

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

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

**ITA Nos.6303 - 6304/MUM/2019
(Assessment Years: 2012-13 & 2013-14)**

DCIT, CC-8(4)
Room No. 659,
6th Floor, Aayakar Bhavan,
M.K. Road,
Mumbai – 400 020

M/s Sitara Builders Pvt. Ltd.
Vs. 112-122, Hira Bhavan,
Raja Ram Mohan Roy
Road, Prathana Samaj,
Mumbai-04

PAN No. AABCS4975L

Appellant

Respondent

Appellant by : Shri Vijay Kumar Menon, D.R
Respondent by : Shri A.K. Ghosh, A.R

Date of Hearing : 01.04.2021
Date of pronouncement : 31.05.2021

ORDER

PER S. RIFAUR RAHMAN, AM:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-47/50, dated 23.07.2019 for A.Y. 2012-13 and A.Y. 2013-14. As the issue involved in the captioned appeals are inextricably interlinked or in fact interwoven and having common issue, the same are therefore being taken up and disposed off by way of a consolidated order.

2. Brief facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was carried out on 26.05.2011 by the DDIT (Inv.), Unit - 111(3), Mumbai at the residences, business premises and lockers of M/s Rohan Developers Pvt. Ltd. and other companies and entities promoted by Shri Harresh N. Mehta and Late Shri Jitendra N. Mehta along with Directors and employees of the companies. All these entities are commonly herein-after referred as "Rohan Group". The assessee is also one of the entity of the

"Rohan group". The search action was also carried out at Registered Office of the assessee company located at II, 2nd floor, Govardhan Building, 12-14, Dr. Parekh Street, Prarthana Samaj, Mumbai - 400 004.

2. The "Rohan Group", headed by Mr. Harresh N. Mehta, is one of the leading builders of the South and Central Mumbai and mainly engaged in construction of residential buildings and redevelopment of old & dilapidated buildings. The group has re-developed over 50 buildings and constructed over 2.5 million sq. ft. residential space. Apart from M/s Rohan Developers Pvt. Ltd, other main concerns are M/s Goodwill Properties Pvt. Ltd., M/s. Silver Arch Builders & Promoters Pvt. Ltd. The main persons in this group are Mr. Harresh N. Mehta and Late Mr. Jitendra N. Mehta. Apart from these persons, Mr. Sameer Shah, Mr. Haresh M. Mehta, Mr. Riyush Vora, Mr. Kalpesh Mehta, Ms. Chaulla Joshi and Ms. Ananya Karnani are other key persons of the group who were handling financial, sales and other important functions of the business activities of "Rohan group".

3. During the course of search, unaccounted cash/jewellery and incriminating documents indicating suppression of sales etc. were found and seized as per panchnamas prepared. In the course of search proceedings, Late Shri Jitendra Mehta (demised subsequent to the search) in his statement recorded on oath under section 132(4) of the Act, on 27-5-2011, admitted undisclosed income of Rs.100 crores in respect of various entities of the "Rohan group". He again reconfirmed the said disclosure in his statement recorded on 22-7-2011. Later on, the break-up of the disclosure was submitted vide letter dated 01.08.2011, the details of disclosure made by late Shri Jitendra Mehta is as under:

Sr. No.	Name of the Entity	Particular of Income	Assessment year	Amount (Rs.)
1.	Jitendra Mehta	Undisclosed Income and peak negative cash	2006-07	23,44,692
			2007-08	10,62,72,672
			2008-09	12,09,72,295
			2009-10	2,22,47,743
			2010-11	11,78,972
			2011-12	1,94,877
			2012-13	86,17,859
2.	Jitendra Mehta	Page 15, Ann. A-1 seized from Residence.	2007-08	65,000
3.	Jitendra Mehta	Disputed demand for additional interest by lenders	2011-12	17,20,35,681
4.	Jitendra Meht	Disputed demand for Additional interest by lenders of Shivalik	2011-12	45,99,142

5.	Harresh Mehta	Horse racing loss	2011-12	1,50,00,000
6.	Harresh Mehta	Pune Property	2011-12	2,00,00,000
7.	Mindset Estates Pvt. Ltd	Profit from project	2011-12	34,00,00,000
8.	Rohan Developers Pvt. Ltd.	Page 112, Ann. A-1 seized from office	2011-12	1,50,00,000
9.	Manav Builders Pvt. Ltd.	Page 97, Ann. A-1 seized from office	2006-07	7,00,000
10.	Manav Builders Pvt. Ltd.	Page 161, Ann. A-4 seized from office	2008-09	10,00,000
11.	Jitendra Mehta	Cash seized from Resident		8,50,000
12.	Rohan Office	Cash seized from office		25,86,687
13.	Group	To cover up any errors/omission/discrepancies, etc.		14,19,84,380
	Total			100,00,00,000

