforesaid observations.

86. We shall now deal with the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) had erred in estimating profit from on-money received at 20% of Rs. 46.77 lacs which is on the higher side and should have been estimated @12% of on-money as was offered by theassessee.As the adverse inferences drawn by the lower authorities as regards receipt of alleged on-money of Rs. 33.77 lac w.r.t Shop Nos. 29 & 30 had been vacated by us thus, the grievance of the assessee pertaining to quantification of the addition to the said extent the same was

sustained by the CIT(A) having been rendered as academic in nature, we, therefore refrain from adverting to and adjudicating the same. As regards the grievance of the assessee to the extent the same survives as regards estimation by the CIT(A) of the profit from on-money received at 20% of Rs. 13 lac [Shop No. 150 : Rs. 4 lac (+) Shop No. 158 : Rs. 9 lac], which as claimed by the assessee is on higher side and should have been estimated @12% of the amount on-money as was offered by it, we fnd that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the said issue in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 13 lacs.The **Ground of appeal No. 4** is partly allowed in terms of our aforesaid observations

87. We shall now deal with the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition w.r.t the income element of the amount of on-money amount of Rs. 9 lakhs during the year in question i.e A.Y 2016-17 without considering the fact that the assessee had offered the income arising therefrom in its computation of income for A.Y 2017-18. Admittedly, the incriminating material seized in the course of the search proceedings inter alia revealed that the assessee during

the year in question had received on-money of Rs. 9 lac on sale of Shop No. 158 in its project, viz. "Parksville". Net income @12% of the amount of the on-money of Rs. 9 lac was offered for tax by the assessee in its computation of income for A.Y 2017-18, i.e the year in which the registration of the shop in question was done and the sale was recognised in the books of account. However, the A.O was of the view that the on-money of Rs. 9 lac received by the assessee w.r.t the aforesaid Shop No. 158 was liable to be brought to tax in the hands of the asseseee in the year of receipt itself. It was observed by the A.O that as the evidence of receipt of on-money of Rs. 9 lac had surfaced in the course of the search proceedings conducted during the F.Y 2015-16, therefore, there was no justification in subjecting the same to tax in A.Y 2017-18 i.e in the years in which the sale transactions were registered and revenue arising therefrom was recognised. On appeal, though the CIT(A) restricted the addition as regards the on-money of Rs. 9 lac that was received by the assessee w.r.t Shop No. 158 (supra) to the extent of the income element embedded in such receipts, however, he concurred with the view taken by the A.O that the said income was to be subjected to tax during the year of receipt itself i.e A.Y 2016-17. Before us, it was submitted by the ld. A.R that as the assessee was following the Project Completion Method, therefore, the income element pertaining to the amount of on-money of Rs. 9 lac received w.r.t Shop No. 158 was rightly offered for tax in the year in which registration of the said shop was done and the project in question, viz. "Parksville" was completed. It was submitted by the ld. A.R that though the claim to the said effect was raised by way of a specific ground of appeal before the CIT(A) however, he had not

adjudicated upon the same on the ground that it was not being pressed by the assessee.

88. We have given a thoughtful consideration to the aforesaid issue in the backdrop of the observations of the lower authorities. It is the claim of the assessee that as it was consistently following a Project Completion Method for its project, viz. "Parksville", therefore, the income pertaining to on-money that was received w.r.t sale of Shop No. 9 was rightly offered for tax in the period relevant to A.Y 2017-18 i.e when the sale agreement was registered and the project was completed. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted foror would be accounted for by the assesseeas per its regular method of accounting that has been accepted by the department. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 2 & 3**are allowed for statistical purposes in terms of our aforesaid observations.

89. The **Ground of appeal No. 5** being general in nature is dismissed as not pressed.

90. The appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

M/s Ekta Supreme Corporation :

ITA No. 1738/Mum/2019 (assessee's appeal)
ITA No. 2202/Mum/2019 (revenues appeal)
A.Y 2014-15

(A). ITA No. 1738/Mum/2019 (assessee's appeal)

91. We shall first take up the appeal filed by the captioned assessee, viz. M/s Ekta Supreme Corporation for A.Y 2014-15. The assesseehas assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the years when conditions of revenue recognition are satisfied as per percentage completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @ 20% of the on-money in this year without considering the fact- that the appellant offered the income of Rs. 40.49 lakhs @12% of on-money of Rs.337.39 lakhs in A.Y 2016-17 when the project was completed and sale was recognized in P&I A/c.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 337.39 lakhs which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

92. Briefly stated, the assessee company which is engaged in the business of a builder and developer had filed its original return of income for A.Y. 2014-15 on 30.09.2014, declaringan income of Rs. 1,70,05,422/-. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee, viz. M/s Ekta Supreme Corporation was found in the course of the search proceedings. Notice u/s 153C was issued and duly served upon the assessee company for the year in question. Return of income in compliance to the notice issued u/s 153C was filed by the assessee

company on 12.01.2017, declaring its incomeas originally returned at Rs.1,70,05,422/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

93. During the course of the assessment proceedings, it was gathered by the A.O that the seized material, viz loose papers found from the residence of Shri. Naresh Kalani made a mention of sale of 6 flats namely, Flat Nos. 801, 901, 1001, 1101, 1201 & 13/1401. On a perusal of the details it was gathered by the A.O that the assessee had received on-money w.r.t its project "Eudora", as under:

Assessment Year	Amount (in lacs)	Flat No
2014-15	**Rs. 337.39**	**901**
2015-16	Rs. 165.17 Rs. 398.84	1001 1101
2016-17	Rs. 265.00	1201
Total	Rs.1164.00	

On being queried that as to why the aforesaid amount of on-money may not be added as its unaccounted receipts for the year in question, it was submitted by the assessee that the net income i.e @12% of the gross amount of on-money of Rs. 1164 lac amounting to Rs. 139.71 lacs was offered for tax in its computation of income for A.Y 2016-17. However, the aforesaid reply of the assessee did not find favour with the A.O who treated the entire amount of on-money of Rs. 337.39 lac received by the assessee during the year in question as an unaccounted receipt u/s 68 of the Act.

94. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element embedded in the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15%of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent.

95. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us.Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating the income element embedded in the on-money receipt at 20% of Rs. 337.39 lakhs which is on the higher side and should have been estimated @12% of the said on-money receipts as was offered by the assessee is concerned, we find that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order

passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the issue in hand in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 337.39 lacs.The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations.

96. As noticed by us hereinabove, the A.O had inter alia called upon the assesseeto explain that as to why the amount of on-money of Rs. 337.39 lac received by it w.r.t Flat no. 901 in its project, viz. "Eudora" may not be added as its unaccounted receipt in the year of receipt itself i.e A.Y 2014-15. In reply, it was inter alia submitted by the assessee that the net income i.e @12% of the amount of on-money of Rs. 337.39 lac (supra) was offered for tax in its computation of income for A.Y 2016-17. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money of Rs. 337.39 lac received by the assessee during the year in question as an unaccounted receipt u/s 68 of the Act. On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e in the year of receipt itself.

97. Before us, the assesseehas assailed the view taken by the lower authorities who had concluded that the on-money was to be

brought to tax in the year of receipt itself. We have heard the authorised representatives for both te parties in context of the issue in hand i.e the year of assessability of the on-money receipt. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y 2014-15 to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 1 and 2**are allowed for statistical purposes in terms of our aforesaid observations.

98. The **Ground of appeal No. 4** being general is dismissed as not pressed.

99. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2202/Mum/2019 (revenue's appeal)

100. We shall now take up the cross-appeal of the revenue for A.Y 2014-15. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 3,37,39,000/-- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 3,37,39,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

101. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 337.39 lacs u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrived from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive

definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Further, the revenue is aggrieved with the confining of the addition of the on-money receipts at 20% of the entire amount by the CIT(A).

102. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group entity of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the

case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

103. As we had while disposing off the assessee's appeal in ITA No. 1738/Mum/2019 for A.Y 2014-15 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein embedded,and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

104. The appeal filed by the revenue is dismissed.

105. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1739/Mum/2019 (assessee's appeal)
ITA No. 2203/Mum/2019 (revenues appeal)
A.Y 2015-16

(A). ITA No. 1739/Mum/2019
(assessee's appeal) :

106. We shall now take up the appeal of the captioned assessee for A.Y 2015-16. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the years when conditions of revenue recognition are satisfied as per percentage completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @ 20% of the on-money in this year without considering the fact- that the appellant offered the income of Rs. 67.68 lakhs @12% of on-money of Rs.564.01 lakhs in A.Y 2016-17 when the project was completed and sale was recognized in P&l A/c.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 564.01 lakhs which is on higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

107. Briefly stated, the assessee had filed its original return of income for A.Y. 2015-16 on 26.09.2015, declaring an income of Rs. 21,22,88,960/-. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee, viz. M/s Ekta Supreme Corporation was found in the course of the search proceedings. Notice u/s 153C was issued and duly served upon the assessee company for the year in question. Return of income in compliance to the notice issued u/s 153C was filed by the assessee company on 12.01.2017, declaring its income as originally returned of Rs. 21,22,88,960/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

108. During the course of the assessment proceedings, it was gathered by the A.O that the seized material, viz loose papers found from the residence of Shri. Naresh Kalani made a mention of sale of 6 flats namely, Flat Nos. 801, 901, 1001, 1101, 1201 & 13/1401.

Further, the seized document, viz. Page 46 & 46A found from the residence of Shri. Prateek Arora revealed receipt of on-money w.r.t flat nos. 901, 1001 and 1101 of Rs. 3.37 crore, Rs. 1.65 crore and Rs. 3.98 crore, respectively. Also, as per the seized documents, viz. Page 3 and Page 46 of the loose papers it was observed by the A.O that the assessee had entered into a deal for flat no. 1301/1401, which was completed and the agreement was registered on 08.05.2017. Observing, that the sale amount was received by the assessee earlier, the A.O added the on-money of Rs. 3,93,89,404/- pertaining to the said flat to the total income of the asseseee for A.Y 2016-17 u/s 68 of the Act. On a perusal of the details it was gathered by the A.O that the assessee had received on-money w.r.t its project "Eudora", as under:

Assessment Year	Amount (in lacs)	Flat No
2014-15	Rs. 337.39	901
2015-16	**Rs. 165.17** **Rs. 398.84**	**1001** **1101**
2016-17	Rs. 265.00	1201
Total	Rs.1164.00	

On being queried that as to why the aforesaid amount of on-money may not be added as its unaccounted receipts for the year in question, it was submitted by the assessee that the net income i.e @12% of the gross amount of on-money of Rs. 1164 lac i.e amounting to Rs. 139.71 lacs was offered for tax in its computation of income for A.Y 2016-17. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money of Rs. 564.01 lac [Rs. 165.17 lac (+)

Rs. 398.84 lac] received by the assessee during the year in question as an unaccounted receipt u/s 68 of the Act.

109. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element embedded in the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent.

110. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating the income element embedded in the on-money receiptsof Rs. 564.01 lakhs at 20% which is on the higher side and should have been estimated @12% of on-money as was offered by the assesse is concerned, we fnd that the facts and the issue therein involved

remains the same as were ther before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the issue in hand in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 564.01 lacs.The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations

111. As observed by us hereinabove, the A.O had inter alia called upon the assessee to explain that as to why the amount of on-moneyaggregating to Rs. 564.01 lac i.e Rs. 165.17 lac and Rs. 398.84 lac received by it w.r.t Flat no. 1001 and Flat No. 1101, respectively, in its project, viz."Eudora" may not be added as its unaccounted receipts in the year of receipt itself i.e A.Y 2015-16. In reply, it was inter alia submitted by the assessee that the net income i.e @12% of the amount of on-money of Rs. 564.01 lac (supra) was offered for tax in its computation of income for A.Y 2016-17. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money of Rs. 564.01 lac received by the assessee during the year in question as its unaccounted receipt u/s 68 of the Act. On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge

the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

112. Before us, the assessee has assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y 2015-16 to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 1& 2**are allowed for statistical purposes in terms of our aforesaid observations.

