

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER  
(Virtual hearing)**

**IT(SS)A Nos.267 & 268/Ind/2016  
Assessment Years:2011-12 & 2012-13**

ACIT, Central-2 Indore	<b>बनाम/ Vs.</b>	Shri Mohanlal Chugh Khasra No.84/3/5, Grand Exotica Near Agrawal Public School, Bicholi Mardana Road, Indore
(Appellant)		(Respondent)
P.A. No.ADOPC2849Q		

**ITA No.239/Ind/2017  
Assessment Year:2013-14**

ACIT, Central-2 Indore	<b>बनाम/ Vs.</b>	Shri Mohanlal Chugh Khasra No.84/3/5, Grand Exotica Near Agrawal Public School, Bicholi Mardana Road, Indore
(Appellant)		(Respondent )
P.A. No.ADOPC2849Q		

**IT(SS)A No.77/Ind/2017  
Assessment Year:2011-12**

ACIT, Central-2 Indore	बनाम/ Vs.	Smt. Reena Devi Chugh Khasra No.84/3/5, Grand Exotica Near Agrawal Public School, Bicholi Mardana Road, Indore
(Appellant)		(Respondent )
P.A. No.ABMPC2562Q		

**IT(SS)A No.22/Ind/2017**  
**Assessment Year: 2012-13**

ACIT, Central-2 Indore	बनाम/ Vs.	Shri Nitesh Chugh Khasra No.84/3/5, Grand Exotica Near Agrawal Public School, Bicholi Mardana Road, Indore
(Appellant)		(Respondent)
P.A. No.ADKPC7515P		

**ITA No.122/Ind/2017**  
**Assessment Year:2013-14**

ACIT, Central-2 Indore	बनाम/ Vs.	Shri Nitesh Chugh Khasra No.84/3/5, Grand Exotica Near Agrawal Public School, Bicholi Mardana Road, Indore
(Appellant)		(Respondent )
P.A. No. ADKPC7515P		

**ITA No.238/Ind/2017**  
**Assessment Year:2013-14**

ACIT, Central-2 Indore	बनाम/ Vs.	M/s Chugh Realty Office No.503, Plot No.305-306, Orbit Mall, Scheme No.54, A.B. Raode, Indore
(Appellant)		(Respondent )
P.A. No. AAGFC0376F		

Appellant by	Shri S.S. Mantri, CIT-DR
Respondent by	S/Shri Anil Kamal Garg & Arpit Gaur, ARs

<b>Date of Hearing:</b>	<b>24.05.2021</b>
<b>Date of Pronouncement:</b>	<b>23.08.2021</b>

## आदेश / O R D E R

### **PER MANISH BORAD:**

The above captioned appeals at the instance of Revenue are directed against the respective orders of Ld. Commissioner of Income Tax(Appeals)-III, (in short 'CIT(A)'), Indore dated 29.09.2016, 16.12.2016 24.10.2016 & 30.11.2016.

Grounds of appeal in IT(SS)ANo.267/Ind/2016, Shri Mohanlal Chugh

1. *“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.1,89,38,425/- on account of on-money received on sale of various units in ‘The View’ Project and Rs.32,70,000/- on account of on-money received on sale of various units in ‘Almas Elements’ Project without appreciating the facts and evidences brought into light by the AO during assessment proceedings.”*

Grounds of appeal in IT(SS)ANo.268/Ind/2016, Shri Mohanlal Chugh

1. *“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.27,30,000/- on account of on-money received on sale of various units in ‘The View’ Project and Rs.3,65,88,500/- on account of on-money received on sale of various units in ‘Almas Elements’ Project without appreciating the facts and evidences brought into light by the AO during assessment proceedings.”*

Grounds of appeal in ITANo.239/Ind/2017, Shri Mohanlal Chugh

1. *“On the facts and in the circumstances of the case the Ld. CIT(A)*

*erred in deleting the addition made by the AO of Rs.1,40,74,000/- on account of on-money received on sale of various units in 'Almas Element' Project and Rs.1,75,00,000/- on account of unexplained investment in property and Rs.3,79,04,952/- on account of undisclosed investment for purchase of plots in 'Pulak City' project without appreciating the facts and evidences brought in to light by the AO during assessment proceedings.*

Grounds of appeal in IT(SS)ANo.77/Ind/2017, Smt. Reena Devi Chugh

1. *"On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.20,85,427/- on account of on-money received on sale of various units in 'The View' Project and Rs.1,89,38,425/- on account of on-money received on sale of various units in 'The View' Project and Rs.2,49,482/- on account of unaccounted investment in house property without appreciating the facts and evidences brought into light by the AO during assessment proceedings."*

Grounds of appeal in IT(SS)ANo.22/Ind/2017, Shri Nitesh Chugh

1. *"On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition Rs.2,08,00,000/- made by the AO on account of on-money received on sale of agricultural land without appreciating the facts and evidences brought into light by the AO during assessment proceedings."*

Grounds of appeal in ITANo.122/Ind/2017, Shri Nitesh Chugh

1. *"On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition Rs.3,39,000/- made by the AO on account of cash loan given from unaccounted income and Rs.1,75,48,900/- on account of unexplained investment in purchase of plots without appreciating the facts and evidences brought into light by the AO during assessment proceedings."*

Grounds of appeal in ITANo.238/Ind/2017, M/s Chugh Reality

1. *"On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.22,71,000/- on account of sale consideration from the sale of units of 'The Mark Project and Rs.5,26,74,600/- on account of unexplained investment*

*in ‘Pulak City’ project and Rs.3,81,11,476/- on account of undisclosed investment in ‘Sun City’ project without appreciating the facts and evidences brought in to light by the AO during assessment proceedings.”*

2. First, we shall take up the departmental appeals filed in the case of Mohanlal Chug for the assessment years 2011-12 to 2013-14. Facts, in brief, are that the assessee is an individual and a key person of one real estate group of Indore titled as ‘Chugh Group’. Search and Seizure operations u/s. 132 of the Act were initiated in the Chugh Group by the DDIT(Inv.)-II, Indore on 21-09-2012. Subsequently, notices u/s 153A of the Act were issued to the assessee and in response, the assessee furnished returns for respective assessment years. Thereafter, the case of the assessee, for all three assessment years was selected for scrutiny and necessary notices u/s 143(2) and 142(1) of the Act served upon the assessee. Finally, the Assessing Officer framed the assessments for A.Ys. 2011-12 and 2012-13 u/s 153A r.w.s. 143(3) of the Act and for A.Y. 2013-14 u/s 143(3) of the Act, by passing a common Order dated 30.03.2015.

3. Being aggrieved, the assessee filed appeals for all three assessment years before the Ld. CIT(A) and the Ld. CIT(A) deleted the additions made by the AO.

4. Felt aggrieved, the Revenue is in appeals before this Tribunal for all the three assessment years. As all three appeals relate to the same assessee and the issues raised are common, they were heard together and are being disposed off by this common order for sake of convenience and brevity.

**Ground No. 1 for A.Y. 2011-12:**

5. This ground of appeal of the Revenue pertains to additions of Rs.1,89,38,425/- and Rs.32,70,000/- made by the Assessing Officer on account of on-money received on sale of units in 'The View' and 'Almas Elements' projects respectively of the assessee. Briefly stated facts as culled out from the records are that the assessee along with his wife namely Smt. Reena Devi Chugh had constructed many multi-storied housing units in the name of 'The View' near Laad Colony, Indore during F.Ys. 2009-10, 2010-11 and 2011-12. The Assessing Officer noted that on examination during the course of search and seizure, the receipts of Rs.6,33,12,350/- as per registered sale deeds from sale of units in 'The View' project were not

found recorded in the regular books of account. The Assessing Officer further noted that the taxable profit cannot be less than 30% of the total sales consideration as per registered sale deeds. The Assessing Officer also noted that in real estate business, normally the actual sales considerations are at least twice of the amounts shown in the registered sale deeds. The Assessing Officer further noted that 19% profit shown to have been derived by the assessee on sale of units in “The View Project” is contrary to the actual scenario. The AO made a comparison of “The View” project with one residential project of the assessee titled as “Almas Elements”. The Assessing Officer further added that the cost of construction would have been lower in commercial project as the quality of finishing varies drastically in both the type. The Assessing Officer also noted that the various members of the group were involved in receiving on-money in land transactions. As per the Assessing Officer, some incriminating documents were found by the Search Party in this regard and Shri Nitesh Chugh had also confirmed the receipt of on-money in his case. In another case, it was found that Shri Vivek Chugh had received cash of Rs.35 lakhs and the same was not accounted for in his books of account. Accordingly, the Assessing

Officer estimated the net profit of the assessee and his wife Smt. Reena Devi Chugh from 'The View Project' @ 30% and made an addition in the assessee's income on account of short-term capital gain. The AO also noted that assessee and the co-owner might have received on-money equivalent to the value stated in the registered sale deeds, on sale of various units in "The View" Project and therefore, he made additions equivalent to the amount stated in registered sale deeds by dividing such amount between the assessee and his wife equally in three assessment years viz. A.Ys. 2010-11 to 2012-13 in the same proportion in which the sale registries were executed by the assessee [Rs.1,89,38,425/- for A.Y. 2011-12 and Rs.27,30,000/- for A.Y. 2012-13]. In respect of one another project of the assessee titled as 'Almas Elements', the Assessing Officer noted that the assessee had sold many flats and duplexes in the name of 'Almas Elements' near Saket Nagar, Indore during F.Y. 2011-12 and F.Y. 2012-13. Again, in respect of this project too, the Assessing Officer noted that the amount of Rs.5,39,32,500/- as per registered sale deeds from sale of flats in 'Almas Elements' was not found recorded in the regular books of account of the assessee. The Assessing Officer again noted that normally the actual sales

considerations are at least twice the amount as per the registered deeds. Accordingly, the Assessing Officer made an addition of Rs.32,70,000/-, Rs.3,65,88,500/- and Rs.1,40,74,000/-, respectively, for A.Ys. 2011-12, 2012-13 and 2013-14 on account of on-money from sale of units in 'Almas Elements' project.

6. Being aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that although the assessee has himself claimed not to have maintained any regular books of account u/s 44AA of the Act, but the bills, vouchers and details in respect of the projects were duly produced before the Assessing Officer. The Ld. CIT(A) also noted that in the original returns u/s 139 as well as returns furnished in compliance to notices u/s 153A, the assessee has duly shown income from short-term capital gain from sale of units in 'The View' project. The Ld. CIT(A) noted that the Assessing Officer has added Rs.30 on account of profit and Rs.100/- as on-money received i.e. Rs.130/- on sales of Rs.100/- which is highly improbable and arbitrary in the line of this business. The Ld. CIT(A) also observed that the incriminating documents found in the hands of other members of the assessee's family have no relation with the

issue on hand. The Ld. CIT(A) further noted that the two projects 'The View' and 'Almas Elements' cannot be compared as the first one is commercial and the second is residential, they are situated at different locations and time period of construction is also different. The Ld. CIT(A) further observed that the assessee had produced all the bills and vouchers in support of cost of construction of the project and no defect or discrepancy in such bills and vouchers was found by the Assessing Officer. The Ld. CIT(A) noted that the assessee and his wife have jointly shown short term capital gain of Rs.1,20,21,991/- on deemed sales consideration of Rs.6,55,18,000/- u/s 50C which works out to 18.34%. Further, the assessee and co-owner have not claimed any other administrations expenses, financial expenses or depreciation as the assessee carried out the activities of development of project as an investor and not as a builder. The Ld. CIT(A) also noted that without bringing any corroborative evidence on record the profit of the project cannot be estimated @30%. In respect of the other project 'Almas Elements', the Ld. CIT(A) noted that the assessee has duly shown income from business in respect of sale of units in 'Almas Elements' in his original returns of income as well as returns furnished in response

to notices u/s 153A. The Ld. CIT(A) further noted that the assessee had shown income aggregating to Rs.3,21,08,829/- for A.Ys. 2011-12, 2012-13 and 2013-14 which is more than 30% of sale consideration of various units. The Ld. CIT(A) also found that the assessee had furnished a list showing complete name, address, PAN etc. of the buyers to whom the units in the 'Almas Elements' project had been sold and the Assessing Officer was requested to verify the actual amount of receipt of sale consideration from the buyers of properties. However, the Assessing Officer simply by rejecting the explanation and submissions of the assessee and disregarding all the documentary evidences made an addition equivalent to the amount of sales consideration which was getting reflected in the registered sale deeds. The Assessing Officer also assumed that the assessee had received the on-money component on the sale of flats belonging to the share of the developer. The Ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be

any presumption as regard to the understatement. Accordingly, the Ld. CIT(A) held that no effort has been made by the Assessing Officer for making any investigation or enquiry to substantiate his theory of receipt of on-money or estimation of net profit @30%. Finally, the Ld. CIT(A) deleted the additions so made by the AO in the assessee's income in respect of both 'The View' and 'Almas Elements' Projects of the assessee.

7. Being aggrieved with the Order of Ld. CIT(A), the Revenue is in appeal before this Tribunal. The ld. CIT-DR relied upon the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

8. We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not bring any corroborative material on record to justify the additions made by the Assessing Officer. We find that the assessee had duly shown the short-term capital gain from sale of units in 'The View' project and business income from sale of units in 'Almas

Elements' project in his original returns of income furnished u/s 139 of the Act. We further find that during the course of the assessment proceedings, the assessee had duly furnished all the necessary details, documents, bills, vouchers etc. in respect of both the projects before the Assessing Officer. We also find that the Assessing Officer has also not made any independent enquiry or investigation from the buyers of the property as regard to actual receipt of sale consideration despite specifically being insisted by the assessee during the course of the assessment proceedings. Further, the Assessing Officer has also not brought any incriminating material or evidence on record which could substantiate that the assessee has actually received any on-money from the sale of units in 'The View' and 'Almas Elements' projects. We also found that the assessee has duly shown the income by having regard to the provisions of section 50C of the Act. Therefore, we are of the considered view that the Assessing Officer has made the additions purely on his guess work and surmises which do not have any basis whatsoever. We do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, the action of the Ld. CIT(A) in deleting the additions of Rs.1,89,38,425/- and Rs.32,70,000/- on account of

'The View' and 'Almas Elements' projects respectively, is hereby sustained. Thus, the only ground raised in the appeal of the Revenue for the A.Y. 2011-12 is dismissed.

**Ground No. 1 for A.Y. 2012-13:**

8. The only ground of appeal of the Revenue for A.Y. 2012-13 pertains to additions of Rs.27,30,000/- and Rs.3,65,88,500/- made by the Assessing Officer on account of on-money received on sale of units in 'The View' and 'Almas Elements' projects respectively of the assessee. This ground is identical with that raised for the A.Y. 2011-12. Further, while dealing with the identical Ground No. 1 for A.Y. 2011-12 in the preceding paras, we have discussed in detail on the additions made by the Assessing Officer in 'The View' and 'Almas Elements' projects. Accordingly, following our own findings given in the preceding paras, this Ground of appeal of the Revenue is dismissed.

**Ground No. 1 for A.Y. 2013-14:**

9. The only ground raised in the appeal of the Revenue for A.Y. 2013-14 pertains to additions of Rs.1,40,74,000/- on account of on-money received on sale of units in 'Almas Elements' project,

Rs.1,75,00,000/- on account of unexplained investment in property and Rs.3,79,04,952/- on account of undisclosed investment for purchase of plots in 'Pulak City' project.

10. The issue relating to the addition of Rs.1,40,74,000/- on account of on-money received on sale of units in 'Almas Elements' project has already been dealt with by us while adjudicating the Ground No. 1 for A.Y. 2011-12 in the preceding paras. Accordingly, following our own findings given in the preceding paras, the action of the Ld. CIT(A) in deleting the addition of Rs.1,40,74,000/- for A.Y. 2013-14 is confirmed.

11. Now, with regard to the addition of Rs.1,75,00,000/- on account of unexplained investment in property, the briefly stated facts as culled out from the records are that during the course of search, an unexecuted, unsigned, undated sale agreement between partners of M/s. Gold Terrace Apartment and Chugh family for sale of 16.34 acres land at village Bhorasala for Rs.18,00,00,000/- was found and seized vide Page No. 112 to 116 of LPS-6. During the course of the assessment proceedings, the Assessing Officer required the assessee to explain the sources of payments made in respect of

such sale agreement and to show cause as to why an addition of Rs.1,75,00,000/- be not made on account of undisclosed payment from undisclosed sources. In response, the assessee stated that such agreement was not executed and ultimately, the deal has got cancelled. The assessee further stated that in respect of the said land, only token money of Rs.50,00,000/- was paid through account payee cheque dated 23-05-2012 and except making such payment, no further payment was made. The Assessing Officer rejected the explanation of the assessee and stated that if the agreement was cancelled, the amount would have been refunded to the Chugh family. However, the said amount of Rs.50,00,000/- was not found returned by the seller to the assessee family. Thus, the Assessing Officer noted that the installment of Rs.1,75,00,000/- which, as per the agreement, was payable by the assessee on 01.09.2012, would have also been paid by the Chugh family. The Assessing Officer further noted that while examining the books of account of the assessee family, this payment was not found recorded in the regular books of account of any of the assesseees of Chugh family. The Assessing Officer issued summons and notices u/s 131 and 133(6) to Shri Mahavir Jain, ex-partner of the firm M/s. Gold Terrace

Apartment, but Shri Mahavir Jain had neither attended nor filed any reply. Accordingly, the Assessing Officer made an addition of Rs.1,75,00,000/- in the hands of the assessee on account of unexplained investment made in house property.

11.1 Being aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A), at para (5.2) of the impugned order, noted that the assessee claimed that the agreement was only at draft stage, a fact which is brought out by the unsigned, undated agreement. The assessee further submitted that the sellers failed to provide the necessary documents establishing their clear title due to which the agreement came to an end. The sum of Rs.50,00,000/- which was paid by Shri Nitesh Chugh, the son of the assessee, to the sellers was returned by them to Shri Nitesh Chugh vide RTGS on 29.04.2013. The assessee has also submitted before the Assessing Officer a notarized affidavit of Shri Anil Sogani, one of the partners of M/s. Gold Terrace Apartment, the purported seller, stating that other than the initial token money of Rs.50,00,000/-, no other payment was made towards the said agreement. It is also stated in the affidavit that the advance of Rs.50,00,000/- was refunded on

29.04.2013 through RTGS. The Ld. CIT(A) further found that the affidavit remained uncontroverted. The Ld. CIT(A) also found that the Assessing Officer has not brought any evidence on record to show that the first installment of Rs.1,75,00,000/- was paid before the date of the search. The Ld. CIT(A) further observed that the agreement states the assessee and his two sons as the joint purchasers and the advance of Rs.50,00,000/- was paid by one of the sons, Shri Nitesh Chugh but the addition of Rs.1,75,00,000/- towards the first installment has been made only in the case of the assessee and not his two sons without any basis or justification. The Ld. CIT(A) cited and relied upon various authorities wherein it has been held that when the seized papers have not been corroborated by any independent evidence, it cannot be considered as acceptable piece of evidence. Finally, the Ld. CIT(A) made a finding that the Assessing Officer has simply proceeded to make additions on the basis of the documents in question without bringing any evidence on record to show that Rs.1,75,00,000/- was paid by the assessee towards the first installment as per the terms of the unsigned, undated agreement seized during the course of search which is not an acceptable, sustainable and justified approach. Accordingly, the

Ld. CIT(A) deleted the addition of Rs.1,75,00,000/- made by the Assessing Officer in the hands of the assessee.

11.2 Felt aggrieved, the Revenue is in appeal before this Tribunal. The ld. CIT-DR vehemently argued supporting the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

11.3 We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not bring any corroborative material on record to justify the additions made by the Assessing Officer. We find that during the course of the assessment proceedings, the assessee has duly furnished a notarized affidavit of Shri Anil Sogani, one of the partners of M/s. Gold Terrace Apartment, stating that except a payment of Rs.50,00,000/-, no other payment was made towards the said agreement. However, the said Affidavit was not controverted by the Assessing Officer. We also find that during the course of the assessment proceedings only, the assessee has also demonstrated

the refund of Rs.50,00,000/- to Shri Nitesh Chugh on 29.04.2013 through RTGS but, the Assessing Officer did not make any reference thereof in his assessment order and instead, the AO made an incorrect finding to the effect that the amount of Rs.50,00,000/- was not found refunded by the seller to the assessee family. We also find that the Assessing Officer, except placing his reliance on the payment terms stated in the unsigned and undated agreement, could not bring any corroborative evidence on record to establish that the installment of Rs.1,75,00,000/- was actually paid before the date of the search. We have also carefully perused the judicial pronouncements cited and discussed by the Ld. CIT(A) in the impugned order. The decisions relied upon by the Ld. CIT(A) are directly applicable to the present issue to avoid repetition, the same are not discussed here again. In view of the above facts, circumstances and material available on record, we find no infirmity in the order of the Ld. CIT(A) in deleting the addition of Rs.1,75,00,000/- made by the Assessing Officer on this count. Accordingly, this ground of appeal of the Revenue to this effect has no merits.

12. Now, as regard the addition of Rs.3,79,04,952/- on account of unexplained investment for purchase of plots in Pulak City, the briefly stated facts as culled out from the records are that the assessee has purchased 25 plots (total area 31,372 sq. ft.) in Pulak City Colony located at Rau Pithampur Road. The assessee has shown purchase of these plots in March 2013 at a total sale consideration of Rs.1,25,48,800/- (excluding registry expenses). However, it is seen from the registry documents that as per the government guideline value for these plots was Rs.3,20,93,556/-. According to the Assessing Officer, as against the guideline value of Rs.1023/- per sq ft., the assessee has shown purchase of these plots at Rs.400/- per sq. ft. only. The Assessing Officer further noted that Shri Vivek Chugh (son of the assessee) has also purchased 27 plots (total area 31,372 sq. ft.) in Pulak City for a total sale consideration of Rs.1,23,40,800/- (excluding registry expenses) as against the government guideline value of Rs.3,07,00,996/-. The Assessing Officer also observed that in another search group namely 'Jhaveri Group of Indore', evidences were found that in their project namely Silicon City located in the vicinity of the Pulak City, prevailing rate of plots in A.Y. 2012-13 was Rs.750/- per sq. ft. and in A.Y. 2013-14,

it was Rs.1100/- per sq. ft. The AO further noted that during the course of simultaneous assessment proceedings in the case of Shri Vivek Chugh, an undertaking was filed by the assessee that if any undisclosed income/ expenditure/ investment is found, the same may be added to the total income of the assessee, being father of Shri Vivek Chugh and main earning member of family. Therefore, the AO noted that the undisclosed investment found in Pulak City in the name of Shri Vivek Chugh will also be added to the total income of the assessee for the A.Y. 2013-14. Accordingly, the Assessing Officer held that the assessee has suppressed the purchase price of plots in Pulak City, Indore and made an addition of Rs.1,95,44,756/- [Rs.3,20,93,556 minus Rs.1,25,48,800] in the hands of the assessee for the A.Y. 2013-14 on account of undisclosed investment in purchase of plots in the name of assessee in Pulak City. Furthermore, an addition of Rs.1,83,60,196/- [Rs.3,07,00,996 minus Rs.1,23,40,800] has also been made in the hands of the assessee on account of undisclosed investment made by the assessee in purchase of plots in Pulak City in the name of Shri Vivek Chugh. Accordingly, an aggregate addition of Rs.3,79,04,952/- was made by the Assessing Officer in the

assessee's income for A.Y. 2013-14 on account of unexplained investment in land.

12.1 Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and the Ld. CIT(A), at para (6.4) of the impugned order, noted that the Assessing Officer made the addition by relying on the observation that the assessee group is in continuous process of earning undisclosed income and has made reference to some evidences found during the search regarding other issues. As per the Ld. CIT(A), the Assessing Officer further observed that in another project Silicon City of the Jhaveri Group located in the vicinity of Pulak City, the prevailing rate of plots was Rs.750/- per sq. ft. in A.Y. 2012-13 and Rs.1100/- per sq. ft. in A.Y. 2013-14. During the course of appellate proceedings before the Ld. CIT(A), additional evidences were submitted under Rule 46A which were duly forwarded to the Assessing Officer for comments. According to the Ld. CIT(A), the Assessing Officer has neither objected to the admissibility of additional evidences nor offered any comments. The Ld. CIT(A) further noted that the colony Pulak City was being developed by Shri Ritesh Ajmera and due to some encroachments,

various cases were pending before the judicial forums in respect of the said colony. Such fact is seen from the newspaper cuttings which have been placed on record. The Ld. CIT(A) also noted that the details of other parties who have purchased the plots in same colony at Rs.400/- per sq. ft. have also been placed on record. The Ld. CIT(A) further observed that during the course of search, no incriminating document or material was found to show that the assessee had made payment over and above the amount stated in the purchase deeds for the plots in Pulak City. The Ld. CIT(A) also observed that estimation of the additions on the basis of the assumption that as the group members indulge in receiving on-money in land transactions, there is undisclosed consideration paid for purchase of plots in Pulak City is not an acceptable, sustainable and justified approach. The Ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. Thus, the Ld. CIT(A)

held that the addition of Rs.3,79,04,952/- made on account of undisclosed investment for purchase of plots in Pulak City on account of purchase consideration paid being less than the guideline value cannot be sustained. Accordingly, the Ld. CIT(A) deleted the entire addition of Rs.3,79,04,952/- made by the Assessing Officer in the assessee's income.

12.2 Being aggrieved, the Revenue is in appeal before this Tribunal. The Ld. CIT-DR vehemently argued supporting the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

12.3 We have heard the rival contentions and carefully perused the records placed before us. We find that the assessee has furnished various documentary evidences including newspaper cuttings in support of the disputed nature of the colony. We also find that the assessee has also furnished the details of other parties who have purchased the plots in same colony at the same rate of Rs.400/- per sq. ft. at which the assessee and his son purchased. However, the Assessing Officer could neither comment nor

controvert any single document or evidence furnished by the assessee. We also find that the Assessing Officer has also not brought any corroborative evidence on record to establish that the assessee has paid any consideration over and above that stated in the registered sale deeds. Further, the Assessing Officer has also not made any independent enquiry from the sellers or from the other parties who have purchased the plots in the Pulak City. We find that the Assessing Officer has also not brought any incriminating document or material on record to establish that the assessee has paid any amount over and above the purchase consideration stated in the registered sale deeds. We noted that the Assessing Officer has made a reference of some rates prevailing in Silicon City of Jhaveri Group of Indore but, in our considered opinion, it cannot be a parameter or yardstick for determining the purchase price of the plots in another colony. Thus, in our view, the onus was lying on the assessing officer to establish that the assessee had paid any on-money over and above that stated in the registered sale deeds. However, the Assessing Officer failed to discharge such onus and made the addition merely on assumption and presumption. We further find force in the contention of the assessee that the

impugned transactions of purchases were carried out during the financial year 2012-13 relevant to A.Y. 2013-14 and for such year, the provisions of s.56(2)(vii) were not made applicable. It is worth to note that the provisions of s.56(2)(vii) have been introduced in the statute by the Finance Act, 2013 w.e.f. 1.4.2014 only and such provisions are not retrospective in the nature. In such circumstances, merely on the presumption basis, any difference in the guideline value and apparent consideration paid by an assessee for purchase of an immovable property cannot be deemed as income of the assessee. Undisputedly, in the present case, no positive evidence has been brought on record to establish that the assessee has parted with any consideration over and above that shown in the registered sale deeds. In such circumstances, we are of the considered view that the Ld. CIT(A) has rightly deleted the addition of Rs.3,79,04,952/- made by the Assessing Officer in the assessee's income on the allegation of payment of on-money by the assessee and his son Shri Vivek Chugh. Accordingly, this ground of the Revenue for the A.Y. 2013-14 is dismissed.

13. In the result, the appeals of the Revenue for the A.Ys. 2011-12, 2012-13 and 2013-14 are dismissed.

**SMT. REENA DEVI CHUGH (A.Y. 2011-12)**

14. Revenue has filed the present appeal for A.Y. 2011-12 before this Tribunal raising the only ground of appeal challenging the deletion of addition of Rs.20,85,427/- made by the Assessing Officer on account of on-money received on sale of various units in 'The View' Project and Rs.1,89,38,425/- on account of on-money received on sale of various units in 'The View' Project and Rs.2,49,482/- on account of unaccounted investment in house property. Briefly stated facts as culled out from the records are that the assessee along with her husband namely Shri Mohanlal Chugh had constructed many multi-storied housing units in the name of 'The View' near Laad Colony, Indore during F.Ys. 2009-10, 2010-11 and 2011-12. The Assessing Officer, in the assessment order, noted that on examination during the course of search and seizure, the receipts of Rs.6,33,12,350/- as per registered sale deeds from sale of units in 'The View' project were not found recorded in the regular books of account. The Assessing Officer further stated that the taxable profit cannot be less than 30%

of the total sales consideration as per registered sale deeds. The Assessing Officer also noted that in real estate business, normally the actual sales considerations are at least twice of the amounts shown in the registered sale deeds. The Assessing Officer further observed that 19% profit shown to have been derived by the assessee on sale of units in “The View Project” is contrary to the actual scenario. The AO made a comparison of “The View” project with one residential project of the husband of the assessee titled as “Almas Elements”. The Assessing Officer further added that the cost of construction would have been lower in commercial project as the quality of finishing varies drastically in both the type. The Assessing Officer also noted that the various members of the group were involved in receiving on-money in land transactions. As per the Assessing Officer, some incriminating documents were found by the Search Party in this regard and Shri Nitesh Chugh had also confirmed the receipt of on-money in his case. In another case, it was found that Shri Vivek Chugh had received cash of Rs.35 lakhs and the same was not accounted for in his books of account. Accordingly, the Assessing Officer estimated the net profit of the assessee and her husband Shri Mohanlal Chugh from ‘The View

Project' @ 30% and made an addition in the assessee's income on account of short-term capital gain [Rs.20,85,427/- for A.Y. 2011-12]. Besides, the Assessing Officer also noted that assessee and the co-owner might have received on-money equivalent to the value stated in the registered sale deeds, on sale of various units in "The View" Project and therefore, he made additions equivalent to the amount stated in registered sale deeds by dividing such amount between the assessee and her husband equally in three assessment years viz. A.Ys. 2010-11 to 2012-13 in the same proportion in which the sale registries were executed by the assessee [Rs.1,89,38,425/- for A.Y. 2011-12].

15. Being aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that although the assessee has herself claimed not to have maintained any regular books of account u/s 44AA of the Act, but the bills, vouchers and details in respect of the projects were duly produced before the Assessing Officer. The Ld. CIT(A) also noted that in the original return u/s 139 as well as return furnished in compliance to notice u/s 153A, the assessee has duly shown income from short-term capital gain from sale of units

in 'The View' project. The Ld. CIT(A) noted that the Assessing Officer has added Rs.30 on account of profit and Rs.100/- as on-money received i.e. Rs.130/- on sales of Rs.100/- which is highly improbable and arbitrary in the line of this business. The Ld. CIT(A) also observed that the incriminating documents found in the hands of other members of the assessee's family have no relation with the issue on hand. The Ld. CIT(A) further stated that the two projects 'The View' and 'Almas Elements' cannot be compared as the first one is commercial and the second is residential, they are situated at different locations and time period of construction is also different. The Ld. CIT(A) observed that the assessee had produced all the bills and vouchers in support of cost of construction of the project and no defect or discrepancy in such bills and vouchers was found by the AO. The Ld. CIT(A) noted that the assessee and her husband have jointly shown short term capital gain of Rs.1,20,21,991/- on deemed sales consideration of Rs.6,55,18,000/- u/s 50C which works out to 18.34%. Further, the assessee and co-owner have not claimed any other administrations expenses, financial expenses or depreciation as the assessee carried out the activities of development of project as an investor and not as a builder. The Ld. CIT(A) further stated that

without bringing any corroborative evidence on record the profit of the project cannot be estimated @30%. The Ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. Accordingly, the Ld. CIT(A) held that no effort has been made by the Assessing Officer for making any investigation or enquiry to substantiate his theory of receipt of on-money or estimation of net profit @30%. Finally, the Ld. CIT(A) deleted the additions of Rs.20,85,427/- and Rs.1,89,38,425/- made by the Assessing Officer in the assessee's income in respect of 'The View' Project of the assessee.

16. Now, aggrieved with the Order of Ld. CIT(A), the Revenue is in appeal before this Tribunal. The Ld. CIT-DR relied upon the order of the Assessing Officer. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

17 We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not bring any corroborative material on record to justify the additions made by the Assessing Officer. We find that the assessee had duly shown the short-term capital gain from sale of units in 'The View' project in his original return of income furnished u/s 139 of the Act. We further find that during the course of the assessment proceedings, the assessee had duly furnished all the necessary details, documents, bills, vouchers etc. in respect of the project before the Assessing Officer. We also find that the Assessing Officer has also not made any independent enquiry or investigation from the buyers of the property as regard to actual receipt of sale consideration despite specifically being insisted by the assessee during the course of the assessment proceedings. Further, the Assessing Officer has also not brought any incriminating material or evidence on record which could substantiate that the assessee has actually received any on-money from the sale of units in 'The View' project. We also found that the assessee has duly shown the income by having regard to the provisions of section 50C of the Act.

Therefore, we are of the considered opinion that the Assessing Officer has made the additions purely on his guess work and surmises which do not have any basis whatsoever. We find ourselves in full agreement with the findings of the Ld. CIT(A). Accordingly, the action of the Ld. CIT(A) in deleting the additions of Rs.20,85,427/- and Rs.1,89,38,425/- on account of 'The View' project is hereby confirmed.

18. Now, as regard the issue regarding the addition of Rs.2,49,482/- made on account of unaccounted investment in house property, the briefly stated facts as culled out from the records are that during the course of the search proceedings, it was found that a palatial house in the name of the assessee is under construction at 85, Pragati Vihar, Indore. As per the Assessing Officer, investment in the construction of house was not found disclosed in the books of account of the assessee. During the course of the assessment proceedings, the assessee was required to explain the total investment in construction of house made by her and sources thereof. In response, the assessee filed her reply. Thereafter, a reference u/s 142A of the Act was made by the Assessing Officer

to the District Valuation Officer, Bhopal for estimation of value of investment in construction of the said house. The DVO submitted his valuation report estimating the value of investment at Rs.4,03,15,000/- as against Rs.3,60,40,102/- shown by the assessee. Finally, the Assessing Officer, by accepting the valuation report of the DVO and rejecting the explanation of the assessee, made additions of Rs.42,75,898/- in five assessment years viz. A.Ys. 2009-10 to 2013-14 [Rs.2,49,482/- in A.Y. 2011-12].

19. Being agrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that besides incurring an expenditure of Rs.3,60,40,102/-, the assessee has also incurred a sum of Rs.47,61,258/- during the F.Y. 2013-14 relevant to A.Y. 2014-15. The Ld. CIT(A) stated that the assessee had given a reason for not submitting the details of expenses incurred on construction of house during F.Y. 2013-14. The Ld. CIT(A) admitted the additional evidences under Rule 46A. As per the Ld. CIT(A), the Assessing Officer in his report dated 29.11.2016 has neither objected to the admissibility of additional evidences nor offered any comments. The Ld. CIT(A) stated that the assessee submitted a copy of ledger account of house construction for F.Y. 2013-14 wherein an

expenditure of Rs.47,61,258/- has been incurred by the assessee during F.Y. 2013-14. In support of the expenditure of Rs.47,61,258/-, the assessee furnished a copy of relevant bank statement along with copies of bills. The Ld. CIT(A) noted that after including the said expenditure of Rs.47,61,258/-, the total investment of the assessee towards the property amounts to Rs.4,08,01,360/- which is more than the value of Rs.4,03,15,000/- determined by the DVO. Accordingly, the Ld. CIT(A) deleted the addition so made by the Assessing Officer on the basis of the DVO's report. Now, aggrieved with the order of Ld. CIT(A), the Revenue is in appeal before this Tribunal against the additions deleted by the Ld. CIT(A). The Ld. CIT-DR relied upon the order of the Assessing Officer. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

19. We have heard the rival contentions and carefully perused the records placed before us. We find that the construction of the House at 85, Pragati Vihar, Indore, has been claimed to have been commenced by the assessee during the F.Y. 2008-09 [A.Y. 2009-10] and the same has been claimed to have been completed during the F.Y. 2013-14 [A.Y. 2014-15]. In the said construction, the assessee

has claimed to have incurred a sum of Rs. 4,08,01,360/- in various years. During the course of the assessment proceedings, the assessee also provided the break-up of the financial year wise investment made in construction of the house. We also find that as per the Report submitted by the DVO, there are two points of variation between the DVO's valuation and the assessee's claim. The first variation is as regard to the period of construction inasmuch according to the DVO's estimation, the construction work was carried out only during the period from the F.Y. 2008-09 to the F.Y. 2012-13 whereas according to the assessee's claim, the construction work lasted till F.Y. 2013-14. We find that over and above the cost of Rs.3,60,40,102/- incurred by the assessee uptill F.Y. 2012-13 [A.Y. 2013-14], the assessee had also incurred expenditure towards cost of construction amounting to Rs. 47,61,258/- during the F.Y. 2013-14 relevant to A.Y. 2014-15. We also noted that the assessee, in support of the cost of construction of Rs.47,61,258/- during F.Y. 2013-14, the assessee has duly furnished copies of the bills and bank statements evidencing payments which were forwarded by the Ld. CIT(A) to the Assessing Officer. However, we find that the Assessing Officer could not controvert any of the documentary

evidences furnished by the assessee. We also find that the Assessing Officer has also not brought any corroborative evidence or material on record to establish that the construction of the house got completed at any time earlier than that claimed by the assessee. We further find that the assessee has also challenged the DVO's report by pointing out various defects and discrepancies prevailing in such report. However, the Assessing Officer could neither by himself controvert any of the points raised by the assessee nor he sought any clarification from the DVO and merely, by rejecting the submission of the assessee and accepting the DVO's report, made the addition in the assessee's income. Thus, we find that if the investment made by the assessee during the F.Y. 2013-14 at Rs.47,61,258/- is also taken into consideration, the total cost of construction shown by the assessee herself would work out to be at Rs. 4,08,01,360/- which is much higher than the cost of construction of Rs.4,03,15,000/- determined by the DVO. Thus, in our considered opinion, the assessee has fully established the total cost of construction of Rs.4,08,01,360/- with supporting evidences which remained unrebutted by the Assessing Officer. In such circumstances, we don't find any infirmity in the action of the Ld.

CIT(A) in deleting the addition so made by the Assessing Officer on account of unaccounted investment in house property. Accordingly, we hereby confirm the action of the Ld. CIT(A) in deleting the addition of Rs.2,49,482/- made in the hands of the assessee. Therefore, this ground of Appeal of the Revenue is dismissed.

20. In the result, the appeal of the Revenue for the A.Y. 2011-12 is dismissed.

**SHRI NITESH CHUGH (A.Y. 2012-13 & A.Y. 2013-14)**

**Ground No. 1 for A.Y. 2012-13:**

21. This ground of appeal of the Revenue pertains to addition of Rs.2,08,00,000/- made by the AO on account of on-money received on sale of agricultural land of the assessee. Briefly stated facts as culled out from the records are that during the course of the search proceedings, various incriminating loose papers were found and seized vide LPS-1 (page no. 82 & 83 to 86), LPS-4 (page no. 2 to 6), LPS-6 (page no. 69 to 78, 96 to 90, 94 to 108) and LPS-7 (page no. 67 to 68) from the assessee's premises situated at 503, Orbit Mall, A.B. Road, Indore. The Assessing Officer, in the assessment order, noted that agricultural land admeasuring 2.139 hectares situated at

Survey No. 149/1, 150/2, 150/1/2, PH No. 26, Village Mundla Nayta, Tehsil Indore was sold by the assessee to M/s. Avalanche Realty Pvt. Ltd.. The Assessing Officer further stated that the total consideration received during the period from 01-01-2011 to 21-10-2011 was at Rs.260 lacs i.e. @Rs.50 lacs per acre but on record, only payment of Rs.52 lacs was disclosed. The Assessing Officer noted that Shri Mohanlal Chugh, father of the assessee, in his statement recorded u/s. 132(4) of the Act, admitted an additional income of on-money of Rs.2,08,00,000/- by his son, being the assessee, against sale of the aforesaid agricultural land. The Assessing Officer further observed that the assessee has admitted to have received total sale consideration of Rs.2,60,00,000/- against sale of agricultural land at Rs.52,00,000/-. The assessee also admitted that out of total consideration of Rs.2,60,00,000/-, only sales consideration of Rs.52,00,000/- was recorded in books and the remaining consideration of Rs.2,08,00,000/- was received by him from the purchaser as on-money. The Assessing Officer noted that in the return of income filed under s.153A for A.Y. 2012-13, the assessee has shown taxable long term capital gain from sale of land to the extent of Rs.50,12,179/- only. The Assessing Officer further

observed that out of the total sales consideration of Rs.2,60,00,000/-, the assessee claimed indexed cost of acquisition of land at Rs.76,06,453/- thereby showing capital gain of Rs.1,83,93,547/-. However, against such gain of Rs.1,83,93,547/-, the assessee has claimed a deduction u/s. 54F in respect of investment of Rs.1,89,15,088/- in purchase of one residential house situated at 18, Manishpuri, Indore. The assessee has claimed pro-rata deduction of Rs.1,33,81,367/- thereby offering only a sum of Rs.50,12,179/- as long-term capital gain. According to the Assessing Officer, the on-money of Rs.2,08,00,000/- received by the assessee is not a normal receipt on sale of capital asset and therefore, no claim under any section of the Income Tax Act is allowable against this receipt. According to the Assessing Officer, since the said amount was admitted only after search action, the entire undisclosed receipts are taxable under the head 'Income from Other Sources' and no deduction under s.54F will be available against this receipt. The Assessing Officer further stated that the claim of the assessee u/s. 54F is also not admissible in view of the provisions of s.115BBE. The AO also averted that although the section 115BBE is applicable w.e.f. A.Y. 2013-14 but the same is applicable for earlier

years also. Finally, the Assessing Officer made an addition of Rs.2,08,00,000/- in the assessee's income on account of on-money received on sale of agricultural land for the A.Y. 2012-13.

22 Being aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that the decision of the Coordinate Bench of ITAT, Pune in the case of Shri Manish Madhav Malpani vs. ACIT, Central Circle-1(1), Pune is applicable to the facts of the case of the assessee. The ld. CIT(A) further noted that section 54F provides options to the assessee to invest even within a period of one year before the date on which transfer took place and there is no precondition imposed by the provision to the effect that the property is to be purchased out of the consideration received on account of transfer of the capital asset. The ld. CIT(A) noted that undoubtedly, the receipt of on-money is on account of sale of land which is a capital asset and as the appellant has invested in a residential house within a period of one year before the date on which the transfer took place and is fulfilling the other condition u/s. 54F, the claim for deduction u/s. 54F cannot be denied on the receipt of unaccounted money disclosed and owned up by the appellant. The

ld. CIT(A) relied upon the decision of the Hon'ble Bombay High Court in the case of CIT vs. Sheth Developers (P) Ltd. (2012) 208/25 taxmann.com 173 wherein the Hon'ble Court has held that the income disclosed in the search which was received in the course of carrying out business activities as a builder. The ld. CIT(A) further stated that the amount of on-money received by the assessee on account of sale of land has to be taxed under the head 'income from capital gains' and not under the head 'income from other sources'. The ld. CIT(A) also placed reliance on the decision of the Coordinate Bench of ITAT, Pune in the case of Malpani Estates vs. ACIT reported in 64 SOT 105 (Pune) wherein it is held that the character of income does not change because of the search. The ld. CIT(A) further noted that the provisions of section 115BBE are not applicable in the case of the assessee for the assessment year under consideration. Finally, the Ld. CIT(A) deleted the addition of Rs.2,08,00,000/- so made by the Assessing Officer on account of on-money received on sale of agricultural land for the A.Y. 2012-13. Now, aggrieved with the Order of Ld. CIT(A), the Revenue is in appeal before this Tribunal. The Ld. CIT-DR relied upon the order of the Assessing Officer. The ld. DR also filed a Paper Book which is

carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

23 We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. DR, except placing his reliance on the findings of the Assessing Officer, could not bring any further material on record to justify the addition made by the Assessing Officer. We find that there is no dispute as regard to the receipt of sale consideration of Rs.2,60,00,000/- from sale of a capital asset (agricultural land) by the assessee. It is also not disputed that against sale of the aforesaid land, the assessee has purchased one residential house situated at 18, Manishpuri, Indore for a total consideration of Rs.1,89,15,088/-. We find that the Assessing Officer has also not disputed the claim of deduction u/s. 54F made by the assessee in respect of the investment in purchase of residential house. The only point of dispute raised by the Assessing Officer is that the on-money of Rs.2,08,00,000/- admitted during the course of search u/s. 132(1) by the assessee to have received from sale of agricultural land is to be declared in the return of income under the head 'income from other sources' and no

deduction u/s. 54F is allowable to the assessee against the receipt of on-money of Rs.2,08,00,000/-. We also find that as per the provisions of section 14 of the Act, for the purpose of charge of income-tax and computation of total income, an income has to be divided into five heads. We also find that the fifth head of income i.e. 'Income from Other Sources' is a residual head and an income shall be chargeable under this head only if it does not fall under any other four heads of income. We are of the considered view that the on-money received by the assessee against sale of capital asset is nothing but un-recorded part of the sale consideration actually received by the assessee and therefore, any gain arising from transfer of such capital asset has to be charged only under the provisions of s.45 of the Act. We find merit in the argument of the AR that under provisions of clause (b) of section 153A, the Assessing Officer is required to assess or reassess the total income of an assessee. We also find that the expression 'total income' has been defined under clause (45) of section 2 of the Act and according to which, the expression 'total income' means the total amount of income referred to in section 5, computed in the manner laid down in the Act. Thus, in our considered opinion, even in the assessment

proceedings u/s. 153A, the total income has to be computed in the same manner in which it is computable under the normal assessments under the provisions of s.143(3) of the Act and no discriminatory treatment can be given for computation of total income in pursuance of the assessment made u/s. 153A of the Act. We also find that the position of law for giving a different treatment has got changed only by way of insertion of a new section 115BBE in the statute by way of the Finance Act, 2012 w.e.f. 1-4-2013, which is not applicable for the assessment year under consideration. Thus, we are of the considered view that the assessee is eligible for claim of deduction u/s. 54F of the Act in respect of the on-money of Rs.2,08,00,000/- received from sale of subject capital asset. This view is supported by the decision of the Coordinate Bench of ITAT, Pune in the case of Shri Manish Madhav Malpani vs. ACIT, as also relied upon by the ld. CIT(A). We find that in that case too, the assessee had made fresh claim of deduction u/s. 54F at Rs.31,20,000/- against the long term capital gains declared during the course of assessment u/s. 153A of the Act which was not so declared in the return of income filed u/s. 139. The Coordinate Bench was pleased to hold that the character of the income remains

'long term capital gain' and since the assessee fulfills the conditions laid down in provisions of s.54F of the Act, the assessee is entitled to claim deduction u/s. 54F to the Act. Further, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Sheth Developers (P) Ltd. (2012) 208/25 taxmann.com 173, as also relied upon by the assessee and the ld. CIT(A), is also applicable to the case of the assessee. The Hon'ble Court, at para (11), was pleased to hold as under:

*"11. The further case of the appellant-revenue that in view of section 69A of the said Act the benefit of deduction under Chapter VIA of the said Act would not be available to the respondent-assessee is not well founded. In the present facts it is not the case of the revenue that the money found in possession of the respondent assessee could not be explained and/or its source could not be explained to the satisfaction of the Assessing Officer. In the present case undisclosed income found in the form of cash was explained as having been acquired while carrying on business as a builder and this explanation was accepted by the Assessing officer by having assessed the undisclosed income for the block period as income from profits*

*and gains of business or profession. Therefore, the reliance by the revenue upon the decision of the Gujrat High Court in the matter of Fakir Mohmed Haji Hasan (supra) is not correct as the facts of that case are completely distinguishable from the present facts. In the present case, no question of application of section 68,69 and 69A, 69B and 69C of the said Act arises as the same has not been invoked by the Department. It is an admitted position between the parties as reflected even in the order the Assessing officer that undisclosed income was in fact received by the respondent in the course of carrying out its business activities as a builder. The same was returned by the respondent as income arising from profits and gains of business or profession and the same was accepted by the department unlike in the matter of Fakir Mohmad Haji Hasan (supra)”*

We also find that the Coordinate Bench of ITAT, Pune in the case of Malpani Estates vs. ACIT (2014) 39 CCH 0413 (Pune Trib), by following the decision of the Hon’ble Bombay High Court in the case of Sheth Developers *supra*, has also held that the assessee was eligible for deduction u/s. 80IB(10) in relation to additional income

offered in statement u/s. 132(4) in the course of search and subsequently declared in return filed in response to notice u/s. 153A. We find that the Coordinate Bench of ITAT, Ahmedabad in the case of Shree Bhagwanbhai Revabhai Prajapati vs. ACIT (IT(SS)A No. 377/Ahd/2014, Order dated 24.06.2015) has also held that the assessee is fully entitled to the benefit of exemption u/s. 54B of the Act in respect of the on-money.

24. Before us, the ld. CIT-DR could not controvert any of the decisions relied upon by the assessee and the ld. CIT(A) and also could not bring on record any contrary decision to support the claim of the Revenue that the on-money received by the assessee from the sale of capital asset would be taxed separately and no deduction u/s. 54F of the Act would be available to the assessee against such receipt of on-money. Therefore, we are of the considered opinion that the Assessing Officer has made the impugned addition without any basis whatsoever. We do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, the action of the Ld. CIT(A) in deleting the addition of Rs.2,08,00,000/- on account of receipt of on-money from sale of agricultural land, is confirmed. Therefore,

this ground of Appeal of the Revenue for the A.Y. 2012-13 is dismissed.

**Ground No. 1 for A.Y. 2013-14:**

25. This ground of appeal of the Revenue for A.Y. 2013-14 pertains to addition of Rs.3,39,000/- made by the Assessing Officer on account of cash loan given from unaccounted income and Rs.1,75,48,900/- on account of unexplained investment in purchase of plots by the assessee.

26. As regard the addition of Rs.3,39,000/-, the briefly stated facts as culled out from the records are that during the course of search proceedings, various incriminating loose papers were found and seized vide LPS-7 (page no. 63 & 64), LPS-2 (page no. 24) and LPS-7 (page no. 56, 57 & 59) from the assessee's premises. As per the Assessing Officer, these papers show that the assessee had given loans in cash and against these loans, he had obtained undated cheques from the borrowers. As per these loose papers, the assessee had given cash loans aggregating to Rs.8,39,000/- during A.Y. 2013-14. During the course of the assessment proceedings, the assessee was required to make his explanation. The assessee, in his reply,

admitted to have made cash loans aggregating to Rs.1,89,000/- i.e. Rs.50,000/- (page no. 56), Rs.39,000/- (page no. 57), Rs.50,000/- (page no. 63), Rs.50,000/- (page no. 64) out of his undisclosed income for A.Y. 2013-14. Further, in respect of the remaining amount, the assessee claimed that the page no. 24 of LPS-2 did not pertain to him but it pertains to his younger brother Shri Vivek Chugh, who has given cash loan of Rs.5,00,000/- to some Mr. Amit Chawla against one undated cheque. The assessee submitted that Shri Vivek Chugh has already owned such loose paper bearing no. 24 of LPS-2 and has also made a disclosure of Rs.5,00,000/- on this count in his return filed u/s. 153A for A.Y. 2013-14. However, according to the Assessing Officer, in respect of the remaining cash loans of Rs.1,50,000/- i.e. (Rs.8,39,000 – Rs.1,89,000 – Rs.5,00,000), the assessee could not furnish any satisfactory explanation. Thus, according to the Assessing Officer, the assessee has given cash loan of Rs.3,39,000/- (Rs.1,89,000 + Rs.1,50,000) out of his undisclosed income for A.Y. 2013-14. Accordingly, the Assessing Officer made an addition of Rs.3,39,000/- in the assessee's income for A.Y. 2013-14 on account of cash loans given but not found recorded in books.

27. Being aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that out of the cash loans aggregating to Rs.3,39,000/-, the assessee has already offered a sum of Rs.1,89,000/- in his return for A.Y. 2013-14 filed post-search and therefore, the ld. CIT(A) deleted the addition to the tune of Rs.1,89,000/- made on this count. Further, as regard the remaining addition of Rs.1,50,000/-, the ld. CIT(A) noted that such addition is made on the basis of LPS-7/59 which is a promissory note dated 25.03.2007 given by Shri Sanjay Wadhwani in favour of Shri Vivek Chugh. The assessee submitted before the ld. CIT(A) that the said loose paper is not pertaining to him or any other family member and further, the date on the promissory note is 25.03.2007 and the income on the basis of such loose paper cannot be made in A.Y. 2013-14. The ld. CIT(A) noted that the assessee is neither the lender nor the borrower in such loose paper and therefore, there is no justification for making the addition in the hands of the assessee. The ld. CIT(A) further relied upon decisions of the various judicial authorities. Finally, the Ld. CIT(A) deleted the addition of Rs.3,39,000/- so made by the Assessing Officer on account of cash

loans for the A.Y. 2013-14. Now, aggrieved with the order of Ld. CIT(A), the Revenue is in appeal before this Tribunal. The Ld. CIT-DR relied upon the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

28. We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not bring any further material on record to justify the addition made by the Assessing Officer. We find that the assessee himself had offered a sum of Rs.1,89,000/- as additional income on account of cash loans in his return of income filed post-search for the A.Y. 2013-14. Thus, the Assessing Officer was not justified in re-making the addition to the tune of Rs.1,89,000/- in the assessee's income for the relevant assessment year. Even, as regard the addition of Rs.1,50,000/- made by the AO on the basis of page no. 59 of LPS-7, we find that the said loose paper is in the form of a promissory note dated 25.03.2007 given by Shri Sanjay Wadhvani in favour of Shri

Vivek Chugh. We are in full agreement with the finding of the Id. CIT(A) that the said promissory note neither contains the name of the assessee nor it pertains to the assessment year under consideration and in such circumstances, no addition could be made in the assessee's income on this count for the relevant assessment year. Accordingly, the action of the Id. CIT(A) in deleting the entire addition of Rs.3,39,000/- (Rs.1,89,000 + Rs.1,50,000) is confirmed. .

29 Now, as regard the addition of Rs.1,75,48,900/- on account of unexplained investment for purchase of plots in Pulak City, the briefly stated facts as culled out from the records are that the assessee has purchased 25 plots (total area 27,534 sq. ft.) in Pulak City Colony located at Rau Pithampur Road. The assessee has shown purchase of these plots in March 2013 at a total sale consideration of Rs.1,10,13,600/- (excluding registry expenses). However, it is seen from the registry documents that as per the government guideline value for these plots was Rs.2,85,62,500/-. According to the Assessing Officer, as against the guideline value of Rs.1037/- per sq ft., the assessee has shown purchase of these plots

at Rs.400/- per sq. ft. only. The Assessing Officer also observed that in another search group namely 'Jhaveri Group of Indore', evidences were found that in their project namely Silicon City located in the vicinity of the Pulak City, prevailing rate of plots in A.Y. 2012-13 was Rs.750/- per sq. ft. and in A.Y. 2013-14, it was Rs.1100/- per sq. ft. Accordingly, the Assessing Officer held that the assessee has suppressed the purchase price of plots in Pulak City, Indore and made an addition of Rs.1,75,48,900/- [Rs.2,85,62,500 minus Rs.1,10,13,600] in the hands of the assessee for the A.Y. 2013-14 on account of undisclosed investment in purchase of plots in Pulak City. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), at para (7.2) of the order, noted that the Assessing Officer made the addition by relying on the observation that the assessee group is in continuous process of earning undisclosed income and has made reference to some evidences found during the search regarding other issues. As per the Ld. CIT(A), the Assessing Officer further observed that in another project Silicon City of the Jhaveri Group located in the vicinity of Pulak City, the prevailing rate of plots was Rs.750/- per sq. ft. in A.Y. 2012-13 and Rs.1100/- per sq. ft. in A.Y. 2013-14. During the course of

appellate proceedings before the Ld. CIT(A), additional evidences were submitted under Rule 46A which were duly forwarded to the Assessing Officer for comments. According to the Ld. CIT(A), the Assessing Officer has neither objected to the admissibility of additional evidences nor offered any comments. The Ld. CIT(A) further noted that the colony Pulak City was being developed by Shri Ritesh Ajmera and due to some encroachments, various cases were pending before the judicial forums in respect of the said colony. Such fact is seen from the newspaper cuttings which have been placed on record. The Ld. CIT(A) also noted that the details of other parties who have purchased the plots in same colony at Rs.400/- per sq. ft. have also been placed on record. The Ld. CIT(A) further observed that during the course of search, no incriminating document or material was found to show that the assessee had made payment over and above the amount stated in the purchase deeds for the plots in Pulak City. The Ld. CIT(A) also observed that estimation of the additions on the basis of the assumption that as the group members indulge in receiving on-money in land transactions, there is undisclosed consideration paid for purchase of plots in Pulak City is not an acceptable, sustainable and justified

approach. The Ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. Finally, the Ld. CIT(A) held that the addition of Rs.1,75,48,900/- made on account of undisclosed investment for purchase of plots in Pulak City on account of purchase consideration paid being less than the guideline value cannot be sustained. Accordingly, the Ld. CIT(A) deleted the entire addition of Rs.1,75,48,900/- made by the Assessing Officer in the assessee's income. Aggrieved with the order of Ld. CIT(A), the Revenue is in appeal before the Tribunal against the addition deleted by the Ld. CIT(A). The Ld. CIT-DR vehemently argued supporting the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

30. We have heard the rival contentions and carefully perused the records placed before us. We find that the assessee has furnished various documentary evidences including newspaper cuttings in support of the disputed nature of the colony. We also find that the assessee has also furnished the details of other parties who have purchased the plots in same colony at the same rate of Rs.400/- per sq. ft. at which the assessee purchased. However, the Assessing Officer could neither comment nor controvert any single document or evidence furnished by the assessee. We also find that the Assessing Officer has also not brought any corroborative evidence on record to establish that the assessee has paid any consideration over and above that stated in the registered sale deeds. Further, the Assessing Officer has also not made any independent enquiry from the sellers or from the other parties who have purchased the plots in the Pulak City. We find that the Assessing Officer has also not brought any incriminating document or material on record to establish that the assessee has paid any amount over and above the purchase consideration stated in the registered sale deeds. We noted that the Assessing Officer has made a reference of some rates prevailing in Silicon City of Jhaveri Group of Indore but, in our

considered opinion, it cannot be a parameter or yardstick for determining the purchase price of the plots in another colony. Thus, in our view, the onus was lying on the assessing officer to establish that the assessee had paid any on-money over and above that stated in the registered sale deeds. However, the Assessing Officer failed to discharge such onus and made the addition merely on presumption and assumption. We further find force in the contention of the assessee that the impugned transactions of purchases were carried out during the financial year 2012-13 relevant to A.Y. 2013-14 and for such year, the provisions of s.56(2)(vii) were not made applicable. It is worth notable that the provisions of s.56(2)(vii) have been introduced in the statute by the Finance Act, 2013 w.e.f. 1.4.2014 only and such provisions are not retrospective in the nature. In such circumstances, merely on the presumption basis, any difference in the guideline value and apparent consideration paid by an assessee for purchase of an immovable property cannot be deemed as income of the assessee. Undisputedly, in the present case, no positive evidence has been brought on record to establish that the assessee has parted with any consideration over and above that shown in the registered sale deeds. In such circumstances, we are of the

considered view that the Ld. CIT(A) has rightly deleted the addition of Rs.1,75,48,900/- made by the Assessing Officer in the assessee's income on the allegation of payment of on-money by the assessee. Accordingly, the ground No. 1 of the Revenue for the A.Y. 2013-14 is dismissed.

31. In the result, the appeals of the Revenue for the A.Ys. 2012-13 and 2013-14 are dismissed.

**M/s. CHUGH REALITY (A.Y. 2013-14)**

**Ground No. 1:**

32. This ground of appeal of the Revenue pertains to addition of Rs.22,71,000/- made by the Assessing Officer on account of sale consideration from sale of units of 'The Mark' project, addition of Rs.5,26,74,600/- on account of undisclosed investment in purchase of plots in 'Pulak City' project and addition of Rs.3,81,11,476/- on account of unexplained expenditure in 'Sun City' project by the assessee.

33. As regard the addition of Rs.22,71,000/-, the briefly stated facts as culled out from the records are that during the course of

search and post-search proceedings, it was noticed that the assessee firm had purchased an old house situated at Plot No. 24A, Old Palasia, Indore, admeasuring 25,464 sq. ft. for a total consideration of Rs.8,21,00,000/- under a registered sale deed dated 06-10-2008. It is stated by the Assessing Officer that after purchasing the above old house, the assessee firm got the old house demolished and constructed a multi-storeyed building thereon, titled as 'The Mark'. As per the Assessing Officer, during the course of search proceedings, it was seen that the sales consideration from the units of 'The Mark' project have been shown by the assessee firm at a lower side despite the fact that the project is commercial in nature and located at business centre of Indore. It has also been observed that the sales consideration has been shown even below the guideline value fixed by the Registrar of Properties. It was noticed by the Assessing Officer that during F.Y. 2010-11 to F.Y. 2012-13, the assessee firm has sold 69570.70 sq. ft. floor area in six floors of 'The Mark' project and as per guideline, the sales ought to have been shown by the assessee atleast for a sum of Rs.16,21,48,315/-. However, upto 31.03.2013, the assessee had shown sales consideration in its books at Rs.14,47,46,500/- only which, as per

the Assessing Officer, makes it clear that the assessee had understated its sales in its books by a sum of Rs.1,74,01,815/-. During the course of the assessment proceedings, the Assessing Officer required the assessee to show cause as to why the difference of Rs.1,74,01,815/- be not added as undisclosed estimated sales consideration in A.Y. 2011-12 to A.Y. 2013-14. In reply, the assessee firm stated that it had recorded sales consideration aggregating to a sum of Rs.17,49,93,500/- in its books of account in respect of 'The Mark' Project, upto 31-03-2013, whereas the sales value adopted by the Stamp Valuation Authority for the purpose of stamp duty was to the extent of Rs.18,08,30,500/- thereby giving a difference of Rs.58,37,000/-. The assessee further submitted that it had furnished the entire details as regard to unit no., area of unit, name, address, PAN of the buyer, sale consideration as per books, valuation as per Stamp Valuation Authority and also furnished all the copies of sale deeds and therefore, no addition in respect of difference of Rs.58,37,000/- can be made. The assessee firm further claimed that since it was holding the units in 'The Mark' project in the form of stock-in-trade and not as capital assets, the provisions of s.50C were not applicable to it. The assessee also claimed that the

provisions of s.43CA which are applicable only from the A.Y. 2014-15, cannot be made applicable to its case for the A.Y. 2013-14. However, the Assessing Officer rejected the explanation of the assessee and stated that the amendment by way of s.43CA is clarificatory in nature. The Assessing Officer then made a reference of certain incriminating documents found and seized during the course of search in the cases of group assessees. Finally, the Assessing Officer noted that the assessee firm has suppressed its sales and accordingly, made an addition of Rs.49,000/- in A.Y. 2011-12, Rs.35,17,000/- in A.Y. 2012-13 and Rs.22,71,000/- in A.Y. 2013-14. Being aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) observed that the incriminating documents, as referred to by the Assessing Officer as found and seized in the case of group members of the assessee firm, were not having any bearing on the project 'The Mark' of the assessee. The Ld. CIT(A) noted that estimations of the additions on the basis of assumption that as the group members were indulged in receiving on-money in land transactions, there is an understatement of sales in the project of the assessee also is not an acceptable, sustainable and justifiable approach. The Ld. CIT(A) relied upon the decision of

Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. The ld. CIT(A) further relied upon the decisions of the Hon'ble Gujarat High Court in the case of CIT vs. Mukesh & Kishor Barot Co-owners (2013) 215 Taxman 151, Hon'ble Allahabad High Court in the case of CIT vs. Kan Construction and Colonizers (P) Ltd. (2012) 208 Taxman 478, the ITAT, Indore Bench in the case of ACIT vs. Danish Housing Cooperative Society Ltd. (2013) 22 ITJ 447 wherein it has been held that provisions of s.50C would have no application where the transfer of immovable property is on account of sale of stock-in-trade. The ld. CIT(A) also observed that the provisions of s.43CA can also not be invoked in this case as the same have been inserted by the Finance Act, 2013 w.e.f. 1-4-2014. Thus, the ld. CIT(A) deleted the addition of Rs.22,71,000/- made by the Assessing Officer on account of alleged understatement of sales by the assessee in its 'The Mark' project for the A.Y. 2013-14. Now, aggrieved with the

order of Ld. CIT(A), the Revenue is in appeal before this Tribunal against the addition deleted by the Ld. CIT(A). The Ld. CIT-DR relied upon the order of the Assessing Officer. The ld. CIT-DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

34. We have heard the rival contentions and carefully perused the records placed before us. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not bring any further material on record to justify the addition made by the Assessing Officer. We find that even the Assessing Officer, while making the impugned addition, has not brought on record any corroborative material or evidence on record to substantiate any understatement of sales by the assessee. We also noted that the assessee had duly furnished the entire details in respect of the sales made by it in respect of the project 'The Mark' before the Assessing Officer. If the Assessing Officer was not convinced with the sale consideration claimed to have received by the assessee and stated in the registered sale deeds, the Assessing Officer could have made the

necessary enquiries from the buyers of the units in the project. However, the Assessing Officer did not make any independent enquiry or investigation to disprove the claim of the assessee. In such circumstances, the Assessing Officer cannot be allowed to proceed on presumptions and assumptions. We derive support from the ratio laid down in the decision of the Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. We also find that the assessee firm is a partnership firm engaged in the business of real estate development which has not been doubted or disputed by the Assessing Officer. We find that the units in the said project were held by the assessee firm as its stock-in-trade and not as capital assets and therefore, the provisions of s.50C which apply only in the case of capital assets, cannot be made applicable to the case of the assessee. We find that this Bench earlier in the case of ACIT vs. Danish Housing Coopertative Society Ltd. (2013) 22 ITJ 447 (ITAT

Indore) has already held that where the assessee has held an immovable property as a trading asset, the income of the assessee is taxable as business income and the provisions of s.50C have no application in such a case. We are of the considered opinion that the provisions of section 43CA which have been inserted in the Statute by the Finance Act, 2013 w.e.f. 1-4-2014, were not applicable in the case of the assessee firm for the assessment year under consideration. Therefore, we do not find any reason for making addition by the Assessing Officer in the assessee's income on this count. Accordingly, the action of the Id. CIT(A) in deleting the entire addition of Rs.22,71,000/- for the A.Y. 2013-14 is confirmed.

35. Now, as regard the addition of Rs.5,26,74,600/- on account of unexplained investment for purchase of plots in Pulak City, the briefly stated facts as culled out from the records are that the assessee purchased 46 plots (total area 79,721 sq. ft.) in Pulak City Colony located at Rau Pithampur Road. The assessee has shown purchase of these plots in March 2013 at a total sale consideration of Rs.3,19,78,400/- (excluding registry expenses). However, it was seen from the registry documents that as per the government

guideline value for these plots was Rs.8,46,53,000/-. According to the Assessing Officer, as against the guideline value of Rs.1062/- per sq ft., the assessee has shown purchase of these plots at Rs.401/- per sq. ft. only. The Assessing Officer also observed that in another search group namely 'Jhaveri Group of Indore', evidences were found that in their project namely Silicon City located in the vicinity of the Pulak City, prevailing rate of plots in A.Y. 2012-13 was Rs.750/- per sq. ft. and in A.Y. 2013-14, it was Rs.1100/- per sq. ft. Accordingly, the Assessing Officer held that the assessee has suppressed the purchase price of plots in Pulak City, Indore and made an addition of Rs.5,26,74,600/- [Rs.8,46,53,000/- minus Rs.3,19,78,400/-] in the hands of the assessee for the A.Y. 2013-14 on account of undisclosed investment in purchase of plots in Pulak City. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), at para (5.4) of the order, noted that the Assessing Officer made the addition by relying on the observation that the assessee group is in continuous process of earning undisclosed income and has made reference to some evidences found during the search regarding other issues. As per the Ld. CIT(A), the Assessing Officer further observed that in another project

Silicon City of the Jhaveri Group located in the vicinity of Pulak City, the prevailing rate of plots was Rs.750/- per sq. ft. in A.Y. 2012-13 and Rs.1100/- per sq. ft. in A.Y. 2013-14. During the course of appellate proceedings before the Ld. CIT(A), additional evidences were submitted under Rule 46A which were duly forwarded to the Assessing Officer for comments. According to the Ld. CIT(A), the Assessing Officer had neither objected to the admissibility of additional evidences nor offered any comments. The Ld. CIT(A) further noted that the colony Pulak City was being developed by Shri Ritesh Ajmera and due to some encroachments, various cases were pending before the judicial forums in respect of the said colony. Such fact is seen from the newspaper cuttings which have been placed on record. The Ld. CIT(A) also noted that the details of other parties who have purchased the plots in same colony at Rs.400/- per sq. ft. have also been placed on record. The Ld. CIT(A) further observed that during the course of search, no incriminating document or material was found to show that the assessee had made payment over and above the amount stated in the purchase deeds for the plots in Pulak City. The Ld. CIT(A) also observed that estimation of the additions on the basis of the assumption that as

the group members indulge in receiving on-money in land transactions, there is undisclosed consideration paid for purchase of plots in Pulak City is not an acceptable, sustainable and justified approach. The Ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 597 (SC) wherein it has been held that the onus lies on the Revenue to establish that an assessee has understated the consideration for transfer of an immovable property and unless such onus is discharged by the Revenue, there cannot be any presumption as regard to the understatement. Finally, the Ld. CIT(A) held that the addition of Rs.5,26,74,600/- made on account of undisclosed investment for purchase of plots in Pulak City on account of purchase consideration paid being less than the guideline value cannot be sustained. Accordingly, the Ld. CIT(A) deleted the entire addition of Rs.5,26,74,600/- made by the Assessing Officer in the assessee's income. Being aggrieved with the order of Ld. CIT(A), the Revenue is in appeal before this Tribunal against the addition deleted by the Ld. CIT(A). The ld. CIT-DR vehemently argued supporting the order of the Assessing Officer. The ld. CIT-DR also filed a Paper Book which is carefully perused and placed on record.

Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

36 We have heard the rival contentions and carefully perused the records placed before us. We find that the assessee has furnished various documentary evidences including newspaper cuttings in support of the disputed nature of the colony. We also find that the assessee has also furnished the details of other parties who have purchased the plots in same colony at the same rate of Rs.400/- per sq. ft. at which the assessee purchased. However, the Assessing Officer could neither comment nor controvert any single document or evidence furnished by the assessee. We also find that the Assessing Officer has also not brought any corroborative evidence on record to establish that the assessee has paid any consideration over and above that stated in the registered sale deeds. Further, the Assessing Officer has also not made any independent enquiry from the sellers or from the other parties who have purchased the plots in the Pulak City. We find that the Assessing Officer has also not brought any incriminating document or material on record to establish that the assessee has paid any amount over and above the

purchase consideration stated in the registered sale deeds. We noted that the Assessing Officer has made a reference of some rates prevailing in Silicon City of Jhaveri Group of Indore but, in our considered opinion, it cannot be a parameter or yardstick for determining the purchase price of the plots in another colony. Thus, in our view, the onus was lying on the assessing officer to establish that the assessee had paid any on-money over and above that stated in the registered sale deeds. However, the Assessing Officer failed to discharge such onus and made the addition merely on presumption and assumption. We further find sufficient merit in the contention of the assessee that the impugned transactions of purchases were carried out during the financial year 2012-13 relevant to A.Y. 2013-14 and for such year, the provisions of s.56(2)(vii) were not made applicable. It is worth notable that the provisions of s.56(2)(vii) have been introduced in the statute by the Finance Act, 2013 w.e.f. 1.4.2014 only and such provisions are not retrospective in the nature and furthermore, these provisions are applicable only to the individual and HUF and not to a partnership firm. In such circumstances, merely on the presumption basis, any difference in the guideline value and apparent consideration paid by an assessee

for purchase of an immovable property cannot be deemed as income of the assessee. Undisputedly, in the present case, no positive evidence has been brought on record to establish that the assessee has parted with any consideration over and above that shown in the registered sale deeds. In such circumstances, we are of the considered view that the Ld. CIT(A) has rightly deleted the addition of Rs.5,26,74,600/- made by the Assessing Officer in the assessee's income on the allegation of payment of on-money by the assessee. Accordingly, the action of the ld. CIT(A) in deleting the aforesaid addition of Rs.5,26,74,600/- is confirmed.

37. Now, as regard the addition of Rs.3,81,11,476/- on account of unexplained expenditure in 'Sun City' project, the briefly stated facts as culled out from the records are that during the course of search proceedings, at the residential premises of the partners of the assessee firm, certain documents pertaining to development of 'Sun City' project at Rau, Indore, mentioned as page no. 11 to 21 of LPS-2 were found and seized. During the course of search as well as the assessment proceedings, the assessee was asked to explain the transactions mentioned in these papers.

However, the assessee replied that these papers do not belong to the assessee. According to the Assessing Officer, the assessee firm stated that this project has been developed and executed by M/s. Medicaps I.T. Park Pvt. Ltd. and all the details regarding the same should be called from the same only. According to the Assessing Officer, the assessee firm was in fact, developer of the Sun City project. The same can be seen from the fact that it had given an advance of Rs.4Cr. to M/s. Medicaps I.T. Park Pvt. Ltd. in the A.Y. 2012-13 as project advance. The Assessing Officer noted that this means, the assessee was handed over the land by the land owner i.e. M/s. Medicaps I.T. Park Pvt. Ltd. and as a caution money towards project development, the amount of Rs.4 Cr. was advanced to the said company. As per the Assessing Officer, it has been extracted from the internet and facebook page of the assessee firm that the assessee is in fact the developer of the Sun City project. The Assessing Officer stated that the assessee firm was engaged in development of the Sun City project at Rau and had also incurred the total cost of Rs.3,81,11,476/- on the project development as evident from page nos. 12 to 23 of LPS-2 found and seized from the residential premises of the partners of assessee firm. The Assessing

Officer noted that from the verification of books and bank statements of the assessee firm as well as its partners, the expenditure to the tune of Rs.3,81,11,476/- as mentioned in the three RA Bills (LPS-2) is not found recorded. The Assessing Officer further stated that the veracity of the bills cannot be doubted as the same are duly acknowledged. The Assessing Officer treated the amount of Rs.3,81,11,476/- as unexplained expenditure incurred by the assessee in Sun City Project. The Assessing Officer further stated that as the time period of the same is not clearly available and the assessee is also not forthcoming with full facts, it is presumed that the assessee would have incurred these expenses after payment of project advance to the land owner of the project. Since the said advance was made in A.Y. 2012-13, the Assessing Officer presumed that the expenditure might have been incurred in A.Y. 2013-14. Finally, the Assessing Officer made an addition of Rs.3,81,11,476/- in the assessee's income for the A.Y. 2013-14 on account of unexplained expenditure in respect of Sun City project at Rau. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), at para (6.3) of the order, noted that the addition of Rs.3,81,11,476/- has been made by adding

Rs.2,75,39,046/- mentioned at loose page no. 16 and the amount of Rs.1,05,72,430/- mentioned at page no. 21. The Ld. CIT(A) observed that the page no. 21 is an abstract sheet of the proposed estimate. The Ld. CIT(A) stated that the Assessing Officer has given no basis for adding the proposed estimate in the development expenditure. The Ld. CIT(A) further noted that the entries at page no. 16 include previous bill amount of Rs.1,94,12,306.50/- (also mentioned at page no. 22) and amount of running bill no. 2 at Rs.81,26,739.57/- totaling to Rs.2,75,39,046.07/-. The Ld. CIT(A), at para (6.4) of her Order, further stated that any development agreement, being binding on both the parties requires registration with the Sub-Registrar of Properties. The Ld. CIT(A) stated that the Assessing Officer could have gathered the information either from M/s. Medicaps I.T. Park Pvt. Ltd. or the sub-registrar of the properties but has not brought any evidence on record to show that the assessee firm was a developer or Sun City, Rau. The Ld. CIT(A), at para (6.5) noted that the perusal of the seized documents shows that they are undated, page no. 16 & 17 only are signed by one Shri Ashish Pachori. However, as per the ld. CIT(A), the Assessing Officer has not brought anything on record to show the relationship/ connection of

Shri Ashish Pachori with the assessee firm. The Ld. CIT(A) further stated that the said addition of Rs.3,81,11,476/- has only been made on presumptions without bringing any corroborative evidence on record to support the stand taken that the said expenses have been incurred by the assessee firm. The Ld. CIT(A) relied upon certain decisions of the judicial authorities on the ratio that the seized papers having not corroborated by any independent evidence are dumb documents which cannot be considered as a reliable document or acceptable piece of evidence. Finally, the Ld. CIT(A) made a conclusion that the Assessing Officer has simply proceeded to make additions on the basis of the documents seized without bringing any evidence on record to show that Rs.3,81,11,476/- was incurred by the assessee towards development of Sun City, Rau which is not an acceptable, sustainable and justified approach. Accordingly, the Ld. CIT(A) deleted the entire addition of Rs.3,81,11,476/- made by the Assessing Officer in the assessee's income. Being aggrieved with the order of Ld. CIT(A), the Revenue is in appeal before this Tribunal against the addition deleted by the Ld. CIT(A).

38. The CIT-DR vehemently argued supporting the order of the Assessing Officer. The ld. DR also filed a Paper Book which is carefully perused and placed on record. Per contra Ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A).

39. We have heard the rival contentions and carefully perused the records placed before us. We have also carefully perused the various loose papers seized from the residential premises of the partners of the assessee firm which have been relied upon by the Assessing Officer for making the impugned addition. We find that such loose papers are in respect of one project site titled as 'Sun City', Rau. However, at the same time, we appreciate that these loose papers do not anywhere contain name of the assessee firm or any of its partners. It has been claimed by the assessee firm that such loose papers have not been prepared by, or on the instructions of, the assessee firm. We also find that on these loose papers, no date or period has been mentioned. We further find that some of the loose papers merely contain some measurement notings without any reference of any amount. We find that the loose paper page no. 21 contains the caption 'estimate' for some work to be done for an

estimated cost of Rs.1,05,72,430/-. We also find that at computerized sheets inventorized as page No.22 to 23, some cost of work at Rs.1,94,12,306.50p has been stated. Further, at page No.16 and 17 cost of work has been mentioned at Rs.81,26,739.57p. At page No.16, the sum total of these two costs have been mentioned at Rs.2,75,39,046.07p. On a careful and conjoint reading of all the subject loose papers, we find that the subject loose papers do not convey any meaning and these loose papers, having no signature, no date and no periodicity, can at the best be regarded as dumb documents and the same cannot be used as an evidence against the assessee. We find that the Assessing Officer, except relying upon the subject loose papers, have not brought any single corroborative material or evidence on record to establish that the assessee firm has actually incurred any such development expenditure in respect of Sun City project at Rau. It is an undisputed fact that the 'Sun City' project at Rau does not belong to the assessee firm. We find that such project is situated at land owned by one different company namely, M/s. Medicaps IT Park Pvt. Ltd. having its registered office at 20/1, Pushparatan Paradise, 9/5, Palasia, Indore. Thus, the ownership of the entire project is that of the above named company

only and the assessee is not having any ownership rights in such project. Before us, the assessee firm claimed that the above named company had approached the assessee firm for marketing its proposed 'Sun City' project and for such purpose, the company had appointed the assessee as one of the agents. It has been further claimed that in such project the assessee had made bulk booking by giving an advance of Rs.4,00,00,000/- through account payee cheque during the financial year 2011-12 which has duly been entered into the regular books of account of the assessee firm. The assessee firm further stated that a copy of the resolution to this effect passed in the Meeting of the Board of Directors of M/s. Medicaps IT Park Pvt. Ltd., on 01-09-2011, which was also furnished before the Id. CIT(A). The assessee firm further claimed that the entire expenditure relating to the development of the said 'Sun City' project had been incurred by the above named company only and the assessee has not incurred any single penny in connection with such project. As regard the abstracts of the websites reproduced by the Assessing Officer in the assessment order, the assessee firm submitted that it was making its efforts to market the project along with Medicaps I.T. Park Pvt. Ltd. only. The assessee

firm further claimed that it was not having any vested interest in the said project either as owner or developer and during the course of entire search proceedings, not a single agreement or title deed or any other evidence to this effect was found by the search party.

40. Further, we find that during the course of the assessment proceedings, the Assessing Officer was having full details of the owner of the project, i.e. Medicaps IT Park Pvt. Ltd. but, despite having the information, the Assessing Officer did not make any independent enquiry from the company to unearth the real truth and merely relied upon the uncorroborated loose sheets recovered during the course of search from the premises of the assessee firm. We also find that the Assessing Officer has not brought on record any cogent material or evidence that the assessee had incurred any unexplained expenditure during the previous year relevant to A.Y. 2013-14 only. We noted that the Assessing Officer himself, at para (15.9) of his Order, has stated that the period of the payment is not clearly available and therefore, merely on presumption the AO formed an opinion that the expenditure might have been incurred during the previous year relevant to the assessment year under

consideration and made the impugned addition. We find support from the ratio laid down by the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC) that any suspicion howsoever strong it may be, cannot become a basis of any addition. We are of the considered opinion that no addition can be made in the total income of an assessee merely on the basis of uncorroborated, undated, unsigned seized loose papers, in absence of any other material or evidence to substantiate the contents of such loose papers. In our opinion, these documents are merely dumb documents which cannot be allowed as a piece of evidence against the assessee. We are in agreement with the findings of the Ld. CIT(A) and the decisions of the various authorities relied upon. Thus, we uphold the action of the ld. CIT(A) in deleting the entire addition of Rs.3,81,11,476/- made by the Assessing Officer in the assessee's income merely on guess work without bringing any cogent and corroborative material or evidence on record. Accordingly, the ground No. 1 of the Revenue for the A.Y. 2013-14 is dismissed.

41 In the result, the appeal of the Revenue for the A.Y. 2013-14 is dismissed.

42. Finally, all the appeals filed by the Revenue are dismissed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 23 .08.2021.

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 23/08/2021

*!vyas!*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**