4. The assessee company is primarily engage in the business of real estate development activities. The assessee recognizes its income from construction or property development activity on Percentage Completion Method. During the year under consideration, assessee has undertaken redevelopment of project name Moksh Plaza situated at Borivali (W).

5. The assessee filed the return of income on 30-09-2012 declaring total income at Rs. 26,99,750/-. Thereafter, notices u/s 143(2) dated 30-09-2013 and 142(1) dated 21-10-2013 along with detailed questionnaire were issued and duly served on the assessee. In response, A.R of the assessee filed the relevant information as called for by the A.O. Based on the findings in the search u/s 132 of the Act in the case of Rohan Group Concerns and their admission of additional income, AO made an addition of 30% of the Sales on account of on-money and also disallowed 25% of the conveyance charges and 30% of telephone charges added back in the hands of the assessee.

6. Aggrieved with above order the assessee preferred an appeal before the CIT(A) and filed detailed submission before Ld CIT(A).

7. Ld.CIT(A) after considering detailed submissions of the assessee and also by relying upon various judicial precedents including decision of ITAT, Special Bench decision in the case of All Cargo Global Logistics vs DCIT I.T.A Nos. 5018 to 5022 & 5059/M/10, Ld CIT(A) held that it was clear from the records that necessary condition to issue notice u/s 153C is that money, bullion, jewellery or other valuable article or thing or books of account belonging to a person other than the person searched, should have been seized or requisitioned. Further, as per circular No.24/2015(F.No.279-Misc-140-2015-ITJ), the issue of satisfaction of the AO through recording of a satisfaction has also been clarified to be mandatory. Ld.CIT(A) observed that in the instant case, on perusal of the impugned order indicates that excess amount of Rs.25,86,687 was found at 112-122, Hira Bhavan, Rajaram Mohan Roy Road, Prarthana Samaj, Mumbai, but the assessee explained that the said amount was actually seized from the residential premises

of late Shri Jitendra Mehta, director and he had duly admitted said amount in his individual capacity. He observed that except this, there is nothing on record for the impugned year to say that any money, bullion, jewellery or other valuable article or thing or books of account belonging to the assessee was seized or requisitioned as a result of search. Further he observed that with regard to the seized paper on page 114, Annexure A-I on perusal of the same shows that there is no mention of the assessee company or the project undertaken by the assessee. During the year under consideration, as observed by the AO in the impugned assessment order, the assessee company has executed the project name 'Moksh Plaza' and this name did not find mention on page 114 of Annexure A-I. Thus, it is very clear from the above facts that seized paper found during the course of search cannot be considered belonging to the assessee. Ld.CIT(A) deleted addition made by the AO towards estimation of on-money with the following observations:-

15.17 The matter travelled to the Hon'ble Appellate Tribunal, which had decided the same issue of on-money on sale of flats, vide it's order dated 01.03.2019. This was a Departmental Appeal against the order of CIT (A) and the CIT(A) had ruled in favour of the assessee by deleting the addition on account of on-money. It may be noted that the background on which addition was made was the same search operation dated 26.05.2011 conducted on the Rohan Group. Further, the additions were also based on the same statement given by Shri. Haresh M. Mehta, wherein Shri Mehta had acknowledged that 30% of on-money had been accepted over and above the registered value of the agreement. I have also noted that the AO had also relied on the same statement of Mrs. Chaula Joshi and Mr. Vijay Jasani. The contentions of the AO in that case were also the same as in the Appellant's present case. In that case also, reliance had been placed on the seized Page No. 114, confessional statement recorded u/s 132(4) of the Act, delay in filing of retraction of statements etc.,

15.18. The Hon'ble Tribunal held that the statements of the employees, in Search and seizure cases, can only be used if they are supported by corroborative evidences. The department could not point out the evidence proving the receipt of alleged On-money. The Hon'ble ITAT in it's order in the case of Goodwill Properties Pvt. Ltd. had also relied in the case of DCIT Vs Silver Arch Builders and Promoters, which has been quoted extensively in the order. The relevant extract of the aforementioned case of M/s Goodwill Properties Private Limited is reproduced as under-