113. The **Ground of appeal No. 4** being general is dismissed as not pressed.

114. The appeal of the assessee is allowed in terms of our aforesaid observations.

(B). ITA No. 2203/Mum/2019
(revenues appeal) :

115. We shall now take up the cross-appeal of the revenue for A.Y 2015-16. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 5,64,01,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 5,64,01,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

116. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 5,64,01,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us.

It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Also, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A).

117. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned

assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

118. As we had while disposing off the assessee's appeal in ITA No. 1739/Mum/2019 for A.Y 2015-16 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein embedded,and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

119. The appeal filed by the revenue is dismissed.

120. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1740/Mum/2019 (assessee's appeal)
ITA No. 2204/Mum/2019 (revenues appeal)
A.Y 2016-17

(A). ITA No. 1740/Mum/2019
(assessee's appeal) :

121. We shall now take up the appeal of the captioned assessee for A.Y 2016-17. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the years when conditions of revenue recognition are satisfied as per percentage completion method.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from on-money received at 20% of Rs. 658.89 lakhs which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

122. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee, viz. M/s Ekta Supreme Corporation was found in the course of the search proceedings. Return of income for A.Y. 2016-17 was filed by the assesee on 16.10.2016, declaring an income of Rs. 12,94,26,570/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

123. During the course of the assessment proceedings, it was gathered by the A.O that the seized material, viz. loose papers found from the residence of Shri. Naresh Kalani made a mention of sale of 6 flats namely, Flat Nos. 801, 901, 1001, 1101, 1201 & 13/1401. Further, as per the seized document, viz. Page 46 & 46A found from the residence of Shri. Prateek Arora revealed receipt of on-money w.r.t flat nos. 901, 1001 and 1101 of Rs. 3.37 crore, Rs. 1.65 crore and Rs. 3.98 crore, respectively. Also, as per the seized documents, viz. Page 3 and Page 46 of the loose papers it was observed by the A.O that the assessee had entered into a deal for a

flat no.1301/1401 which was completed and the agreement was registered on 08.05.2017.In the backdrop of the aforesaid facts, the A.O inter alia called upon the assessee to explain as to why the on-money of Rs. 6,56,89,404/- [Rs. 265 lac (+) Rs. 393.89 lac] may not be added as its unaccounted receipts for the year under consideration i.e A.Y 2016-17. In reply, it was submitted by the assessee that the net income i.e @12% of the gross amount of on-money of Rs. 1164 lac (comprising of Rs. 265 lac) therein amounting to Rs. 139.71 lacs had been offered for tax in its computation of income for the year in question i.e A.Y 2016-17. As regards the impugned on-money pertaining to flat no. 1301/1401 of Bhagwan Das Rangnani, it was submitted by the assessee that the fact that the deal pertaining to the said flat was at the verge of cancellation at the time of search had remained omitted to be considered. However, the A.O did not find favour with the aforesaid explanation of the assessee. Also, the A.O was not inclined to accept the claim of the assessee that only 12% of the amount of on-money was to be brought to tax in its hands.Observing, that the assessee had received on-money of Rs. 265 lac during the year in question i.e A.Y 2016-17, the A.O was of the view that the entire amount was liable to be added in the hands of assessee. Further, it was observed by the A.O that the on-money received by the assessee in the earlier years was to be brought to tax in its hands in the said respective preceding years of receipt. Accordingly, the A.O taking note of the fact that the assesee had already offered an amount of Rs. 139.71 lac i.e 12% of on-money receipts of Rs.1164 lacs as its income for the year in question i.eA.Y 2016-17 thus restricted the addition w.r.t on-money receipt pertaining to flat no. 1201 at an amount of Rs. 125.29 lac [Rs. 265 lac (-) Rs. 139.71 lac]. Further,

the A.O also made an addition of the on-money of Rs. 393.89 lacs that was received by the assessee for Flat nos. 1301/1401 at the stage of booking, though, the agreement for sale was not registered till the date of search. Accordingly, the A.O made an addition of Rs. 519.18 lac [Rs. 393.89 lac (+) Rs 125.29 lac] as unaccounted receipts u/s 68 of the Act.

124. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element of the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15%of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent.

125. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating the

income element embedded in the on-money received at 20% of Rs. 658.89 lakhs which is on the higher side and should have been estimated @12% of on-money as was offered by the assesse is concerned, we find that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the issue in hand in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 658.89 lacs.The **Ground of appeal No. 2** is partly allowed in terms of our aforesaid observations

126. As observed by us hereinabove, the A.O was of the view that the amount of on-moneyof Rs. 265 lac received by the assesseeduring the year in question i.e A.Y 2016-17 w.r.t Flat No. 1201 of its project, viz. "Eudora" was liable to be added in its hands during the year of receipt itself i.e A.Y 2016-17. Observing, that the assesee had already offered an amount of Rs. 139.71 lac i.e 12% of on-money receipts of Rs.1164 lacs as its income for the year in question i.e A.Y 2016-17, the A.O had accordingly restricted the addition w.r.t on-money receipt pertaining to Flat no. 1201 at an amount of Rs. 125.29 lac [Rs. 265 lac (-) Rs. 139.71 lac]. Further, the A.O also made an addition of the on-money of Rs. 393.89 lacs that was received by the assessee for Flat nos. 1301/1401 at the stage of booking, though, the agreement for sale was not registered

till the date of search. Accordingly, the A.O made an addition of Rs. 519.18 lac (Rs. 393.89 lac (+) Rs 125.29 lac] as unaccounted receipts u/s 68 of the Act. On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

127. Before us, the assessee had assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department. Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT

[102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y 2016-17 to tax in terms of our aforesaid observations.The **Ground of appeal No. 1** is allowed for statistical purposes in terms of our aforesaid observations.

128. The **Ground of appeal No. 3** being general is dismissed as not pressed.

129. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2204/Mum/2019
(<u>revenues appeal)</u> :

130. We shall now take up the cross-appeal of the revenue for A.Y 2016-17. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 5,19,18,404/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 5,19,18,404/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

131. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 6,56,89,404/- (neted at Rs. 5,19,18,404/-) u/s 68 of the Act in the hands of the assessee

company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Also, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Further, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A).

132. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in

the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 for A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

133. As we had while disposing off the assessee's appeal in ITA No.1740/Mum/2019 for A.Y 2016-17 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts were liable to be restricted to the extent of the element of net income therein involved,and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

134. The appeal filed by the revenue is dismissed.

135. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

M/s Ekta Shelters Pvt.Ltd. :

ITA No. 1741/Mum/2019 (assessee's appeal)
ITA No. 2197/Mum/2019 (revenues appeal)
A.Y 2015-16

(A). ITA No. 1741/Mum/2019 (assessee's appeal) :

136. We shall firsttake up the appeal filed by the captioned assessee, viz. M/s Ekta Shelters Pvt. Ltd. for A.Y 2015-16. The assessee has assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @ 20% of the on-money in this year without considering the fact- that the appellant offered the income of Rs. 29.76 lakhs @12% of on-money of Rs.248 lakhs in A.Y 2016-17.
>
> 2. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of the project or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting project completion method.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from the on-money received at 20% which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

137. Briefly stated, the assessee company is engaged in the business of a builder and developer. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee, viz. M/s Ekta Shelters Pvt. Ltd. was found in the course of the search proceedings. Notice u/s 153C was issued and duly served

upon the assessee company for the year in question. Return of income in compliance to the notice issued u/s 153C was filed by the assessee company on 07.01.2017, declaring Nilincome. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

138. During the course of the assessment proceedings, it was gathered by the A.O that the assessee had undertaken construction of two projects, viz. (i). Iris; and (ii). Ram Laxmi Niwas. On a perusal of the seized documents, it was observed by the A.O that the assessee had received on-money on sale of flats/shops of its aforementioned projects, viz. (i). Iris; and (ii). Ram Laxmi Niwas, as under:

Project Name	Flat/Shop No.	Amount (in lacs)	Year of Receipt
Ram Laxmi Niwas	1101	475	2015-16
	901	173	2015-16
Total		648	
Iris	1102	90	2015-16
	1001	**150**	**2014-15**
	502/802	175	2015-16
	101	58.50	2015-16
	1002	**99**	**2014-15**
Iris Total		572.50	
Grand Total		1220.50	

On being queried that as to why the aforesaid amount of on-money may not be added as its unaccounted receipts for the respective years, it was submitted by the assessee that the net income i.e @12% of the amount of on-money receipts was either offered for

tax or would be so offered in the respective year of completion of the concerned project, as under:

(i). Net income of Rs. 29.76 lacs i.e 12% of the on-money of Rs. 249 lakhs pertaining to IRIS project had been offered in the computation of income for A.Y 2016-17.

(ii). Net income of Rs. 38.82 lacs i.e 12% of the on-money of Rs. 323.50 lakhs pertaining to IRIS project had been offered in the computation of income for A.Y 2017-18 as the 'agreements' pertaining to the concerned flats were registered during the F.Y 2016-17.

(iii). On-money of Rs. 648 lakhs pertaining to Ram Laxmi Niwas Project shall be considered for computing the income in the year of completion of the project.

Accordingly, it was the claim of the assessee that part of the amount of on-money of Rs. 1219.50 lacs had already been taken into consideration in computing the income of the succeeding years in which the project was completed, while for the remaining part would duly be considered in the year in which the concerned project is completed. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money of Rs. 249 lac [Rs. 150 lac (+) Rs. 99 lac] received by the assessee during the year in question as its unaccounted receipts u/s 68 of the Act.

139. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as

the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element of the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. It was further observed by the CIT(A) that the assessee was following different methods of revenue recognition not only for its different projects but even in the same project the method for recognising the revenue was changed to suit its needs. Observing, that the assessee was not following a consistent method of revenue recognition, the CIT(A) was of the view that no infirmity could be related to assessing of the profit pertaining to the on-money during the year under consideration.

140. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating income element embedded in the on-money receipt of Rs.249 lakhs at 20% which is on the higher side and should have been estimated @12% as was offered by the assesse is concerned, we fnd that the

facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the said issue in hand in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 249lacs.The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations

141. We shall now deal with the grievance of the assessee that the lower authorities are in error in concluding that the on-money so received by it w.r.t Flats/Shops in its projects "Ram Laxmi Niwas" and "Iris" was to be assessed in the year of receipt. As observed by us hereinabove, the A.O held a conviction that the amount of on-moneyreceived by the assessee w.r.t Flats/Shops in its projects, viz."Ram Laxmi Niwas" and "Iris" was to be assessed as the unaccounted receiptsof the assessee in the year of receipt itself. On being queried that as to why the on-money aggregating to Rs. 249 lac received by the assessee w.r.t Flat/Shop Nos. 1001 and 1002 in its project, viz. "Iris" amounting to Rs. 150 lacs and Rs. 99 lac, respectively, may not be brought to tax in the year of receipt itself i.eA.Y 2015-16, it was submitted by the assessee that the net income of Rs. 29.76 lacs i.e 12% of the on-money of Rs. 249lac pertaining to IRIS project had been offered in the computation of income for A.Y 2016-17.However, the aforesaid reply of the

assessee did not find favour with the A.O who therein treated the entire amount of on-money of Rs. 249 lac received by the assessee during the year in question as its unaccounted receipt u/s 68 of the Act. On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

142. Before us, the assessee has assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd.Vs. DCIT

[102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y 2015-16 to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 1 & 2** are allowed for statistical purposes in terms of our aforesaid observations.

143. The **Ground of appeal No. 4** being general is dismissed as not pressed.

144. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2197/Mum/2019 (revenues appeal) :

145. We shall now take up the cross-appeal of the revenue for A.Y 2015-16. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us:

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 2,49,00,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 2,49,00,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?
>
> (v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

146. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 2,49,00,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Also, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to set-off the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

147. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group entity of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

148. As we had while disposing off the assessee's appeal in ITA No. 1741/Mum/2019 for A.Y 2015-16 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein involved, and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20%

of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is accordingly dismissed.

