

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.64 to 66/Ind/2021
Assessment Year:2011-12 to 2013-14

DCIT Central-II, Indore	<u>बनाम/</u> Vs.	Shri Rakesh Kumar Agrawal, Mhow
(Appellant)		(Respondent)
P.A. No.AGUPA7002J		
Appellant by	Shri P.K. Mitra, CIT-DR	
Respondent by	Shri Anil Kamal Garg, CA	

ITA No.328 to 330/Ind/2020
Assessment Year:2011-12 to 2013-14

Shri Rakesh Kumar Agrawal, Mhow	<u>बनाम/</u> Vs.	DCIT Central-II, Indore
(Appellant)		(Respondent)
P.A. No.AGUPA7002J		
Appellant by	Shri Anil Kamal Garg, CA	
Respondent by	Shri P.K. Mitra, CIT-DR	
Date of Hearing:		18.01.2022
Date of Pronouncement:		11 .03.2022

आदेश / O R D E R

PER BENCH:

The above captioned cross appeals are directed against three separate Orders of the Ld. Commissioner of Income Tax

(Appeals)-III, Indore (in short 'CIT(A)'), all dated 10.09.2020, which are arising out of the separate Orders u/s. 144 of the Income-Tax Act, 1961 (in short, 'the Act') viz. for A.Y. 2011-12 dated 18.03.2016 by ACIT (Central) -2, Indore, for A.Y. 2012-13 dated 18.03.2015 by DCIT (Central) -1, Indore and for A.Y. 2013-14 dated 18.03.2016 by ACIT (Central) -2, Indore.

2. The delay in filing the appeals is condoned in view of Covid-19 restrictions. As submitted by the Ld. Counsel for the assessee and as also concurred with by the Ld. Departmental Representative that the issues raised in all these appeals are common and inter-linked and as also, are arising out of the similar facts, for the sake of convenience and brevity, all these appeals were heard together on the request of both the parties and are being disposed off by this common order.

2.1 Grounds of appeal raised by the Revenue for AY 2011-12 in IT(SS)A No.64/Ind/2021:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.2,85,38,400/- made by the Assessing officer on account of undisclosed cash credit.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.30,00,000/- made by the Assessing officer on account of additional surrendered income not shown by the assessee in ITR."

2.2 Grounds of appeal raised by the Revenue for AY 2012-13 in IT(SS)A No.65/Ind/2021:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.50,00,000/-

made by the Assessing officer on account of surrendered income which was not shown by the assessee in ITR.

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.20,18,30,178/- made by the Assessing officer on account of excess expenditure over income.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.1,25,79,722/- made by the Assessing officer on account of disallowance out of various expenses claimed by the assessee.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.9,10,11,278/- made by the Assessing officer on account of bogus sundry creditors and advances against properties.”*

2.3 Grounds of appeal raised by the Revenue for AY 2013-14 in IT(SS)A No.66/Ind/2021:

“1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.1,40,04,961/- made by the Assessing officer on account of surrendered income which was not shown by the assessee in ITR.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.1,08,26,047/- made by the Assessing officer on account of disallowance out of various expenses claimed by the assessee.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.4,96,06,927/- made by the Assessing officer on account of bogus sundry creditors.”*

2.4 Grounds of appeal raised by the Assessee for AY 2011-12 in IT(SS)A No.328/Ind/2020:

“1. *That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO in framing the assessment and*

issuing the notice under s. 148 of the Act without having/ recording any reason to believe that any chargeable income of the appellant for the assessment year under consideration had escaped to assessment.

2. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the impugned Assessment Order passed by the AO without first issuing and servicing a notice under sub-section (2) of section 143 of the Income-Tax Act, 1961 which has rendered the entire assessment proceeding as invalid and nullity.

3. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary.”

2.5 Grounds of appeal raised by the Assessee for AY 2012-13 in IT(SS)A No.329/Ind/2020:

“1a). That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in making an enhancement of Rs.25,88,306/- in the appellant’s income by invoking the provisions of section 251(2) of the Act on account of estimation of net profit at 15% by estimating the turnover of the appellant at Rs.6,00,00,000/- as against the same shown by the appellant at Rs.4,66,88,800/- in his audited financial statements for the relevant assessment year.

1b). That, the learned CIT(A) grossly erred in making the impugned enhancement in the appellant’s income without first rejecting the books of account under the provisions of sub-section (3) of section 145 of the Income-Tax Act, 1961.

1c). That, the learned CIT(A) grossly erred in making the impugned enhancement of Rs.25,88,306/- in the appellant’s income by estimating the net profit of the appellant at 15% and estimating the turnover at Rs.6,00,00,000/- merely on guess work, surmises and conjectures, without giving any specific finding as regard to any defect or discrepancy in the regular books of account maintained by the appellant and without considering the material fact that neither during the course of the survey under s.133A nor during the course of assessment proceedings, any evidence as

regard to suppression of any sales effected by the appellant was found.

1d). That, without prejudice to the above, the estimation of net profit at the flat rate of 15% by the learned CIT(A) is quite excessive and arbitrary considering the nature of trade and net profit already shown and accepted by the Revenue in the appellant's own case for earlier assessment years.

2. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary."

2.6 Grounds of appeal raised by the Assessee for AY 2013-14 in IT(SS)A No.330/Ind/2020:

"1. That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in upholding the impugned Assessment Order passed by the AO under s. 144 of the Act without servicing any valid notice under s. 143(2) of the Act to the appellant.

2a). That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in making an enhancement of Rs.11,96,353/- in the appellant's income by invoking the provisions of section 251(2) of the Act on account of estimation of net profit at 15% by estimating the turnover of the appellant at Rs.16,00,00,000/- as against the same shown by the appellant at Rs.10,16,39,194/- in his audited financial statements for the relevant assessment year.

2b). That, the learned CIT(A) grossly erred in making the impugned enhancement in the appellant's income without first rejecting the books of account under the provisions of sub-section (3) of section 145 of the Income-Tax Act, 1961.

2c). That, the learned CIT(A) grossly erred in making the impugned enhancement of Rs.11,96,353/- in the appellant's income by estimating the net profit of the appellant at 15% and estimating the turnover at Rs.16,00,00,000/- merely on guess work, surmises and conjectures, without giving any specific finding as regard to any defect or discrepancy in the regular books of account maintained by the appellant and without considering the material fact that neither during the course of the survey under

s.133A nor during the course of assessment proceedings, any evidence as regard to suppression of any sales effected by the appellant was found.

2d). That, without prejudice to the above, the estimation of net profit at the flat rate of 15% by the learned CIT(A) is quite excessive and arbitrary considering the nature of trade and net profit already shown and accepted by the Revenue in the appellant's own case for earlier assessment years.

3. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary."

3. The brief facts of the case as culled out from the records are that the assessee, an individual carrying on the business of real estate developers, under a sole proprietorship, in the name and style of 'M/s. Royal Colonizers, Builders and Developers'. A Survey u/s.133A of the Act was carried out at the premises of the assessee on 21-09-2012. During the course of the Survey proceedings, the assessee admitted certain additional income for all the assessment years under consideration. The assessee furnished his returns of income u/s. 139(1)/139(4) of the Act for the assessment years under consideration. The assessee also claimed to have furnished copies of his audited financial statements along with the returns of income filed for A.Ys. 2012-13 & 2013-14. Subsequently, for the A.Y. 2011-12, notice u/s. 148 of the Act on 15-12-2014 and for the A.Ys. 2012-13 & 2013-14, notices u/s. 143(2) of the Act on 05-09-2014 were issued and served upon the assessee. In response to the notice u/s. 148 for A.Y. 2011-12, the assessee instead of filing the fresh

return, filed a letter before the AO requesting to consider the original return as the return furnished in compliance to the notice issued u/s.148 of the Act. According to the Learned Assessing Officer (in short Ld.AO) notices under s.142(1) were issued to the assessee for the assessment years under consideration and in response to such notices, the assessee failed to make any compliance. Finally, the Assessing Officer framed the assessments for the relevant assessment years u/s. 144 of the Act by passing three separate Orders dated 18.03.2016, 18.03.2015 & 18.03.2016 respectively for A.Ys. 2011-12, 2012-13 and 2013-14 making certain additions to the returned income shown by the assessee.

4. Aggrieved assessee preferred separate appeals for all the assessment years under consideration before Ld. CIT(A). Since the subject assessments for all the three assessment years were framed u/s. 144 of the Act, the entire documentary evidences along with written submissions, furnished by the assessee as additional evidences under Rule 46A, were forwarded to the Assessing Officer for comments. The Ld.AO submitted his remand reports before the ld. CIT(A) on two occasions i.e. on 07-03-2019 and on 28-07-2020. In response to the Remand Reports, the assessee filed his rejoinders vide his two letters dated 17-04-2019 and 20-08-2020. Both the Remand Reports and the Assessee's Rejoinders thereto have been reproduced by the ld. CIT(A) at

page nos. 28 to 52 of his Order for A.Y. 2011-12 itself. The ld. CIT(A), vide his three separate Orders, all dated 10.09.2020, adjudicated the appeals of the assessee for the assessment years under consideration. The ld. CIT(A), after issuing the notices u/s. 251 for enhancement of income, rejected the books of account of the assessee for the A.Ys. 2012-13 & 2013-14 and estimated the net profit of the assessee for such years.

5. Now, aggrieved by the relief granted by the ld. CIT(A) to the assessee, the revenue is in appeal before this Tribunal for the assessment years under consideration.

6. Against the legal ground dismissed by the ld. CIT(A) and as also against the action of the ld. CIT(A) for enhancement of income, the assessee has preferred cross appeals before us.

7. Ground No. 1 of the Revenue's Appeal for A.Y. 2011-12

7.1 Through this ground of appeal, the revenue has challenged the action of the ld. CIT(A) deleting the addition of Rs.2,85,38,400/- made by the Ld.AO on account of unexplained cash deposits made in his various bank accounts during the previous year relevant to A.Y. 2011-12.

7.2 Briefly stated facts are that during the course of the assessment proceedings, Ld. AO, from the Individual Transaction Statement (ITS) generated from the System of the Department, noted that during the relevant previous year, the

assessee had made total deposits of Rs.2,85,38,400/- in cash in his various bank accounts whereas he had not shown any sales or advance received in his return of income and therefore, the entire deposit amount of Rs.2,85,38,400/- was added to the total income of the assessee u/s. 68 of the Act.

7.3 Aggrieved assessee preferred an appeal for the assessment year under consideration before the ld. CIT(A) making detailed submissions along with the documentary evidences. The ld. CIT(A) after considering the Ld.AO's remand reports submitted by the AO as well as the rejoinders of the assessee thereon, documentary evidences and other materials placed on record, arrived at a conclusion that the assessee had duly explained source of each and every cash deposit made by him in his bank accounts through various statements and documentary evidences and during the remand proceedings, the AO could not find any specific defect or discrepancy in the explanation of the assessee or any of the documentary evidences so furnished by him. Accordingly, the ld. CIT(A) deleted the entire addition of Rs.2,85,38,400/- made by the AO on account of unexplained cash deposits. The ld. CIT(A) has given his findings on the issue from para (7.3) at page no. 56 to para (7.15) at page no. 64 of his Order.

7.4 Aggrieved with the Order of the ld. CIT(A), the revenue is in appeal before us.

7.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

7.6 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

“D.Key Points of Assessee’s Submission and Relevant Pages of the Paper Book:

In this context it is submitted as under :

1.00 That, the learned AO has made an addition of Rs.2,85,38,400/- in the assessee’s income, by invoking the provisions of s.68 of the Act, on account of alleged cash deposits made in the bank account. It is submitted that in the body of the assessment order, the learned AO has nowhere given any finding to the effect that during the course of the assessment proceedings, any credit entry in any books of account maintained by the assessee was found by him so as to enable him to invoke the provisions of s.68 of the Act.

2.00 That, the learned AO has made an addition of Rs.2,85,38,400/- in the assessee’s income, by invoking the provisions of s.68 of the Act, on account of alleged cash deposits made in the bank account. It is submitted that in the body of the assessment order, the learned AO has nowhere given any finding to the effect that during the course of the assessment proceedings, any credit entry in any books of account maintained by the assessee was found by him so as to enable him to invoke the provisions of s.68 of the Act.

2.01 That, the relevant provisions of s.68 of the Act are being extracted for a ready reference as under :

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:”

2.02 That, on a plain reading of the provisions of s.68 of the Act, it would be observed by Your Honour that the section comes into motion only in a case where any sum is found credited in the books of an assessee maintained for any previous year.

2.03 Thus, perusal of the books of account maintained by the assessee is an essential condition for the purpose of invoking the provisions of s.68 of the Act. In other words, a finding to the effect that any sum is credited in the books of account is sine-qua-non for triggering the provisions of s.68 of the Act.