"15. We have perused the available material. We find that the FAA has given a categorical finding of fact that no incriminating material was found during the search and seizure operation that could justify the addition made by the AO. She has analyzed the page number 114 that was seized by the authorized party carrying out the search proceedings. It is very clear that neither the name of the assessee nor the name of the project is appearing in the paper. The assessee had objected before

the AO that the statements of the employees were not given to it. We do not know as to whether same were made available to the assessee or not. The statements of the employees, in search and seizure cases, can be used if they are supported by some kind of collaborative evidence. On a specific query by the bench to the DR about supporting evidence proving the receipt of alleged on money, she could not refer to any material. As the assessment for the AY. 2007-08 was not pending, so, without some incriminating material the AO should not have made the addition to the total income of the assessee. The FAA had taken notice of the order of the special bench and dismissal of the Departmental appeal by the Hon'ble Bombay High Court and had decided the issue. In our opinion, her order does not suffer from any legal or factual infirmity. So, confirming the same, we decide effective ground of appeal (GOA-1 &2) against the AO.

16. After having gone through the facts of the present case and also perusing the orders of the Coordinate Bench of ITAT in the case of group concern with regard to the same search, we are also of the view that the statements of the employees, in search and seizure cases, can be used only if they are supported by some kind of collaborative evidence. However, Ld. DR could not point out the evidence proving the receipt of alleged on money. As the assessment for the AY. 2008-09 was not pending, so, without some incriminating material, the AO should not have made the addition to the total income of the assessee. That the order of Ld. CIT(A) does not suffer from any legal or factual infirmity. Moreover, taking into consideration, the decision of the Coordinate Bench of ITAT in the case of group concern and also in order to maintain judicial consistency, we apply the same findings in the present case which are applicable mutatis mutandis. Resultantly this ground raised by the revenue stands dismissed."

15.19 I have also examined the orders passed by the various judicial authorities in the case of Silver Arch Builders & Promoters which is a group concern of the Appellant on this issue. The CIT(A) in its order in the case of Silver Arch Builders & Promoters for an earlier year had decided the issue of on money in her appellate order dated 29.02.2016. The issue dealt by her in that appeal is identical and based on the same evidence as in the case of the Appellant i.e., Page No. 114 of Annexure 1. The Ld. CIT(A) referred to the case of All Cargo Global Logistics Ltd. of the Special Bench of the Tribunal and held that in cases where there had not been any abatement of assessment, the assessment u/s. 153A of the Act could be made on the basis of incriminating material found during the course of search. The perusal of the statements of the employees reflected that there was no specific mention of receipt of on money, that the impugned assessment was not based on any incriminating material pertaining to the assessee seized during the search, that the addition made on account of on money was not emanating from the material found and seized during the search

action. Accordingly, the addition made by the AO on the issue of on-money was deleted by the Ld. CIT(A).

15.20 Upholding the decision of CIT(A), the Hon'ble ITAT has decided this issue in favour of the Appellant. The relevant extract of the order of the Hon'ble ITAT in the appellant's own case, ITA No. 3126 and 3163/MUM/16 is reproduced below:-

During the course of hearing before us, the Departmental Representative stated that the employees of the assessee had accepted the fact that on money at the rate of 30% of the registered value was accepted by the company. As stated earlier, none appeared on behalf of the assessee.

We have perused the available material We find that the FAA has given a categorical finding of fact that no incriminating material was found during the search and seizure operation that could justify the addition made by the AO. She has analysed the page number 114 that was seized by the authorized party carrying out the search proceedings. It is very clear neither the name of the assessee nor the name of the project is appearing in the paper. The assessee had objected before the AO that the statements of the employees were not given to it. We do not know as to whether same were made available to the assessee or not. The statements of the employees, in search and seizure cases, can be used if they are supported by some kind of collaborative evidence. On a specific query by the bench to the DR about supporting evidence proving the receipt of alleged on money, she could not refer to any material. As the assessment for the A.Y. 2007-08 was not pending, so, without some incriminating material the AO should not have made the addition to the total income of the assessee. The FAA had taken notice of the order of the special bench and dismissal of the Departmental appeal by the Hon'ble Bombay High Court and had decided the issue. In our opinion, her order does not suffer from any legal or factual infirmity. So, confirming the same, we decide effective ground of appeal (GOA-1&2) against the AO.

