

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

**BEFORE SHRI MAHAVIR PRASAD, HON'BLE JUDICIAL
MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

VIRTUAL HEARING

ITA No.126/Ind/2017
Assessment Year 2012-13

ACIT, Central-II, Indore

: Appellant

V/s

Vinod Garg, Mandasaur
PAN – ACDPG 7986 J

: Respondent

Revenue by	Shri P.K. Mitra, CIT-DR
Assessees by	S/Shri S.N. Agrawal & Pankaj Mogra, CAs
Date of Hearing	09.11.2021
Date of Pronouncement	05.01.2022

ORDER

PER MANISH BORAD, A.M

The above captioned appeal at the instance of Revenue is directed against the order of Ld. Commissioner of Income Tax(Appeals)-III, (in short 'CIT(A)'), Indore dated 10.11.2016. The Grounds of Appeal as taken by the Revenue in the said appeal reads as under:

(1) On the facts and in the circumstances of the case the Ld. CIT(Appeals) has erred in deleting the additions of Rs. 3,70,01,954/- made by the A.O. on account of undisclosed expenses incurred on development of colony without appreciating the facts and evidences brought into light by the A.O. during assessment proceedings.”

2. Facts, in brief, are that the assessee an individual carrying on his business of real estate at Mandsaur. Search and Seizure operations u/s. 132 of the Act were initiated in the Ambika Group by the DDIT(Inv.), Indore on 19.01.2012. Subsequently, notices u/s. 153A of the Act were issued to the assessee and in response, the assessee furnished returns for the respective assessment years. Thereafter, the case of the assessee was selected for scrutiny and necessary notices u/s. 143(2) and 142(1) of the Act served upon the assessee. Various details were called for by the Assessing Officer which were replied by the

assessee. It was explained by the assessee that along with his

Family members he has developed following three colonies:-

S.No	Name of the Colony
1	Keshav Kunj
2	Keshav Vihar
3	Keshav Riddhi

3. During the course of assessment proceedings the Ld. A.O. asked the assessee to provide the complete details in respect of development expenses incurred by him on development of these colonies. The assessee provided year-wise and assessee-wise complete details in respect of these colonies developed by him along with his other family members. However, the Ld. A.O. added an amount of Rs. 3,70,01,954/- to the total income of the assessee by estimating the development cost of all the colonies developed by him with his family members @ 300/- per square feet of saleable area specified by the assessee as per the catalogue of the colony. The Colony wise Details of addition as made by the A.O. in the Assessment Order is as under:-

S.No.	Name of Colony	Development Expenses estimated	Development Expenses	Amount added by the A.O.

		by the A.O. (A)	incurred by the assessee as per books (B)	towards Development expenses [A – B]
01.	Keshav Vihar	1,77,58,500	77,84,503	99,73,997
02.	Keshav Kunj	1,95,87,300	82,60,951	1,13,26,349
03.	Keshav Ridhi Sidhi	2,06,08,200	49,06,592	1,57,01,608
	Total Addition			3,70,01,954

4. Being aggrieved, the assessee preferred appeal before the Id. CIT(A) who allowed the appeal filed by the assessee and deleted the entire amount of addition. While passing the order, the Ld. CIT(A) considered the various documents as submitted by the assessee and deleted the addition made by the Ld. A.O. as per the observation given by her in para 3.4 to 3.7 page 5 to 7 of the impugned order which read as under: -

3.4 I have gone through the assessment order, the appellant's submissions and the material on record.

3.4.1 The Assessing Officer has made the addition on account of development expenses incurred for the three colonies viz. 'Keshav Vihar', 'Keshav Kunj' 86 'Keshav Riddhi Siddhi' in the hands of the appellant. It is seen that the land in respect of the three colonies was owned by different individuals of the family who are all separately assessed to Income Tax. The lands on which these colonies have been developed were purchased/owned by

different individuals and were disclosed in their respective names. The ownership of the land for the three colonies is as under:-

