

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"F" BENCH, MUMBAI**

**BEFORE SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 2705, 2706, 2707 & 2708/MUM/2019  
(A.Ys: 2011-12, 2012-13, 2013-14 & 2014-15)**

Shri Vinayak G. Badani 601, Kesaria Dham Vallabh Bagh Lane Ghatkopar (E) Mumbai - 400077  <b>PAN: AABPB4460E</b>	v.	DCIT – Central Circle – 6(3) 1926, Air India Building Nariman Point Mumbai – 400 021
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NOs. 2920, 2921 & 2923/MUM/2019  
(A.Ys: 2011-12, 2012-13 & 2014-15)**

DCIT – Central Circle – 6(3) 1925, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021	v.	Shri Vinayak Gulabchand Badani 601, Kesaria Dham Vallabh Bagh Lane Ghatkopar (E), Mumbai - 400077  <b>PAN: AABPB4460E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Gaurav Kabra</b>
<b>Department by</b>	<b>:</b>	<b>Shri Achal Sharma</b>
<b>Date of Hearing</b>	<b>:</b>	<b>06.12.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>22.02.2022</b>

## **ORDER**

### **PER BENCH**

**1.** All these appeals are filed by the Assessee and revenue against the different orders of Learned Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.02.2019 for A.Ys. 2011-12, 2012-13, 2013-14 and 2014-15.

**2.** Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 2705/Mum/2019 for the A.Y. 2011-12 as a lead case.

**3.** Brief facts of the case are that, assessee filed return of income on 23.11.2011 declaring total income of ₹.9,36,160/-. A search and seizure action u/s. 132 Income-tax Act, 1961 (in short "Act") was conducted at M/s. Avighna Group on 04.04.2014 and concluded on 05.06.2014 covering its head office, its branches and site office and residences and office premises of its key persons and also on individual who had paid "On-Money" for booking of a flats with M/s. Nish Developer Pvt. Ltd. Assessee has booked two flats in the "One Avighna Park" the project developed by M/s Nish Developers Pvt Ltd. One flat is booked in the name

of assessee and his son and the second flat is booked in the joint name of Smt Chhaya Badani (wife of Shri Vinayak Badani) and two other two relatives. It was alleged that assessee has also facilitated sale of flats in One Avigna Park. In search conducted in M/s. Avighna Group, the assessee's residence was also covered. Statements of the assessee, Account Holder of Oriental Bank of Commerce, Mumbai and Jankaiyan Sahakari Bank. Ltd., Mumbai was recorded on oath u/s. 132(4) of the Act on 19.05.2014. Subsequently, notice u/s. 153A of the Act was issued and served on the assessee. In response assessee filed return on 06.02.2015 declaring total income of ₹.9,36,160/-. Subsequently, notice u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response Ld. AR of the assessee attended and filed the relevant information as called for.

**4.** During the course of search at the residence of Shri Praveen Mishra, one pen drive was found and it contained some details of cash received against the name of the assessee. As per the statement recorded from Shri Praveen Mishra, he confirmed that cash mentioned against the name of the assessee was directly handled by him only, he was not sure whether assessee has booked flat in the company's project. He also submitted

that assessee was a broker of the company and used to handle cash and also brought cash on behalf of customers. As per the cash statement amount mentioned against the name of assessee was of ₹.15.31 crores.

**5.** The Assessing Officer observed that assessee has not offered any income in his or in the hands of other flat owners from his family. Accordingly, showcause notice dated 28.11.2016 was issued to the assessee to prove the sources of cash payment made to M/s.Nish Developers Pvt. Ltd.

**6.** The Assessing Officer relying on the statement of Shri Praveen Mishra, recorded statement from the assessee and the assessee was asked to explain details of cash component deposited by the assessee to M/s.Nish Developers Pvt. Ltd., and also assessee was asked whether assessee has paid any cash component for purchase of the two flats. Further assessee was asked whether the parties who had declined to acknowledge booking the flats were through the assessee are true if so produce these parties and file confirmations.