ITA/3163/Mum/2016, AY. 2008-09:

All the facts for the year under consideration are identical to the facts of earlier A.Y., except for the amount of addition. Following our order for the AY.2007-08, we decide, effective ground of appeal against the AO.

As a result, appeals filed by the AO for the both AY.s stand dismissed.

15.21 I have noted that the above decisions of Hon'ble ITAT in the case of M/s Goodwill Properties Private Limited and Silver Arch Builders & Promoters, both are identical to the facts of the present case at hand. In these case also, there was no mention in the seized Page No. 114 of Annexure 1 of on-money w.r.t. the projects,

which were developed by M/s Goodwill Properties Pvt. Ltd. or Silver Arch Builders & Promoters.

15.22 I have noted that the above decisions in the case of Goodwill Properties Private Limited and Silver Arch Builders & Promoters, both are identical to the facts of the present case at hand. In these case also, there was no mention in the seized Page No. 114 of Annexure 1 of on-money w.r.t. the projects, which were developed by M/s Goodwill Properties Pvt. Ltd. or Silver Arch Builders & promoters.

15.23 In view of these facts and circumstances, the decisions of M/s Goodwill properties Pvt. Ltd and Silver Arch Builders & Promoters will therefore apply and in all aspects to the facts of the present case. It is therefore held that the addition in respect of on-money received in sales made needs to be deleted. Since the presumption of charging on-money can't be extended to the projects, which don't find mention in the seized document. Hence, the addition on account of on-money added by the AO for projects in the Appellant's case needs to be deleted.

15.24 The assessment year-wise sales made in the case of appellant, alongwith other relevant details is tabulated, as under:-

Assessment Year	Names of Project	Total Sales
	Moksha Plaza	
2012-13	71,650,000	71,650,000

15.25 It may be noted from the above tabular data that in the case of Appellant Company, for the current year under consideration viz. A.Y. 2012-13, the sales made are not with respect to any projects which find mention on Page No. 114 of Annexure 1 of seized document. Accordingly, there is no occasion for making any addition with regard to on money in the Appellant's case for A.Y. 2012-13 and hence, the addition made by the AO on this account is hereby, deleted.

8. Aggrieved with the above order revenue is in appeal before us raising following ground of appeal:

- "1. The Ld. CIT(A) failed to appreciate that the transactions recorded in the seized documents have not been explained by the assessee at the time of assessment proceedings.

2. The Ld. CIT(A) failed to appreciate that statements recorded from the persons associated with the group, mainly Mr. Haresh Mohanlal Mehta, one of the director stated that the assessee company has been indulged in accepting the cash payment @ 30% over & above the agreement value, which works out to be Rs.1,68,03,518/-.
3. The Ld. CIT(A) failed to appreciate that the statements recorded from the sales persons suggested receipt of cash by the assessee company over & above the agreement value.
4. The Ld. CIT(A) erred in deleting the addition made on account of disallowance @ 10% of depreciation, Speed Boat Charges & speed Boat fuel Charges as the assessee company failed to establish that the above expenses were utilized wholly & exclusively for the business of the assessee company.”

9. Ld. DR brought to our notice findings of the assessing officer in detail. Further he submitted that the policy of the group applied to all the group uniformly. He submitted that the findings of the A.O is proper as per facts. On the other hand Id. A.R brought to our notice coordinate bench decision in assessee’s own case in ITA No. 4031/Mum/2016 for assessment year 2009-10 which is placed on record in the paper book. He submitted that this issue is covered in favour of the assessee.

10. Considered the rival submission and material placed on record. We notice that the similar issue under consideration is already considered by the coordinate bench in the assessee’s own case for A.Y. 2009-10, the relevant extract of the decision is reproduced below:

“14. We have heard both the parties, perused materials available on record and gone through the orders of authorities below, along with case laws cited by the Ld.AR for the assessee. The solitary issue that needs to be resolved in this bunch of appeal is addition made by the AO towards on-money in cash on sale of flats. The AO has estimated 30% on total sales declared by the assessee for the relevant financial year towards receipt of on-money in cash over and above normal sales declared in the books of account on the basis of statement recorded from Shri Haresh M Mehta, director of M/s Rohan Developers Pvt Ltd. at the time of search u/s 132(4) of the Act. The AO had also taken support from statement of certain key employees, who looked after day today affairs of the assessee group. According to the AO, the contention of the assessee cannot be accepted that there is no evidence to establish that on-money is received in respect of its projects, because the statement of director and other employees threw light on the modus operandi of the assessee group, as per which, the group was indulging in receipt of on-money on sales which is 30% over and above the normal sales price declared in the registered document. The AO, further, observed that this fact is further strengthened by enormous material found during the course of search, including cash seized from premises of the group and other assets. The assessee had also admitted Rs.100 crore undisclosed income in various group companies name on the basis of incriminating material found as a result of search and also to cover up any errors / omissions / discrepancies, etc. There are certain specified seized materials, which clearly indicated undisclosed income. Therefore, he came to the conclusion that there is no merit in the arguments of the assessee that there is no

evidence to establish receipt of on-money. The AO further observed that when the material gathered during the course of search coupled with statement of directors clearly established the fact of receipt of on-money, it is very essential to infer that the group as a whole was indulging in this kind of modus operandi and accordingly he estimated 30% on total sales declared for the year towards on-money receipt and made addition to the total income.

15. The facts with regard to declaration of undisclosed income in various group company names towards omissions / errors, etc. are not disputed. It is also not in dispute that during the course of search cash and other unaccounted income pertaining to the group was found and seized. But, the AO, nowhere in his assessment order, had brought out facts to the effect that the seized material found during the course of search has a direct nexus with the assessee and its project carried out during the year under consideration. Although, the AO has referred to the seized material page 114 of Annexure A-1, to argue that there are seized materials, which indicated collection of on-money from sale of flats, but the assessee has rebutted the allegation of the AO with necessary evidence and also proved that seized material page 114 of Annexure A-1 is nothing to do with business activity of the assessee and its project undertaken during the year. Insofar as seizure of cash during the course of search at No.112 - 122, Hira Bhavan, Rajaram Mohan Roy Road, Prarthana Samaj, Mumbai, the assessee made it clear that said amount has been seized from the residence of Shri Jitendra Mehta, director and this fact has been reflected in the Panchanama drawn during the course of search and also the same has been disclosed to tax in his individual capacity. As regards statement of director, Shri Haresh M Mehta and other employees of the group, the assessee has filed retraction statements alongwith affidavits filed by them before the AO and also explained under what circumstance they have given admission in the statement recorded u/s 132(4) of the Act. The assessee also made it clear that neither Shri Haresh M Mehta, director, nor the employees from whom statements were recorded u/s 132(4) were ever authorised to conclude sales in respect of its projects. Therefore, on the basis of their statements recorded during the course of search, no adverse inference could be drawn against the assessee regarding receipt of on-money by extrapolation of seized material found during the course of search which belonged to some other concerns.

16. Having deliberated at length on the arguments of both sides, we find that although the AO has tried to establish nexus between incriminating material found during the course of search and other undisclosed asset to the assessee, but he has failed to prove the nexus between seized materials and business activity of the assessee and also receipt of on-money. Unless, the AO has brought out some cogent materials or evidences which establish receipt of on-money from sale of flats, no addition could be made, that too, on adhoc estimation of on-money on the basis of regular sales declared by the assessee. We further note that although the AO has placed his reliance on the statement of Mr. Haresh M Mehta recorded on 05-06-2011, but on perusal of affidavit of Shri Haresh M Mehta dated 11-02-2014, it is seen that reference to on-money is made by Shri Haresh M Mehta only in the answer to question No.12 and that such reference is general inasmuch as Shri Haresh M Mehta stated that he looked after project clearance and tenant association matter and that these areas required lot of cash which was spent through on-money taken in cash on sale of flats. Even in respect of statements of employees of group, nowhere they have specifically attribute the name of the assessee with reference to receipt of on-money while answering