2.04 In the instant case, it is an established fact that the learned AO has not perused the books of account of the assessee. In such eventuality, any addition made by the learned AO by invoking the provisions of s.68 of the Act in the

assessee's income cannot be sustained on this legal count alone. For such proposition, reliance is placed on the following judicial pronouncements:

- i) *Ms. Mayawati vs. DCIT (2008) 113 TTJ (Del.) 178*
- ii) *Anand Ram Ratiani vs. CIT [1997] 223 ITR 544 (Gau.)*
- iii) *CIT vs. Bhaichand N. Gandhi [1982] 11 Taxman 59 (Bom.)*

3.01 That, during the relevant previous year, the assessee was engaged in the business of real estate developers under the proprietorship concern named and styled as 'M/s. Royal Colonizers, Builders & Developers'.

3.02 That, the impugned addition of Rs.2,85,38,400/- so made by the learned AO in the assessee's income on account of unexplained cash credit is not maintainable for the reason that the said addition is made by the learned AO merely on the basis of the ITS generated from the system of department without examining the books of accounts of the assessee.

4.01 That, to the best of the knowledge and belief of the assessee, he had made cash deposits aggregating to a sum of Rs.2,72,14,700/- only in the bank accounts so maintained by him as against the alleged cash deposits of Rs.2,85,38,400/- as noted by the learned AO. The break up of the aforesaid cash deposits of Rs.2,72,14,700/-, as made by the assessee in his bank accounts, is given in a tabular form as under:

S.No.	Name of Bank Account	Amount of Cash Deposits
1	IDBI Bank	67,22,500
2	Punjab National Bank	10,98,000
3	Bank of India	13,76,000
4	Axis Bank (3124)	12,33,000
5	Bank of Baroda	79,05,900
6	ICICI Bank (0227)	6,33,300
7	Axis Bank (0329)	3,20,000
8	HDFC Bank	3,54,000
9	ICICI Bank (0085)	5,000
10	State Bank of India (7919)	56,40,000
11	State Bank of India (6606)	19,27,000
TOTAL		2,72,14,700

4.02 That, during the relevant previous year, the assessee had maintained total twelve bank accounts. The details of these bank accounts are given in a tabular form as under:

S no.	Name of Bank & Branch	Nature of Account	Account No.
1	IDBI Bank, Mhow	Saving	131093031400
2	Punjab National Bank, Mhow	Saving	321000100160183

3	Bank of India, Mhow	Saving	881610110002276
4	Axis Bank, Gawli Palasia Branch, Mhow	Saving	650010100003124
5	Bank of Baroda, Mhow	Saving	9180100001270
6	ICICI Bank, Mhow	Saving	103601500227
7	Axis Bank, Gawli Palasia Branch, Mhow	Current	650010200000329
8	HDFC Bank, Pithampur	Saving	12911530004964
9	ICICI Bank, Mhow	Current	103605000085
10	State Bank of India, Town Hall Branch, Mhow	Saving	53016697919
11	State Bank of India, Plawdon Road Mhow	Saving	10699666606
12	Union Bank of India, Mhow	Saving	362702010086360

- 5.01 *Your Honours, the assessee has carried out an exhaustive exercise of reconciliation of the cash deposits made by him in the aforesaid bank accounts. It is submitted that the cash deposits of Rs.2,72,14,700/- have, partly, been made by the assessee in the subject bank account out of the cash withdrawals made immediately before making the deposits either from the same bank account or other bank accounts. Further, some cash deposits have also been made by the assessee out of the advances received by him in cash from customers against sale of plots in the colony project.*
- 5.02 *Your Honours, in order to demonstrate the aforesaid facts, we are furnishing herewith statements showing details of cash deposits aggregating to Rs. 2,72,14,700/- made by the assessee on various dates during the relevant previous year and the corresponding cash inflow immediately before the making of cash deposits, for kind perusal and record of Your Honour, at para (5.3) infra. Besides, we are also furnishing herewith copies of the relevant bank statements of the assessee for the relevant previous year, for kind perusal and record of Your Honour, at para (5.3) infra.*
- 5.03 *Your Honours, in order to further buttress our submission that the assessee had received some advances in the form of cash from various customers against sale of plots in his project, we are also furnishing herewith a separate statement [at para (5.3) infra] showing the details of the buyers from whom such advances were received by him during the relevant previous year and their corresponding details as regard to the registered sale deeds executed by the assessee in their favour. It is submitted that in respect of many of the cases of receipt of advances in cash (which in its turn was deposited in bank accounts), the assessee in subsequent years, have executed registered sale deeds. Such fact speaks in volume regarding the genuineness of the claim of the assessee as regard to the receipt of the advance and consequent availability of cash. It is submitted that in the aforesaid statement containing details of advances, the assessee has also made reference of the concerning registered sale deed.*

- 5.04 *Your Honours, on a perusal of the aforesaid statements and copies of registered sale deeds, it shall be observed that the sources of cash deposits aggregating to Rs.2,72,14,700/- so made by the assessee in the subject bank accounts are fully explained and the same deserve to be accepted at the end of Your Honours.*
- 6.01 *Your Honours, to summarize, the various documentary evidences, as referred to herein above, were duly furnished before the ld. CIT(A) and which are also placed in the Paper Book, as per details given as under:*
- i) *Statements showing details of cash deposits aggregating to Rs. 2,72,14,700/- made by the assessee on various dates during the relevant previous year in the aforesaid bank accounts maintained by the assessee and the corresponding cash inflows immediately before the making of cash deposits, as Annexure A-4.01 to A-4.11 [PB Page No. 36 to 48];*
 - ii) *Copies of the relevant bank statements for the relevant previous year, as Annexure A-4.12 to A-4.23 [PB Page No. 49 to 120];*
 - iii) *Statement showing the details of the buyers from whom such advances were received by him during the relevant previous year and their corresponding details as regard to the registered sale deeds executed by the assessee in their favour, as Annexure A-4.24 [PB Page No. 121 to 124];*
 - iv) *Copies of registered sale deeds executed by the assessee in favour of the buyers, as Annexure A-4.25 to A-4.71 [PB Page No. 125 to 546].*
- 6.00 *Your Honours, since the assessee was not granted sufficient opportunity of being heard during the course of the assessment proceedings, all these documents, furnished hereinabove, could not be furnished before the AO. It is submitted that since the aforesaid documents were quite vital to adjudicate the issue on hand, the same were furnished before the ld. CIT(A) as additional evidences along with an application under Rule 46A of the Income-tax Rules, 1962.*
- 7.00 *Your Honours, the entire submission of the assessee along with documentary evidences were forwarded by the ld. CIT(A) to the AO for his remand report. In the instant case, the AO also carried out remand proceedings and in pursuance thereof, the assessee furnished his replies from time to time along with necessary documentary evidences. The reply letters so filed by the assessee before the AO are placed at page no. 52 to 56 of our Paper Book prepared separately in respect of Remand Proceedings. Further, the AO has submitted his remand reports before the ld. CIT(A) on two occasions. The Remand Reports dated 17-03-2019 and 28-07-2020 have been respectively placed at page no. 1 to 10 and 109 to 112 of our separate Paper Book for Remand Proceedings. In response to the aforesaid Remand Reports, the assessee had also filed his rejoinders vide his two letters dated 17-04-2019 and 20-08-2020 which are also placed at page no. 36 to 41 and 127 to 133 respectively in our separate Paper Book for Remand Proceedings*
- 8.01 *The ld. CIT(A) has dealt with the subject issue at Para (7.1) at page no. 55 to Para (7.15) at page no. 64 of his Order. The ld. CIT(A) noted that the AO has made the addition of Rs.2,85,38,400/- merely on the basis of Individual Transaction Statement (ITS) generated from the system of the Department. The ld. CIT(A) further noted that during the course of the remand proceedings, the assessee vide his letter dated 26.02.2020 had submitted that his turnover for the assessment year 2011-12 as per the registered sale deeds was to the extent*

of Rs. 2,35,88,600/- on which he had shown a Net Profit of 30,41,000/- which works out to be 12.89% of the turnover. The ld. CIT(A) observed that in respect of any assessee carrying out business, the entire deposits made in his bank accounts cannot be regarded as the income of the assessee. The ld. CIT(A) also noted that the AO making the remand report could not dispute the genuineness of the documents furnished by the assessee.

8.02 The ld. CIT(A) after considering the remand report submitted by the AO as well as the rejoinder of the assessee thereon, arrived at a conclusion that the assessee had duly explained each and every cash deposit made by him in his bank accounts through various statements and documentary evidences and the AO could neither find any defect or discrepancy in the explanation of the assessee or any of the documentary evidences so furnished by him. Accordingly, the ld. CIT(A) deleted the entire addition of Rs.2,85,38,400/- made by the AO on account of unexplained cash deposits. The action of the ld. CIT(A) in deleting of the impugned addition has been challenged by the Revenue before this Hon'ble Bench.

9.00 Your Honours, considering the entire facts and circumstances of the case, it would be appreciated that the entire subject cash deposits of Rs. 2,72,14,700/- have been made by the assessee either out of the cash withdrawals made from the bank accounts or out of the advances received from various customers against sale of plots. Thus, in nutshell, the entire cash deposits in the bank accounts of the assessee have been made out of the explained sources only and therefore, no addition on this count is warranted.

In view of the above facts and circumstances, it is submitted that the addition of Rs.2,85,38,400/- was rightly deleted by the ld. CIT(A) and therefore, the action of the ld. CIT(A) deserves to be upheld by this Hon'ble Bench and the Revenue's Ground on this issue deserves to be dismissed.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

S. No.	Description of the document	Page No.
1	Statements showing details of cash deposits aggregating to Rs. 2,72,14,700/- made by the assessee on various dates during the relevant previous year in the aforesaid bank accounts maintained by the assessee and the corresponding cash inflows immediately before the making of cash deposits	36 to 48
2	Copies of the relevant bank statements of the assessee for the relevant previous year	49 to 120
3	Statement showing the details of the buyers from whom such advances were received by him during the relevant previous year and their corresponding details as regard to the registered sale deeds executed by the assessee in their favour	121 to 124
4	Copies of registered sale deeds executed by the assessee in favour of the buyers	125 to 546
5	1 ST Remand Report of the AO dated 07-03-2019 for the A.Y. 2011-12	1 to 10 of Remand Report PB
6	1 ST Rejoinder of the assessee dated 17-04-2019 for the A.Y. 2011-12	36 to 41 of Remand Report PB
7	2 ND Remand Report of the AO dated 28-07-2020 for the A.Y.	109 to 112

	2011-12	<i>of Remand Report PB</i>
8	<i>2ND Rejoinder of the assessee dated 20-08-2020 for the A.Y. 2011-12</i>	<i>127 to 133 of Remand Report PB</i>

8.1 We have heard rival contentions and perused the records placed before us. We notice that in the instant case, the AO has made the addition of Rs.2,85,38,400/- on the basis of Individual Transaction Statement (ITS) generated from the system of the Department revealing that during the relevant year, the appellant had made total deposits of Rs.2,85,38,400/- in cash in his various bank accounts, whereas no sales or advances received were shown in the return. Finally, the AO held that the appellant was deliberately avoiding to furnish details and therefore, the entire amount of cash deposited in banks at Rs.2,85,38,400/- was held to be undisclosed income of the appellant u/s. 68 of the Act.

8.2 We find that except having the information through ITS as regard to the deposit Ld.AO was not having any adverse material or information on his record. It is an undisputed fact that the appellant is carrying out the business of real estate. The AO himself in the body of the assessment order has stated that the appellant had launched various projects. The AO has also observed that the appellant was also making booking of plots and developing colonies. Further, from the

body of the assessment order, it also emanates that during the course of survey u/s. 133A of the Act in the appellant's business premises on 21.09.2012, no incriminating material or document relating to the assessment year under consideration was found and the AO has not made reference of any such incriminating material. We find that the appellant, in his return, had shown income of Rs. 30,41,000/- and had also shown his turnover for the assessment year 2011-12 as per the registered sale deeds executed to the extent of Rs. 2,35,88,600/-. We find that in the remand report Ld.AO has not rebutted such factual statement of the appellant. Thus, in our view, the findings given by the AO, framing the assessment, that the appellant had not shown any sales in his return of income is factually incorrect.

8.3 It is generally accepted that in respect of any assessee carrying out business, the entire deposits made in his bank accounts cannot be regarded as the income of the assessee. A businessman is invariably required to incur corresponding expenses against the deposits made in bank accounts. So, it is only the net profit element which can be subjected to tax. Even under some situations even it is not necessary that the entire deposits made in the bank accounts would be required to be considered for the purpose of recognition of revenue. In the business world, there takes place numerous transactions of deposits in bank accounts which do not have any direct

nexus of earning by such businessmen in the year in which the deposits have been made. There may be deposit of cash or cheques in bank account of an assessee out of the advances received against sales which may be recognized as revenue in the subsequent years.

8.4 We observe that before us, the assessee has filed a voluminous Paper Book containing 1 to 569 pages for the assessment year under consideration. Besides, the assessee has also filed one combined Paper Book for A.Y. 2011-12 to A.Y. 2013-14 containing pages from 1 to 150 and at page no. 36 to 48 of the Paper Book for the A.Y. 2011-12, the assessee has furnished the date-wise details of cash deposited by him in his various bank accounts during the relevant previous year. From page no. 49 to 120, the assessee has furnished the copies of his bank statements. From page no. 121 to 124, the assessee has furnished the details of the registered sale deeds executed by him whereas the copies of the registered sale deeds have been filed by him from page no. 547 to 566 of his Paper Book for the assessment year under consideration. Further, we find that the assessee has filed the copy of statement showing details of sales made in the common Paper Book at page no. 85 to 86.

8.5 We note that find that the documents furnished before us by the assessee in the Paper Book were also filed by him before the ld. CIT(A) and ld. CIT(A) had called remand report

from the concerning AO under Rule 46A of the Income-Tax Rules 1962 and Ld. AO making the remand report could not dispute the genuineness of the documents furnished by the appellant but has only questioned the date of receipts from customers for the reason that such dates were not found mentioned in the sale deeds subsequently executed by the assessee in favour of the concerning customers. The AO has also objected the contention of the appellant on the pretext that the appellant did not maintain any record of sales. However, in our considered opinion, the appellant by furnishing the date wise inflow outflow of cash, details of the customers from whom advances were received and copies of the sale deeds, executed subsequently, could be said to be able to discharge his onus of establishing the sources of cash deposits made in his various bank accounts during the year under consideration.

8.6 In our considered view, it is a common practice in the real estate trade that a colonizer or builder enters into agreement with any customer for sale of properties, with the stipulation that the customer would make the payment of agreed sales consideration in installments. Further, only after receipt of the entire sales consideration, possession of the properties is handed over to the customer and sale deed is accordingly executed. The AO also, in the body of the assessment order, has given a finding that the appellant had launched various projects and in such projects, he was

making bookings. Thus, the claim of the appellant that he had made deposits in his bank accounts out of final sales proceeds/advances received from customers, in cash, deserves to be accepted. Once an assessee is in a position to establish that during a particular year, he had received certain cash from explained sources, then unless and until it is proved otherwise, by any cogent evidence that the assessee had received the cash so from some other sources then that claimed by the assessee, the claim of the assessee should be accepted. The transactions of receipt of proceeds from the customers have been established by the appellant by way of furnishing sale deeds and even in the remand report, the AO has nowhere commented that the appellant failed to furnish necessary documentary evidence by way of sale deeds in support of receipt of money from customers. In our view, the very fact of registration of sale deed, before a Government Authority, being Sub-Registrar of Property, establishes the identity of the transaction and as also, genuineness of the transaction and in the cases of credits relating to sales proceeds, the onus of an assessee is relatively lighter to establish the creditworthiness of the transactions as all such transactions takes place on *quid-pro-quo* basis only.

8.7 Further, in our view, since, the AO has accepted the turnover as well as Net-Profit shown by the appellant in his return of income, merely on the basis of making of deposits in

bank accounts, no addition can be sustained specially in a circumstance when the appellant has fully explained the sources of each and every deposits made in his bank accounts and has also substantiated such sources with the documentary evidences.

8.8 Thus, we find that by furnishing the various documentary evidences, the appellant has satisfactorily explained each and every cash deposit made by him in his bank accounts, Ld.AO could neither find any specific defect or discrepancy in the explanation of the appellant or any of the documentary evidences so furnished by him and also during the course of the survey proceedings carried out in the assessee's premises, no incriminating material for the year under consideration was found and even the learned AO has not made reference of any of the materials found during the course of the survey.

8.9 We also find from the various statements furnished by the assessee that out of the total cash deposits of Rs.2,72,14,700/- made by the assessee in his bank accounts during the relevant previous year, cash deposits aggregating to Rs.2,21,77,700/- have been made out of receipts from customers towards sales/ booking advances and the remaining cash deposits aggregating to Rs.50,37,000/- have been made out of the cash withdrawals from bank accounts themselves.

8.10 We therefore under the given facts and circumstances of the case , find no infirmity in the finding given by the ld. CIT(A) for deleting the addition of Rs.2,85,38,400/- made by the Ld.AO on account of unexplained cash deposits under section 68 of the Act. Accordingly, the findings given by the ld. CIT(A) are upheld and Ground No. 1 raised by the Revenue for A.Y. 2011-12 is hereby Dismissed.

9. Ground Nos. 2, Ground no.1 & Ground no.1 of the Revenue's Appeal for A.Ys. 2011-12, 2012-13 and 2013-14

9.1 Through these grounds of appeal, the revenue has challenged the action of the ld. CIT(A) in deleting the additions of Rs.30,00,000/-, Rs.50,00,000/- and Rs.1,40,04,961/- on account of additional surrendered income not shown by the assessee in ITR respectively for A.Ys. 2011-12, 2012-13 and 2013-14. Since all these grounds are involving same issue, the same are being dealt with here simultaneously.

9.2 Briefly stated facts of the issue, as culled out from the records, are that a survey under the provisions of s. 133A of the Act was carried out in the business premises of the assessee on 21.09.2012 and during the survey proceedings, a statement of the assessee was recorded u/s. 133A of the Act. A copy of the statement has been filed by the assessee at page nos. 547 to 566 of his Paper Book for A.Y. 2011-12. While giving the statement, in reply to the last question no.

40 asking him if he had anything further to say, the assessee had stated that considering the impounded documents, he was inclined to declare a consolidated income of Rs.3,20,00,000/- for the financial year 2012-13 and for the earlier assessment years. Subsequent to the date of survey, the assessee vide a letter dated 11.01.2013 furnished the breakup of the income admitted in pursuance of the survey proceedings u/s. 133A of the Act before the DDIT (Inv.)-II, Indore vide his letter dated 11-01-2013. A copy of such break-up of income has been filed by the assessee at page no. 567 to 569 of the Paper Book for A.Y. 2011-12, as per which the assessee had admitted income amounting to Rs.30,00,000/-, Rs.60,00,000/- and Rs.2,25,00,000/- respectively for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14. After survey, the assessee furnished his returns of income for the aforesaid three assessment years by showing taxable income of Rs.30,41,000/-, Rs.64,37,450/- and Rs.2,27,12,840/- respectively for the A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14. According to the AO, the aforesaid admitted income of Rs.30,00,000/-, Rs.60,00,000/- and Rs.2,25,00,000/- respectively for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14 were taxable separately over and above that already shown by the assessee in his returns of income. Accordingly, Ld.AO made separate additions of Rs.30,00,000/-, Rs.50,00,000/- and Rs.1,40,04,961/- in the hands of the assessee on account of surrendered income not

shown in ITR respectively for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14.

9.3 Aggrieved with the Orders of Assessment, the assessee preferred separate appeals for the assessment years under consideration before the ld. CIT(A). The ld. CIT(A) observed that the assessee had already shown net profit at the reasonable rate of 12.89% of his turnover for A.Y. 2011-12. Further, for A.Y. 2012-13 and A.Y. 2013-14, the ld. CIT(A) rejected the books of account and made the estimation of turnover and as also, net profit on such turnover at the flat rate of 15%. However, while adjudicating the respective grounds on the subject issue of taxability of the additional income surrendered during the course of the survey over and above that already shown in the returns of income, the ld. CIT(A) has granted full relief to the assessee for all the three assessment years. The ld. CIT(A) held that it was not the allegation of the Ld.AO that besides carrying out the business of real estate, the assessee was carrying out any other business and since on the date of survey, the books of account of the assessee were not complete, the income surrendered were only the estimated business income of the assessee. The ld. CIT(A) further found that the assessee did not retract from his statement made under s.133A of the Act and on the contrary, has shown more income in his returns of income than that admitted by him during the course of the survey. The ld. CIT(A) further relying upon the decision of the

Hon'ble High Court of Madras in the case of *S. Khader Khan Son (2008) 300 ITR 157 (Mad)* and further considering that the SLP filed by the Revenue against such decision got dismissed by the Hon'ble Supreme Court, held that any statement under s.133A which cannot be recorded on oath has no evidentiary value. Accordingly, the ld. CIT(A) deleted the entire additions so made by the AO on account of the income admitted during the course of the survey u/s. 133A.

9.4 Aggrieved with the Order of the ld. CIT(A), the revenue is in appeal before us.

9.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

9.6 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

"LEAD YEAR : A.Y. 2011-12:

D. Key Points of Assessee's Submission and Relevant Pages of the Paper Book:

In this context it is submitted as under :

1.01 That, a Survey under the provisions of section 133A of the Income-Tax Act, 1961, was carried out in the residential premises of the assessee on 21-09-2012.

1.02 That, during the course of the Survey proceedings, the assessee admitted certain additional income for various assessment years. The assessee, while giving his statement, in reply to Question No. 40, admitted an aggregate taxable income of Rs.3,20,00,000/- for the various assessment years commencing from A.Y. 2010-11 to A.Y. 2013-14. A copy of the Statement of the assessee recorded during the course of the Survey is placed at PB Page No. 547 to 566. The assessee, through his subsequent letter dated 11-01-2013, submitted before the ld. DDIT (Inv.)-II, Indore, furnished a tentative year-wise break-up of the aforesaid income of Rs.3,20,00,000/-. A copy of such letter along with a copy of

statement containing break-up of the income of Rs.3,20,00,000/- is placed at PB Page No. 567 to 569. On a perusal of such statement, it would be observed that out of the total admitted income of Rs.3,20,00,000/-, the assessee has admitted an income of Rs.30,00,000/- for the assessment year under consideration. It shall not be out of place to mention here that since for the assessment year under consideration, no incriminating material or document was found or impounded by the Survey Party, the aforesaid additional income of Rs.30,00,000/- was admitted by the assessee as his regular business income.

1.03 That, post survey, the assessee duly furnished his return of income, for the assessment year under consideration, under s.139 of the Act, on 30-03-2013 vide acknowledgment no. 607198661300313 declaring an income of Rs.30,41,000/- [refer PB Page No. 21]. It is submitted that the aforesaid returned income of Rs.30,41,000/- exclusively represents the business income of the assessee as admitted by him before the survey party. Thus, in other words, the assessee duly honored the admission made by him before the survey party.

2.00 Your Honours, the impugned addition of Rs.30,00,000/- has been made by the learned AO over and above the returned income of Rs.30,41,000/- shown by the assessee without considering the material fact that the assessee had already considered and incorporated the additional income in his return of income furnished for the relevant assessment year.

3.00 Your Honours, the aforesaid action of the learned AO has resulted into double addition in the hands of the assessee which cannot be upheld especially in a circumstance when the learned AO could not bring any adverse material on record to establish the fact that the assessee has derived such income of Rs.30,00,000/- over and above the business income of Rs.30,41,000/- already incorporated in the return of income for the relevant assessment year.

4.00 The ld. CIT(A) observed that as against the admitted income of Rs. 30,00,000/-, the assessee had shown a higher income of Rs. 30,41,000/- in his return of income for the assessment year under consideration and in respect of such income shown in the return, the assessee had got separately assessed by the AO. Accordingly, the ld. CIT(A) deleted the addition of Rs.30,00,000/- so made by the AO. The action of the ld. CIT(A) in deleting of the impugned addition has been challenged by the Revenue before this Hon'ble Bench.

In view of the above facts and circumstances, it is submitted that the addition of Rs.30,00,000/- has been rightly deleted by the ld. CIT(A) and therefore, the action of the ld. CIT(A) deserves to be upheld by this Hon'ble Bench and the Revenue's Ground on this issue deserves to be dismissed.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

S. No.	Description of the document	Page No.
1	Copy of Statement of the assessee recorded during the course of the Survey u/s. 133A of the Act on 21-09-2012	547 to 566
2	A copy of letter dated 11-01-2013 along with a copy of statement containing break-up of the income of Rs.3,20,00,000/- submitted by the assessee before the ld. DDIT (Inv.)-II, Indore	567 to 569
3	Xerox copy of Acknowledgment evidencing furnishing of Return of Income u/s. 139 for A.Y. 2011-12 along with Computation of	21 to 23

	Total Income	
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10. We have heard rival contentions and perused the records placed before us. We observe that in the letter of break-up of additional income submitted by the assessee before the DDIT (Inv.)-II, Indore, as placed at page no. 567 to 569 of the Paper Book for A.Y. 2011-12, the assessee had admitted additional income aggregating to sum of Rs.3,20,00,000/- for four assessment years viz. from A.Y. 2010-11 to A.Y. 2013-14, out of which income amounting to Rs.30,00,000/- was pertaining to A.Y. 2011-12, income amounting to Rs.60,00,000/- was pertaining to A.Y. 2012-13 and income amounting to Rs.2,25,00,000/- was pertaining to A.Y. 2013-14. We also found from the letter of break-up that the assessee had admitted such additional income only for the reason that till the date of survey, his books of account were not complete and no return of income for earlier years could be filed by him and the assessee came forward to declare the aforesaid income as his business income for the assessment years under consideration. In our view, from such letter, it cannot be inferred that the assessee in any manner admitted the additional income over and above his regular business income. We also observe that as against the income of Rs.30,00,000/-, Rs.60,00,000/- and Rs.2,25,00,000/- respectively for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14, the assessee had shown higher income amounting to Rs.30,41,000/-, Rs.64,37,450/- and

Rs.2,27,12,840/- respectively. Thus, it is not a case where the assessee has retracted his statement. Even otherwise, we are in full agreement with the finding of the ld. CIT(A) that statement recorded under s.133A of the Act by themselves have no evidentiary value in view of the judicial ruling of the Hon'ble Madras High Court in the case of *S. Khader Khan Son (2008) 300 ITR 157 (Mad)*. We find that in the instant cases, the ld. AO based upon the material gathered during the course of the survey, has made separate additions and therefore, merely on the basis of the admission of the assessee, without having any other corroborative material on record, no addition could have been made. Accordingly, we find no infirmity in the findings of the ld. CIT(A) in deleting the additions on this count for all the three assessment years viz. A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14 under appeal and the same are hereby upheld. Consequently, the Ground No. 2 for A.Y. 2011-12 and Ground No. 1 for A.Y. 2012-13 & A.Y. 2013-14 raised by the Revenue are hereby dismissed.

11. Ground Nos. 1 & Ground no.2 of the Assessee's Appeal for A.Y. 2011-12

11.1 Through these grounds of appeal, the assessee has challenged the action of the AO in initiating the re-assessment proceedings u/s. 148 of the Act and framing the re-assessment order u/s. 147 of the Act on the ground that the AO was not having/recorded any reason to believe that

any income chargeable to tax had escaped assessment. The assessee has also challenged the Notice u/s. 148 on the ground that he was not made aware of the purpose of the Notice whether it was for assessment or reassessment or re-computation of the income/loss/depreciation. The assessee further agitated that the assessment order framed by the AO is invalid inasmuch before passing of the assessment order, no notice u/s. 143(2) was served upon him. Since both these grounds are interconnected, the same are being dealt with here simultaneously.

11.2 Briefly stated facts of the issue, as culled out from the records, are that in the case of the assessee, a survey u/s. 133A of the Act was conducted on 21.09.2012. According to the AO, during the course of the survey, incriminating documents were found and impounded showing that the assessee had suppressed his income. The AO noted that the assessee had voluntarily surrendered an income of Rs. 3.20 Crores as his undisclosed income vide letter dated 11.01.2013 for various assessment years which includes an income of Rs. 30,00,000/- for the assessment year under consideration. The AO had a reason to believe that the income so surrendered had escaped assessment within the meaning of section 147 of the Act. Thus, the AO after recording reasons to believe as regard to the escapement of income, for the assessment year under consideration, issued a Notice u/s. 148 of the Act to the assessee on 15.12.2014

requiring the assessee to furnish his return of income within 30 days from the date of service of the Notice. The assessee has not claimed that the Notice so issued was never got served upon him. According to the AO, in response to the Notice u/s. 148, the assessee had not filed return of income and therefore, the AO continued the proceedings by way of issuance of a notice u/s. 142(1) of the Act, on 08.09.2015 again requiring the assessee to file his return of income. The assessee did not respond to the Notice so issued again. Therefore, a questionnaire u/s. 142(1) was issued on 22.01.2016 fixing the date of compliance on 02.02.2016. As per AO, the assessee did not comply with the questionnaire also. The AO issued a final show cause notice on 03.03.2016 requiring the assessee to explain as to why an amount of Rs. 30,00,000/- surrendered by him during the survey proceedings for the year under consideration should not be added to his total income, but, as per AO, the assessee did not respond. Finally, the AO framed the assessment u/s. 144 of the Act by determining the total income of the assessee at Rs. 3,45,79,400/- for the A.Y. 2011-12.

11.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the assessment year under consideration before the ld. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences.

The ld. CIT(A) after considering the remand reports submitted by the AO as well as the rejoinders of the assessee thereon, observed that the AO had issued Notice to furnish a return within 30 days and the AO had correctly mentioned the name, address, PAN and assessment year in the Notice and therefore, merely for such a small clerical error of not scoring-out assessment/re-assessment, the entire notice u/s. 148 cannot be held to be invalid. Further, as regard the legal ground of the assessee to the effect that before completion of the assessment proceedings, no notice u/s. 143(2) was issued, the ld. CIT(A) held that since in the instant case, the assessee had not furnished any valid return u/s. 148 and therefore, there was absolutely no necessity for the AO to issue any notice u/s. 143(2) of the Act. Accordingly, the ld. CIT(A) dismissed both the legal grounds of the assessee. The ld. CIT(A) has given his findings at para (4.2) to para (4.2.3) at page no. 53 & 54 of his Order.

11.4 Aggrieved with the Order of the ld. CIT(A), the assessee is in appeal before us.

11.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

11.6 Per Contra, Learned Counsel for the assessee has filed written synopsis placed on record. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

S. No.	Description of the document	Page No.	Remarks
1	Xerox copy of Acknowledgment evidencing furnishing of Return of Income u/s. 139 for A.Y. 2011-12	21	-
2	Xerox copy of letter dated 29-02-2016 filed by the assessee before the AO for treating the original return filed u/s. 139 as return filed in pursuance to Notice u/s. 148 of the Act.	24	-
3	Xerox copy of letter dated 29-02-2016 filed by the assessee before the AO requesting to provide the copy of statement of reasons recorded before issuance of Notice u/s. 148	25 & 26	-

Reliance placed on the following judicial pronouncements :

- i) *CIT vs. Rajeev Sharma (2010) 336 ITR 678 (AllHC)*
- ii) *ITO vs. M/s. NVS Builders Pvt. Ltd. [ITA No. 3729/Del/2012 vide Order dated 08-03-2018]*
- iii) *ITO vs. Shri Neeraj Goel 2018 (3) TMI 668 (ITAT Del)*
- iv) *ITO vs. Naseman Farms Pvt. Ltd. (2015) 44 CCH 0003 (DelTrib)*
- v) *TML Drivelines Ltd. vs. DCIT, Mumbai 2018 (2) TMI 1516 (ITAT Mum)*
- vi) *Virendra Dev Dixit vs. ACIT (2011) 331 ITR 483 (AllHC)*
- vii) *CIT vs. Bharat G Patel (2014) 88 CCH 0032 (GujHC)*
- viii) *Mohinder Kumar Chhabra vs. ITO (2014) 31 ITR (Trib.) 0093 (Del)*
- ix) *Addl. Director of Income Tax (Exemptions) vs. Vodithala Education Society (2015) 144 DTR (Hyd)(Trib) 0018*
- x) *Suresh Exports Pvt. Ltd. vs. DCIT (2016) 48 ITR 333 (Trib.Mum)*
- xi) *ACIT vs. Ravnet Solutions Pvt. Ltd. & Anr. (2017) 49 CCH 0156 (DelTrib)*
- xii) *Pr. CIT vs. Hindustan Candle Manufacturing Co. Pvt. Ltd. 2018 (12) TMI 468 (BomHC)*
- xiii) *DCIT vs. Cameron Singapore Pte. Ltd. 2018 (11) TMI 873 (RajHC)*
- xiv) *PCIT, Kolkata vs. Oberoi Hotels Pvt. Ltd. 2018 (6) TMI 1472 (KolHC)*
- xv) *PCIT, Mumbai vs. Shri Jawahar Hiranand Bhatia 2018 (3) TMI 1166 (BomHC)*

12. We have heard rival contentions and perused the records placed before us. We note that in the case of the assessee, a Survey under s.133A had taken place on 21-09-2012 and based upon the findings of the survey, a notice under s.148 was duly issued to the assessee after recording

the reasons. We also observe that the ld. AO has clearly mentioned in the body of the assessment order that before issuance of the notice, reasons were duly recorded. Accordingly, we find no infirmity in the action of the AO in invoking the provisions of s.148 in the instant case. We also find merit in the findings given by the ld. CIT(A) that since in the instant case, the assessee did not furnish a valid return, within the time prescribed in the notice under s.148, there was absolutely no necessity for the ld. AO to issue any notice under s.143(2) of the Act to the assessee. Accordingly, we uphold the findings of the ld. CIT(A) on these grounds and consequently, legal ground nos. 1 and 2 of the assessee for the A.Y. 2011-12 are hereby dismissed.

13. Ground No. 2 of the Revenue for A.Y. 2012-13; Ground Nos. 1(a) to 1(d) of the Assessee for A.Y. 2012-13; and Ground Nos. 2(a) to 2(d) of the Assessee for A.Y. 2013-14

13.1 Through the ground No. 2 for A.Y. 2012-13, the revenue has challenged the action of the ld. CIT(A) in deleting the addition of Rs.20,18,30,178/- on account of excess expenditure over income. Further, through Ground Nos. 1(a) to 1(d) for A.Y. 2012-13 and Ground Nos. 2(a) to 2(d), the assessee has challenged the action of the ld. CIT(A) in rejecting the books of account and estimating the turnover and net profit of the assessee thereby making enhancement, u/s.251, in the income of the assessee by a sum of

Rs.25,88,306/- and Rs.11,96,353/- respectively for A.Y. 2012-13 and A.Y. 2013-14. Since all these grounds are emanating from the same issue, the same are being dealt with here simultaneously.

13.2 Briefly stated facts of the issue, as emerged out from the records, are that during the course of the survey proceedings u/s. 133A carried out on 21.09.2012 in the business premises of the assessee, some red color diaries in the form of manual ledgers, inventorized as BI-13 and BI-16, maintained by the assessee in respect of income and expenses, on day to day basis, were found and impounded. According to the AO, on the basis of transactions noted in such diaries, a summary was prepared and it got revealed that during the financial year relevant to the assessment year 2012-13, the assessee had incurred expenses to the extent of Rs.51,64,08,123/- as against the income of Rs.31,45,77,945/-. According to the AO, despite raising a specific query, the assessee could not explain the sources of these excess payments over the income. Accordingly, the AO made addition of Rs.20,18,30,178/- in the assessee's income on account of the excess of expenditure over the income for A.Y. 2012-13.

13.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the assessment year under consideration before the Id. CIT(A). During the course of the

first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The ld. CIT(A) after considering the facts and circumstances of the case, documentary evidences placed on record, remand reports submitted by the AO as well as the rejoinders of the assessee thereon, deleted the entire addition of Rs.20,18,30,178/- made by the AO on account of excess of expenditure over income on the basis of notings found made in some diaries. The ld. CIT(A) has given the necessary findings from para (7.1) at page no. 64 to para (7.3.4) at page no. 72 of his Order for A.Y. 2012-13.

13.4 Besides deleting the aforesaid addition, the ld. CIT(A) by discarding the results shown by the assessee in his books of account, made an enhancement of income amounting to Rs.25,88,306/- in the hands of the assessee by estimating the turnover of the assessee at Rs.6,00,00,000/- as against the same shown by the assessee at Rs.4,66,88,800/- and estimating a net profit @15% thereon for the A.Y. 2012-13. Likewise, the ld. CIT(A) made an enhancement of income amounting to Rs.11,96,353/- by estimating the turnover of the assessee at Rs.16,00,00,000/- as against the same shown by the assessee at Rs.10,16,39,194/- and estimating a net profit @15% thereon. The ld. CIT(A) has dealt with the issue of enhancement at para (9) of his Order for A.Y. 2012-13 and at para (10) of his Order for A.Y. 2013-14.

13.5 Aggrieved with the Order of the ld. CIT(A) deleting the addition of Rs.20,18,30,178/-, the revenue is in appeal before us whereas for making the enhancement by estimating the turnover and net profit, the assessee has raised above grounds before us.

13.7 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

13.8 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

“REGARDING EXCESS EXPENDITURE OVER INCOME AS PER SEIZED DIARIES BI-13 & BI-16 AT Rs.20,18,30,178/-

D. Key Points of Assessee’s Submission and Relevant Pages of the Paper Book:

In this context, it is submitted as under :

1.00 That, a Survey under the provisions of section 133A of the Income-Tax Act, 1961, was carried out in the residential premises of the assessee on 21-09-2012. During the course of the Survey proceedings, two diaries, inventorized as BI-13 & BI-16, were impounded by the survey party. These diaries were containing transactions undertaken by the assessee during the course of his real estate business. For a ready reference, we had furnished the Xerox copies of these two diaries, in a separate Volume-2, marked as ‘Impounded Diaries’ before the ld. CIT(A).

2.00 That, according to the ld. AO, both these diaries were pertaining only to the financial year 2011-12 and the AO, at para (8) of the impugned Order, has prepared one table containing the year-wise total receipts and payments as noted by him. As per the AO, the assessee has allegedly incurred total expenses of Rs.51,64,08,123/- as against the total income of Rs.31,45,77,945/-. Thus, according to the learned AO, the assessee had incurred excess expenditure to the extent of Rs.20,18,30,178/- over the receipts shown in the said diaries. According to the AO, the sources of such excess expenditure remained unexplained and therefore he made the addition of Rs. 20,18,30,178/- in the assessee’s income.

3.01 Your Honours, at the outset, it is submitted that the subject diaries BI-13 & BI-16 are pertaining to two financial years i.e. F.Y. 2011-12 (A.Y.2012-13) and F.Y. 2012-13 (A.Y. 2013-14) as against the same erroneously presumed by the learned AO as pertaining to only one financial year i.e. F.Y. 2011-12 (A.Y. 2012-13). On a perusal of the subject diaries, it shall be observed that the notings in the subject diaries have been made from Diwali 2011 (28-10-2011) to Diwali 2012 (13-11-2012). Thus, the total receipts and payments as noted by the learned AO fall to two different financial years pertaining to two different assessment years.

3.02 Your Honours, the learned AO further made a gross error of principle by holding that the subject two diaries, impounded as BI-13 and BI-16, represent the complete set of books of account of the assessee and contained notings of all the business transactions carried out by the assessee during the relevant previous year. The learned AO, misreably, failed to appreciate that the assessee neither during the course of making statements in the survey proceedings, nor during the course of the assessment proceedings, ever claimed these two diaries as his complete set of books of accounts. The fact remained that these two diaries were only a part of many voluminous records maintained by the assessee during the course of carrying out his regular business of development of plots and buildings. It is submitted that, these diaries were used to be maintained by only one of the many clerical staff members of the assessee and the notings in these diaries were restricted to only those transactions which were in the knowledge of that clerk. It is submitted that, in these diaries, many of the transactions relating to the receipts as well as payments of funds through cheques/cash were not noted as these transactions were carried out by some other clerk and were not in the specific knowledge of the clerk who maintained these diaries.

3.03 Your Honours, the learned AO, at Para (8) of his Order, has given an affirmative finding that from two red colour diaries, in the form of manual ledgers, income and expenditure on day to day basis were found and on the basis of the transactions noted in these diaries, a summary was prepared which shows year wise total receipts and payments made by the assessee during the course of his business. The learned AO, further in the said para, has given a table in which as per diaries BI-13 and BI-16, total income (sic. Receipt) to the extent of Rs.31,45,77,945/- were found to have been received as against the total expenditure of Rs.51,64,08,123/-. It is submitted that first of all, neither during the course of the assessment proceedings, nor at anytime prior thereto, the assessee had been provided the details of working of the aforesaid summary, so prepared by the learned AO. It is submitted that besides committing error of periodicity of diaries, the summary, so prepared by the learned AO is also factually incorrect. The learned AO has committed some arithmetical errors in working out the figures of total income and expenditure, as mentioned in para (8) of the Assessment Order.

3.04 Your Honours, on the basis of each and every jotting made in the subject two diaries, the assessee has carried out an exhaustive working and has re-computed the year-wise total receipts and payments, which are given in a tabular form as under:

Diary No.	F.Y.	A.Y.	Receipts	Payments
BI-13	2011-12	2012-13	19,76,525	7,42,200
BI-16	2011-12	2012-13	11,69,12,830	22,15,12,116
Sub-Total (A)			11,88,89,355	22,22,54,316
BI-13	2012-13	2013-14	23,02,880	8,06,660
BI-16	2012-13	2013-14	19,27,38,490	28,94,74,452
Sub-Total (B)			19,50,41,370	29,02,81,112
Grand Total (A+B)			31,39,30,725	51,25,35,428
Total Amount as per Assessment Order			31,45,77,945	51,64,08,123

3.05 Your Honours, the working of the figures given in the table above have been made by the assessee from extracting the day to day jottings made in the impounded diaries, in an excel sheet. A copy of the excel sheets, containing the details of the day to day working of impounded diaries, is placed at PB Page No. 80 to 97.

4.00 Your Honours, before proceeding further to explain the sources of expenditure of Rs.51,25,35,428/-, as against the total receipts of Rs. 31,39,30,725/-, it would be apt to note that all the transactions which have been jotted down in the said diaries BI-13 & BI-16 are duly recorded in the books of account which have been completed by the assessee after the date of survey. Thus, in other words, none of the transactions noted in the said diaries represent any undisclosed income of the assessee but, these represents, although, partially the regular business transactions carried out by the assessee. It is submitted that, after the date of survey, the assessee had completed his books of accounts and had also drawn financial statements. These financial statements were duly furnished by the assessee, electronically, along with the return of income for the relevant assessment year. A copy of such financial statements are placed at page no. 22 to 43 of our paper book.

5.00 Your Honours, as regard to the sources of payments aggregating to a sum of Rs. 51,25,35,428/-, made by the assessee during the two financial years, as jotted down in the subject diaries BI-13 and BI-16, it is submitted that out of the aforesaid aggregate payments of Rs. 51,25,35,428/-, substantial payments to the extent of Rs.22,95,52,980/- were made by the assessee through banking channels and only a sum of Rs. 28,42,12,648/- was paid by the assessee in the form of cash. Again, out of the total cash payments of Rs. 28,42,12,648/-, as aforesaid, a

sum amounting to Rs. 1,93,78,750/- represents the amount of Cash given by the concerning clerk/cashier to the assessee/his wife as imprest account, from time to time, for the purpose of safe custody. It is submitted that, at the end of each business hours, one of the cashiers of the assessee used to keep cash in his custody, either with the assessee or his wife (written in the diary as 'given to bhaisahab/bhabhiji') which were subsequently taken back as and when the need arisen. If such payment of cash, given on imprest basis, at Rs. 1,93,78,750/- is excluded from the total cash payments of Rs. 28,42,12,648/-, there would remain cash payments aggregating to a sum of Rs. 26,48,33,898/- only, during both the financial years, which inter alia includes jottings relating to making of cash deposits aggregating to a sum of Rs. 5,53,00,000/- in various bank accounts of the assessee.

5.01 Your Honours, the various sources of making payments aggregating to a sum of Rs. 22,95,52,980/- through banking channels were duly verified by the ld. CIT(A) from the copies of the relevant bank statements of the assessee, for both the financial years, submitted before him, in a separate Volume-3, marked as 'Bank Statements'. It is submitted that all the payments through bank accounts have duly been made by the assessee out of his disclosed bank accounts and all the banking transactions are duly recorded in the books of account maintained by the assessee. It is submitted that the major source of receipts in various bank accounts of the assessee was sale proceeds/advance receipts against the sale of properties. As the assessee has made the payments through banking channels and has also made recording thereof in his books of accounts, no adverse cognizance in respect of such payments ought to have been made by the learned AO.

5.02 Your Honours, the sources of aggregate cash payments, made by the assessee, as per the subject two diaries are explained in a summarized form as under:

A.Y.	Cash Payments towards purchase of Lands/ to contractors / for other development expenses	Cash deposited in Bank Accounts	Payment towards imprest account	Total Cash Payments	Cash receipts from various Customers, either as Sales/ Advance receipts against sale of properties	Withdrawals from Banks	Receipts from Imprest Account	Total Cash Receipts	Cash Surplus/ (Deficiency)
[1]	[2]	[3]	[4]	[5] = [2+3+4]	[6]	[7]	[8]	[9] = [6+7+8]	[10] = [9]-[5]
2012-13	10,90,76,738	37,50,000	1,70,49,250	12,98,75,988	8,08,16,355	1,47,55,000	1,89,19,000	11,44,90,355	(1,53,85,633)
2013-14	9,92,26,960	5,15,50,000	23,29,500	15,31,06,460	11,75,99,370	4,48,88,000	61,55,000	16,86,42,370	1,55,35,910

Total	20,83,03,698	5,53,00,000	1,93,78,750	28,29,82,448	19,84,15,725	5,96,43,000	2,50,74,000	28,31,32,725	1,50,277
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5.03 Your Honours, the above table has been drawn on the basis of a consolidated statement of transactions noted in BI-13 & BI-16, which in its turn, is based upon the day to day working of the diary in the excel sheets, placed at PB Page no. 80 to 97. Copy of the aforesaid consolidated statement and year-wise statement, are placed at PB Page No.98 to 100.

5.04 Your Honours, in order to establish the veracity of the table given at Para 5.02, supra, were duly furnished before the ld. CIT(A) and which are also placed in the Paper Book, as per details given as under:

- (i) Statement showing day wise details of cash deposits made in various bank accounts, as Annexure A-8.01 [PB Page No. 101 to 104].
- (ii) Statement showing day wise details of cash withdrawals from various bank accounts, as Annexure A-8.02 [PB Page No. 105 to 110].
- (iii) Statement showing details of cash receipt from various customers, as Annexure A-8.03 [PB Page No. 111 to 116].

5.05 Your Honours, again, the veracity of the aforesaid statements of date wise cash deposits and cash withdrawals from various banks, were duly verified by the ld. CIT(A) from the copies of the various bank statements of the assessee for the relevant previous years, as are being submitted herewith in a separate Volume-3, marked as 'Bank Statements'. The details of various bank accounts, given in the aforesaid statements, can be verified from the details of the bank accounts given by the assessee in Schedule-5 of his Audited Financial Statements for the financial year 2011-12 [refer PB Page No.39]. Further, the veracity of the claim of the assessee, as regard to receipt of cash from various customers against sale of properties were duly verified by the ld. CIT(A), from the relevant abstracts of the copies of the Registered Sale Deeds, executed subsequently, by the assessee, which were submitted before the ld. CIT(A) in a separate Volume - 4, marked as 'Registered Sale Deeds'. It is further submitted that the authenticity of the claim of the assessee, as regard to receipt of advances from various customers, can very well be verified by Your Honours from the copy of the Audited Financial Statements of the assessee for the financial year 2011-12 [refer PB Page No.40], in Schedule-7 of 'Advance Against Sale of Properties' at Rs. 30,19,88,287/- has been reflected. It shall be appreciated that even the ld. AO, in the body of impugned assessment order at Para (10) has given a finding that the assessee had shown sundry creditors and advances against properties, to the extent of Rs. 30,33,70,927/-, which inter alia includes the above stated amount of advances received from customers at Rs. 30,19,88,287/-.

6.00 Your Honours, on a perusal of the column no. 9 of the table given at Para 5.02, supra, it shall be observed that after excluding the transactions carried out through banking channels, there remained a cash deficiency i.e. excess of cash expenditure over cash receipts, as per the said impounded diaries BI-13 & BI-16, to the extent of Rs.1,53,85,633/- only. Thus, there was absolutely no justification for the ld. AO to make an addition of Rs. 20,18,30,178/- in the assessee's income, on the allegation of unexplained expenditure over receipts. Even as regard the aforesaid deficiency, it is reiterated that the diaries BI-13 & BI-16 are only a part of the books of accounts and records maintained by the assessee in his course of business and therefore, on the basis of such diaries, no adverse presumption or inference can be drawn against the assessee. It is submitted that, during the relevant previous year, the assessee had carried out some other transactions of cash receipts and cash payments, which were not recorded in the aforesaid diaries BI-13 & BI-16, but the same were recorded only in the regular cash book. It is submitted that if the transactions, which were not recorded in these diaries, but recorded in the regular cash book, there would not remain any case of any deficiency. For the purpose of dispelling any doubt, it is hereby clarified that transactions mentioned in the aforesaid diaries BI-13 & BI-16 are duly recorded in the regular cash book of the assessee. It shall be appreciated by Your Honours that the books of account maintained by the assessee by a firm of Chartered Accountants and a copy of the Audited Financial Statements were duly furnished before the learned AO [refer PB Page no.22 to 43] .

7.00 Your Honours, since in the appellant's case, the assessment has been framed under s. 144 of the Act, without affording any reasonable opportunity of being heard to the assessee, the assessee could not furnish certain documentary evidences before the ld. AO. It is submitted that since the aforesaid documents were quite vital to adjudicate the issue on hand, the same were furnished before the ld. CIT(A) as additional evidences along with an application under Rule 46A of the Income-tax Rules, 1962.

8.00 Your Honours, the entire submission of the assessee along with documentary evidences were forwarded by the ld. CIT(A) to the AO for his remand report. In the instant case, the AO also carried out remand proceedings and in pursuance thereof, the assessee furnished his replies from time to time along with necessary documentary evidences. The reply letters so filed by the assessee before the AO are placed at page no. 52 to 56 of our Paper Book prepared separately in respect of Remand Proceedings. Further, the AO has submitted his remand reports before the ld. CIT(A) on two occasions. The Remand Reports dated 21-06-2019 and 28-07-2020 have been respectively placed at page no. 11 to 20 and 113 to 121 of our separate Paper Book for Remand Proceedings. In response to the aforesaid Remand Reports, the assessee had also filed his rejoinders vide his two letters dated 12-07-2019 and 20-08-2020

which are also placed at page no. 42 to 45 and 134 to 146 respectively in our separate Paper Book for Remand Proceedings.

8.01 The ld. CIT(A) has dealt with the subject issue at Para (7.1) at page no. 64 to Para (7.3.4) at page no. 72 of his Order. The ld. CIT(A) noted that the sole ground taken by the AO for making the addition is that on the basis of summaries prepared from the notings made in the two diaries inventorized as BI-13 & BI-16, the AO found that the amount of expenditure (sic. Payments) noted in such diaries was more than the amount of income (sic. Receipts) recorded in the same, by a sum of Rs. 20,18,30,178/-.

8.02 The ld. CIT(A) further stated that during the course of the appellate proceedings, a copy of the written submission of the assessee along with all the above referred documentary evidences were duly provided to the AO for verification and her counter comments. As per the ld. CIT(A), in the first remand report dated 21.06.2019, the AO did not make any specific comment on the written submissions and various documentary evidences furnished by the assessee before him. The ld. CIT(A), in order to ensure the necessary verification of the various documentary evidences furnished by the assessee during the course of the appellate proceedings and as also to make necessary comments on the written submission filed by the assessee before him, again directed the AO to furnish her detailed report after making necessary verification and in response, the AO vide her second remand report dated 28.07.2020 submitted her comments. The ld. CIT(A) found that the AO has admitted filing of various documentary evidences by the assessee such as date wise details of jottings made in the diaries, date wise details of cash deposits and cash withdrawals, details of amounts received against sale/booking of properties, copies of registered sale deeds, bank statements etc.

8.03 The ld. CIT(A) noted that the AO did not controvert the assertion made by the assessee that the said diaries do not entirely pertain to the assessment year under consideration but pertain to two assessment years viz. A.Y. 2012-13 (under appeal) and A.Y. 2013-14. The ld. CIT(A) also observed that the AO also did not rebut the assertion of the assessee that the said two diaries were not containing the records of the complete financial transactions carried out by the assessee during the assessment year under consideration but, there were some other transactions, which, although carried out by the assessee during the course of his regular business, were not so recorded in the diaries, but were recorded only in his regular books of accounts. As per the ld. CIT(A), the AO has not denied maintenance of regular books of account by the assessee but had only commented that the same were not produced before her. Further, as regard to the contention of the assessee that he had received advances from various customers which were utilized for making the payments, the AO has merely stated that the notices u/s. 133(6) were issued to the purchaser of the plots, but, in most of the cases, the replies were not received. As per the ld. CIT(A), the AO also commented that in some cases, original letters had got unserved and in some cases, where the

replies have been received the dates of payments were not mentioned and the AO further commented that the assessee had shown turnover of Rs. 4,66,88,800/- only in his financial statements whereas the various receipts found noted in the said diaries were to the extent of Rs. 11,44,90,355/- and therefore, the same cannot be said to be fully reconciled, especially in a circumstance when the assessee himself is claiming that the diaries so found were not his complete records.

8.04 The ld. CIT(A), after considering all the facts and circumstances of the case, was of the view that the assessee could said to be able to establish that the said diaries, impounded and inventorized as BI-13 and BI-16, during the course of the survey proceedings carried out in the business premises of the assessee, do not pertain to only one assessment year i.e. the assessment year under consideration, but, they factually pertain to two assessment years viz. A.Y. 2012-13 (under appeal) and A.Y. 2013-14. The ld. CIT(A) also gone through the copies of the impounded diaries filed before him and found the contention of the assessee, to this effect, as factually correct and as per ld. CIT(A), even the AO has not rebutted such a factual position in her remand reports. The ld. CIT(A) also found merit in the contention of the assessee that the aforesaid two diaries were not the complete records of all the financial transactions carried out by the assessee during the relevant previous year, but, these were containing only part of many of the records maintained by the assessee. The ld. CIT(A) further noted that the assessee is claiming that all the transactions noted in such diaries are duly recorded in his regular books of accounts and on the basis of such books of accounts only, the financial statements were prepared and filed along with the return. However, as per ld. CIT(A), even if such an assertion of the assessee is not accepted at its face value, then also, one will have to place complete reliance on the impounded diaries based upon which the impugned addition has been made by the AO.

8.05 The ld. CIT(A) observed that for explaining the sources of expenditure, as noted in the said diaries, the assessee has furnished the necessary documentary evidences and the AO has not found any material defect or discrepancy in such documentary evidences. As per ld. CIT(A), the submission of the assessee that out of the total payments aggregating to a sum of Rs. 22,22,54,316/- found noted in the said diaries pertaining to the assessment year under consideration, expenditure to the extent of Rs. 9,23,78,328/- were made by him through banking channels. The ld. CIT(A) also found that in the said diaries, many notings have been made in respect of the transactions carried out through the bank accounts of the assessee but, for many of the receipts through banking channels found deposited in the bank accounts were not so recorded in the diaries. Further, as per ld. CIT(A), if only one side of a transaction i.e. making of the payment through banking channels, is recorded without recording the making of deposits in bank through banking channels, there is bound to arise a distorted result by placing reliance on the partial records. The ld. CIT(A) noted that the AO has not controverted that the bank accounts through which the payments were

made were not disclosed by the assessee in his financial statements. As regard the remaining cash payments of Rs. 12,98,75,988/- made by the assessee during the relevant previous year, as per the jottings made in the said diaries, the ld. CIT(A) observed that the assessee has claimed to have received a sum of Rs. 8,08,16,355/- from his various customers against sale of properties either as advance or full payment. The ld. CIT(A) further noted that in support of such assertion, the assessee has furnished various documentary evidences giving the names and addresses of the customers from whom the sum was received. The assessee has also furnished the status of such advances and as per the ld. CIT(A), in most of the cases, the sale deeds against the advances received have already been executed by the assessee in favour of the concerning customers. The ld. CIT(A) also found that it is not the case of the AO that any of the customers to whom a letter u/s. 133(6) of the Act was issued by her, during the course of the remand proceedings, denied the making of payments by him to the assessee or purchase of any property by him from the assessee. The ld. CIT(A) considered the rejoinder made by the assessee contending that first of all, the notices u/s. 133(6) were issued behind the back of the assessee and the assessee was never made aware of outcome of issuance/servicing of the notices to various customers. The factum and reason for non-servicing of the letters were not brought to the knowledge of the assessee by the AO. As per ld. CIT(A), the counsel contended that the very reason for return of the notices might be that in the last 8-10 years, they might have changed their addresses. As per the ld. CIT(A), it was also contended by the assessee that having handed over the possession of the properties sold to the customers after execution of the registered sale deeds, the customers were not in his control and therefore, he could not have compelled the customers to comply with the letters issued u/s. 133(6) of the Act. As per the ld. CIT(A), it was not the case of the AO that any of the customers who responded to the notices issued u/s. 133(6) denied to have made payment of advances to the assessee. Further, as per ld. CIT(A), the transactions of payments by the customers to the assessee have been taken place almost 10-12 years back, no adverse inference can be drawn only on the basis that the customers who have responded the notices and confirmed the transactions, did not mention the exact dates of payments by them. As per the ld. CIT(A), it is a common practice in the real estate trade that a colonizer or builder enters into agreement with any customer for sale of properties with the stipulation that the customer would make the payment of agreed sales consideration in various years in installments. Further, only after receipt of the entire sales consideration, possession of the properties is handed over to the customer and sale deed is accordingly executed. The ld. CIT(A) further observed that the AO also, in the body of the assessment order, has given a finding that the assessee had launched various projects and in such projects, he was making bookings. As per the ld. CIT(A), the very fact of registration of sale deed, before a Government Authority, being the Sub-Registrar of Properties, establishes the identity of the customer and as also, genuineness of the transaction. As per the ld. CIT(A), in the cases of credits relating to sales proceeds, the onus of an assessee is relatively

lighter to establish the creditworthiness of the transactions as all such transactions takes place on quid-pro-quo basis only. Thus, As per the ld. CIT(A), the assessee could be able to establish that the sum of Rs. 8,08,16,355/- was received by him out of realization from customers. Further, the ld. CIT(A) noted that by way of furnishing the date wise details of cash withdrawals made by the assessee from his various bank accounts along with the copies of the bank statements, the assessee could said to able to substantiate his claim of meeting the sources of payments noted down in the diaries out of the cash so withdrawn. Upon going through the impounded diaries, the ld. CIT(A) found that the claim of the assessee to the effect that in such diaries, on payment sides, some jottings were made which were not pertaining to payments made to any outsiders, but were only pertaining to the transactions taken in-house i.e. between the clerk/cashier recording the transactions and the assessee or his wife. Thus, as per the ld. CIT(A), the assessee could be able to explain the sources of cash payments aggregating to a sum of Rs. 12,98,75,988/- found noted in the diaries, for the assessment year under consideration.

8.06 The ld. CIT(A) further noted that the diaries BI-13 and BI-16, cannot be held to be the complete records of financial transactions of the assessee for the assessment year under consideration and therefore, merely for the reason of any excess recording of receipts or payments over the corresponding expenditure or receipts, cannot be viewed adversely. The assessee has never claimed that the diaries so maintained are his complete set of books of accounts. The ld. CIT(A) found that by furnishing ample of the documentary evidences, the assessee could said to be able to explain the sources of receipts jotted down in the diaries. As per the ld. CIT(A), while making the impugned addition, the AO himself has admitted the sources of receipts in the hands of the assessee as noted down in the diaries and the AO has made addition only because the sum of receipts made in such diaries was lesser than the sum of the payments so noted. The ld. CIT(A) noted that on the basis of the financial statements for the year under consideration, as furnished by the assessee, there is no case of excess or unexplained payment over the explained sources of receipts. The ld. CIT(A) also observed that the working of excess payments of Rs. 1,53,85,633/- over the receipts recorded in the said diaries, for the year under consideration, also has no relevance in as much these diaries have been held to be only partial records of the assessee. As per the ld. CIT(A), from such diaries only, it cannot be inferred that the assessee had incurred excess expenditure of Rs.1,53,85,633/- from his unexplained sources.

8.07 Finally, the ld. CIT(A) after considering the detailed submissions of the assessee, documentary evidences furnished, remand reports submitted by the AO as well as the rejoinders of the assessee thereon, deleted the entire addition of Rs.20,18,30,178/- made by the AO on account of excess of expenditure over income on the basis of notings found made in some diaries. The action of the ld. CIT(A) in deleting of the

impugned addition has been challenged by the Revenue before this Hon'ble Bench.

In view of the above facts and circumstances, it is submitted that the addition of Rs.20,18,30,178/- was rightly deleted by the Id. CIT(A) and therefore, the action of the Id. CIT(A) deserves to be upheld by this Hon'ble Bench and the Revenue's Ground on this issue deserves to be dismissed.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

<i>S. No.</i>	<i>Description of the document</i>	<i>Page No.</i>
<i>1</i>	<i>A copy of the day-to-day summary of excel sheets, containing the details of the day to day working of impounded diaries viz BI-13 & BI-16</i>	<i>80-97</i>
<i>2</i>	<i>A consolidated statement of transactions noted in BI-13 & BI-16, which in its turn, is based upon the day to day working of the diary in the excel sheets</i>	<i>98-100</i>
<i>3</i>	<i>Statement showing day wise details of cash deposits made in various bank accounts</i>	<i>101-104</i>
<i>4</i>	<i>Statement showing day wise details of cash withdrawals from various bank accounts</i>	<i>105-110</i>
<i>5</i>	<i>Statement showing details of cash receipt from various customers</i>	<i>111-116</i>
<i>6</i>	<i>1ST Remand Report of the AO dated 21-06-2019 for the A.Y. 2012-13</i>	<i>11 to 20 of Remand Report PB</i>
<i>7</i>	<i>1ST Rejoinder of the assessee dated 12-07-2019 for the A.Y. 2012-13</i>	<i>42 to 45 of Remand Report PB</i>
<i>8</i>	<i>2ND Remand Report of the AO dated 28-07-2020 for the A.Y. 2012-13</i>	<i>113 to 121 of Remand Report PB</i>
<i>9</i>	<i>2ND Rejoinder of the assessee dated 20-08-2020 for the A.Y. 2012-13</i>	<i>134 to 146 of Remand Report PB</i>

REGARDING ENHANCEMENT OF INCOME AT Rs.25,88,306/-

D. Key Points of Assessee's Submission and Relevant Pages of the Paper Book:

In this context it is submitted as under :

1.00 That, the Id. CIT(A) grossly erred in making the impugned enhancement in the assessee's income without first rejecting the books of account under the provisions of sub-section (3) of section 145 of the Income-Tax Act, 1961. It is submitted that the books of account for the

relevant previous year have duly been maintained properly by the assessee in the ordinary course of his business. It is further submitted that the books of account so maintained by the assessee have duly been audited by a firm of qualified chartered accountants and on the basis of such audited books of account only, the auditors have issued their unqualified audit report under the provisions of section 44AB of the Act to the assessee which has been placed on record of Your Honour along with the Paper Book. In such circumstances, without first rejecting the books of account u/s. 145(3) of the Act, no enhancement of income could have been made by the ld. CIT(A).

2.00 That, the ld. CIT(A) failed to appreciate a very vital fact that neither during the course of the survey under s.133A nor during the course of assessment proceedings, any evidence as regard to suppression of any sales effected by the assessee was found. In such circumstances, without giving any specific finding as regard to any defect or discrepancy in the regular books of account, there was no occasion for the ld. CIT(A) to make an estimation of turnover at an arbitrary figure of Rs.6,00,00,000/- as against the same shown by the assessee at Rs.4,66,88,800/- in his audited financial statements for the relevant assessment year.

3.00 Your Honours, it is submitted that the assessee had not been found to have suppressed his revenue and further, all the trading transactions were fully and truly recorded in his regular books of account and therefore, no estimation of either income or turnover is warranted. It is submitted that during the relevant previous year, the assessee has shown sales turnover of Rs.4,66,88,800/- and on such turnover of Rs.4,66,88,800/-, he had already declared total business income of Rs.64,11,694/- which works out to be at 13.79% and therefore, no further enhancement in the rate of net profit was warranted.

4.00 Without prejudice to the above, the estimation of net profit at the flat rate of 15% by the ld. CIT(A) is quite excessive and arbitrary considering the nature of trade and net profit already shown and accepted by the Revenue in the assessee's own case for earlier assessment years. It is submitted that the assessee had shown a net profit of 9.33% for the relevant assessment year [refer PB Page No. 35] from his business. Thus, the estimation of net profit @15% by the ld. CIT(A) is excessive.

In view of the above facts and circumstances, it is submitted that the enhancement of income so made by the ld. CIT(A) by estimating the turnover of the assessee at Rs.6,00,00,000/- as against the same shown by the assessee at Rs.4,66,88,800/- and estimating a net profit @15% thereon without any basis whatsoever, deserves to be set aside and no interference be made in respect of the book results declared by the assessee in his audited books of account."

14.1 We have heard rival contentions and perused the records placed before us. We find that the sole ground taken by the AO for making the addition is that on the basis of summaries prepared from the notings made in the two diaries inventorized as BI-13 & BI-16, he found that the amount of expenditure noted in such diaries was more than the amount of income recorded in the same, by a sum of Rs.20,18,30,178/-.

14.2 We note that the Id. CIT(A) before whom the said diaries BI-13 & BI-16 were furnished by the assessee, has given a specific finding that these diaries were maintained by him on Diwali to Diwali basis and thus held that these diaries have to be considered as pertaining to two financial years relevant to A.Y. 2012-13 and A.Y. 2013-14. Further as contended by Ld.AR that these two diaries were not the complete records of all the financial transactions carried out by the appellant in the aforesaid two assessment years and the same can only be considered as part of various records maintained by the appellant during the course of carrying out his regular business of development of plots and buildings. We also find merit in the contention of the Ld.AR that these diaries were used to be maintained by one of many clerical staff members of the appellant and the notings in the diaries were restricted to only those transactions which were in the specific knowledge of the concerning clerk and under these circumstances, many transactions relating to the receipts

and payments, through cheques/cash, could not be got recorded in the said diaries. Before us, the assessee submitted that although the AO has not provided the basis for preparing of summary of receipts and payments jotted down in such diaries, but, when he himself undertook such exercise, he found that as against the total receipts of Rs. 31,45,77,945/- as determined by the AO, the actual receipts as per these diaries, in two assessment years, were to the extent of Rs. 31,39,30,725/- only. Likewise, according to the appellant, the total amount of the payments as per these two diaries, in two assessment years, worked out to be at Rs. 51,25,35,428/- only as against the same worked out by the AO at Rs. 51,64,08,123/-. In support of such assertion, before us, the appellant has furnished a detailed paper book containing 228 pages. We find that in such Paper Book, the assessee has filed various details and statements such as the statements showing the date wise and diary wise working of transactions jotted down in the diaries, in two assessment years (placed at paper book page no. 80 to 100), a consolidated as well as year wise statements showing summary of transactions noted in both the diaries, statement of day wise details of cash deposits made in various bank accounts (placed at paper book page no. 101 to 104) as well as cash withdrawals made from various bank accounts (placed at paper book page no.105 to 110). The assessee has also furnished a statement of cash receipts from various

customers (placed at paper book page no. 111 to 116) showing that the working of amounts of receipts and payments determined by the AO, on the basis of the said diaries, was not correct. The Ld,AR further submitted that all the jottings made in the diaries are duly recorded in his regular books of account which have been completed and finalized after the date of the survey and based upon such books of accounts, he had drawn his financial statements for the relevant year and the same were audited by a firm of qualified chartered accountants and further the same were also duly uploaded by him electronically along with the return of income for the relevant assessment year. The copy of such financial statements has also been filed before us at page no. 22 to 43 of the paper book. The Ld.AR further contended that out of the aggregate payments of Rs. 51,25,35,428/-, as found jotted down in the said two diaries, in two assessment years, substantial payments to the extent of Rs. 22,95,52,980/- were made by him through his bank accounts and such bank accounts were duly disclosed in his financial statements. The appellant also contended that in such diaries, there were also recording of some transactions which had taken place in-house viz. between the concerning clerk/appellant and appellant's wife. According to the appellant, the payments, thus, include in-house payment transactions to the extent of Rs. 1,93,78,750/-. It was further submitted that the jottings also include the deposit of cash by

the assessee in his two bank accounts for an aggregate sum of Rs. 5,53,00,000/-. Ld.AR further submitted that many of the payments, as jotted down in the diaries were made through banking channels and the major sources of funds in the various bank accounts of the appellant were realization of proceeds against sales of properties from various customers and out of the total payments of Rs. 28,42,12,648/- found made in cash, as per the said two diaries, payments aggregating to a sum of Rs. 12,98,75,988/- were made during the assessment year under consideration and the remaining payments were made during the subsequent assessment year i.e. A.Y. 2013-14. Again, for explaining the sources of cash payments in the previous year relevant to A.Y. 2012-13, the Ld.AR submitted that during the relevant previous year, assessee received a sum of Rs. 8,08,16,355/- from various customers against sale of properties, either as advance or upon execution of final sales. In support of such assertion statements of advances received shown in the said two diaries are placed at page no. 111 to 116 of the paper book. In such statements, various details such as the name of the customer, the name of the project, the amount of receipt through the mode of cash, the amount of receipt through the mode of cheque are furnished. The details as regard to the execution of the registered sale deeds against the advances so received are also furnished. Ld.AR further submitted that during the relevant year, a sum of Rs. 1,47,55,000/- was

withdrawn by him from his various bank accounts as per the date wise details furnished in the paper book at page no. 105 to 110. In support, the appellant also furnished copy of the relevant bank statements. Thus, according to Ld.AR, although the said diaries were not containing the complete records of all the financial transactions carried out by him during the relevant previous year, but, even if such diaries are considered to be complete records then also there would result a deficiency of only a sum of Rs. 1,53,85,633/- for the year under consideration. Whereas, in the next assessment year, there has resulted a surplus of Rs. 1,55,35,910/-. According to Ld.AR, the very reason for working out of the deficiency of Rs. 1,53,85,633/- was that the said diaries were not his complete records and many of the transactions of receipts and payments, which were duly recorded in the regular books of account were not so noted down in the said diaries and the same are summarized in a tabular form reproduced as under:

A.Y.	Cash Payments towards purchase of Lands/to contractors / for other development expenses	Cash deposited in Bank Accounts	Payment towards imprest account	Total Cash Payments	Cash receipts from various Customers, either as Sales/Advance receipts against sale of properties	Withdrawals from Banks	Receipts from Imprest Account	Total Cash Receipts	Cash Surplus/ (Deficiency)
[1]	[2]	[3]	[4]	[5] = [2+3+4]	[6]	[7]	[8]	[9] = [6+7+8]	[10] = [9]-[5]

2012-13	10,90,76,7 38	37,50,00 0	1,70,49,2 50	12,98,75,9 88	8,08,16,35 5	1,47,55,0 00	1,89,19,0 00	11,44,90,3 55	(1,53,85,63 3)
2013-14	9,92,26,96 0	5,15,50,0 00	23,29,500	15,31,06,4 60	11,75,99,3 70	4,48,88,0 0	61,55,00 0	16,86,42,3 70	1,55,35,91 0
Total	20,83,03, 698	5,53,00, 000	1,93,78, 750	28,29,82,4 48	19,84,15,7 25	5,96,43, 000	2,50,74, 000	28,31,32, 725	1,50,277

14.3 We observe that the same contention along with the documentary evidences were also furnished by the assessee before the ld. CIT(A) and in turn, the ld. CIT(A) forwarded the same to the AO for verification and her counter comments. In the first remand report dated 21.06.2019, the Ld.AO did not make any specific comment on the written submissions and various documentary evidences furnished by the appellant before the ld. CIT(A). However, upon the specific insistence by the ld. CIT(A), the AO vide her second remand report dated 28.07.2020 submitted her comments admitting that various documentary evidences by the appellant such as date wise details of jottings made in the diaries, date wise details of cash deposits and cash withdrawals, details of amounts received against sale/booking of properties, copies of registered sale deeds, bank statements etc. were filed. We also find that the Ld.AO did not controvert the assertion made by the appellant that the said diaries do not entirely pertain to the assessment year under consideration but pertain to two assessment years viz. A.Y. 2012-13 (under appeal) and A.Y. 2013-14. We further find that the AO also did not rebut the assertion of the appellant that the said two diaries were not containing the records of the complete

financial transactions carried out by the appellant during the assessment year under consideration but, there were some other transactions, which, although carried out by the appellant during the course of his regular business, were not so recorded in the diaries, and the same were recorded only in his regular books of accounts. The AO has not denied maintenance of regular books of account by the appellant but had only commented that the same were not produced before her. As regard to the contention of the appellant that he had received advances from various customers which were utilized for making the payments, the AO has merely stated that the notices u/s. 133(6) were issued to the purchaser of the plots, but, in most of the cases, the replies were not received.