149. Insofar the grievance of the revenue that the CIT(A) has erred in vacating the view taken by the A.O who had as per the mandate of Sec. 115BBE of the Act declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal in the case of a group concern of the assessee, viz. M/s Ekta Parksville Homes Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the appeal in the case of the group concern of the assessee for A.Y 2014-15 in ITA No. 2194/Mum/2019 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the provisions of Sec. 115BBE would not be applicable to the case of the assessee for the year in question and had directed the A.O to set-off the business losses of the assessee against additions made u/s 68 of the Act. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

150. The appeal filed by the revenue is dismissed.

151. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1742/Mum/2019 (assessee's appeal)
ITA No. 2198/Mum/2019 (revenues appeal)

A.Y 2016-17

(A). ITA No. 1742/Mum/2019 (assessee's appeal) :

152. We shall now take up the appeal filed by the captioned assesseefor A.Y 2016-17. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition @ 20% of the on-money in this year for (IRIS Project) the on-money receipts of Rs. 323.50 lakhs for which the appellant offered the income of Rs. 38.82 lakhs @12% of on-money of Rs. 323.50 lakhs in A.Y 2017-18 when the agreement was registered.
>
> 2. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of the project 'RAMLAXMI' or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting project completion method.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from the on-money received at 20% which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

153. Briefly stated, the assessee company had filed its return of income for A.Y 2016-17, declaring a loss of (Rs. 4,07,83,318/-). Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

154. During the course of the assessment proceedings, it was gathered by the A.O that the assessee had undertaken construction of two projects, viz. (i). Iris; and (ii). Ram Laxmi Niwas. On a perusal of the seized documents, it was observed by the A.O that the assessee had received on-money on sale of flats/shops of its aforementioned projects, viz. (i). Iris; and (ii). Ram Laxmi Niwas, as under:

Project Name	Flat/Shop No.	Amount	Year of Receipt

		(in lacs)	
Ram Laxmi Niwas	**1101**	**475**	**2015-16**
	901	**173**	**2015-16**
Total		648	
Iris	**1102**	**90**	**2015-16**
	1001	150	2014-15
	502/802	**175**	**2015-16**
	101	**58.50**	**2015-16**
	1002	99	2014-15
Iris Total		572.50	
Grand Total		1220.50	

On being queried that as to why the aforesaid amount of on-money may not be added as its unaccounted receipts for the respective years, it was submitted by the assessee that the net income i.e @12% of the amount of on-money receipts was either offered for tax or would be so offered in the respective year of completion of the concerned project, as under:

(i). Net income of Rs. 29.76 lacs i.e 12% of the on-money of Rs. 248 lakhs pertaining to IRIS project had been offered in the computation of income for A.Y 2016-17.

(ii). Net income of Rs. 38.82 lacs i.e 12% of the on-money of Rs. 323.50 lakhs pertaining to IRIS project had been offered in the computation of income for A.Y 2017-18, as the 'agreements' pertaining to the concerned flats were registered during the F.Y 2016-17.

(iii). On-money of Rs. 648 lakhs pertaining to Ram Laxmi Niwas Project shall be considered for computing the income in the year of completion of the project.

Accordingly, it was the claim of the assessee that part of the amount of on-money of Rs. 1219.50 lacs had already been taken into consideration in computing the income of the succeeding years in which the project was completed, while for the remaining part would duly be considered in the year in which the concerned project is completed. However, the aforesaid reply of the assessee did not find favour with the A.O who was of the view that the entire amount of on-money receipts pertaining to the year in question i.e Rs. 323.50 lac (Iris Project) and Rs. 648 lac (Ram Laxmi Niwas Project) were to be brought to tax in the hands of the assessee during the year under consideration i.e A.Y 2016-17. Further, the A.O excluded the income of Rs. 29.76 lac i.e 12% of on-money of Rs. 249 lac that was received by the assessee w.r.t "Iris project" in the immediately preceding year i.e A.Y 2015-16 and was offered in its computation of income for the year in question i.e A.Y 2016-17. Backed by his aforesaid observations, the A.O made an addition of Rs. 293.74 lac [Rs. 323.50 lacs (-) Rs. 29.76 lacs] as regards the on-money received by the assessee w.r.t "Iris project". Further, the A.O added the on-money of Rs. 648 lacs that was received by the assessee during the year in question as regards its "Ram Laxmi Niwas" project. Accordingly, the A.O made an addition of Rs. 9,41,74,000/- [Rs. 2,93,74,000/- (+) Rs. 6,48,00,000/-] as the assessee'sunaccounted receipts u/s 68 of the Act.

155. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets

and the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element of the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. It was further observed by the CIT(A) that the assessee was following different methods of revenue recognition not only for its different projects but even in the same project the method for recognising the revenue was changed to suit its needs. Observing, that the assessee was not following a consistent method of revenue recognition, the CIT(A) was of the view that no infirmity could be related to assessing of the income element embedded in the on-money received during the year under consideration. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing set-off of current years business loss of Rs.4,07,83,318/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from 01.04.2017, therefore, the same would not be applicable to the case of the assesse for the year in question i.e A.Y 2016-17. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by her as business income and not an

income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE would also not be applicable on the said count too. Accordingly, the CIT(A)directed the A.O to allow set-off of current years business loss and brought forward losses after due verification.

156. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating income element embedded in the on-money received at 20% of Rs. 971.50 lacs (netted at Rs. 941.74 lacs) which is on the higher side and should have been estimated @12% of on-money as was offered by the assesse is concerned, we fnd that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the said issue in hand in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 971.50 lacs.The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations

157.We shall now deal with the grievance of the assessee that the lower authorities are in error in concluding that the on-money so received by it w.r.t Flats/Shops in its projects “Ram Laxmi Niwas” and “Iris” was to be assessed in the year of receipt. As observed by

us hereinabove, the A.O held a conviction that the amount of on-moneyreceived by the assessee w.r.t Flats/Shops in its projects, viz.“Ram Laxmi Niwas” and “Iris” was to be assessed as the unaccounted receiptsof the assessee in the year of receipt itself.On being queried that as to why the on-money aggregating to Rs. 648 lac received w.r.t Flat/Shop Nos. 1101 and 901 in its project, viz. “Ram Laxmi Niwas” amounting to Rs. 475 lacs and Rs. 173 lac, respectively,ANDthat aggregating to Rs.323.50 lac received w.r.t Flat/Shop Nos. 1102, 502/802 and 101 in its project “Iris” amounting to Rs. 90 lac, 175 lac and Rs. 58.50 lac, respectively, may not be brought to tax in the year of receipt itself i.e A.Y 2015-16, it was submitted by the assesseethat the net income of Rs. 38.82 lacs i.e 12% of the amount of on-money of Rs. 323.50 lacs pertaining to IRIS project had been offered in the computation of income for A.Y 2017-18, as the ‘agreements’ pertaining to the concerned flats were registered during the F.Y 2016-17. It was further submitted by the assessee that the on-money of Rs. 648 lacsreceived by it w.r.t flats/shops in its project, viz. “Ram Laxmi Niwas” shall be considered for computing the income in the year of completion of the project. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money received by the assessee during the year in question as its unaccounted receipt u/s 68 of the Act. Observing, that the assesee had already offered an amount of Rs. 29.76 lac i.e 12% of on-money receipts of Rs.249 lacs as its income for the year in question i.e A.Y 2016-17, the A.O accordingly restricted the addition w.r.t on-money receipt pertaining to Flat/Shop Nos. 1102, 502/802 and 101 in its project “Iris”to 293.74 lac [Rs. 323.50 lac (-) Rs. 29.76 lac]. Further, the A.O added the

entire amount of on-money aggregating to Rs. 648 lac that was received by the assessee w.r.t Flat/Shop Nos. 1101 and 901 in its project, viz. "Ram Laxmi Niwas" amounting to Rs. 475 lacs and Rs. 173 lac, respectively. On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

158. Before us, the assessee has assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been accounted for or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department. Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the

case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y2016-17 to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 1 &2**are allowed for statistical purposes in terms of our aforesaid observations.

159. The **Ground of appeal No. 4** being general is dismissed as not pressed.

160. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

B). ITA No. 2198/Mum/2019
(revenues appeal) :

161. We shall now take up the cross-appeal filed by the revenue for A.Y 2016-17. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us:

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 9,41,74,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 9,41,74,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?
>
> (v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

162. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 9,41,74,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Also, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Further, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to allow set-off of the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

163. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, the same could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

164. As we had while disposing off the assessee's appeal in ITA No. 1742/Mum/2019 for A.Y 2016-17 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein involved,and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20%

of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is dismissed.

165. Insofar the grievance of the revenue that the CIT(A) had erred in vacating the view taken by the A.O who as per the mandate of Sec. 115BBE of the Act had declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal in the case of a group concern of the assessee, viz. Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019.As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the aforesaid appeal in the case of the assessee's group concern, viz. M/s Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the provisions of Sec. 115BBE would not be applicable to the case of the assessee for the year in question and had directed the A.O to set-off the business losses of the assessee against additions made u/s 68 of the Act. The **Ground of appeal Nos. (iv)** raised by the revenue is dismissed.

166. The appeal filed by the revenue is dismissed.

167. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

M/s Ekta Shubham Venture :

ITA No. 1744/Mum/2019 (assessee's appeal)
ITA No. 2201/Mum/2019 (revenues appeal)
A.Y 2015-16

(A). ITA No. 1744/Mum/2019 (assessee's appeal) :

168. We shall now deal with the appeal of the captioned assessee, viz. M/s Ekta Shubham Venture for A.Y 2015-16. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of the project "Panorama" or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting project completion method for this project.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from the on-money received at 20% of Rs. 185 lakhs which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 3. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

169. Briefly stated, the assesseefirm is engaged in the business of a builder and developer. Original return of income for A.Y 2015-16 was filed by the assessee firm on 26.09.2015, declaring a loss of (Rs. 2,24,292/-). Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee firm, viz. M/s Ekta Shubham Venture was found in the course of the search proceedings. Notice u/s 153C was issued and duly served upon the assessee firm for the year in question. Return of income in compliance to the notice issued u/s 153C was filed by the assessee firm on 07.01.2017 declaring the loss as originally returned of (Rs.2,24,492/-). Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

170. During the course of the assessment proceedings, it was gathered by the A.O that the assessee had undertaken construction of a project, viz.”Panorama” at Chembur. On a perusal of the seized documents, it was observed by the A.O that the assessee had received on-money on sale of flats of its aforementioned project, as under:

Project Name	Flat No.	Amount (in lacs)	Financial Year of Receipt	Date of agreement
Panorama	**303**	**120**	**2014-15**	**23.02.2015**
	601	**65**	**2014-15**	**25.07.2014**
	1401	77	2015-16	Not done
	1002	200	2015-16	Not done
Grand Total		462		

Observing that the date of registration of the aforesaid flat nos. 303 & 601 pertained to A.Y 2015-16, the A.O called upon the assesee to show cause as to why the on-money of Rs. 185 lacs received as regards the said flats may not be added as its income for the year in question i.e A.Y 2015-16. Also, taking note of the fact that the flats nos. 1401 & 1002 were still unregistered on the date of search, the A.O being of the view that the on-money of Rs. 277 lacs was received by the assessee during the A.Y 2016-17, therefore, called upon the assessee to explain as to why the same may not be added to its income for the said year. In reply, it was submitted by the assessee that the aforesaid gross on-money of Rs. 4.62 crores [Rs. 185 lacs (+) Rs. 277 lacs] would be considered for determining the income in the year of completion of the project.However, the aforesaid reply of the assessee did not find favour with the A.O who held a conviction that the entire amount of on-money was to be

brought to tax in the year of receipt itself. Accordingly, the A.O added the on-money of Rs. 1.85crore [Rs. 1.20 crore (flat no. 303) (+) Rs. 65 lac (flat no. 601)] u/s 68 of the Act in the year in question i.e A.Y 2015-16.

171. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income element embedded in the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15% of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element embedded in the on-money receipts at 12% could not be substantiated by the assessee, therefore, she substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. It was further observed by the CIT(A) that the assessee was following Percentage Completion Method in the past and had shifted to Project Completion Method only in A.Y 2016-17. It was further observed by the CIT(A) that the asseseee had not given any reason for changing the method for recognising its revenue from Percentage Completion Method to Project Completion Method. It

was further noticed by the CIT(A) that some of the group concerns of the assessee were following Percentage Completion Method.Observing, that the Percentage Completion Method was also in accordance with the guidelines issued by the ICAI, the CIT(A) was of the view that there was no justifiable reason for the assessee to shift to Project Completion Method. In fact, the CIT(A) held a conviction that the assessee was trying to tweak with the methods of recognising revenue which was not permissible. Backed by her aforesaid observations the CIT(A) rejected the assessee's request for considering the Project Completion Method for revenue recognition. As regards the claim of the assessee that the A.O by applying Sec. 115BBE of the Act had erred in not allowing set-off of the current year business loss of Rs. 2,24,292/- against the income assessed, the same was accepted by the CIT(A). It was observed by the CIT(A) that as Sec. 115BBE had came into effect from 01.04.2017, therefore, the same would not be applicable to the case of the assesse for the year in question i.e A.Y 2015-16. Apart from that, it was observed by the CIT(A) that as the on-money receipts were held by her as business receipts and not an income u/s 68 of the Act, therefore, the provisions of Sec. 115BBE would also not be applicable on the said count too. Accordingly, the CIT(A)directed the A.O to allow set-off of current years business loss and brought forward losses after due verification.

172. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) had erred in estimating the income element embedded in the on-money receiptsof Rs. 185 lacs @20%, which is on the higher side, and should have been estimated @12% as was offered by the assesse is concerned, we fnd that the

facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the said issue in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 185 lakhs.The **Ground of appeal No. 2** is partly allowed in terms of our aforesaid observations

173. We shall now deal with the grievance of the assessee that the lower authorities are in error in concluding that the on-money so received by it w.r.t Flats in its project "Panorama" was to be assessed in the year of receipt. As observed by us hereinabove, the A.O held a conviction that the amount of on-moneyreceived by the assessee w.r.t Flats in its project, viz."Panorama" was to be assessed as the unaccounted receiptsof the assessee in the year of receipt itself. On being queried that as to why the on-money aggregating to Rs. 185 lac received w.r.t Flat Nos. 303 and 601 in its project, viz. "Panorama" amounting to Rs. 120 lac and Rs. 65 lac, respectively, may not be brought to tax in the year of receipt itself i.e A.Y 2015-16, it was submitted by the assesseethat the said amounts would be considered for determining the income in the year of completion of the project.However, the aforesaid reply of the assessee did not find favour with the A.O who treated the entire amount of on-money received by the assessee during the year in

question as its unaccounted receipt u/s 68 of the Act.On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the amount of on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

174. Before us, the assessee has assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been or would be accounted for by the assesseeas per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the

year under consideration i.eA.Y 2015-16 to tax in terms of our aforesaid observations.The **Ground of appeal No. 1** is allowed for statistical purposes in terms of our aforesaid observations.

175. The **Ground of appeal No. 3** being general is dismissed as not pressed.

176. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2201/Mum/2019

(<u>revenues appeal</u>) :

177. We shall now take up the cross-appeal of the revenue for A.Y 2015-16. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,85,00,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 1,85,00,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?
>
> (v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

178. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 1,85,00,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was

not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Also, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Further, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount of on-money by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to allow set-off of the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

179. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the

amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, it could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

180. As we had while disposing off the assessee's appeal in ITA No. 1744/Mum/2019 for A.Y 2015-16 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein involved, and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is accordingly dismissed.

181. Insofar the grievance of the revenue that the CIT(A) has erred in vacating the view taken by the A.O who as per the mandate of Sec. 115BBE of the Act had declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal in the case of a group concern of the assessee, viz. Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019.As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the aforesaid appeal in the case of the assessee's group concern, viz. M/s Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the provisions of Sec. 115BBE would not be applicable to the case of the assessee for the year in question and had directed the A.O to allowset-off of the business losses of the assessee against the assessed income. The **Ground of appeal No. (iv)** raised by the revenue is dismissed.

182. The appeal filed by the revenue is dismissed.

183. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

ITA No. 1745/Mum/2019 (assessee's appeal)
ITA No. 2201/Mum/2019 (revenues appeal)
A.Y 2016-17

(A). ITA No. 1745/Mum/2019
(assessee's appeal) :

184. We shall now deal with the appeal of the captioned assessee for A.Y 2016-17. The assessee has assailed the impugned order of the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that income from on-money received is assessable in the year of receipt as against in the year of completion of the project "Panorama" or alternatively in the years when conditions of revenue recognition are satisfied as per percentage completion method and further erred in rejecting project completion method for this project.
>
> 2. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the profit from on-money of flats in the project "Panorama" was assessable in this year though the flats were not registered during this year.
>
> 3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from the on-money received at 20% of Rs. 277 lakhs which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 4. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

185. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee firm, viz. M/s Ekta Shubham Venture was found in the course of the search proceedings. The assessee firm had e-filed its return of income for A.Y 2016-17 on 15.10.2016, declaring an income of Rs. 32,61,920/-. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee.

186. During the course of the assessment proceedings, it was gathered by the A.O that the assessee had undertaken construction of a project, viz."Panorama" at Chembur. On a perusal of the seized documents, it was observed by the A.O that the assessee had received on-money on sale of flats of its aforementioned project, as under:

Project Name	Flat No.	Amount	Financial Year of	Date of agreement

		(in lacs)	Receipt	
Panorama	303	120	2014-15	23.02.2015
	601	65	2014-15	25.07.2014
	1401	**77**	**2015-16**	**Not done**
	1002	**200**	**2015-16**	**Not done**
Grand Total		462		

Observing that the date of registration of the aforesaid flat nos. 303 & 601 pertained to A.Y 2015-16, the A.O called upon the assesee to show cause as to why the on-money of Rs. 185 lacs received as regards the said flats may not be added as its income for A.Y 2015-16. Also, taking note of the fact that the flats nos. 1401 & 1002 were still unregistered on the date of search, the A.O being of the view that the on-money of Rs. 277 lacs was received by the assessee during the A.Y 2016-17, therefore, called upon the assessee to explain as to why the same may not be added to its income for the said year. In reply, it was submitted by the assessee that the aforesaid gross on-money of Rs. 4.62 crores [Rs. 185 lacs (+) Rs. 277 lacs] would be considered for determining the income in the year of completion of the project. However, the aforesaid reply of the assessee did not find favour with the A.O who was of the view that the entire amount of on-money was to be brought to tax in the hands of the assessee in the year of receipt. Accordingly, the A.O inter alia added the on-money of Rs. 2.77crore [Rs. 77 lac (flat no. 1401) (+) Rs. 200 lac (flat no. 1002)] u/s 68 of the Act for the year in question i.e A.Y 2016-17.

187. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee’s business was in the

nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, the same, thus, could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that only the net income embedded in the on-money receipt could be brought to tax, the same was principally accepted by the CIT(A). It was observed by the CIT(A) that the group concerns of the assessee which had approached the Income-Tax Settlement Commission had offered 15%of the on-money receipts for tax, which was accepted by the commission. At the same time, the CIT(A) observing that the basis for quantification of the net income element of the on-money receipts at 12% could not be substantiated by the assessee, therefore, he substituted the same by 20% of the gross on-money receipts and directed the A.O to restrict the addition to the said extent. It was further observed by the CIT(A) that the assessee was following Percentage Completion Method in the past and had shifted to Project Completion Method only in A.Y 2016-17. It was further observed by the CIT(A) that the asseseee had not given any reason for changing the method for recognising its revenue from Percentage Completion Method to Project Completion Method. It was further noticed by the CIT(A) that some of the group concerns of the assessee were following Percentage Completion Method. Observing, that the Percentage Completion Method was in accordance with the guidelines issued by the ICAI, the CIT(A) was of the view that there was no justifiable reason for the assessee to shift to Project Completion Method. In fact, the CIT(A) was of the view that the assessee was trying to tweak with the methods of recognising revenue, which was not

permissible. Backed by his aforesaid observations the CIT(A) rejected the assessee's request for considering the Project Completion Method for revenue recognition.

188. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. Insofar the grievance of the assessee that the Ld. Commissioner of Income-tax (Appeals) has erred in estimating income element embedded in the on-money receipts of Rs. 277 lacs at 20%, which is on the higher side, and should have estimated the same @12% as was offered by the assesse is concerned, we find that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14. Accordingly, our order passed in context of the said issue while disposing off the appeal of the group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 shall apply mutatis mutandis for the purpose of disposal of the said issue in the case of the captioned assessee.We, thus, are of the considered view that the net income element embedded in the on-money receipts can safely be taken in the case of the captioned assessee @15% of the amount of the on-money receipts of Rs. 277 lacs.The **Ground of appeal No. 3** is partly allowed in terms of our aforesaid observations

189. We shall now deal with the grievance of the assessee that the lower authorities had erred in concluding that the on-money so received by it w.r.t Flats in its project "Panorama" were to be assessed in the year of receipt. As observed by us hereinabove, the A.O held a conviction that the amount of on-moneyreceived by the assessee w.r.t Flats in its project, viz."Panorama" was to be

assessed as the unaccounted receiptsof the assessee in the year of receipt itself. On being queried that as to why the on-money aggregating to Rs. 277 lac received w.r.t Flat Nos. 1401 and 1002 in its project, viz. "Panorama" amounting to Rs. 77 lac and Rs. 200 lac, respectively, may not be brought to tax in the year of receipt itself i.e A.Y 2015-16, it was submitted by the assesseethat the said amounts would be considered for determining the income in the year of completion of the project. However, the aforesaid reply of the assessee did not find favour with the A.O who therein treated the entire amount of on-money received by the assessee during the year in question as its unaccounted receipt u/s 68 of the Act.On appeal, the CIT(A) though found favour with the assessee's claim that the addition w.r.t the on-money was to be restricted to the extent of the income element therein embedded, however, she did not dislodge the view arrived at by the A.O as regards the year of taxability of the on-money i.e the year of receipt itself.

190. Before us, the assessee has assailed the view taken by the lower authorities who had concluded that the on-money was to be brought to tax in the year of receipt itself. We have heard the authorised representatives for both the parties in context of the issue in hand i.e the year of assessability of the on-money receipts. Specifically in context of the year in question, it was submitted by the ld. A.R that the CIT(A) had erred in holding that the net income pertaining to the on-money received w.r.t flats in its project, viz. "Panorama" was assessable during the year in question i.eA.Y 2016-17 despite the fact that the flats under consideration had not even been registered during the year. Inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction accounted for by

the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. We, thus, direct the A.O to subject the income element embedded in the on-money received by the assessee during the year under consideration i.eA.Y 2015-16 to tax in terms of our aforesaid observations.The **Grounds of appeal Nos. 1& 2**are allowed for statistical purposes in terms of our aforesaid observations.

191. The **Ground of appeal No. 4** being general is dismissed as not pressed.

192. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

(B). ITA No. 2201/Mum/2019
(<u>revenues appeal</u>) :

193. We shall now take up the cross-appeal of the revenue for A.Y 2016-17. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

"(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 2,77,00,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?

(ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 2,77,00,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?

(iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?

(iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?

(v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

194. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 2,77,00,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Further, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of

parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Also, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A). Lastly, the revenue is aggrieved with the direction of the CIT(A) to set-off the business losses of the assessee against additions made u/s 68, which as stated by the revenue is contrary to the provisions of Section 115BBE.

195. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, it could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17. As the facts and the issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold

the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

196. As we had while disposing off the assessee's appeal in ITA No. 1745/Mum/2019 for A.Y 2016-17 principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein involved,and had further directed the A.O to restrict the same to the extent of 15% of such receipts, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue and observations recorded therein. The **Ground of appeal no. (v)** raised by the revenue is accordingly dismissed.

197. Insofar the grievance of the revenue that the CIT(A) had erred in vacating the view taken by the A.O who as per the mandate of Sec. 115BBE of the Act had declined the assessee's claim for set-off of the business losses against the additions made u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal in the case of a group concern of the assessee, viz. Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019.As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the aforesaid appeal in the case of the assessee's group concern, viz. M/s Ekta Parksville Pvt. Ltd. for A.Y 2014-15 in ITA No. 2194/Mum/2019 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we

uphold the order of the CIT(A) to the extent she had concluded that the provisions of Sec. 115BBE would not be applicable to the case of the assessee for the year in question and had directed the A.O toallow set-off of the business losses of the assessee against the assessed income. The **Ground of appeal No. (iv)** raised by the revenue is dismissed.

198. The appeal filed by the revenue is dismissed.

199. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

M/s Ekta World Pvt.Ltd. :

ITA No. 2199/Mum/2019 (revenues appeal)
ITA No. 2200/Mum/2019 (revenues appeal)
A.Y 2016-17

(A). ITA No. 2199/Mum/2019 (revenues appeal) :

200. We shall now take up the quantum appeal of the revenue in the case of the captioned assessee, viz. M/s Ekta World Pvt. Ltd. for A.Y 2016-17. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 75,00,000/- made u/s 68 of the IT Act, 1961.
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?
>
> (iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the A.O to set off business losses against additions made u/s 68, by invoking provisions of section 115BBE?

(v). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

201. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material that had surfaced in the course of the search proceedings revealed that the assessee firm, viz. M/s Ekta World which was engaged in the business of a builder and developer had received on-money on sale of flats w.r.t its project "Occult" at Chembur. Return of income for A.Y 2016-17 was e-filed by the assessee firm on15.10.2016 declaring Nil income under the normal provisions and 'book profit' of Rs. 5,34,823/- u/s 115JB of the Act. Subsequently, notices under Sec. 143(2) and 142(1) of the Act were issued to the assessee firm.

202. During the course of the assessment proceedings, the A.O observed that the whats app messages that were exchanged between Shri. Vivek Mohanani, director and Shri Prateek Arora, a key employee of "Ekta group"and were retrieved in the course of the search proceedings revealed that on-money of Rs. 75 lacs was received from one Shri. Venketagainst the sale of flat in the assessee's project, viz. "Occult" at Chembur. It was observed by the A.O that the aforesaid fact was confronted to Shri. Prateek Arora (supra), and was also admitted to be the unaccounted income of the assessee firm by Shri. Vivek Mohanani (supra). However, it was noticed by the A.O that the assessee firm had thereafter not offered the aforesaid amount of on-money as its additional income in the return of income for the year in question i.e A.Y 2016-17. In the backdrop of the aforesaid facts the A.O called upon the assessee to show cause as to why the on-money of Rs. 75 lac received by it on sale of flat in its project "Occult" may not be added to its income

returned for the year in question i.e A.Y 2016-17. In reply, the assessee referring to the seized record as was relied upon by the A.O for alleging receipt of on-money of Rs. 75 lac, therein declined of having received any such amount. It was submitted by the assessee that it had neither carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor there wasany broker by the said name for sale of flats in its project. It was, thus, submitted by the assessee that the addition of the impugned on-money of Rs. 75 lac was not called for in its hands. However, the aforesaid explanation of the assessee did not find favour with the A.O. It was observed by the A.O that Shri. Vivek Mohanani (supra) in his statement recorded u/s 132(4) of the Act, on being confronted with the whatsapp messages exchanged between him and Shri. Prateek Arora (supra) had confirmed the receipt of on-money of Rs. 75 lacs on sale of flat in its project, viz. "Occult". Further, the A.O was of the view that the onus was cast upon the assessee to disprove the notings of receipt of cash on the loose paper that was seized in the course of the search proceedings from its premises. Backed by his aforesaid observations, the A.O added the amount of Rs. 75 lac as on-money received by the assessee firm on sale of flat in its project, viz. "Occult" at Chembur.

203. On appeal, the CIT(A) on the basis of exhaustive deliberations concluded that in the absence of any evidence either direct or corroborative, the addition made only on the basis of some whatsapp messages could not be upheld. Accordingly, the CIT(A) vacated the addition of Rs. 75 lac made by the A.O.

204. Aggrieved, the revenue has assailed the order of the CIT(A) before us. The ld. Authorised representative (for short "A.R") for the

assessee at the very outset submitted that as the tax effect involved in the present appeal filed by the revenue was below that contemplated in the CBDT Circular No. 17/2019, dated 08.08.2019, therefore, the same was not maintainable.

205. As submitted by the ld. A.R, and rightly so, the Central Board of Direct Taxes (CBDT) vide its Circular No.17/2019 dated 08.08.2019 has amended Circular No. 3/2018 dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the Department before the ITAT, High Courts and SLPs/Appeals before Supreme Court as a measure for reducing litigation.

206. CBDT *vide* Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the 'tax effect'. In cases where returned loss is reduced or assessed as income, the 'tax effect' would include notional tax on disputed additions. In case of penalty order, the 'tax effect' will mean quantum of penalty deleted or reduced in the order to be appealed against. At para 13 of the above Circular, it has been mentioned that:

> "13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed."

207. As a step towards further management of litigation, CBDT *vide* Circular No. 17/2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

208. As is discernible from the memorandum of appeal, the 'tax effect' involved in the present appeal is below the monetary limit of Rs.50,00,000/-.

209. On being confronted with the aforesaid fact, the ld. D.R did not controvert the aforesaid factual position. It was, however, submitted by the Ld. D.R that liberty may kindly be given to seek recall of the dismissal of appeal and its restoration, in case it can be shown that the appeal is covered by the exceptions.

210. We agree with the above contentions of the Ld. D.R and make it clear that the appellant revenue shall be at liberty to point out the exceptions and we will take appropriate remedial measures in this regard.

211. Resultantly, with the above observations the captioned appeal involving a 'tax effect' of less than Rs.50 lac is dismissed.

212. The appeal of the revenue is dismissed in terms of our aforesaid observations.

(B). ITA No. 2200/Mum/2019
(revenues appeal) :

213. We shall now take up the appeal of the revenue in the case of the captioned assessee for A.Y 2016-17, which in turn arises from

the order of the CIT(A) vacating the penalty imposed by the Addl. CIT, Central Range-6, Mumbai u/s 271D of Rs. 75 lacs. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the penalty levied u.s 271D amounting to Rs. 75,00,000/-, by relying on decision in quantum additions?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the decision in quantum addition was not accepted by the department and appeal is pending before Hon'ble ITAT?"

214. On the basis of the what's app messages dated 19.09.2015 exchanged between Shri. Vivek Mohnani, promoter of the "Ekta group" and Shri. Prateek Arora, key employee of the group that were retrieved in the course of the search proceedings and thereafter formed part of the seized material, the A.O had vide his letter No. DCIT/CC/6(4)/Mum/271D&E/17-18, dated 29.12.2017 made a reference to the Addl. CIT, Central Range-6, Mumbai for imposing penalty u/s 271D for contravention of the provisions of Sec. 269SS of the Act by the assessee firm in lieu of having received an unaccounted amount of Rs. 75 lac in cash. The Addl. CIT, Central Range-6, Mumbai, therein called upon the assessee to show cause as to why penalty u/s 271D w.r.t the cash receipt of Rs. 75 lac may not be imposed on it. In reply, the assessee denied of having received the alleged amount of Rs.75 lac. It was submitted by the assessee firm that it had neither carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor was there any broker bythe said name for sale of any flat in its said project. It was, thus, submitted by the assessee that now when the impugned on-money of Rs. 75 lac was never received by it, therefore, no penalty u/s 271D for the alleged infraction of the

provisions of Sec. 269SS could be imposed on it. However, the Addl. CIT did not find favour with the aforesaid explanation of the assessee. It was observed by the Addl. CIT that thewhatsappp messages between Shri. Vivek Mohanani (supra) and Shri. Prateek Arora (supra) clearly made a reference of receipt of the amount of Rs. 75 lac. In order to fortify his conviction that the assessee firm had actually received the aforesaid amount of Rs. 75 Lac, the Addl. CIT referred to the contents of the whats app messages exchanged between the aforementioned persons. Backed by his aforesaid observations, the Addl. CIT vide his order dated 29.06.2018 imposed a penalty u/s 271D of Rs. 75 lac on the assessee firm.

215. On appeal, the CIT(A) after exhaustively deliberating on the fact situation in the backdrop of the material available on record concluded that as there was no evidence that an amount of Rs. 75 lac was received by the assessee, thus, there was no case for levy of penalty u/s 271D of the Act. Accordingly, the CIT(A) vacated the penalty u/s 271D of Rs. 75 lac imposed by the Addl. CIT.

216. Aggrieved, the revenue has assailed the order of the CIT(A) before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Ld. D.R relied on the order passed by the Addl. CIT dated 29.06.2018 imposing penalty u/s 271D of the Act. It was submitted by the ld. D.R that as the factum of receipt of unaccounted project receipts of Rs. 75 lac by the assesseewas clearly discernible from the whats app messages exchanged between Shri Prateek Arora, a key employee of the

assessee group and Shri. Vivek Mohanani, promoter of the assessee groupthus, the Addl. CIT observing that the aforesaid transaction of the assessee was in contravention of the express provisions of Sec. 269SS of the Act had rightly imposed penalty u/s 271D of the Act. It was submitted by the ld. D.R that as the CIT(A) had erred in vacating the penalty imposed by the Addl. CIT u/s 271D of the Act, therefore, his order may be set-aside and that of the Addl. CIT be restored.

217. Per contra, the ld. A.R relied on the order of the CIT(A). It was submitted by the ld. A.R that taking cognizance of the fact that there was no evidence of receipt of the impugned cash of Rs. 75 lac by the assessee company, the CIT(A) had rightly quashed the penalty that was imposed by the Addl. CIT u/s 271D of the Act on baseless assumptions and presumptions. It was submitted by the ld. A.R that asthe assessee company had neither carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor was there any broker by the said name for sale of flat in its said project thus, there was no justification on the part of the Addl. CIT to have imposed penalty u/s 271D as regards a non-existent transaction.

218. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, whats app messages exchanged between Shri Prateek Arora, a key employee of the assessee group and Shri. Vivek Mohanani, promoter of the assessee group were retrieved in the course of thesearch proceedings and formed part of the seized records. Gist of the retrieved what's app messages which formed part of the seized material is culled out as under:

Date	Time	Message from Pratik	Message to Pratik
19.09.2015	1:29 P.M	Venkat is giving approx 50A in the evening	
19.09.2015	1:29 P.M	Balance on Monday	Ok Kool
		Today 75 he will give	
	1:30 P.M		Ok Kool
19.09.2015	1:41 P.M	He is giving 65 in cheque too	
19.09.2015	6:32 P.M	Received 50 from Venkat	
19.09.2015	6:37 P.M		Ok Kool

It is on the basis of the aforesaid whats app messages that the Addl. CIT had inferred that the assesseehad received cash amount of Rs. 75 lacs by way of unaccounted receipts as regards sale of flat in its project, viz. "Occult". Backed by her aforesaid view, the Addl. CIT had called upon the assessee to explain as to why penalty u/s 271D of the Act for receiving the impugned amount in contravention of the provisions of Sec. 269SS of the Act may not be imposed on it. In reply, the assessee had denied of having received the aforesaid impugned amount of Rs. 75 lac. As observed by us hereinabove, it was the claim of the assessee that it had not received any amount in cash from sale of flats/units in its building project after 01.06.2015 i.e in violation of the provisions of Sec. 269SS of the Act. In order to fortify its aforesaid claim, it was submitted by theassessee that it had neither carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor was there any broker by the said name for sale of flats in its said project. However, the Addl. CIT was not inclined to accept the explanation of the assessee, and being of the view that the assessee had in contravention of the provisions of Sec. 269SS of the Act

received unaccounted project receipts of Rs. 75 lac, therein imposed a penalty u/s 271D of Rs. 75 lac on the assessee firm.

219. We have deliberated at length on the issue under consideration in the backdrop of the respective contentions advanced by the authorised representatives for both the parties, and have also perused the material available on record. Although, the aforesaid whats app messages exchanged between Shri Prateek Arora, a key employee of the assessee group and Shri. Vivek Mohanani, promoter of the assessee group apparently points out to a cash transaction, however, the same on such standalone basis cannot justifiably evidence that the impugned amount of Rs. 75 lac was received by the assessee. As is discernible from thewhats messages, the alleged transaction is stated to be with one Shri. Venkat. However, it has been the claim of the assessee that it had neither carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor was there any broker by the said name for sale of any flat in its said project. Neither the aforesaid claim of the assessee had till date either been dislodged or disproved bythe Addl.CIT/A.O nor any material has been placed on our record by the ld. D.R to prove to the contrary. In sum and substance, it is a matter of fact borne from the records that neither the assessee had carried out any sale of a flat in its project "Occult" to any person by the name of "Venket" nor any broker was there of the said name for sale of any flat in the aforesaid project of the assessee. Apart from that, we find that the impugned whats app message on 19.09.2015 at 1:41 P.M also makes a reference to a payment of Rs. 65 lac in cheque. It was the claim of the assessee before the CIT(A) (in course of its quantum appeal) that if the receipt of cash of Rs. 75 lac is to be taken as true, then, the

transaction of Rs. 65 lac through cheque also should be considered true. However, as stated by the assessee, it remained as a matter of an uncontroverted fact that there was no receipt of Rs. 65 lac through cheque in the bank accounts of the assessee. Insofar the admission on the part of Shri. Vivek Mohanani that the amount of Rs. 75 lac was the cash received for sale of a flat in the project of the assessee company, viz. "Occult", the said statement had thereafter been retracted by him and the fact that no such transaction had occasioned was brought by him to the knowledge of the DDIT(Inv.). In the backdrop of the aforesaid facts, we concur with the view taken by the CIT(A) that as the alleged receipt of the amount of Rs. 75 lac by the assessee had not been proved, therefore, no penalty u/s 271D could have been imposed on the assessee for allegedly receiving the impugned amount in contravention of the provisions of Sec. 269SS of the Act. To sum up, we are of the considered view that as neither the A.O nor the Addl. CIT had brought anything on record to show that the assessee had in fact received cash of Rs. 75 lac, no penalty u/s 271D could justifiably be imposed on the basis of assumptions, presumptions, surmises and conjectiures de hors any iota of evidence proving the same. Our aforesaid view that adverse inferences cannot be drawn in the hands of an assessee merely on the basis of unsubstantiated presumptionsis fortified by the order of the ITAT, Bangalore in the case of Nandini Deluxe Vs. ACIT (2014) 42 CCH 20 (Bang). In its said order, it was inter alia observed by the Tribunal that taxing of profits earned on unexplained sales on the basis of figures found in the mobile phones of the partner without bringing on record any evidence to substantiate the addition made was not allowed. Accordingly, in the backdrop of our aforesaid deliberations, finding

no infirmity in the view taken by the CIT(A) that penalty imposed by the Addl. CIT u/s 271D in the absence of any evidence of receipt of the impugned amount of Rs. 75 lac by the assessee cannot be sustained, we uphold the same.

220. The appeal filed by the revenue is dismissed.

221. Resultantly, both the appeals filed by the revenue are dismissed.

M/s Pahli Hill Developers LLP :

ITA No. 1743/Mum/2019 (assessee's appeal)
ITA No. 2193/Mum/2019 (revenues appeal)
A.Y 2014-15

(A). ITA No. 1743/Mum/2019 (assessee's appeal) :

222. We shall now take up the appeal of the captioned assessee, viz. M/s Pahli Hill Developers LLP for A.Y 2014-15. The assessee has assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the appellant received on-money without appreciating the fact that the partner of appellant denied for the same. She ought to have deleted the whole addition.
>
> 2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) has erred in estimating profit from the on-money received at 20% of Rs. 336.30 lakhs which is on a higher side and should have been estimated @12% of on-money as offered by your appellant.
>
> 3. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."

223. Briefly stated, the assessee firm is engaged in the business of a builder and developer. Search and seizure action was conducted on 05.10.2015 in the case of the entities belonging to the "Ekta group". Incriminating material pertaining to the captioned assessee firm, viz. M/s Pahli Hill Developers LLP was found in the course of

the search proceedings. Notice u/s 153C was issued and duly served upon the assessee firm for the year in question. Return of income in compliance to the notice issued u/s 153C was filed by the assessee firm on 10.01.2017 declaring an income of Rs. 2,21,83,351/-. Subsequently, notices under S/sec. 143(2) and 142(1) of the Act were issued to the assessee firm.

224. During the course of the assessment proceedings, it was gathered by the A.O that the assessee had undertaken construction of a project, viz."The One". On a perusal of the seized documents and statements recorded in the course of the search proceedings, it was observed by the A.O that the assessee had received on-money on sale of flats of its aforementioned project, as under:

Project Name	Flat No.	Amount (in lacs)	Financial Year of Receipt	Date of agreement
The One	**1401 & 1402**	**136.30**	**2013-14**	**23.02.2015**
	1201 & 1202	**200.00**	**2013-14**	**25.07.2014**
Grand Total		**336.30**		

Observing, that the assessee had not offered the aforesaid amount of on-money of Rs. 3,36,30,000/- as its additional income in the return of income, the A.O called upon it to show cause as to why the same may not be added to its returned income specifically when the sale transactions for the said flats were registered in the period relevant to A.Y 2014-15. In reply, the assessee denied of having received any on-money w.r.t the transactions in question. However, the A.O was not inclined to accept the aforesaid reply of the assessee. It was observed by the A.O that the claim of the assessee that no on-money was received w.r.t sale of flats of its project "The

One" could not be accepted as the seized document, viz. Annexure A-3 – Page 3-4 clearly mentioned the bifurcation of the rate per sq. ft. for the flats into cheque and cash portion. It was further observed by the A.O that the assessee had also failed to produce any material in support of its claim that no on-money was received in respect of the sale transactions in question. Accordingly, the A.O rejected the assessee's reply and added the amount of Rs. 3,36,30,000/- [Rs. 2,00,00,000/- (+) Rs. 1,36,30,000/-] as the unaccounted receipts u/s 68 of the Act of the assesseefor the year under consideration.

225. On appeal, it was observed by the CIT(A) that as the on-money received by the assessee was for sale of flats, therefore, the same being inseparable from the assessee's business was in the nature of a business receipt. Further, the CIT(A) observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. As regards the claim of the assessee that the A.O de hors any incriminating material that would conclusively prove receipt of on-money by the assessee firm had made an addition of Rs. 3,36,30,000/- on the basis of an unsubstantiated standalone statement of Shri. Prateek Arora and dumb notings in the seized documents, viz. Annexure A-3 – Page 3-4, the same did not find favour with the CIT(A). It was observed by the CIT(A) that as Shri Prateek Arora (wrongly mentioned by the CIT(A) in his order as Shri. Dilip Borade) was a key employee of the assessee company and the assessee group was habitually receiving on-money on sale of properties, therefore, it could safely be presumed that the

aforesaid amount of Rs. 3,36,30,000/- was received by the assessee as on-money on sale of flats in its project, viz. "The One". It was observed by the CIT(A) that Shri. Prateek Arora was a key employee of the "Ekta group" and was actively involved in negotiating and handling cash for the group. Observing that certain loose papers were found in the course of the search proceedings from the residence of Shri. PrateekArora (supra), and that receipt of on-money was admitted by him in his statement recorded on oath u/s 132(4), the CIT(A) was of the view that the same being a valuable piece of evidence could not be overlooked. As regards the denial by Shri. Vivek Mohanani (supra) of having received any on-money on sale of flats in question in the assessee's project, viz. "The One", the CIT(A) was of the view that the said simpliciter denial would not suffice to dislodge the evidentiary value of the notings and the facts stated by Shri. Prateek Arora (supra) in his statement recorded on oath u/s 132(4) of the Act. Backed by his aforesaid observations, the CIT(A) rejected the claim of the assessee and added the aforesaid amount of Rs. 3,36,30,000/- as on-money received by the assessee on sale of the aforesaid flats in question.

226. Aggrieved, the assessee has assailed the order of the CIT(A) in appeal before us. We have heard the ld. Authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial prouncements that have been pressed into service by them to drive home their respective contentions. As observed by us hereinabove, during the course of the search proceedings conducted on 07.10.2015 on the "Ekta Bhoomi" group certain loose papers were found from the residence of Shri. Prateek Arora, key employee of

"Ekta Group", which thereafter were marked as Annexure A-3 – Page 1-74A. On a perusal of the notings of Annexure A-3 – Page 3 & 4 the A.O held a conviction that the same were in context of the on-money that was received by the assessee on sale of flats in its project, viz."The One".On being confronted with the seized material, Shri. Prateek Arora (supra) admitted that contents therein mentioned were in context of the cash element involved in the sales transactions. For a fair appreciation of the issue in question we shall herein cull out the relevant parts of the seized documents (as are discernible from the assessment order), which reads as under:

Annexure A3 - Page No. 3 :

"Page No.3 of Annexure A3 found from residence of Prateek Arora

5180 X 39000 = 202000000/-

= 180000000

A. Value -- 2,20,20,000/-
-- 411139500/-

-- 19113500/-"

On being confronted, it was stated by Shri. Prateek Arora in his statement recorded on oath u/s 132(4) that the aforesaid notings pertained to details of a Pali Hill flat. It was stated by him that the said page was given to him by the promoter of the assessee company. Further, it was stated by him that the area of the flat was 5180 sq.ft and the rate per sq. feet was Rs. 39,000/-. It was further stated by him that while for the deal value was mentioned at Rs.20,20,20,000/- however, the agreement value mentioned was Rs.18,00,00,000/-. It was further stated by him that as per the aforesaid page the cash component against the subject deal was Rs. 2,20,00,000/-. For the sake of clarity and inorder to avoid any

doubt the relevant extract of the statement of Shri. Prateek Arora (supra) is reproduced as under:

> *"Q.2 I am showing you page no. 3 (written in pencil), A Xerox copy of the said page 3 is marked as 3A of Annexure A3. Please go through the same and explain the contents of the same.*
>
> *Ans. The page has details of Pali Hill Flat. This page was given to me by my promoter. The rate per sq. ft. mentioned is Rs. 39,000/- and area mentioned is Rs. 5180/- sq.ft. The deal value is mentioned at Rs. 20,20,20,000/- and agreement value mentioned Rs. 18,00,00,000/-.The term amenities mentioned in the page represent the 'cash' as per the coding between me and the promoters. As per the referred page the cash component against the subject deal represents Rs. 2,20,00,000/-"*

On being confronted with the aforesaid statemet of Shri. Prateek Arora, Shri. Vivek Mohanani (supra) in his statement recorded on oath u/s 132(4) though admitted that he had purchased a flat in the assessee's Pali Hill project, viz. "The One" for a consideration of Rs. 18,00,00,000/-, however, he denied the explanation of Shri. Prateek Arora (supra) as regards the cash element that was allegedly stated to have been involved in respect of the said transaction. Further, it was stated by him that the notings in the seized document, viz. Annexure A-3 – Page No. 3 pertained to Flat No. 701 in the assessee'sPali Hill project, viz. "The One". Relevant extract of the statement of Shri. Vivek Mohanani (supra) recorded u/s 132(4) is reproduced as under :

> *"For Page No. 3 I would like to explain that this 5180 sq. ft. area pertain to a flat no. 701 in Pali Hill project named as "The One". Yes, I agree that one flat has been bought by me at Rs. 18,00,00,000/-. However for other explanation given by Prateek I am not agreed with Prateek regarding cash component."*

On the basis of the aforesaid facts the A.O observed that on-money of Rs. 2.20 crore was received w.r.t the property that was bought by Shri. Vivek Mohanai. Observing, that the additional value of cheque of Rs. 83.70 lac was paid by the assessee towards registration of Flat Nos. 1401 & 1402, the A.O observed that the

cash component therein involved was reduced to an amount of Rs. 136.30 lacs. It was, thus, observed by the A.O that the assessee company had received on-money of Rs. 1,36,30,000/- on sale of Flat Nos. 1401 & 1402 in its project, viz. "The One".

227. Further, on a perusal of the notings of Annexure A-3 – Page 4, the A.O observed that the same read as under:

Annexure A3 - Page No. 4 :

"Page No.4 of Annexure A3 found from residence of Prateek Arora

7th Habitable 12th Floor - 5180 sq. ft

8th Habitable 13th Floor -1545 sq. ft.

6725 sq. ft

6725 X 39000 = 262275000

Agreement = 2000

62275000/2 = 31137500

= 200 Paid

=11137500/-

5th Floor 9.20

Bjoge Less 2% = 18.4 *50.80*

901.6/2 *+11137500*

16217500

450.80

400 = 50.80 paid

6th Habitable price as discussed & comprised @40000 per. Sq.ft

5th Habitable Mr. Shirangi - same price

4th Habitable Mr. Reyon

3rd Habitable Vavant

2nd Habitable Bhagwan

1st Habitable Vavant."

On being confronted, it was stated by Shri. Prateek Arora in his statement recorded on oath u/s 132(4) that the aforesaid page contained details of Pali Hill Flat and there were multiple transactions recorded on the said page. For the sake of clarity the relevant extract of the statement of Shri. Prateek Arora (supra) is reproduced as under:

> *"Q.22 I am showing you page no. 4 of Annexure A3. Please go through the same and explain the contents of the same.*
>
> *Ans. The page contains details of Pali Hill Flat. These are multiple transactions recorded on the said page.*
>
> *Transaction 1: The details of 7th habitable & 8th habitable floors consisting 5180sq. fts & 1545 sq. ft respectively aggregating to 6725 sq. fts is mentioned.*
>
> *The rate mentioned for the said floors in the page was Rs. 39000 per sq.ft and the total deal value mentioned at Rs. 26,22,75,000/- (6725 X 39000). Against the deal value, the difference of Rs. 6,22,75,000/- was divided amongst two flats and Rs. 3,11,37,500/-. Out of which Rs. 2,00,00,000/- was received and balance was shown as receivable Rs. 1,11,37,500/-.*
>
> *Transaction 2 : The second transaction mentioned at the same page was for the 5th habitable floor and amount mentioned was Rs. 9.20 crores. Brokerage @2% amounting to Rs. 18,40,000/- was deducted and balance is worked out at Rs. 9,01,60,000/-. As mentioned above, this amount was again divided by 2 and worked out Rs. 4,50,80,000/-, out of which again Rs. 4,00,00,000/- was the agreement value and Rs. 50,80,000/- was the cash portion.*
>
> *Transaction 3: The entry pertaining to 6th habitable floor is also mentioned and the price as discussed and confirmed @Rs. 40,000/- per sq.ft.*
>
> *Some other entries were also written on the bottom of the page indicating habitable floor and the name of the parties and the status of the occupancy of the floor."*

On being confrontedShri. Vivek Mohanani (supra) in his statement recorded on oath u/s 132(4) rebutted the statement of Shri. Prateek Arora (supra) as regards his explanation w.r.t the contents of Page 4 of Annexure A-3on the ground that the project in question, viz. "The One" did not have a 8th habitable floor. In order to fortify his

aforesaid claim, Shri. Vivek Mohanani (supra) furnished the duly approved plan of the said project.Relevant extract of the statement of Shri. Vivek Mohanani (supra) recorded u/s 132(4) is reproduced as under :

> *"For Page No. 4as stated by Prateek this pertain to Pali Hill project, however there is no 8th habitable floor in this project. Further I hereby furnish the project plan duly approved in support of my contention as Annexure 1.*
>
> *For Page No. 6 some similar facts have been mentioned with regard to Pali Hill flat bought by me. However no cash component has been introduced in this. I totally deny, as it has never been written by me. I dont recognise whose handwriting it is."*

However, the A.O on the basis of the aforesaid facts observed that the assessee had received on-money of Rs. 2,00,00,000/- for Flat nos. 1201 and 1202. Accordingly, backed by his aforesaid observations the A.O made an addition of Rs. 3,36,30,000/- [Rs. 1,36,30,000/- (+) Rs. 2,00,00,000/-] towards on-money received by the assessee w.r.t sale of the aforesaid flats in its project, viz. "The One".

228. On appeal, though the CIT(A) principally sustained the view taken by the A.O that the assessee was in receipt of on-money w.r.t the flats in its Pali Hill project, viz. "The One", however, he restricted the addition to the extent of the income element embedded in the amount of such on-money i.e @20% of the said amount.

229. It is in the backdrop of the aforesaid facts that we shall adjudicate upon the sustainability of the adverse inferences and the consequential addition made w.r.t the impugned amount of on-money stated to have benreceived by the assesseeas regards the

Flat Nos. 1401/02 and 1201/02 in its project, viz. "The One", as under:

(A). Re: Addition towards on-money w.r.t Flat Nos. 1401/02 : Rs. 136.30 lac.

230. As observed by us hereinabove, the impugned addition towards receipt of on-money of Rs. 136.30 lac w.r.t Flat Nos. 1401/02 was made by the A.O on the basis of the notingsin the document, viz. Annexure A-3 – Page 3 that was seized from the residence of Shri. Prateek Arora (supra)a/w the explanation that was given by him as regards the said notings. As observed by us hereinabove, the A.O on the basis of the impugned notings recorded in the seized document, viz. Annexure A-3 – Page 3 had concluded that Shri. Vivek Mohanani (supra) had paid on-money of Rs. 2,20,00,000/- towards purchase of a flat admeasuring 5180 sq.ft in the assessee's Pali hill project, viz. "The One". Observing, that an additional value of cheque of Rs. 83.70 lac was paid towards registration of Flat Nos. 1401 & 1402, the A.O restricted the cash component for purchase of the aforementioned property to an amount of Rs. 136.30 lacs [Rs. 220 lac (-) Rs. 83.70 lac]. Accordingly, backed by his aforesaid observations the A.O madean addition of Rs. 136.30 lacs (supra) towards on-money which as per him was paid by Shri. Vivek Mohanani (supra) for purchase of the property in question.

231. On a perusal of the statement of Shri. Prateek Arora (supra) recorded u/s 132(4), we find that it was stated by him in reply to Question No. 2that the document, viz. Annexure A-3 – Page No. 3 containing the impugned notings was given to him by the promoter of the assessee company. On being confronted, Shri. Vivek

Mohanani (supra), promoter of the assessee company, had in his statement recorded on oath u/s 132(4) stated that the area of 5180 Sq. ft pertained to a Flat No. 701 in the assessee's Pali Hill project, viz. "The One". Further, it was though admitted by him that he had purchased a flat for a consideration of Rs. 18,00,00,000/-, however, he denied the explanation of Shri. Prateek Arora (supra) as regards the cash element that was allegedly stated to have been therein involved. On a perusal of the aforesaid facts, we find, that while for it is the claim of the department that the impugned notings in the impounded document, viz.Annexure A-3 – Page No. 3pertained to Flat Nos. 1401 & 1402 in assessee's Pali Hill project, viz. "The One" purchased by Shri. Vivek Mohanani (supra), while for it is the claim of Shri. Vivek Mohanani (supra) in his statement recorded u/s 132(4) that the impugnednotings in the aforesaid seized document, viz. Annexure A3 – Page 3 pertaining to 5180 sq.ft were w.r.t the Flat No. 701 in the assessee's Pali Hill project, viz. "The One". Before proceeding any further, we may herein observe, that as claimed by Shri. Prateek Arora (supra) in reply to Question No. 2 of his statement recorded on oath u/s 132(4), the seized document, viz.Annexure A-3 – Page No. 3 was given to him by the promoter of the assessee company. Accordingly, it is in the backdrop of the aforesaid fact that the explanation of Shri. Vivek Mohanani (supra), promoter of the assessee company as regards the notingsin the seized document, viz. Annexure A-3 – Page No. 3have to be considered and in our view requires to be given due weightage. As observed by us hereinabove, Shri. Vivek Mohanani (supra) had categorically stated in his statement recorded u/s 132(4) that the area of 5180 sq.ft mentioned in the seized document, viz. Annexure A-3 – Page No. 3 pertained to Flat No. 701 in the assessee's Pali Hill

project, viz. "The One". On a perusal of the record, we find that the assumption drawn by the A.O that the amount of Rs. 2.20 crores (supra) pertained to the on-money that was paid by Shri. Vivek Mohanani (supra) for purchase of Flat Nos. 1401 & 1402 in the assessee's Pali Hill project, viz. "The One" is not backed by any supporting material. On the contrary, Shri. Vivek Mohanani (supra) who had apparently authored the notings in the seized document, viz. Annexure A-3 – Page No. 3(as stated by Shri. Prateek Arora) had categorically stated that the area of 5180 sq. ft therein mentioned pertained to Flat No. 701 in the assessee's Pali Hill project, viz. "The One". In fact, contents of the seized document, viz. Annexure A-3 – Page No. 4 which makes a reference to "7th Habitable 12th Floor – 5180 sq. ft." further fortifies the aforesaid claim of Shri. Vivek Mohanani (supra) that the notings in the seized document, viz. Annexure A-3 – Page No. 3pertained to Flat No. 701 in the assessee's Pali Hill project, viz. "The One". As such, in the backdrop of our aforesaid observations we are unable to persuade ourselves to subscribe to the unsubstantiated adverse inferences drawn by the lower authorities that the notings w.r.t the area of 5180 sq. ft in the seized document, viz. Annexure A-3 – Page No. 3 pertained to the Flat Nos. 1401 & 1402 that was purchased by Shri. Vivek Mohanai (supra) in the assessee's Pali Hill project, viz. "The One". In our considered view the A.O had failed to carry out necessary verifications as regards the impugned notings in the seized document, viz. Annexure A-3 – Page 3. We would not hesitate to observe that de hors any supporting material the A.O had hushed to conclude that the impugned notings in the seized document, viz. Annexure A3 – Page 3 pertained to the on-money that was received by the assessee w.r.t Flat Nos. 1401 & 1402

purchased by Shri. Vivek Mohanai (supra) in the Pali Hill project, viz. "The One". As the view arrived at by the A.O is not backed by any supporting material,we, thus, in all fairness restore the matter to his file with a directionto make necessary verifications as regards the impugned notingsrecorded in the aforesaid Annexure A3 – Page 3. At this stage, we may herein observe thst a conjoint perusal of Annexure A3- Page 3&Page 4a/w the statement of Shri. Vivek Mohanani (supra), therein inspires substantial confidence as regards the latters claim that the notings in the said seized document, viz. Annexure A3 – Page 3pertain to receipt of on-money by the assesseew.r.t Flat No. 701 in the assessee's Pali Hill project, viz. "The One". However, the A.O in the course of the set-aside proceedings shall not be bound by our aforesaid observation and shall remain at a liberty to carry out necessary verifications as he deems fit. Needless to say, the A.O in the course of the set-aside proceedings while readjudicating the aforesaid issue shall afford a reasonable opportunity of being heard to the assessee. The **Ground of appeal No. 1** insofar the same pertains to the aforesaid impugned addition is concerned is allowed for statistical purposes subject to our observations recorded hereinbelow.

232. Before us, the theassesseehas also assailed the order of the CIT(A) on the ground that she had erred in estimating income element embedded in the on-money receipts at 20%, which is on the higher side,instead of estimating the same @12% as was offered by the assesse. We find that the facts and the issue therein involved remains the same as were there before us in the case of a group concern of the assessee, viz. Ekta Housing Pvt. Ltd. in ITA No. 1732/Mum/2019 for A.Y 2013-14 wherein we had directed the A.O to estimate the income element embedded in the on-money

receipts at 15%. Although we have restored the issue pertaining to receipt of on-money of Rs. 2.20 crore to the file of the A.O for fresh adjudication, we may,however observe that if in the course of the set-aside proceedings it is found that the assessee had received on-money w.r.t the transaction in question, then, the A.O shall in terms of our aforesaid observations restrict the addition to the extent of the income element therein embedded i.e@15% of such on-money receipt.Further, inour considered view, as the receipt of on-money is inextricably interlinked and in fact interwoven with the corresponding sale transaction to the extent accounted for by the assessee in its books of account, the same, thus, cannot be divorced therefrom, and the income element therein embedded would be required to be brought to tax in the same year in which the sale transaction had been or would be accounted for by the assessee as per its regular method of accounting that has been accepted by the department.Our aforesaid view that the conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted, and the accounting of such income have to be made on the basis of the method of accounting followed by the assessee is supported by the order of the ITAT, Pune bench in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT [102 ITD 375 (Pune)]. The **Ground of appeal No. 2** is partly allowed in terms of our aforesaid observations

(A). Re: Addition towards on-money w.r.t Flat Nos. 1201/02 : Rs. 200 lac.

233. We shall now deal with the addition as had been sustained by the CIT(A) w.r.t the on-money of Rs. 200 lac that is inter alia stated

to have been received by the assesseeas regards the Flat Nos. 1201 and 1202 in its Pali Hill project, viz. "The One". As observed by us hereinabove, the A.O on a perusal of the notings of the seized document, viz. Annexure A3- Page 4read alongwith the statement of Shri. Prateek Arora (supra) that was recorded on oath u/s 132(4), had concluded that the assessee had inter alia received on-money w.r.t Flat nos. 1201 and 1202 in its Pali Hill project, viz. "The One". As observed by us hereinabove, the relevant extract of the seized document, viz. Annexure A3 – Page 4 read as under :

"Page No.4 of Annexure A3 found from residence of Prateek Arora

7th Habitable 12th Floor - 5180 sq. ft

8th Habitable 13th Floor -1545 sq. ft.

6725 sq. ft

6725 X 39000 = 262275000

Agreement = 2000

62275000/2 = 31137500

= 200 Paid

=11137500/-"

On being confronted with the aforesaid notings, it was inter alia stated by Shri. Prateek Arora (supra), as under:

"Q.22 I am showing you page no. 4 of Annexure A3. Please go through the same and explain the contents of the same.

Ans. The page contains details of Pali Hill Flat. These are multiple transactions recorded on the said page.

Transaction 1: The details of 7th habitable &8th habitable floors consisting 5180sq. fts & 1545 sq. ft respectively aggregating to 6725 sq. fts is mentioned.

The rate mentioned for the said floors in the page was Rs. 39000 per sq.ft and the total deal value mentioned at Rs. 26,22,75,000/- (6725 X 39000). Against the deal value, the difference of Rs. 6,22,75,000/- was divided amongst two flats and Rs. 3,11,37,500/-. Out of which Rs. 2,00,00,000/- was received and balance was shown as receivable Rs. 1,11,37,500/-."

However, Shri. Vivek Mohanani (supra) on being confronted with the aforesaid contents of the seized document, viz. Annexure A3 – Page 4 had in his statement recorded on oath u/s 132(4) rebutted the explanation that was given by Shri. Prateek Arora (supra) w.r.t the contents of Page 4 of Annexure A-3on the ground that the project in question, viz. "The One" did not have a 8th habitable floor. In order to fortify his aforesaid claim, Shri. Vivek Mohanani (supra) had even placed on record the duly approved plan of the said project. Relevant extract of the statement of Shri. Vivek Mohanani (supra) that was recorded u/s 132(4) is reproduced as under:

> *"For Page No. 4as stated by Prateek this pertain to Pali Hill project, however there is no 8th habitable floor in this project. Further I hereby furnish the project plan duly approved in support of my contention as Annexure 1."*

However, we find that the A.O discarding the duly substantiated rebuttal of Shri. Vivek Mohanani (supra), had acted upon the unsubstantiated notings in the seized document, viz. Annexure A3 – Page 4 and chose to be guided by the statement of Shri. Prateek Arora (supra).

234. We have given a thoughtful consideration to the issue before us in the backdrop of the material available on record and the contentions advanced by the authorised representatives for both the parties. On a conjoint perusalof the seized document, viz. Annexure A3 – Page 3 & Page 4, we hold a strong conviction that the notingstherein mentioned inter alia deals with a common transaction pertaining to a property admeasuring 5180 sq. ft on the 7th Habitable 12th floor in the assessee's Pali Hill project, viz. "The One". After exhaustive deliberations on the seized document, viz. Annexure A3 – Page 3, the impugned addition made by the A.O on

the basis of the notings therein recorded had been restored by us to the file of the A.O for fresh adjudication.In our considered view, the A.O had wrongly inferred that the notings of Annexure A3 – Page 3&Page 4 w.r.t a property admeasuring 5180 sq. ft. on the 7th Habitable floor, as notingspertaining to two different properties. We, thus, vacate the adverse inferences separately arrived at by the A.O on the basis of the notings of the seized document, viz. Annexure A3 – Page 4 insofar the same were recorded in context of the property admeasuring 5180 sq. ft on the 7th Habitable floor, which in our considered view had resulted to duplicacy of additions in the hands of the assessee. As we have already restored the issue as regards receipt of on-money by the assessee w.r.t property admeasuring 5180 sq. ft on the 7th Habitable floor in its Pali Hill project, viz. "The One" to the file of the A.O for fresh adjudication in terms of our observations recorded hereinabove, thus, the adverse infernces and the consequential addition separately made by the A.O as regards the aforesaid property by drawing support from the impugned notings of the seized document, viz. Annexure A3 – Page 4 are herein vacated.

235. Insofar the adverse inference drawn by the A.O as regards the property admeasuring 1545 sq.ft on the 8th Habitable floor are concerned, the same we find cannot be sustained in the backdrop of the claim raised by Shri. Vivek Mohanani in his statement recorded u/s 132(4) that there is no 8th habitable floor in the Pali Hill project, viz. "The One", which we find he had substantiated by furnishing the project plan duly approved in support thereof. Neither there is any material available on record nor is there any finding of the lower authorities which would dislodge or disprove the aforesaid claim of Shri. Vivek Mohanani (supra). Apart from that, no contention has

been advanced by the ld. D.R before us disputing the veracity of the aforesaid claim of Shri. Vivek Mohanani. In the backdrop of the aforesaid fact situation, we are unable to uphold the adverse inferences drawn by the lower authorities as regards the alleged property admeasuring 1545 sq. ft on the standalone basis of dumb notings in the seized document, viz. Annexure A3 – Page 4, which as observed by us hereinabove had been dislodged by the assessee on the basis of clinching material. Accordingly, in the backdrop of our aforesaid deliberations the adverse inferences and the consequential addition made by the lower authorities as regards the alleged on-money of Rs. 200 lac (supra) is herein vacated in terms of our observations recorded hereinabove. The **Ground of appeal No. 1** raised by the assessee to the extent relatable to the aforesaid addition is herein allowed in terms of our aforesaid observations.

236. The **Ground of appeal No. 3** being general is dismissed as not pressed.

(B). ITA No. 2193/Mum/2019 (revenues appeal) :

237. We shall now take up the cross-appeal of the revenue for A.Y 2014-15. The revenue has assailed the impugned order of the CIT(A) on the following grounds before us :

> "(i). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 3,36,30,000/- made u/s 68 of the IT Act, 1961, by holding that the on-money is not part of the books of accounts maintained by the assessee?
>
> (ii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions of Rs. 3,36,30,000/- made u/s 68, in disregard to the inclusive definition of books of account in section 2(12A) of the Act, particularly when section 68 uses the word "books" and not "regular books" of account?
>
> (iii). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate that the assessee had not established identity of parties, genuineness of transactions and creditworthiness of parties?

(iv). Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition to 20% of on-money even though the assessee has failed to produce details of expenses incurred?"

238. As observed by us hereinabove, the A.O had brought to tax the entire amount of on-money receipts of Rs. 3,36,30,000/- u/s 68 of the Act in the hands of the assessee company. On appeal, the CIT(A) had inter alia observed that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones, therefore, the same could not have been brought to tax u/s 68 of the Act. Aggrieved with the aforesaid observation of the CIT(A) the revenue has carried the matter in appeal before us. It is the claim of the revenue that the view arrived at by the CIT(A) is in complete disregard of the fact that the definition of the term "books of account" in Sec. 2(12A) of the Act is an inclusive definition. Also, it is the claim of the revenue that as the term used in Sec. 68 is "books" and not the "regular books" of account, therefore, the view arrived at by the CIT(A) by drawing support from the definition of "books of account" as contemplated in Sec. 2(12A) cannot be sustained and is liable to be vacated. Further, it is the claim of the revenue that as the assessee had failed to establish the identity of parties, genuineness of transactions and creditworthiness of the parties thus, no infirmity can be related to the addition of the impugned amounts under Sec. 68 of the Act. Lastly, the revenue is aggrieved with the restriction of the addition of the on-money receipts to 20% of the entire amount by the CIT(A).

239. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial

pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the grievance of the revenue that the CIT(A) had erred in concluding that as the amount of on-money was not found credited in the books of account of the assessee but was found noted on some loose sheets and in the data retrieved from the mobile phones in the course of the search proceedings, therefore, it could not have been brought to tax u/s 68 of the Act is concerned, the same, we find had been adjudicated by us while disposing off the appeal of the revenue in the case of a group concern of the assessee, viz. M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17. As the facts and issue involved in the present appeal of the captioned assessee remains the same, therefore, our order passed in context of the issue in question while disposing off the revenue's appeal in the case of M/s Ekta Housing Pvt. Ltd. in ITA No. 2186/Mum/2018 in A.Y 2016-17 shall apply mutatis mutandis for disposing off the issue in hand. Accordingly, on the same terms and reasoning we uphold the order of the CIT(A) to the extent she had concluded that the impugned addition of on-money could not have been made u/s 68 of the Act. The **Grounds of appeal Nos. (i) to (iii)** raised by the revenue are dismissed.

240. As we had while disposing off the assessee's appeal in ITA No. 1743/Mum/2019 for the year in question i.eA.Y 2014-15 held that no part of the addition w.r.t on-money receipts of Rs. 200 lacis liable to be sustained, therefore, the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our aforesaid adjudication of the issue in hand and is accordingly rendered as infructuous. Insofar the addition made by the A.O as regards the impugned on-money

receipts of Rs. 2.20 crore is concerned, the said issue while disposing off the asessee's appeal in ITA No. 1743/Mum/2019 had been restored by us to the file of the A.O for fresh adjudication. At the same time, while disposing off the assessee's appeal in ITA No. 1743/Mum/2019 for A.Y 2014-15,we have principally upheld the view taken by the CIT(A) that the addition w.r.t on-money receipts was liable to be restricted to the extent of the element of net income therein involved,and had further directed that in case the assessee is found to have received the on-money pertaining to the property in question, i.e admeasuring 5180 sq. ft on the 7th Habitable 12th floor in its Pali Hill project, viz. "The One", then, the A.O shall restrict the addition to the extent of 15% of such on-money receipt. In the backdrop of our aforesaid observations the grievance of the revenue that the CIT(A) had erred in restricting the addition to 20% of on-money receipts is subsumed in our adjudication of the said issue and observations therein recorded. The **Ground of appeal no. (iv)** raised by the revenue is accordingly dismissed.

241. The appeal filed by the revenue is dismissed.

242. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations, while for the appeal of the revenue is dismissed.

Order pronounced in the open court on 24/05/2021.

Sd/-	Sd/-
S. Rifaur Rahman	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date:24.05.2021

Copy of the Order forwarded to :
1.Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR “E” Bench, ITAT, Mumbai
6. Guard File

Dy./Asst.Registrar
ITAT, Mumbai