questions to statement recorded during the course of search. All along the director as well as the employees made a general statement about receipt of on-money with reference to a question posed by the Investigation wing without any reference to particular seized material found as a result of search. Similarly, the AO has taken circumstantial evidence of cash and unexplained jewellery found during the course of search to argue that the assessee is in the habit of suppression of sales by showing under valuation which was used in its business, but on perusal of cash and other assets found during the course of search it was very clear that the cash was found from 112-122, Hira Bhavan, Rajaram Mohan Roy Road, Prarthana Samaj, Mumbai, which was common premises for four entities of the assessee group and that the total cash found from various premises was almost equivalent to cash balance maintained in the books of account. Although, there is a difference of cash balance of Rs.25,86,687, the same has been offered to tax in the hands of directors and also M/s Rohan Developers Pvt Ltd. Neither the Panchanama drawn during the course of search nor the statement recorded during search indicated that cash and other unaccounted assets found during the course of search belonged to the assessee. The Ld.AO has even failed to establish nexus between incriminating materials found during the course of search to the business of the assessee. Unless there is a direct nexus between incriminating material found during the course of search coupled with statement recorded from the director and employees of the group, merely on the basis of admission of certain parties, that too, after retraction of such statements by the parties, addition cannot be made towards receipt of on-money on adhoc basis taking a clue from statement of those persons. No doubt, estimation is possible in assessment proceedings provided the AO is having sufficient information with him regarding suppression of sales or receipt of on-money. In a case, where the department is in possession of material regarding suppression of sales or receipt of on-money for part of a period, then for the remaining period, the AO may go for estimation by taking into account various parameters including certain degree of estimation. But, then this cannot be extended or enlarged to the extent of extrapolation of information to another assessee, though the same belongs to one group, unless there is specific material in the possession of the AO with regard to suppression of sales or receipt of on-money. Further, statement recorded during the course of search including confession may be a best piece of evidence, but that by itself would not be conclusive evidence unless such statement is further supported by evidence in the form of incriminating material found during the course of search. The AO before estimating income has to bring on record some cogent materials to justify his action. In this case, on perusal of facts available on record, it is abundantly clear that nowhere the AO linked the seized material found during the course of search to the income estimated towards on-money received from sale of flats. While it is true that retraction by itself does not provide an impenetrable shield to the concerned person, but it is also equally true that a statement per se by itself is not conclusive evidence. This legal proposition is fortified by the decision of Hon'ble Supreme Court in the case of CIT vs S Kader Khan Sons (2013) 352 ITR 480(SC) where it was categorically held that admission is a best piece of evidence, but that by itself is not a conclusive evidence unless it is supported by further evidence in the form of incriminating materials. This legal proposition is further fortified by the decision of ITAT, Amritsar Bench in the case of ACIT vs Janakraj Chauhan (supra) where it was held that admission at the time of search is important, but not conclusive. The Tribunal further held that addition should be considered on

merits, rather than on the basis of sworn statement made by the assessee. The Hon'ble Bombay High Court in the case of CIT vs Uttamchand Jain (supra) had considered the admission and subsequent retraction of the assessee and held that a retracted confession can be relied upon only if there is independent and cogent evidence to corroborate the statement. In this case, the AO has failed to bring any corroborative evidence to support the statement of directors as well as employees in order to support his action of estimation of on-money on sales declared by the assessee for the relevant financial years. Therefore, we are of the considered view that the AO was erred in estimating adhoc on-money received from sale of flats on the basis of statement of some employees even after such statement has been retracted and also nothing on record to indicate that the assessee is in receipt of on-money.

17....

18. In this case, it is abundantly clear that there is nothing on record to indicate that there is a reference to seized material found during the course of search vis-a-vis addition made by the AO towards estimation of 30% on-money on total sales declared for the year. The Ld.CIT(A), after considering all these aspects, has rightly come to the conclusion that the addition made by the AO cannot be sustained either on jurisdictional issue or on merits. Hence, we are of the considered view that there is no reason to interfere with the findings of the Ld.CIT(A) insofar as deletion of addition made by the AO towards estimation of on-money @30% on sales declared by the assessee for the relevant assessment years. Hence, we are inclined to uphold the findings of Ld.CIT(A) and dismiss the appeal filed by the revenue.”

11. Considering the above findings of the coordinate bench, it is clear that the AO has not brought on record any material to link the document found during search to the projects handled by the assessee during the assessment year, for that matter in any assessment year. Therefore, the ground numbers 1,2 and 3 raised by the revenue are dismissed.

12. With regard to the ground no. 4 no argument is forwarded by both the parties. Accordingly, this ground is dismissed as such.

13. In the net result, the appeal filed by the revenue for both assessment years under consideration i.e., for A.Y. 2012-13 and 2013- 14 are dismissed.

Order pronounced in the open court 31.05.2021.

Sd/-

Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 31.05.2021
PS: Rohit

Sd/-

S.Rifuar Rahman
(ACCOUNTANT MEMBER)

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
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BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai