

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.259 to 269/Ind/2016 &  
ITA No.1330/Ind/2016  
Assessment Years: 2010-11 to 2013-14**

ACIT, Central-2 Indore (Appellant)	<u>बनाम/</u> Vs.	M/s. Silver Realities & Infrastructure Pvt. Ltd., Indore (Respondent)
P.A. No. AAJCS 3841 D		

Appellant by	Shri Rajib Jain, CIT-DR
Respondent by	S/Shri C.P. Rawka & Venus Rawka, CAs

<b>Date of Hearing:</b>	<b>01.09.2021</b>
<b>Date of Pronouncement:</b>	<b>30.09.2021</b>

**आदेश / O R D E R**

**PER MANISH BORAD:**

The above captioned appeals at the instance of Revenue are directed against the common order of Ld. Commissioner of Income Tax(Appeals)-III, [in short 'CIT(A)'], Indore dated 28.09.2016 passed in common assessment order u/s

153A/143(3) dated 26.3.2015. In these appeals, the Revenue has raised the grounds of appeals as under:

Grounds of appeal in IT(SS)A No.259/Ind/2016 (A.Y. 2010-11)

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.7,46,83,600/- on account of undisclosed receipts of ‘on-money’ received from sale of flats without appreciating the facts and evidences brought into light by the A.O. during assessment proceeding.”*

Grounds of appeal in IT(SS)A No.260/Ind/2016 (A.Y. 2011-12)

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.12,03,50,000/- on account of undisclosed receipts of ‘on-money’ received from sale of flats without appreciating the facts and evidences brought into light by the A.O. during assessment proceeding.”*

Grounds of appeal in IT(SS)A No.261/Ind/2016 (A.Y. 2012-13)

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.49,58,74,800/- on account of undisclosed receipts of ‘on-money’ received from sale of flats without appreciating the facts and evidences brought into light by the A.O. during assessment proceeding.”*
- 2.

Grounds of appeal in ITA No.1330/Ind/2016 (A.Y. 2013-14)

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.39,10,91,600/- on account of undisclosed receipts of ‘on-money’ received from sale of flats without appreciating the facts and evidences brought into light by the A.O. during assessment proceeding.”*

2. The only issue involved in the present appeals relate to deletion of the additions made by the Assessing Officer on account of undisclosed receipts of ‘on-money’ received

from sale of flats. As all four appeals relate to the same assessee and the issue raised is common, the same were heard together and are being disposed off by this common order for sake of convenience and brevity. Briefly stated facts as culled out from the records are that the assessee co. constructed and sold residential units and commercial space in the Silver Spring Township spread over 139 acres situated at the Bypass, A.B. Road, Indore. During search and seizure action on the Jhaveri Group, certain documents regarding the receipt of “on-money” were found and seized in respect of the project “Silver Mansion” and “Silver Mansion Extension” developed by the Jhaveries showing the sale of plots in both these projects @1500/- per sq. ft. The Assessing Officer relied on these evidences. The post search enquiries were conducted in the following projects: -

- a. “Shikharji Project” developed by another member of the Jhaveri Group, Smt. Komal Jhaveri.
- b. M/s. Ajitnath Reality P. Ltd.
- c. M/s. Padamprabhu Infrastructure P. Ltd.

In the post search enquiries conducted in the above cases, some of the purchasers of the plots admitted that they have paid “on-money” for purchase of the plots. Thus, the Assessing Officer noted that the assessee co. did not show correct receipts in the

books of account and formed the view that the rate of the constructed housing units in the assessee's projects cannot be less than Rs.1500/- per sq. ft. i.e. the rate at which developed plots were sold in "Silver Mansion" and "Silver Mansion Extension" projects. The Assessing Officer, referring to the summons issued to some Shri Ramesh Chandra Gupta, Garima Chelani and Kokila Chelani, took the average sale price as per books of account to be Rs.1100 per sq. ft. and estimated that Rs.400 per sq. ft. was suppressed and computed the "on-money" at Rs.7,46,83,600/-, Rs.12,03,50,000/-, Rs.49,58,74,800/- and Rs.39,10,91,600/- for the assessment years 2010-11 to 2013-14, respectively.

3. Being aggrieved, the assessee filed appeals for all the assessment years under consideration before the ld. CIT(A) and the ld. CIT(A), having gone through facts and circumstances of the case in the light of judicial pronouncements as noted in the impugned order, deleted the additions made by the Assessing Officer.

4. Being aggrieved, the Revenue is in appeals before this Tribunal for all the present assessment years.

5. The ld. CIT-DR relied upon the order of the Assessing Officer. Per contra, the ld. counsel for the assessee referred and relied on the findings of Ld. CIT(A) and submitted that the additions based on the documents found during search were not related to assessee company as all the group concerns of Jhaveri Group are engaged in the business of development of land and sale thereof after plotting, whereas, the assessee company has not sold a single inch of land. It's main and core business is to construct residential and commercial units. The seizure made in other cases has no bearing whatsoever in the assessee's case. Learned Counsel for the assessee also submitted that the Assessing Officer referred to the summons issued to some Shri Ramesh Chandra Gupta, Garima Chelani and Kokila Chelani. However, the assessee has no business transactions with these persons. Further, no single incriminating document pertaining to assessee was found/seized from the said premises. The operation under section 132 was simultaneously carried out in the project office of the company and there also, no incriminating document was found or seized.

6. 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 assessee is a private limited company incorporated by Shri Mukesh Jhaveri and Shri Abhishek Jhaveri on 27.09.2005 and engaged in the business of construction of residential and commercial units and sale thereof of apartment, row houses, bungalows and shops. Search & seizure operations u/s 132 were carried out on 21.09.2012 on the business as well as residential premises of the Jhaveri Group of Indore of which assessee company is a part. Notices u/s 153A were issued and in compliance to the same, assessee filed returns for respective years u/s 153A. Notices u/s 143(2) were issued on 25.06.2014 along with the questionnaire u/s 142(1). All the notices and hearings were duly complied by assessee from time to time along with the books of accounts, bank statements and other documents which were produced before the Assessing Officer. After completing the assessment proceedings u/s 153A r.w.s. 143(3), the Assessing Officer passed assessment order whereby he made the following additions:-

<b>A.Y.</b>	<b>Amount</b>
2010-11	Rs. 7,46,83,600/-
2011-12	Rs. 12,03,50,000/-
2012-13	Rs. 63,22,72,745/-
2013-14	Rs. 63,82,56,646/-

7. We find that the Id. CIT(A) having gone through the facts and submissions thereof in the light of the judicial pronouncements deleted the additions observing as under:

*“5.1 I have gone through the assessment order and the submissions made by the appellant. The appellate company has constructed and sold residential units and commercial space in the Silver Spring Township spread over 139 acres situated at the Bypass, A.B. Road, Indore. During the search and seizure action on the Jhaveri Group certain incriminating documents regarding the receipt of ‘on money’ were found and seized in respect of the projects ‘Silver Mansion’ and ‘Silver Mansion Extension’ developed by the Jhaveries showing the sale of plots in the said two projects @ Rs. 1500/- per sq. ft. The Assessing Officer has relied on this evidence seized in respect of the projects ‘Silver Mansion’ and ‘Silver Mansion Extension’ and the post search enquiries conducted in respect of the following projects:-*

*(i) ‘Shikharji’ project developed by another member of the Jhaveri Group, Smt.Kokila Jhaveri.*

*(ii) M/s Ajitnath Reality Pvt. Ltd.*

*(iii) M/s Padmaprabhu Infrastructure Pvt. Ltd.*

*In the post search enquiries conducted in the above cases some of the purchasers of the plots admitted that they have paid on money for purchase of the plots. The Assessing Officer held that on the basis of evidences seized in respect of ‘Silver Mansion’ and ‘Silver Mansion Extension’ projects and the post search evidences gather regarding acceptance of on money by the Jhaveri Group in its various projects, the assessee company has not shown correct receipts in its books of accounts. The Assessing Officer took the view that the rate of the constructed housing units in the assessee's project cannot be less than Rs. 1500/- per sq. ft., the rate at which developed plots have been sold in ‘Silver Mansion’ and ‘Silver Mansion Extension’ projects. The Assessing Officer took the average sale price as per the books of accounts to be Rs. 1100/- per sq. ft. and estimated that Rs. 400/- per sq. ft. has been suppressed and made the year wise computation of the on money as under:-*

A.Y.	Booked Area (In Sq. Ft.)	Total receipts as per assessee @Rs.1100/sq.ft.	Actual Receipts @Rs.1500/sq.ft.	Un money received (Col.3 -Col.2)
	(1)	( 2 )	(3)	(4)
2010-11	186709	20,53,79,900	28,00,63,500	7,46,83,600
2011-12	300875	33,09,62,500	45,13,12,500	12,03,50,000
2012-13	1239687	1,36,36,55,700	1,85,95,30,500	49,58,74,800
2013-14	977729	1,07,55,01,900	1,46,65,93,500	39,10,91,600
		<b>2,97,54,99,998</b>	<b>4,05,74,99,997</b>	<b>1,08,19,99,996</b>

The appellant company was started by the Jhaveris on 27/09/2005. In November, 2005 Fire Capital Fund of Mauritius invested in the appellant company and acquired 49% shares. Therefore, it is evident that the appellant company does not wholly belong to the Jhaveri Group. The second point to be considered is that the appellant company has developed the project 'Silver Spring Township' which has multiple housing options of 2, 3, 4 and 5 bedroom units, 3 types of Villas, Town Houses, Terrace Cottages, Duplexes and Commercial units. On the other hand all the projects of the Jhaveri Group are in respect of development of land and sale of plots. The Assessing Officer has relied on the evidences found and seized in respect of the 'Silver Mansion' and 'Silver Mansion Extension' projects and the post search enquiries conducted in respect of various projects of the Jhaveri Group which are for development of land and sale of plots.

In the appeal proceedings the appellant pointed out that the Assessing Officer has adopted the average rate of Rs. 1100/- per sq. ft. on the approximate figure of total area sold/booked of 27 lacs sq. ft. upto 31/03/2013 which is not as per the actual sales declared in the P&L account by the appellant in A.Ys 2010-11 to 2013-14 and this itself makes it evident that the additions have been made without examining the actual details submitted to the Assessing Officer.

The appellant also submitted the details for A.Ys 2010-11 to 2013-14 regarding the sale price of the various categories of sales made i.e. row houses, apartments,

terrace cottage, town house etc.; the built up area and the circle rates for the different categories. It is seen that the appellant has not booked any sale below the rates prescribed by the Circle Rate of Authority i.e. Sub-Registrar of Indore. The details are as under :-

<b>Financial Year 2009-10</b>			
Product Name	Sale Value	Guideline Value	Size
Villa Ruby	1.00 to 1.21 Crore	5770445/-	Plot 4500 sq. ft. and Built Up 4456 sq. ft.
Villa Pearl	66.5 lacs	3547998/-	Plot 2700 sq. ft. and Built Up 2893 sq. ft.
Mid-rise apartments	41.5 lacs	2329680/-	2089 sq. ft. Built Up Area
Terrace Cottage	61 lacs	3514200/-	3386 Sq. Ft. Built Up (1667 Sq. Ft. sold out)
Town House	55 lacs	2579650/-	Plot 1635 sq. ft. and Built Up 2539 sq. ft.
Flats	Rs. 1700/- per sq. ft.	Rs. 1115 per sq. ft.	-
<b>Financial Year 2010-11</b>			
Product Name	Sale Value	Guideline Value	Size
Villa Ruby	1.00 - 1.21 Crore	5979553/-	Plot 4500 sq. ft. and Built Up 4456 sq. ft.
Villa Pearl	66.5 lacs	3673463/-	Plot 2700 sq. ft. and Built Up 2893 sq. ft.
Mid-rise apartments	41.5 lacs	2523820/-	2089 sq. ft. Built Up Area
Terrace Cottage	61 lacs	3807050/-	3386 Sq. Ft. Built Up
Town House	60 lacs	2655618/-	Plot 1635 sq. ft. and Built Up 2539 sq. ft.
Flats	1700/- per sq. ft.	1208/- per sq. ft.	-
<b>Financial Year 2011-12</b>			
Product Name	Sale Value	Guideline Value	Size
Villa Ruby	1.10 - 1.35 crore	7010997/-	Plot 4500 sq. ft. and

			Built Up 4456 sq. ft.
Villa Pearl	85 lacs	4306618/-	Plot 2700 sq. ft. and Built Up 2893 sq. ft.
Mid-rise apartments	50 lacs	2912100/-	2089 sq. ft. Built Up Area
Terrace Cottage	61 lacs	4392750/-	3386 Sq. Ft. Built Up
Town House	Sold Out	3110884/-	Plot 1635 sq. ft. and Built Up 2539 sq. ft.
Flats	1875/- per sq. ft.	1394/- per sq. ft.	-
<b>Financial Year 2012-13</b>			
Product Name	Sale Value	Guideline Value	Size
Villa Ruby	1.20 - 1.51 crore	666u we/-	Plot 4500 sq. tt. and Built Up 4456 sq. ft.
Villa Pearl	65 lacs	5316166/-	Plot 2700 sq. ft. and Built Up 2893 sq. ft.
Mid-rise apartments	50 lacs	3882800/-	2089 sq. ft. Built Up Area
Terrace Cottage	61 lacs	3098600/-	Plot 1635 sq. ft. and Built Up 2539 sq. ft.
Town House	Sold Out	3794074/-	-----do-----
Flats	2500/- per sq. ft.	1858/- per sq. ft.	

At this stage, before drawing a final conclusion, it is relevant and necessary to consider the ratios of the following decisions.

The Hon'ble High Court of Delhi in the case of CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del.) observed that no independent material or evidence had been brought on record by the AO to establish that the notings/jottings recorded on the loose sheet or paper represented an unaccounted transaction, then the explanation of the assessee should be accepted. In this situation, the Tribunal was right in holding that the loose sheet or document does not represent any investment or expenditure over and above the books of accounts of the assessee out of income alleged to be earned from unaccounted sources.

he Hon'ble ITAT Hyderabad 'B' Bench in the case of DCIT vs. M. Aja Babu following the decision of Hon'ble High Court of Delhi in the case of CIT vs. Anil Bhalla (supra), CIT vs. Dinesh Jain (HUF) 211 Taxman 23 (Del) and CIT vs. Jaipal Aggarwal 212 Taxman 1 (Del), ITAT Mumbai in the case of ACIT vs. JP Morgan India Pvt. Ltd. 46 SOT 250(Mumbai), held that the addition made by the AO based on the loose paper, which is not a conclusive evidence and therefore, the same is not sufficient for making the addition. The Tribunal also held that no addition can be made on the basis of dumb document/notebook/loose slips in absence of any other material to show that the assessee has made investment in land. The relevant observations and findings of the Tribunal in this case read as under:-

*17 We have heard the arguments of both the parties, perused the record and have gone through the orders of the authorities below. In this case, the addition was made by the AO based on the loose paper and the same, in our view, cannot be considered as conclusive evidence. As held by the CIT(A) in the impugned order "except relying, the notings in the loose slips, no attempt has been made to corroborate the notings with independent evidence. The parties to the transaction particularly the vendor has not examined. In every transaction there is a circle concerning two parties. It is not known whether the vendor has disclosed the consideration as noted in the diary. Therefore, merely on the basis of presumption and some corroborated notings additions cannot be made." In our opinion, the deletion of addition by the CIT(A) is justified and no interference is called for in the order of the CIT(A). The following cases support the action of the CIT(A):*

1. *CIT Vs. Anil Bhalla [2010] 322 ITR 191 (Del.) - wherein held that the notings recorded on the loose sheet of paper do not represent any expenditure incurred by the assessee director and that the entries related to the company in as much as the assessee could*

*explain from the books of the company that these projects were undertaken by it, and upheld the deletion of the impugned addition under s. 69C, findings arrived at by the Tribunal are pure findings of facts and the same do not warrant any interference.*

2. *ACIT Vs. J.P. Morgan India (P) Ltd. [2011] 46 SOT 250 (Mum)*

3. *CIT Vs. Dinesh Jain HUF [2012] 211 Taxman 23 (Delhi)*

4. *CIT Vs. Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi)- wherein it was held that Dumb documents seized, i.e. from which nothing could be clearly understood, cannot form a justified base for making additions to income of the assessee.*

17.1 In view of the above discussion, we are of the view that the addition made by the Assessing Officer based on the loose paper, which is not a conclusive evidence and, therefore, the same is not sufficient to make the addition. In our opinion, no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has made investments in land. Noting on the note book/diary/loose sheets are required to be supported/corroborated by other evidence and should also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. The vendor has not examined in this case. Therefore, we do not find any infirmity in the order of the CIT(A) in directing the Assessing Officer to delete the addition made on the basis of loose paper and the order of the CIT(A) is hereby upheld dismissing the grounds raised by the revenue on this issue.

18. As a result appeal in ITA No. 1756/Hyd/2012 is dismissed.”

Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atam Valves (P) Ltd. (2011) 332 ITR 468 (P&H) held that when the loose papers did not relate to certain payments during the relevant period in question, then in absence of any supporting material or evidence, these loose sheets by itself were not found to be sufficient enough for making a sustainable and justified addition.

ITAT Delhi 'E' Bench in the case of Atul Kumar Jain (1999) 64 TTJ 786 (Delhi) vs. DCIT held that when the seized papers have being not corroborated by any independent evidence it cannot be considered as a reliable document or acceptable piece of evidence as a proof of investment in the house property and therefore, these kind of documents/papers are liable to be ignored and addition made on the basis of such document is not sustainable and in accordance with law.

In CIT v/s Kulwant Rai (2007) 291 ITR 36 (Del) the ruling of the Supreme Court in Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC) was relied upon. The Supreme Court held that even though Income Tax Authorities including the Assessing Officer has unfettered discretion and not strictly bound by the rules and pleadings as well as materials on record and is legitimately entitled to act on the material which may not be accepted as evidence, nevertheless such discretion does not entitle them to make

a pure guess and base an assessment entirely upon it without reference to any material or evidence at all. Given the above state of law the Delhi High Court stated that it has no hesitation in so concluding, since the document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of the AO.

ITAT, Hyderabad in ITA 329/Hyd/2012 dated 04.01.2014 in the case of DCIT vs. Shri Babu Rao where in Para 26 to 29 held thus:-

*“26. It is clear from the above provisions of section 153A that the income of the assessee in case of a person where search is initiated u/s. 132, the books of account or other documents or any assets are requisitioned u/s. 132A, the Assessing Officer after issue of a notice to furnish income of the assessee in respect of each assessment year falling within 6 assessment year immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition made, the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisitioned, as the case may be, on bringing on record the material to show that there is undisclosed income of the assessee. In other words, there should be material on record to show that the income is assessed on the basis of material/ evidence in hands of the Assessing Officer.*

*27. Being so, in our opinion, guess work is not possible in case of search assessment framed u/s. 143(3) or u/s. 153A of the Act without any proper material. The AO shall have the basis for assuming that the expenditure incurred by the assessee is out of undisclosed income. It is not permissible to assess the undisclosed income in the absence of any other evidence on arbitrary basis. The unsubstantiated loose sheets cannot be considered as a conclusive evidence to make any addition towards undisclosed income. It was held by the Supreme Court in the case of CBI vs. V.C. Shukla (1998) 3 SCC 410 that “file containing loose sheets of papers are not books” and hence entries therein are not admissible u/s. 34 of the Evidence Act, 1872.*

*28. In the present case, the seized material (two note books) marked as KBR/A/02 and KBR/A/04 wherein certain entries are found recording various transactions pertaining to the assessee. These entries in the notebook are unsubstantiated and on that basis the AO reached to the conclusion that the figures mentioned therein are to be read by adding 3 zeros and thereby he came to conclude that there is undisclosed income in these 6 assessment years. In our opinion, the document recovered during the course of search was a dumb document*

and led nowhere. The CIT(A) rightly came to the conclusion that it cannot be acted upon and deleted the addition.

29. Other than the loose paper, the AO has not brought on record any corroborative material or evidence to show that the inference made by him is correct. The CIT(A) after taking the totality of the circumstances into consideration came to the conclusion that the addition made by the AO is not justified and the argument put forth by the assessee is supported by documentary evidence. This was not a case where relevant evidence had been ignored by the CIT(A) and their relevant evidence has been taken into consideration. The only test that was required to be applied was whether on the facts found and the state of evidence on record, the conclusion arrived at by the CIT(A) was one which could be arrived by a reasonable person properly informed in law. Applying this test, it could not be said that the decision recorded by the CIT(A) one which could not have been arrived at by a reasonable person properly informed in law considering the state of evidence on record. Hence, in our considered opinion, the CIT(A) has reached a correct conclusion in deleting the addition made by the AO on the basis of loose sheets.”

The Hon'ble ITAT Jabalpur in the case of ACIT vs. Satyapal (2007) 295 ITR (AT)352 (Jab.) held as under:-

*“The crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transactions of the assessee in the relevant assessment year. Any gap in the various components as mentioned in section 4 of the Income Tax Act must be filled up by the Assessing Officer through investigations and correlations with the other material found either during the course of the search or on investigation. As a result, we hold that document No. 7 is a non- speaking document.*

Hon'ble Delhi High Court in the case of CIT vs. S.M. Agrawal 293 ITR 043 (Del) held that unless and until the contents of the document are proved against the person, the possession of the document or handwriting of that person on such document by itself could not prove the contents of the document. It was further held that the document recovered during the course of search from the assessee was held to be dumb document and the addition on the basis of the same is not sustainable.

The Hon'ble Delhi High Court in the case of CIT vs. Vatika Landbase (P.) Ltd. (2016) 383 ITR 320 (Del) held that the addition made by the Assessing Officer on the basis of documents found and seized from the computer of an employee of the assessee company showing that the rate of sale of floor space in commercial was higher than the rate shown by the assessee was not sustainable as the rates

mentioned in the seized documents did not represent any completed or materialized transaction. Moreover, the Assessing Officer did not make any enquiry from the said employee or from the buyers of flats in respect of actual price paid by them.

The Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash Choudhary (2008) 305 ITR 245 (Del) has held that in the absence of corroborative material, the addition made on the basis of sketchy document which was unproved cannot be sustained in law.

The Hon'ble Delhi High Court in the case of CIT vs. Vivek Agrawal (2015) 231 Taxman 392 (Del) has held that unless the amounts stated in the document were actually paid it cannot be presumed that the amount mentioned in the sale deed was not correct.

The Hon'ble M.P. High Court in the case of CIT vs. Kantilal Prabhudas Patel (2008) 296 ITR 568 (MP) has held that the addition cannot be made on guess work or estimates.

On careful consideration of the entire material placed before me, inter alia the assessment order and the submissions made in the appeal proceedings, it is seen that the Assessing Officer has simply proceeded to make additions on the basis of the documents found and seized in respect of the 'Silver Mansion' and 'Silver Mansion Extension' projects and the post search enquiries conducted in respect of various projects of the Jhaveri Group. No incriminating document was found and seized during the course of the search showing the receipt of money for the "Silver Spring Township" project of the appellant company. No effort has been made by the Assessing Officer of making any investigation or inquiry to substantiate his theory of suppression of sales. The Assessing Officer has estimated the unaccounted sale consideration @ Rs. 400/- per sq. ft. but has not brought out any corroborative material to show that the inference made by him is correct and sustainable. It is also very pertinent to note that the appellant company is not wholly owned by the Jhaveris and its nature of business is different from that of the other projects of Jhaveris and the Assessing Officer has not disputed this fact. Therefore, to estimate the additions on the basis of incriminating documents found in the other projects of the Jhaveri Group is not an acceptable, sustainable and justified approach.

In view of the facts and circumstances of the case and the discussions in the preceding paragraphs, the addition of Rs. 7,46,83,600/-, Rs. 12,03,50,000/-, Rs. 49,58,74,800/- and Rs. 39,10,91,600/- made for A.Ys 2010-11, 2011-12, 2012-13 and 2013-14 respectively on account of undisclosed receipts is hereby deleted. Ground Nos. 1,2,3,4 and 5 for A.Ys 2010-11, 2011-12, 2012-13 and 2013-14 are allowed.”

8. On going through the facts and circumstances of the present case, we find that the entire procedure of additions in assessee's case was based on the documents found during search which related to other group companies named Silver Mansion, Silver Mansion Extension and have no any relevance or relation with the assessee co. as none of the concerns, belonging to Jhaveri Group, have the line of business in which the assessee company deals. We find that all the group concerns of Jhaveri Group are engaged in the business of development of land and sale thereof after plotting, whereas, the assessee company has not sold a single inch of land. It's main and core business is to construct residential and commercial units. The units are in the shape of apartment, row houses, bungalows and shops. Learned Counsel for the assessee explained that the rate fixed for the purpose of sale is as per the deal struck by the assessee with the prospective buyer and which is in unit of per sq Feet and for the purpose of calculation of saleable area, ingredients of space

utilized in the construction of common area, roads, clubs, gardens, staircases and parking etc. are apportioned in the number of unit. Resultantly, a customer is required to pay 30% more than the carpet area bought by him. The Assessing Officer wrongly estimated rate per square feet, by comparing the rates adopted in the adjoining township, 'Silver Mansion', is a project of Jhaveri Group, totally disjoint with the assessee company. The said project, deals in the sale of plot only. Therefore, the comparison made by the Assessing Officer is baseless. Further, the Assessing Officer elaborated, the seizure made, in other cases of Jhaveri Group which has no bearing in the assessee's case but the Assessing Officer without establishing the relevance by bringing any cogent material made the additions. Similarly, some enquires conducted in the cases of Shikharji, Ajitnath Reality Pvt. Ltd. and Padmaprabhu Infrastructure Pvt. Ltd. were irrelevant as is evident from the computation of income of the assessee. Even otherwise, the issue of M/s Shikharji is before the Settlement Commission and therefore, the comparing the case of Shikharji with that of assessee is unjustified. We find that the Assessing Officer failed to pinpoint a single mistake in the books of accounts maintained by the assessee. He could not pin-point

any enquiry made in the assessee's case from which adverse inference could be drawn. He did not conduct any enquiry in the assessee's case which is apparent from the fact that no such details of enquiry have been incorporated in the assessment order. We find that the assessee filed complete details before the Assessing Officer in respect of sale and also the details product-wise of Phase one & two. We find that the assessee's books of accounts are audited and no any incriminating document were found relating to the assessee company during the course of search and no any defect to the maintenance of the books of accounts were noticed by the search team and the Assessing Officer during the course of Assessment proceedings . Therefore, we are of the view that the additions made were uncalled for. Our view is supported by the ratio laid down in the following judicial pronouncements:

1. *Anurag Dalmia vs DCIT (2018) 52 CCH 106 (Del Tribunal);*
2. *Commissioner Of Income Tax Vs. Kabul Chawla, High Court Of Delhi, (2016) 380 Itr 0573 (Delhi)*
3. *Principal Commissioner Of Income Tax & Ors. Vs. Meeta Gutgutia Prop. Ferns 'N' Patels & Ors., High Court Of Delhi, (2017) 395 Itr 0526 (Delhi)*
4. *Principal Commissioner Of Income Tax Vs. Kurele Paper Mills P. Ltd., High Court Of Delhi, (2016) 380 Itr 0571 (Delhi)*
5. *Principal Commissioner Of Income Tax & Ors. Vs. Best Infrastructure (India) Pvt. Ltd. & Ors., High Court Of Delhi, (2017) 397 Itr 0082 (Delhi)*

6. *Commissioner Of Income Tax Vs. Gurinder Singh Bawa, High Court Of Bombay, (2016) 386 Itr 0483 (Bom)*
7. *Principal Commissioner Of Income Tax Vs. Saumya Construction P. Ltd., High Court Of Gujarat, (2016) 387 Itr 0529 (Guj)*
8. *Principal Commissioner Of Income Tax Vs. Dharampal Premchand Ltd., High Court Of Delhi, (2017) 99 Cch 0202 Delhc*

9. So far as the Assessing Officer's observations in respect of the summons issued to some Shri Ramesh Chandra Gupta, Garima Chelani and Kokila Chelani are concerned, we find that the Assessing Officer could not bring any cogent material to establish that the assessee has business transactions with these persons. Therefore, the observations are baseless. Further, so far as the Assessing Officer's observation in respect of placing a figure of Rs. 1500/- per square feet is concerned, we find that the learned Counsel for the assessee explained that M/s Silver Realities and Infrastructure Pvt. Ltd was incorporated by Shri Mukesh Jhaveri and Abhishek Jhaveri on 27.09.2005 and later on in Nov 2005, Fire Capital Fund belonging to Republic of Mauritius joined hands with Jhaveris. Resultantly, 51% shares are held by Jhaveris and 49% by Fire Capital Fund. The investment made by Fire Capital Fund is from US Investors routed through Mauritius. Therefore, the observations made by

the Assessing Officer are not justified as the assessee co. does not belong to Jhaveri Group accordingly. As explained above, we find that the assessee started its projects being incorporated by Shri Mukesh Jhaveri and Abhishek Jhaveri on 27.09.2005, whereas the seized documents relating to search & seizure operations u/s 132 carried out on 21.09.2012 on the business as well as residential premises of the other group concerns/projects named Silver Mansion, Silver Mansion Extension. Thus, it is clear that the assessee's projects are relating to much prior period to the period of the projects of Silver Mansion, Silver Mansion Extension as the date of search is 21.09.2012. Therefore, the observations made by the Assessing Officer are not justified as the projects of the assessee co. have nothing to do with the projects of the Silver Mansion, Silver Mansion Extension. Further, we find that the Assessing Officer made the addition of Rs.37,07,335/- on the basis of the aforesaid seized document and the same has been owned up by Shri Mukesh Jhaveri and Shri Abhishek Jhaveri in 50:50 ratio and paid due taxes which has been accepted by the Settlement Commission vide order dated 22.8.2016. Therefore, the ld. CIT(A) had deleted the addition of Rs.37,07,335/-. Thus, we find that the tax in

respect of the seized document has been paid and the seized document has no relevance so far as the case of the present assessee is concerned.

10. On consideration of above facts and discussion thereof in the light of the judicial pronouncements (supra), we find that no single incriminating document pertaining to assessee was found from the premises of other concerns as narrated above showing that any “on-money” was received by the assessee. Further, the operation under section 132 was simultaneously carried out in the project office of the company and there also no incriminating document was found or seized as is evident from the contents of the Assessment Order itself which show no reference to incriminating documents or undisclosed assets before making any addition for alleged “on-money”. Before us, ld. CIT-DR could not controvert the findings of the ld. CIT(A) by bringing any contrary material on record . Accordingly, we do not find any reason to interfere with the findings recorded by the ld. CIT(A). The same is confirmed. Thus, the only issue raised in the appeals of the Revenue for the assessment years 2010-11 to 2013-14, respectively, is dismissed.

Finally, the appeals filed by the Revenue i.e. IT(SS)A Nos.259 to 261/Ind/2016 and ITA No.1330/Ind/2016 are dismissed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 30.09.2021.

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 30/09/2021

*!vyas!*

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

By order

**Assistant Registrar, Indore**