Keshav Kunj Colony

<i>Name</i>	<i>Area (in hect)</i>
<i>Vinod Kumar Garg</i>	<i>0.352</i>
<i>Asha Devi Garg</i>	<i>0.195</i>
<i>Navneet Garg</i>	<i>0.175</i>
<i>Shikha Garg</i>	<i>0.175</i>

Keshav Vihar Colony

<i>Name</i>	<i>Area (in hect)</i>
<i>Vinod Kumar Garg</i>	<i>0.2648</i>
<i>Navneet Garg</i>	<i>0.2581</i>
<i>Asha Devi Garg</i>	<i>0.183</i>

Keshav Riddhi Siddhi

<i>Name</i>	<i>Area (in hect)</i>
<i>Asha Devi Garg</i>	<i>0.19</i>
<i>Navneet Garg</i>	<i>0.19</i>
<i>Arun Garg</i>	<i>0.19</i>
<i>Ajay Garg</i>	<i>0.19</i>
<i>Shikha Garg</i>	<i>0.19</i>

3.4.2 The Assessing Officer's contention that the development expenses incurred for the three colonies viz. Reshav Vihar', `Keshav

Kunj' 85 Reshav Riddhi Siddhi' are not reflected in the regular books of accounts and that no details of these expenses have been furnished is incorrect. During the assessment proceedings vide letter dated 08/01/2014 it was clearly stated that the appellant and his family members had entered into an agreement with Shri Mukesh Sangai for development of the colonies. The said agreements were also seized during the course of the search. The fact that the development expenses have been incurred through the contractor was clearly explained to the Assessing Officer. All the different individuals have debited the development expenses in their books of accounts. The statement giving year wise development expenses incurred by the different individuals was furnished during the course of assessment proceedings. During the appellate proceedings the copy of ledger accounts of the development expenditure along with the relevant bills and copy of bank statement reflecting the amount of development expenditure has been submitted.

3.4.3 Most of the plots in these colonies have been sold between Rs. 200/- to Rs. 250/- per sq. ft. The sale value as declared by the appellant and the other family members in respect of the sale of plots has been accepted and no adverse view has been taken on that account. It is submitted that the sale of plots has been executed as per the prevailing market rates and in most cases there was no difference in the sale consideration received and the value adopted for stamp duty purposes.

3.5 From the above it is clear that the Assessing Officer has merely estimated the development expenses @ Rs. 300/- per sq. ft. without any basis or logic. A sales brochure was seized during the search in

respect of Keshav Vihar Colony in which various amenities were listed. The Assessing Officer has estimated that development cost in a colony with such amenities cannot be less than Rs. 300/- per sq. ft. This is definitely not a justifiable or acceptable approach. The entire estimation has been done in the hands of the appellant in assessment year 2012-13 which is again not acceptable as different family members owned the land and have incurred the development expenses in different assessment years which are duly reflected in their books of accounts. It is pertinent to note that the Assessing Officer has not pointed out any discrepancy in the development expenses debited in the individual accounts of the different family members and not given any logic for making the entire addition in the hands of the appellant only in A.Y. when development expenses have been incurred in different financial years in different colonies. In the colony Keshav Riddhi Siddhi the appellant himself does not even own any land and the entire land holding is in the hands of other family members. Also the development of this colony was incomplete on the date of the search. Further, the Assessing Officer has not doubted the sales consideration received by the appellant and his family members for the sale of plots in these colonies and to estimate the development expenses without rejecting the books of accounts in the absence of any incriminating document found or seized during the search is not acceptable.

3.6 Thus, estimation of the additions on the basis of the assumption that development expenses incurred would be Rs. 300/- per sq. ft. in the absence of any incriminating evidence found and seized during the course of the search or corroborative evidence brought on record by the Assessing Officer that the undisclosed development expenses in respect of the three colonies have been incurred by the

appellant on behalf of the whole family is not an acceptable, sustainable and justified approach.

5. The CIT-DR vehemently argued and relied on the order as passed by the Assessing Officer.

6. Per contra, Ld. Counsel for the assessee referred and relied on the findings of Ld. CIT (A). Ld. Counsel for the assessee also relied upon the written submission which is reproduced as under:-

“1.1] *That in the only ground of appeal the department has challenged the Addition made by the A.O. of Rs. 3,70,01,954/- on account of Undisclosed expenses incurred on development of 3 colonies but deleted by the Ld. CIT(A).*

1.2] *That as submitted above the assessee along with his other family members has developed following three colonies at Mandsaur:-*

<i>S.No</i>	<i>Name of the Colony</i>
<i>1</i>	<i>Keshav Kunj</i>
<i>2</i>	<i>Keshav Vihar</i>
<i>3</i>	<i>Keshav Riddhi</i>

1.3.1] *That year wise development expenses incurred by the assessee and his family members are as under:-*

<i>S.No</i>	<i>Name of Colony</i>	<i>Year-wise Development Expenses incurred by the assessee and his Family members</i>				
		<i>A.Y. 09-10</i>	<i>A.Y. 10-11</i>	<i>A.Y. 11-12</i>	<i>A.Y. 12-13</i>	<i>Total</i>
<i>01.</i>	<i>Keshav Vihar</i>	<i>0</i>	<i>0</i>	<i>77,84,503</i>	<i>0</i>	<i>77,84,503</i>
<i>02.</i>	<i>Keshav Kunj</i>	<i>12,06,720</i>	<i>70,54,231</i>	<i>0</i>	<i>0</i>	<i>82,60,951</i>
<i>03.</i>	<i>Keshav Ridhi Sidhi</i>	<i>0</i>	<i>0</i>	<i>2,51,056</i>	<i>46,55,536</i>	<i>49,06,592</i>
	<i>Total</i>	<i>12,06,720</i>	<i>70,54,231</i>	<i>80,35,559</i>	<i>46,55,536</i>	<i>2,09,52,046</i>

1.3.2]. *The assessee and his Family members have duly incorporated the Cost of land, development expenses and sale consideration as realized on sale of Plots in the above Colonies in their regular books of accounts which were produced before the A.O.*

- 1.3.3] **The assessee has incurred development expenses for Keshav Vihar Project in the Asst Year 2011-12 , nd not in the AsstYear 2012-13. Similarly, development expenses for Keshav Kunj project was incurred in the Asst Year 2009-10 and 2010-11 and not in the Assessment Year 2012-13 . Hence, addition as made by the assessing officer in the hand of the assessee and that too in the Asst Year 2012-13 was also not correct.**
- 1.3.3] **That like wise for Keshav Ridhi Sidhi project development expenses were incurred in the Asst Years 2011-12 and 2012-13 and not only in the Asst Year 2012-13. Hence, the assessing officer was not justified in adding entire amount of addition to the development expenses in the Asst Year 2012-13 only.**
- 1.4] It was submitted before the A.O. that the assessee and his family members have entered into an agreement with Shri Mukesh Sangai for development of colony. That papers related to development were also seized during the course of search by the Investigation Wing including that of Agreement. That all the Family members of the assessee have individually debited the Development expenses in their books of accounts. A Statement giving year wise development expenses incurred by all the assessee was filed before A.O. Copy of the same is enclosed for your honour kind perusal.
- 1.5.1] That all the expenses incurred towards development of colony has duly been accounted for by the Group in their individual Books of Accounts.
- 1.5.2.1] It was submitted before the Ld. A.O. that **Keshav Vihar Colony** is developed by the following persons which includes three members of the assessee and three other outside members. Detail of the same is as under:-

S.No	Name of the Owner	Area in Hectare	Total area in Sq Fts	Saleable area in Sq Fts
1	Vinod Ku Garg & Other Family members	0.706	75994	59195
	Total- A	0.706	75994	59195
2	Other Investors not related to the assessee's family	1.320	142085	88421
	Total- B	1.320	142085	88421
	Grand Total	2.026	218079	147616
	SQ Mtrs	20260	218079	147616

1.5.2.2] That out of 20260 Sq Mtrs, 7060 Sq Mtr related to the family of the assessee and 13200 Sq Mtrs of the other members not related to the assessee's family.

1.5.3.1] It was submitted before the Ld. A.O. that **Keshav Kunj Colony** is developed by the following persons which includes three members of the assessee and three members of his brothers family. Detail of the same is as under:-

S.No	Name of the Owner	Area in Hectare	Total area in Sq Fts	Saleable area in Sq Fts
01	Vinod Ku Garg & Other Family Members	0.897	96522	65261
	Total- A	0.897	96522	65261
02	Other outside investors	1.129	121505	
	Total- B	1.129		
03	Vinod Garg	0.152	Agricultural land not developed	
04	Asha Devi Garg	0.152	Agricultural land not developed	
	Total-C	0.304		
	Grand Total	2.33		
	Total Area in SQ Mtrs	23310		

1.5.3.2] That out of 23310 Sq Mtrs, **8970 Sq Mtr only related to the family of the assessee** which was developed, 5450 Sq Mtrs related to the family members of his brother, 5840 Sq Mtr related to outside family and 3040 Sq mtrs related to the land of the assessee and his wife which was even not developed.

1.5.4.1] It was submitted before the Ld. A.O. that **Keshav Ridhi Sidhi Colony** which is developed by the following persons which includes five members of the family of the assessee and two members of his brothers family. Detail of the same is as under:-

S. No	Name of the Owner	Area in Hectare	Total area in Sq Fts.	Saleable area in Sq Fts.
1	Shri Vinod K Garg & other Family Members	0.950	101618	68694
	Total- A	0.950	101618	68694
2	Other outside investors	0.380	40900	27445

	Total- B	0.38	40900	27445	11
	Grand Total	1.33			
	Total Area in Sq Mtrs	133			

1.5.4.2] That 13300 Sq Mtrs are total land area which was developed by the family members of the assessee and his brother's family not related to the assessee. That out of 13300 Sq Mtrs, **9500 Sq Mtr related to the family of the assessee** and 3800 Sq Mtrs. of the family members of his brother family.

1.5.5] That on the basis of development expenses as incurred by the assessee in commensurate to the saleable area of plots in these three different colonies are as under:-

S.No	Name of the Colony	Total Development Expenses	Developed Area in Sq. Ft	Development Cost per sq. ft.
1	Keshav Vihar	77,84,503	59,195	131.51
2	Keshav Kunj	82,60,951	65,261	126.58
3	Keshav Riddhi	49,06,592	68,694	71.42

1.6.1] That development expenses as estimated by the Ld. A.O. at Rs 300/- Per Sq Fts was arbitrary, very excessive and without any basis. That all the three colonies which were developed by the family members of the assessee and by other outside members which are not related to the family of the assessee. **It was explained to the Ld. A.O. at the time of Assessment proceedings that most of the plots were sold in these colonies between Rs 200/- to Rs 250/- only.** The sale deeds was duly executed and in most of the cases there was no difference in the valuation as adopted for the purpose for stamp duty purpose though, stamp duty valuation is not applicable in the case of the assessee and his other group members since, they have declared profit on sale of plot as business income. Thus the developments expenses as estimated by the A.O. at Rs 300/- is arbitrary and have no leg to stand.

1.6.2] **The sale value as declared by the assessee in respect of sale of plots was also accepted by the assessing officer. Hence, it is contradictory on the part of the assessing officer. That when he himself accepted sale consideration of plot between Rs 200/- and Rs 300/- in that case he was not right in estimating the development expenses of Rs 300/- Per Sq Fts in addition to the cost of land.**

- 1.6.3] The assessing officer while making addition to the development cost observed that detail and basis of development expenses were not provided by the assessee and therefore the assessing officer has no option except for estimation. The said version of the assessing officer was not correct. Since, the assessee during the course of search assessment proceeding has explained that entire amount of development expenses were incurred by him through the contractor. That considering the location of the plot where developed plot was sold between the range of Rs 200/- to Rs 300/-, the estimation of development expenses at Rs 300/- was exorbitant and very excessive. That in case of search assessment, the assessing officer was not justified in adding any amount to the income of the assessee on presumption basis. The assessing officer has not found anything incriminating in nature which need to be added to the income of the assessee. Thus, entire addition made to the income of the assessee and that too on presumption basis is not justifiable. 12
- 1.7] That during the course of assessment proceedings the assessee has also submitted before the A.O. that the developed plot in the said colonies were sold by the family members of the assessee and by other outside group members ranging between Rs 200/- to Rs 250/- Per Sq Fts. To justify his submission the assessee has also filed copies of some of the sample Registry as made by him wherein the actual sale consideration as received by his group is also less than the Rs. 300/- per square ft., the development cost as estimated by the A.O. A statement justifying the said fact is enumerated as under:-

<i>Project:-</i>		Keshav Vihar				
<i>Address:-</i>		Survey No.273 Mandasaur				
<i>Coloniser:-</i>		Vinod Kumar Garg & other family member				
<u>Year wise Detail of sale of plot Of Keshav Vihar</u>						
<i>F.Y.</i>	<i>Date of Registration</i>	<i>Name of Buyer</i>	<i>Plot No.</i>	<i>Area (In SQFT)</i>	<i>Value</i>	<i>Rate per Sq. Ft.</i>
2010-11	29.03.2011	Mahesh S/o Arjundas Pamnani	B-3	3105	741000	238.6
	11.08.2010	Smt Kirtiben Kamal Sodani	C-1	2990	584000	195.3

<i>Project:-</i>		Keshav Kunj				
<i>Address:-</i>		Survey No.311 Mandasaur				
<i>Coloniser:-</i>		Vinod Kumar Garg & other family member				
<u>Year wise Detail of sale of plot Of Keshav Kunj</u>						

F.Y.	Date of Registration	Name of Buyer	Plot No.	Area (In SQFT)	Value	Rate Per Sq Ft. <u>3</u>
2009-10	13.08.2009	Smt Ramadevi W/o Bherulal	108	600	128000	213
	15.07.2009	Shantilal S/oBherulal& Naveen s/o Shantilal	107	720	159000	221
2010-11	28.02.2011	Smt Rajkumari Vinodkumar Jain	36	1800	515500	286
	17.01.2011	Smt Vishni W/o Ghanshyam	82	900	234500	261

<i>Project:</i>						
		<i>Keshav Riddhi</i>				
<i>Address:-</i>		<i>Survey No. 504, Bhuniyakhed Mandsaur</i>				
<i>Coloniser:-</i>		<i>Vinod Kumar Garg & other members</i>				
<i><u>Year wise Detail of sale of plot at Keshav Siddhi</u></i>						
	Date of Registration	Name of Buyer	Plot No.	Area (In Sq. Ft.	Value	Rate Per Sqft
2011-12	19.03.2012	Virendra Kumar Sagarmal Jain HUF	L-13	998.50	225000	225
	14.03.2012	Suresh Kumar S/o Bhanwarlal Kothari	J-2	1474.5	362000	246

Photocopies of Registry as made by the assessee were also filed before the A.O. Copies of the same are also enclosed for your kind perusal.

1.8] That in view of the above it was explained to the Ld. A.O. that development expenses as incurred by the assessee along with his other family members was correct and proper. The A.O. however did not agreed with assessee submission.

1.10.1]It is submitted before your honour that from the above it is clear that the addition as made by the A.O. to his Total income on account of development expenses is merely on presumption and that too when no incriminating documents were found during the course of search.

1.10.2]That sale of all the plots were duly executed by the assessee as per the prevailing market rates only and in most of the cases there was no difference in the Sale consideration received and value as per the valuation as adopted for the purpose for stamp duty purpose.

1.10.3]That assessee and his family members has maintained day-to-day books of accounts which were not rejected by the A.O. Moreso the A.O. has made addition in the A.Y. 2012-13 even

when the assessee and his family members have incurred the expenses in various years without assigning any reason and merely on estimated basis. 14

- 1.10.4]It has been held by the Courts that if the assessee maintained its books of account in the regular course of business and necessary entries relating to the expenditure towards cost of construction are entered in the books of account which are open for verification and its correctness is not doubted, the Assessing Officer cannot estimate the cost of development exp.
- 1.10.5]The when the assessee has entered into an development agreement with Shri Mukesh Sangai and the amount of development expenses as incurred by them was properly accounted for. In that case the assessing officer was not justified in estimating the amount of development expenses and that too at Rs 300/- Per Sq Ft which is higher than actual sale realization.
- 1.10.6]The assessee has also obtained a report from Chartered Engineer who has estimated the cost of development expenses incurred by the assessee and his group as under:-

S.No	Name of the Colony	Total Development Expenses	Developed Area in Sq. Ft	Development Cost per sq. ft.
1	Keshav Vihar	Rs. 69,12,000	59,195	116.76
2	Keshav Kunj	Rs. 71,70,000	65,261	109.86
3	Keshav Riddhi	Rs. 60,11,000	68,694	87.50

Thus the A.O. was totally wrong in estimating the Development expenses on estimated basis without going into details. The addition so made by the assessing officer on estimated basis requires to be deleted in full.

- 1.11.1]That on perusal of the assessment order it is evident that the AO has not pointed out any defect in the books /records / bills etc. and has not rejected books of account. That it is settled position of law that without rejecting the regular books of account as maintained by the assessee addition made on purely estimation is wrong.
- 1.11.2]That the assessee has supplied the xerox copies of bills of development expenses incurred by all the family members and all these bills were also produced before the Ld. A.O. which he has seen and verified but he has not commented on the genuineness of these bills and not pointed out any defects in

these bills and hence not rejected the records maintained and produced by the assessee.

1.12.1] Hon'ble Jodhpur Bench of ITAT in the case of Meghraj Baid vs ITO reported in (2008) 114 TTJ (Jd) 841 : (2008) 4 DTR 509 has held (refer Para 4):-

“ 4. After examining the provision extracted hereinabove in its letters and spirit, we are of the opinion that in case the AO does not agree with the explanation of the assessee with regard to lower consideration disclosed by him then he should refer the matter to DVO for getting its market rate established as on date of the sale to arrive at the correct sale consideration. If this provision is read in the sense that if the AO is not satisfied with the explanation of the assessee then he ‘may’ or ‘may not’ send the matter for valuation to the DVO then in that case this provision would be rendered redundant. The word ‘may’ used in this sub-section signifies that in case learned AO is not satisfied with the explanation of the assessee, he ‘should’ refer the matter to the DVO for the mentioned purpose. Learned Authorised Representative has relied on the decision of the Hon’ble Supreme Court rendered in the case of Ashok Leyland Ltd. vs. Union of India & Ors. (1997) 105 STC 152 (SC) wherein it has been held that the deeming provisions are rebuttable one. We have examined the entire facts of this case in the light of the provisions and precedents relied before us. In our considered opinion the befitting reply of all the queries arouse in our minds as well as raised by the parties is that the matter should be restored back to the file of the learned AO with a direction that he shall refer this matter of valuation in the light of sub-s. (2) of s. 50C to the DVO for determining the consideration of this plot sold by the assessee under s. 50C of the Act. The other connected grounds are also related to this main ground. Therefore, the entire appeal is restored back to the file of the AO with the direction that he would do as directed above and also give opportunity of hearing to the assessee as per law.”

1.12.2] Hon'ble Delhi bench of ITAT in the case of ITO vs Smt Manju Rani Jain (2008) 24 SOT 24 (Del) has held (Refer Para 10):-

“10. In the instant case, undisputedly the assessee contended before the AO that the actual consideration received by the assessee should be taken as the market value of the properties sold and not the amount paid as stamp duty for the purposes of transfer of the properties because the same was on a higher side in view of the existing details and descriptions given by the assessee before the AO. Further, the assessee in accordance with provisions of s. 50C(2) of the Act requested the AO to refer the properties for valuation to the valuation cell of the Income – tax Department and adopt the same as full market value of the properties for working out the capital gains. The AO has not

done so, hence, in our opinion, the CIT(A) on considering the provisions of s. 50C(2) of the Act has rightly directed the AO to refer the properties to the valuation cell of IT Department for the purpose of valuation of the property and, thereafter, adopt the valuation for working out the capital gains. Since, the direction issued by the CIT (A) is in accordance with the provisions of s. 50C of the Act, we find no illegality or infirmity in the well-reasoned order of the CIT (A) and, accordingly, the same is upheld and ground of appeal taken by the Revenue is rejected.”

1.12] *That in the case of assessee the Ld. A.O. has neither rejected the books of accounts nor has referred the matter of determination of cost of construction to the Valuation officer and has merely estimated the Cost of Development expenses. That in view of the above , the addition so made by the assessing officer on estimated basis was rightly deleted by the Ld CIT(A). Hon'ble bench is hereby requested to approved the order of the Ld CIT(A).”*

07. We have heard the rival contentions of both the parties and gone through the material available on record. On perusal of the same, we find that the assessee has duly provided complete details of development expenses as incurred by him and by the other family members before the assessing officer during the course of search assessment proceeding. We find that during the course of Assessment proceedings itself, the assessee has brought to the notice of Ld. Assessing Officer, that he along with family members had entered into an agreement with Shri Mukesh Sangai for development of the colonies. The said agreements were also seized during the course of the search. The fact that the development expenses have been incurred through

the contractor was clearly explained to the Assessing Officer. All the different individuals have debited the development expenses in their books of accounts. The statement giving year wise development expenses incurred by the different individuals was furnished during the course of assessment as well as appellate proceedings. During the course appellate proceedings before the Ld. CIT(A), the copies of ledger accounts of the development expenditure along with the relevant bills and copy of bank statement reflecting the amount of development expenditure had been submitted and which were duly examined by her. We find that the Ld. CIT-DR, except placing his reliance on the findings of the Assessing Officer, could not justify the addition made by the Assessing Officer. We have also carefully perused the various documents filed by the assessee which were available before the Ld. A.O. as well as CIT (A). Learned Counsel for the assessee drew our attention to the fact that most of the plots in these colonies had been sold between Rs. 200/-to Rs. 250/- per sq. ft. The sale value as declared by the assessee and the other family members in respect of the sale of plots have been accepted and no adverse view has been taken on that account. It was also explained to us that the sale of plots has been executed as per

the prevailing market rates and in most cases there was no difference in the sale consideration received and the value adopted for stamp duty purposes. Thus, we are of the view that in that case, there was no justification for estimating the development expenses at Rs 300/- Per Fts. It was also brought to our notice by the learned Counsel for the assessee that the Ld. A.O. has made the entire estimation of development expenses in the hands of the assessee only and that too, in single year i.e. Assessment year 2012-13. We, on perusal of the details as filed, find that it is evident that development of Keshav Kunj colony was completed in the Asst Years 2009-10 and in the Asst Year 2010-11 only and development of Keshav Vihar Colony was completed in the Asst year 2011-12 and therefore there was no justification for adding any amount on account of development expenses in the Asst Year 2012-13. In view of the above facts in the light of the relevant judicial precedents (supra), we are of the considered view that the Assessing Officer has made the addition towards undisclosed development expenses @ 300/- per sq. ft. in respect of the three colonies on guess work and surmises which was not justified as the addition was purely on the estimations in absence of any incriminating document found and seized during

the course of the search and more so, without bringing any 19
cogent and corroborative material or adverse evidence on record.

Thus, the Ld. CIT(A) rightly deleted the addition made by the A.O.
Therefore, 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 is confirmed.

8. In the result, the appeal of the Revenue is dismissed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on
05.01.2022.

Sd/-

(MAHAVIR PRASAD)

JUDICIAL MEMBER

Sd/-

(MANISH BORAD)

ACCOUNTANT MEMBER

Indore; दिनांक Dated : 05.01.2022

Ivyas!

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

By order

Assistant Registrar, Indore