**7.** In response assessee submitted that assessee has introduced clients to the promotor of M/s.Nish Developers Pvt. Ltd., and the cash component

deposited in the name of the assessee are from those clients who have booked the flats. Further he submitted that the two flats allotted to him were for which assessee has not paid any cash component, the company has allotted at discounted price. During the course of the assessment proceedings assessee has filed written reply to all the above queries, for the sake of clarity it is reproduced below: -

*"In your notice, you have stated that during the course of search action at the premises of M/s. Nish Developers Put. Ltd. who has undertaken a residential project by name of "One Avigna Park", one pen drive was found and seized from Shri Pravin Mishra.*

*The said pen drive contains details of cash payment made on various dates against my - name. At the time of search at my premises conducted on 04 04 2014, the questions related to this cash payment were asked to me. The relevant paras of that statement have been reproduced in this show cause -notice also. For that, I would like to submit that the Statement at the time of search at my premises. was given and recorded under threat and mental pressure. I was not-agreeing with the. content of the statement, but I was pressurized to agree to the statement and I was pressurized: to put my signature on the statement on gun point. I was very nervous and could 'not understand anything and I was being mentally tortured that I could not think anything, I did not understand what was happening. And in mental torture and pressure, I signed the statement. The answer that are written in the statement and which is being said that I have given the answers is totally wrong. The officers have written the answers as per their wish only and I was compelled to put my signature on the statement. I do not agree with the statement. I was pressurized to admit and sign the statement and that if I do not sign there may be serious consequences including imprisonment etc. etc.*

*I have immediately retracted the statement on the very next day, the copy of affidavit showing retraction is enclosed herewith.*

*I would once again like to submit that whatever has been stated at the time of search action is not correct. I do not agree with it. I have*

*never given any cash to M/s Nish Developers Put Ltd. I do not know why my name is being written over there. I have never paid any cash for this to anybody whether for my own flats or for somebody else. I have nothing to do with the cash and I have not paid even a single rupee in cash for the flats.*

*I would once again like to state that me or my family members have not given any cash for the flats purchased by us. We have also not handed over any other person's money to Mr. Kailash Agarwal. In nutshell, I am not involved in any kind of cash payment or cash movement. I don't know why my name is written in the pen drive. When I am not involved in any transactions, my name should not be there. I would like to cross examine the persons who are giving my name for the cash transactions. Kindly provide me the opportunity to prove my point.*

*I hereby file the affidavit stating all this facts. Kindly consider my submission positively and oblige."*

Assessee also filed affidavit retracting his statement dated 06.04.2014.

**8.** After considering the reply and affidavit filed by the assessee Assessing Officer observed that the assessee has not bothered to file retraction letter or affidavit before DDIT (Investigation) and he has mentioned about this fact only in response to the show cause notice. Assessing Officer further observed that the statement recorded by the assessee was voluntary u/s. 132(4) of the Act during search without undue influence or coercion. The retraction letter is not the valid retraction as the same is not filed before Income Tax Authorities

immediately after the search. The Assessing Officer considered the data contained in pen drive as authentic data and he observed that the cash mentioned against the name of the assessee cannot be set aside and the exact dates mentioned for each entry and number of entries shows that pendrive data is authentic and cannot be brushed aside. If the cash shown against assessee's name is not of the other buyers as stated during the course of search, then it has to be of assessee's own. Accordingly, he brought the amount mentioned in the pendrive as above as the undisclosed investment in the hands of the assessee for the impugned Assessment Order, as per the statement the assessee has remitted ₹.5.01 crores. Accordingly, the addition was made as unaccounted investment made by the assessee.

**9.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A), assessee filed detailed submissions which are reproduced below: -

*"ADDITION ON THE POINT OF UNACCOUNTED INVESTMENT AMOUNTING TO RS. 5,01,00,000/-*

*A search action was conducted at M/s One Avighna group on 4/4/2014 and the places of office and residence of the group and other key persons was also covered. One pen drive was found from Mr. Praveen mishra, one of the key persons of the group, the pen drive contains data of cash transactions. In that pen drive the cash details of 15.33 crs was found against different years in the name of the appellatant as mentioned in the order. On being asked Mr. Praveen*

*mishra replied that the appellant is a broker of the company and used to handle cash and has also brought cash on behalf of the customers. A search action was also conducted on the premises of appellant and statement of appellant was also recorded.*

*The appellant was given show cause notice on 28/11/2016 asking to explain the cash transactions. The statement of appellant is also reproduced in the order itself. The appellant replied to the show cause that the statement was given under threat and mental pressure and he was compelled to sign the statement at that time and that he did not agree with the statement and the appellant also filed affidavit which shows retraction of the statement given at the time of search. The reply to the show cause notice and affidavit is also reproduced in the assessment order itself.*

*The Ld. A.O. while passing the order u/s.143(3) of I.T. Act, 1961 justified his action of disallowing the cash payment amounting to 5,01,00,000/- (mentioned in the pen drive for this year) on the basis of the fact that the information was received that the cash was paid to M/s Nish Developers on the basis of pen drive found in search & seizure. But the appellant denies of paying any cash to Nish developers. at The appellant did not agree to the data of the pen drive. He is not aware why his name is written in the pen drive. He denies of paying any on-money for the flat purchased by him nor has he handled any other persons cash. The said fact was submitted before the AO, the relevant para is reproduced herewith:*

*"The said pen drive contains details of cash payment made on various dates against my name. At the time of search at my premises conducted on 4/4/2014, the questions related to this cash payment were asked to me. The relevant paras of that statement have been reproduced in this show cause notice also. For that, I would like to submit that the statement at the time of search at my premises was given and recorded under threat and mental pressure. I was not agreeing with the content of the statement, but I was pressurized to agree to the statement and I was pressurized to put my signature on the statement. I was very nervous and could not understand anything and I was being mentally tortured that I could not think anything, I did not understand what was happening. And in mental torture and pressure, I signed the statement. The answer that are written in the statement and which is being said that I have given the answers is totally wrong. The officers have written the answers as per their wish only and I was compelled to put my signature on the statement. I do not agree with the statement. I was pressurized to admit and sign the statement and that if I do not sign there may be serious consequences including imprisonment etc. etc.*

*I have immediately retracted the statement on the very next day, the copy of affidavit showing retraction is enclosed herewith.*

*I would once again like to submit that whatever has been stated at the time of search action is not correct. I do not agree with it. I have never given any cash to m/s nish developers put ltd. I do not know why my name is being written over there. I have never paid any cash for this to anybody whether for my own flats or for somebody else. I have nothing to do with the cash and I have not paid even a single rupee in cash for the flats.*

*I would once again like to state that me or my family members have not given any cash for the flats purchased by us. We have also not handed over any other person's money to Mr. Kailash Agarwal. In nutshell, I am not involved in any kind of cash payment or cash movement. I don't know why my name is written in the pen drive. When I am not involved in any transactions, my name should not be there. I would like to cross examine the persons who are giving my name or the cash transactions. Kindly provide me the opportunity to prove my point.*

*The appellant asked for the opportunity to cross examine the person who have given his name. but the opportunity was not given to the appellant. Now, we would like to request our goodself to give us the opportunity to cross examine the person who has given appellants name.*

*From this it is crystal clear that the appellant has denied of giving any cash for the flat purchased by him. He has never agreed at the assessment stage of giving any cash for the purchase of flats. And also has retracted the statement given at the time of search and filed affidavit for this also. Hence, the only base for the addition is pen drive of Praveen mishra and his statement that the appellant was broker and he used to handle the cash of the other customers, He stated in his statement that he is not aware of the fact that whether the appellant has purchased any flat in the project.*

*The other four persons who have booked flat in one avighna project and whose name was there in the list and who has given his on money to the appellant as per the theory of the department has also denied of giving any on money for the purchase of the flat and denied of the mediation of appellant for the purchase of the flats. Hence, the department was left with no choice and came to the conclusion that now it could be appellants on money for the flats. Hence, it is pure guesswork and assumption theory of the department that the amount can be on money for the flats. There is no direct evidence to prove that the cash written against his name is*

*nothing but on money. Addition cannot be made on the basis of assumption and surmises; there must be evidence and direct nexus to prove any addition Here, I would like to ask that on which base the department treat the cash as on money? Have they brought any material or evidence on record to prove the cash as on money? We do not agree with the assumption theory of the department and assumption has no place in legal matters.*

*As the department was working with preset mind that they want to make it big addition case and make it high demand case they just add the amount and give it a name of on money. The appellant is a joint owner and he owns only 50 % of the share, inspite of this the whole amount is added in appellants hand. Such a huge amount of 15.33 cr in toto for all year cannot be the on money for one flat. I would like to bring to your notice that the total addition made for the flats comes to 15.33 crs as on money which is on very higher side. The total carpet area of the flat is 1740 sq. ft and agreement value is 3.85 cr. Hence, if we consider 15.33 cr as on money then the total value of the flats comes to 19.18 cr and per sq. ft cost comes to Rs. 110230/-. The agreement is made in 2011 and the market rate in lower parel was never that much high whether in 2011 or even today. 110000 per sq.ft rate is very high and even today it is not that high. So the addition is giving absurd result and cannot be accepted. the addition is totally baseless and only base with the department is pen drive of Praveen mishra and while giving Statement on the content of the pen drive, Praveen mishra has never Said that it is the on money of appellant for the purchase of flat, on the contrary he said that he is broker and used to handle cash of the one avighna group. Hence, Praveen mishra has also not said that it is the details of on-money. Then on what basis department is treating it as on money? Just because appellants name is there it does not prove that it is his on money payment.*

**STAND OF THE APPELLANT:**

*Documents at third party pace cannot be treated as conclusive evidence:*

*The La. AO blindly relied on the pen drive which is seized during the course of search from Shri Praveen Mishra which shows cash payment by Mr. Vinayak Badani at different times but assessee was not aware of any such transaction made by him or his family members therefore, on the basis of pen drive the addition cannot be made in the case of appellant*

*The Hon'ble High Court or tribunal held in many cases that on the basis of documents at third party place could not be treated as*

*conclusive proof of 'on money' transaction, therefore, addition could not be sustained*

*Recently Mumbai tribunal held in the case of leading actress Katrina kaif that under the income tax act, income can be taxed only when it is conclusively proved that it has been received by the assessee. evidence from a third party even a connected person, in the absence of any concrete proof is not adequate to sustain the addition.*

*Your honour's kind attention is invited to the following cases in support of the submission that no addition can be made on the basis of documents which was treated as conclusive evidence"*

**10.** In support of the above contentions he relied on the following decisions: -

- a. *Smt. Lalita Anup Anand V. ITO in ITA NO.7415/Mum/2016.*
- b. *ACIT v. Shri Kanubhai Mananlal Patel and Shri Anil Shakarabhai Patel in ITA.Nos. 1864 to 1866/Ahd /2012*
- c. *G. Mahesh Babu v. DCIT in ITA.No. 256, 286, 55 to 58/Hyd/2015.*
- d. *Shri Ravi Sacheti v. ITO in ITA.No. 315/JP/2012*

**11.** After considering detailed submissions of the assessee, Ld.CIT(A) partly allowed the appeal filed by the assessee by treating that assessee has collected the money on behalf of various parties, accordingly deleted the additions made in the hands of the assessee and further he estimated the brokerage @2% of the cash passed on to M/s.Nish Developers Pvt. Ltd. For the sake of clarity, it is reproduced below: -

*"5.10 The assessee had, however, been denying paying any on-money for his own flats right from the beginning. He stated that he had not charged any brokerage/commission from M/s. Nish Developers Pvt. Ltd. and therefore, two flats were allotted to him at discounted rates. This is a pointer that the assessee had brought in customers for which he had not taken brokerage from M/s. Nish*

*Developers Pvt. Ltd but had got two flats allotted at discounted rates, Similarly, he could have taken brokerage from the parties for whom he had arranged the transaction. The four parties involved are already mentioned supra. Purchase consideration of the assessee is higher than the stamp duty value and, therefore, the assessee's contention that he has not paid on-money for his flats is found to be acceptable but in view of the categorical finding that cash had been delivered to M/s. Nish Developers Pvt. Ltd. on 39 occasions during the period of four years which fact has also been admitted by the assessee during the search but subsequently retracted, and the component of brokerage being prevalent in this line of business, it is presumed that the assessee would have received brokerage from the parties concerned. This brokerage is estimated at 2% of the cash passed on to M/s. Nish Developers Pvt. Ltd. During the year under consideration, the cash recorded against the name of the assessee was Rs.5,01,00,000/-, 2% of the same works out to Rs.10,02,000/-. The Ld.AO is directed to restrict the disallowance to Rs.10,02,000/- and the appellant gets relief for the balance amount. This ground of appeal is Partly Allowed."*

**12.** Aggrieved both revenue and assessee are in appeal before us.

Assessee raised following grounds in his appeal: -

"1. In the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in estimating ad hoc brokerage income of Rs.10,02,000/-, merely on surmises, presumptions and conjectures.

2. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal.

**13.** Revenue has raised following grounds in its appeal: -

1. "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.5,01,00,000/- by accepting that it was paid by the allottees of the flat even though the assessee at no stage has filed Corroborative evidence by way of confirmations, PAN and exact addresses of these allottees and thus has failed to discharge his onus.?",

2. "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in estimating the addition only to the

*extent of Rs.10,02,000/- being 2% as brokerage of the amount of cash of Rs.5,01,00,000/- passed on during the year to Nish Developers Private Limited, which was recorded against the name of the assessee in the seized material.?"*

3. *"Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not remanding the matter to the file of the A.O. before taking the decision of estimating the addition merely @ 2% of the cash passed on to the Developers.?"*

4. *"Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in accepting the assessee's contention that he had not paid on-money for his flats merely on the ground that the purchase consideration was higher than the stamp duty value, more so, when in a similar case of the same group, on identical facts higher value has been accepted?"*

5. *"Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the on-money has nothing to do with the stamp duty value but it is the amount charged by builder / developer and paid by purchaser over and above the consideration recorded in written Agreement?"*

**14.** Assessee has filed Additional ground of appeal as under: -

*"1) On the facts and circumstances of the case as well as in Law, The Ld.AO as well as CIT(A) erred in making addition in the order u/s 153A of the Income Tax Act, 1961 on the basis of statements recorded and document found in third party premises."*

**15.** Ld. AR submitted that additional grounds raised by the assessee is purely legal issue and placing reliance on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd v. CIT [229 ITR 383] requested the same may be admitted for adjudication.

**16.** On hearing both sides, we are of the view that the issue is only legal and following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd *v.* CIT (supra), we admit the additional ground for adjudication.

**17.** Considered the submissions of the assessee that addition cannot be made in the Assessment Order based on the statement recorded and document found in third party premise and Ld. AR relied on the decision of the Hon'ble Delhi High Court in the case of PCIT *v.* Anand Kumar Jain (HUF) in ITA 23/2021 and CM APPI. 5385/2021 dated 12.02.2021 as per which a statement recorded on oath from the other party as the incriminating material belonging to or pertaining to person other than the person searched then the only legal course available to the department was to proceed in terms of section 153C of the Act. Relying on the above decision he submitted that the addition cannot be made in the assessment passed u/s. 143(3) r.w.s. 153A of the Act.

**18.** On the other hand, Ld. DR submitted that all the issues involved in the search were confronted to the assessee and assessee is one of the party of the transaction and the retractions made by Shri Praveen Mishra and assessee are in different situations. He submitted that the case relied

by the assessee on PCIT *v.* Anand Kumar Jain (HUF) (*supra*) is not applicable to the present case.

**19.** Considered the rival submissions and material placed on record, we observe that during the search along with other key personal, assessee also was covered not just merely as a person who has booked the flat but also as a person who was claimed to have referred client to the M/s.Nish Developers Pvt. Ltd. Since the assessee was directly connected with the collection of funds on behalf of M/s.Nish Developers Pvt. Ltd., accordingly, assessee was covered as one of the party in the search proceedings. Merely because assessee has retracted from the statement and also the assessee has accepted that assessee has collected funds from clients on behalf of the M/s.Nish Developers Pvt. Ltd., it clearly indicates that the statement recorded on oath from Shri Praveen Mishra cannot be set aside and it can only be considered for making assessment u/s. 153A not u/s.153C of the Act. Accordingly, additional ground raised by the assessee is dismissed.

**20.** Coming to the merits of the appeals, at the time of hearing, Ld. AR submitted that the issue raised by the revenue in their appeals are

covered in the case of Jt. CIT (OSD) v. M/s.Nish Developers in ITA.No. 3490, 3523, 2514, 3524 & 352/M/2018 dated 12.03.2021.

**21.** With regard to other grounds of appeal in department and assessee's appeal he submitted that the addition made by the Assessing Officer purely based on the statement recorded u/s. 132 of the Act. He brought to our notice Page No. 11 to 15 of the Ld.CIT(A) order and he also brought to our notice the statement and retractions of the assessee from the order of the Ld.CIT(A). He submitted that the statement recorded is not proper and brought to our notice Page No. 48 and 50 of ITAT order in the case of Jt. CIT (OSD) v. M/s.Nish Developers (supra) and submitted that ITAT has observed that the onus is on the revenue to prove the contents of the pendrive and other loose sheets by bringing on record corroborating evidences. They noticed that the revenue has not bothered even to make further enquiry from the flat buyers to ascertain the amount of on-money. Therefore, in view of the facts and circumstances, we held that the pendrive cannot be relied on to make on-money addition in the hands of the assessee.

**22.** Further he brought to our notice at Page No. 50 wherein ITAT observed that Ld. CIT(A) applying a blanket rate of 20% on the on-money

calculated on the basis of data in the pen drive wherein the name of the customers were not even matching with the data in the pen drive and also the fact that the amounts mentioned against the various flats purchasers having glaring and huge variations and that the pen drive was recovered from the premises of the employee of the assessee, the onus is on the Revenue to prove that data in pen drive are related to the affairs of the assessee. He prayed that the issue may be remitted back to the Assessing Officer.

**23.** On the other hand, Ld. DR submitted that assessee has retracted the statement only after issue of show cause notice that too after two years. He submitted that Shri Praveen Mishra has retracted his statement by submitting medical reports whereas assessee has not filed any report. The case law relied on by the assessee is distinguishable. Considering the fact that the Assessing Officer confronted the issue of cash receipt to the assessee and supplied all the relevant information found during search. He also submitted that the decision of the Hon'ble Delhi High Court relied by the Ld. AR is not applicable to the present case.

**24.** In the rejoinder Ld. AR submitted that, in case, the cash received by the company is added in the hands of the assessee the cost of the two

flats will be too high, the price of the flats per square feet would be ₹.1,10,230/- which is an astronomical rate and the same was recorded by the Ld.CIT(A) at Page No. 12 of the Ld.CIT(A) order. He relied on the finding of the Ld.CIT(A) on this aspect and further he submitted that the issue involved in all other appeals are exactly same and with regard to appeal for the A.Y. 2013-14 department appeal he submitted that it is dismissed because of tax effect.

**25.** Considered the rival submissions and material placed on record, we observe from the record that during search proceedings a pendrive was recovered and based on the information contained in the pendrive Shri Praveen Mishra was recording the information date wise over a period of four years for the receipt of cash, revenue found certain receipts against the name of the assessee. We noticed that Shri Praveen Mishra has recorded 39 entries date wise against the name of the assessee and at the time of search assessee has recorded in his statement confirming the allotment of two flats in his name and in the name of family members and at the same time he denied that he has not paid any cash to M/s.Nish Developers Pvt. Ltd. However, he agreed that he has introduced several

parties and collected cash from them and deposited the same with M/s.Nish Developers Pvt. Ltd.

**26.** We observe that the other parties to whom assessee has recommended for purchase of flats had denied that they have paid cash for the flats bought by them through the assessee. Since the denial of such payment and also the statement given by the Shri Praveen Mishra that he has received cash from the assessee to the extent of ₹.15.33 crores, subsequently Assessing Officer issued notice to the assessee based on the denial of the other parties to whom assessee has introduced for purchase of flats as well as collected cash from them. It is from the record that assessee has collected cash from the buyers of the flat or it is not clear why the assessee has deposited such huge money to the M/s.Nish Developers Pvt. Ltd. Only during the assessment proceedings on receipt of show cause notice assessee has retracted the statement given two years ago and filed an affidavit submitting that he has given the statement under duress. We observe from the record that company M/s.Nish Developers Pvt. Ltd., has preferred appeal before ITAT against the additions made in the hands of them for the same issue of cash receipt and ITAT has decided in favour of the assessee M/s. Nish Developers Pvt.

Ltd., the same case was quoted before us and argued by the Ld.Ar that the same addition cannot be made in the hands of the assessee as well since the addition was deleted considering the fact that the information contained in the pendrive cannot be relied on to make the on-money addition in the hands of the M/s. Nish Developers Pvt. Ltd. In our view it is wrong to rely on the case of M/s. Nish Developers since the addition was deleted on technical ground whereas in the case of the assessee Shri Praveen Mishra who has agreed to have received cash during the search proceedings as well as subsequent proceedings. Just because assessee has retracted the statement after two years it has not lost relevance of the statement given at the time of search proceedings. It is relevant to note that assessee has retracted after two years on the claim that there is a issue of duress involved in recording of the statement.

**27.** We have considered the finding of the Ld.CIT(A) and observed that Ld.CIT(A) has gave a clear finding that if we consider the cash deposited by the assessee is belongs to the assessee itself for the purchase of two flats allotted in the name of the assessee and the other family members, the price of the flat per square feet will astronomical to the extent of ₹.1,10,230/- whereas the purchase rate recorded in the document is only

₹.22,126/- and ₹.21,839/- per square feet. It clearly indicates that assessee has collected the money from other parties and based on the statement recorded by the assessee during search, this on-money received through the assessee are from other flat owners who has booked the flats. Since it is recorded in the name of the assessee it clearly shows that assessee is involved in soliciting client for the M/s.Nish Developers Pvt. Ltd. The Ld.CIT(A) came to the conclusion that assessee himself has involved in introducing clients and must have solicited commission @2%. Since assessee was allotted two flats on concessional rates and with the above said services to the M/s.Nish Developers Pvt. Ltd., assessee might have enjoyed the benefits of getting concessional rate. We do not have any data on the different rates of flats sold to other parties to determine how much benefit assessee has received in this transaction. Considering the fact that assessee has solicited clients for the M/s.Nish Developers Pvt. Ltd., and got the flats at the concessional rate it clearly indicate that there is quid pro quo in this transaction and we are in agreement with Ld.CIT(A), who has estimated the benefit @2% of the cash component. Therefore, we do not see any reason to interfere with the finding of the Ld.CIT(A) which is backed with the proper reasoning. Therefore, the grounds filed by the assessee as well as the revenue are dismissed.

**28.** Since the facts in other Assessment Years are exactly similar. The finding given in A.Y. 2011-12 is applicable to all other assessment years.

**29.** In the result, appeals filed by the assessee as well as revenue are dismissed.

Order pronounced on 22.02.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 22/02/2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**