14.4 We also observe that the aforesaid two diaries were not the complete records of all the financial transactions carried out by the appellant during the relevant previous year, but, these were containing only part of many of the records maintained by the appellant. Ld.AR is claiming that all the transactions noted in such diaries are duly recorded in his regular books of accounts and on the basis of such books of accounts only, the financial statements were prepared and filed along with the return. However, even if such an assertion of the appellant is not accepted at its face value, then also, one will have to place complete reliance on the impounded diaries based upon which the impugned addition

has been made by the AO. We find that for explaining the sources of expenditure, as noted in the said diaries, the appellant has furnished the necessary documentary evidences and the AO has not found any material defect or discrepancy in such documentary evidences. The submission of the appellant that out of the total payments aggregating to a sum of Rs. 22,22,54,316/- found noted in the said diaries pertaining to the assessment year under consideration, expenditure to the extent of Rs. 9,23,78,328/- were made by him through banking channels. We also find that in the said diaries, many notings have been made in respect of the transactions carried out through the bank accounts of the appellant but, for many of the receipts through banking channels found deposited in the bank accounts were not so recorded in the diaries. In our view, if only one side of a transaction i.e. making of the payment through banking channels, is recorded without recording the making of deposits in bank through banking channels, there is bound to arise a distorted result by placing reliance on the partial records. The AO has not controverted that the bank accounts through which the payments were made were not disclosed by the appellant in his financial statements. Now, as regard the remaining cash payments of Rs. 12,98,75,988/- made by the appellant, during the relevant previous year, as per the jottings made in the said diaries, the appellant has claimed to have received a sum of Rs. 8,08,16,355/- from his various

customers against sale of properties either as advance or full payment. We find that in support of such assertion, the appellant has furnished various documentary evidences giving the names and addresses of the customers from whom the sum was received. The appellant has also furnished the status of such advances and we find that in most of the cases, the sale deeds against the advances received have already been executed by the appellant in favour of the concerning customers. We also find that it is not the case of the AO that any of the customers to whom a letter u/s. 133(6) of the Act was issued by her, during the course of the remand proceedings, denied the making of payments by him to the appellant or purchase of any property by him from the appellant. We find sufficient merit in the rejoinder made by the counsel of the appellant contending that first of all, the notices u/s. 133(6) were issued behind the back of the appellant. It was further contended that the appellant was never made aware of outcome of issuance/servicing of the notices to various customers. The factum and reason for non-servicing of the letters were not brought to the knowledge of the appellant by the AO. Ld.AR contended that the very reason for return of the notices might be that in the last 8-10 years, they might have changed their addresses. It was also contended that having handed over the possession of the properties sold to the customers after execution of the registered sale deeds, the customers were not in his control

and therefore, he could not have compelled the customers to comply with the letters issued u/s. 133(6) of the Act. We find that it is not the case of the AO that any of the customers who responded to the notices issued u/s. 133(6) denied to have made payment of advances to the appellant. Further, in our view, the transactions of payments by the customers to the appellant have been taken place almost 10-12 years back, no adverse inference can be drawn only on the basis that the customers who have responded the notices and confirmed the transactions, did not mention the exact dates of payments by them. In our view, it is a common practice in the real estate trade that a colonizer or builder enters into agreement with any customer for sale of properties with the stipulation that the customer would make the payment of agreed sales consideration in various years in installments. Further, only after receipt of the entire sales consideration, possession of the properties is handed over to the customer and sale deed is accordingly executed. The AO also, in the body of the assessment order, has given a finding that the appellant had launched various projects and in such projects, he was making bookings. In our view, the very fact of registration of sale deed, before a Government Authority, being the Sub-Registrar of Properties, establishes the identity of the customer and as also, genuineness of the transaction. In my considered view, in the cases of credits relating to sales proceeds, the onus of an assessee is relatively lighter to

establish the creditworthiness of the transactions as all such transactions takes place on *quid-pro-quo* basis only. Thus, in our considered opinion, the appellant could be able to establish that the sum of Rs. 8,08,16,355/- was received by him out of realization from customers. Further, we also find that by way of furnishing the date wise details of cash withdrawals made by the appellant from his various bank accounts along with the copies of the bank statements, the appellant could said to able to substantiate his claim of meeting the sources of payments noted down in the diaries out of the cash so withdrawn. Upon going through the impounded diaries, the claim of the appellant to the effect that in such diaries, on payment sides, some jottings were made which were not pertaining to payments made to any outsiders, but were only pertaining to the transactions taken in-house i.e. between the clerk/cashier recording the transactions and the appellant or his wife. Thus, in our considered view, the appellant could be able to explain the sources of entire cash payments found noted in the diaries, for the assessment year under consideration.

14.5 Further, in our considered view, the diaries BI-13 and BI-16, cannot be held to be the complete records of financial transactions of the appellant for the assessment year under consideration and therefore, merely for the reason of any excess recording of receipts or payments over the corresponding expenditure or receipts, cannot be viewed

adversely. The appellant has never claimed that the diaries so maintained are his complete set of books of accounts. We are in full agreement with the finding of the Id. CIT(A) that in the instant case, although the AO has not invoked any specific provision of the Act for making the impugned addition, but, in such circumstances, the provisions of s. 69C of the Act could have been invoked. But, again, such addition u/s. 69C can be made only if an assessee has incurred certain expenditure and for incurring such expenditure, he fails to satisfactorily explain the sources. We find that by furnishing ample of the documentary evidences, the appellant could said to be able to explain the sources of receipts jotted down in the diaries. Even otherwise, we find that while making the impugned addition, the AO himself has admitted the sources of receipts in the hands of the appellant as noted down in the diaries. The AO has made addition only because the sum of receipts made in such diaries was lesser than the sum of the payments so noted. We find that on the basis of the financial statements for the year under consideration, as furnished by the appellant, there is no case of excess or unexplained payment over the explained sources of receipts. In such view of matter, in our opinion, the addition of Rs. 20,18,30,178/- so made by the AO has no substance and the same has rightly been deleted by the Id. CIT(A). Accordingly, the Ground No. 2 of the Revenue is hereby dismissed.

14.6 Now, coming to the issue of enhancement of income made by the ld. CIT(A), we find that in the instant case, the ld. CIT(A) found that on the date of the survey, the books of account of the assessee were not found regularly maintained by the assessee. The ld. CIT(A) further found that during the course of the survey, some discrepancies were noticed by the survey party and therefore, the ld. CIT(A) by giving notices of enhancement, enhanced the income of the assessee for A.Y. 2012-13 by Rs.25,88,306/- and for A.Y. 2013-14, by Rs.11,96,353/-. We find that for A.Y. 2012-13, the assessee has shown his turnover at Rs.4,66,88,800/- in his books of account and on such turnover, the assessee has shown taxable business income of Rs.64,11,694/-. As against the same, for A.Y. 2012-13, the ld. CIT(A) has estimated the turnover at Rs.6,00,00,000/- and estimated the taxable net profit at the rate of 15% i.e. at Rs.90,00,000/- which has resulted into an enhancement of income of the assessee for A.Y. 2012-13 by Rs.25,88,306/-. Likewise, for A.Y. 2013-14, the assessee has shown his turnover at Rs.10,16,39,194/- in his books of account and on such turnover, the assessee has shown taxable business income of Rs.2,28,03,647/-. As against the same, for A.Y. 2013-14, the ld. CIT(A) has estimated the turnover at Rs.16,00,00,000/- and estimated the taxable net profit at the rate of 15% i.e. at Rs.2,40,00,000/- which has resulted into an enhancement of income of the assessee for A.Y. 2013-14 by Rs.11,96,353/-.

14.7 We have duly considered the facts and circumstances of the case and after considering all the material on record, we find that the assessee is in the business of real estate development and in such business, without finding any instance of receipt of any on-money, suppression of sales cannot be estimated. We note that neither the ld. AO nor the ld. CIT(A) could bring on record any specific instance in which the sales were not found recorded or fully recorded in the books of account of the assessee. We find that in the instant case, the assessee himself while furnishing his returns of income, has declared additional income amounting to Rs.10,00,000/- and Rs.65,00,000/- respectively for A.Y. 2012-13 and A.Y. 2013-14 thereby declaring total business income of Rs.64,11,694/- for A.Y. 2012-13 and Rs.2,28,03,647/- for A.Y. 2013-14. If the total taxable business income shown by the assessee in his returns of income are compared with the total turnover of the assessee, for A.Y. 2012-13, it works out to be 13.73% and for A.Y. 2013-14, the same works out to be at 22.43% which is quite higher than that estimated by the ld. CIT(A) at the flat rate of 15%. Thus, we find no merit in the action of the ld. CIT(A) in estimating the turnover as well as the net profit rate. Accordingly, the enhancement of Rs.25,88,306/- and Rs.11,96,353/- respectively made by the ld. CIT(A) for A.Y. 2012-13 and A.Y. 2013-14, are fully deleted. Consequently,

Ground Nos. 1(a) to 1(d) for A.Y. 2012-13 and Ground Nos. 2(a) to 2(d) for A.Y. 2013-14 of the assessee are allowed.

15. Ground Nos. 3 and 2 of the Revenue for A.Y. 2012-13 and A.Y. 2013-14

15.1 Through these grounds of appeal, the revenue has challenged the action of the ld. CIT(A) in deleting the additions of Rs.1,25,79,722/- and Rs.1,08,26,047/- respectively for A.Y. 2012-13 and A.Y. 2013-14 made by the AO on account of ad-hoc disallowance of various expenses claimed by the assessee. According to the AO, the assessee had been provided ample opportunities to explain the expenditure claimed in the Profit & Loss Account along with the documentary evidences. However, the assessee did not respond and comply with the notices and did not file any details or furnished any documentary evidence to substantiate the claim of aforesaid expenditure. Accordingly, the AO made an addition of Rs.1,25,79,722/- by making an ad-hoc disallowance of 30% of the total expenditure of Rs.4,19,32,408/- claimed by the appellant in his Profit & Loss Account under the various heads for the A.Y. 2012-13. Likewise, the AO also made an addition of Rs.1,08,26,047/- for A.Y. 2013-14 by making an ad-hoc disallowance of 20% of the various expenditure claimed by the assessee in his Profit & Loss Account under the various heads and full disallowance in respect of expenses as claimed by the

assessee in his Profit & Loss Account under the heads of rent, advertisement, commission and donation.

15.2 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the assessment year under consideration before the ld. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The ld. CIT(A) after considering the remand reports submitted by the AO as well as the rejoinders of the assessee thereon, held that since he was inclined to reject the books of account of the assessee and also inclined to estimate the turnover as well as net profit of the assessee, no separate disallowance of expenses would be warranted in respect of the expenses claimed by the assessee after having estimated the rate of net profit. Accordingly, the ld. CIT(A) deleted the entire additions of Rs.1,25,79,722/- and Rs.1,08,26,047/- respectively for A.Y. 2012-13 and A.Y. 2013-14 made by the AO on account of ad-hoc disallowance of expenses. The ld. CIT(A) has given his detailed findings from para (8.1) at page no. 72 to para (8.4) at page no. 73 of his Order for A.Y. 2012-13 and from para (8.1) at page no. 56 to para (8.4) at page no. 57 of his Order for A.Y. 2013-14.

15.3 Aggrieved with the Order of the ld. CIT(A), the revenue is in appeal before us.

15.4 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

15.5 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

“For A.Y. 2012-13:

D. Key Points of Assessee’s Submission and Relevant Pages of the Paper Book:

In this context, it is submitted as under :

1.00 That, the assessee had claimed expenditure on account of various expenses. These expenses were shown in the audited Profit & Loss Account of the assessee [refer PB Page No. 42]. The assessee was maintaining complete details in respect of all the expenses so incurred and the same were also supported by the necessary documentary evidences. However, the learned AO, on the basis of non-furnishing of bills/ vouchers for verification, made an ad-hoc addition of Rs.1,25,79,722/- in the hands of the assessee by making disallowance of @30% of the various expenses claimed to have been incurred by the assessee for the relevant assessment year.

2.00 No ad-hoc disallowance was warranted in view of the following facts and circumstances:

(i) The assessee had maintained regular books of account, in his ordinary course of business, in which all the transactions are fully and truly recorded and they are also vouched and open to verification. The books of account maintained by the assessee have duly been audited by an independent firm of qualified Chartered Accountants and no discrepancy in the books of account or any transaction was found by the auditors.

(ii) The assessee is carrying out the business of development of colony and other real estate. For the purpose of development, the assessee was necessarily required to incur expenditure on procurement of material required for such development at Rs.2,22,60,112/- and as also to incur expenditure to labour contractors for getting the labour work executed at Rs. 70,13,230/-. A copy of statement showing the date wise and description wise details of material expenditure amounting to Rs.2,22,60,112/-, and as also, a copy of statement showing details of payments made to labour contractors at Rs. 70,13,230/- are placed at PB Page No. 117 to 124.

(iii) The assessee was required to incur various establishment expenses, aggregating to a sum of Rs. 88,35,927/-, towards salary to staff, office rent, power, electricity, audit fees, insurance, stationery and printing, telephone expenses, vehicle running and maintenance, tour and travelling etc., as per details given in Scheduel 14 of the Audited Financial Statements. Copies of statements/ledger accounts showing details of such expenses are placed at PB Page No 125 to 154.

(iv) Out of the aforesaid establishment expenses of Rs. 88,35,927/-, expenses amounting to Rs. 1,52,243/- and Rs. 2,37,950/- were claimed by the assessee on account of Service Tax and Value Added Tax, respectively, in his audited profit and loss account. But, due to non payment of the Service Tax and also, the Value Added Tax, before the due date of furnishing of return under s. 139 of the Act, the assessee, had, suo motto, disallowed such sum Service Tax of Rs. 1,52,243/- and Value Added Tax of Rs. 2,37,950/- , under s. 43B of the Act, while computing his total taxable income for the relenvat assessment year [refer PB Page No. 19]. Thus,once, the assessee himself had disallowed the Service Tax at Rs. 1,52,243/- and Value Added Tax at Rs. 2,37,950/- , in his computation of income, while computing the total taxable income, there was absolutely no justification to make further disallowance on the same count, which has resulted into making the same addition twice, which is not warranted.

(v) The assessee was also required to incur bank charges in respect of charges for transactions carried out through his various bank accounts. A copy of the ledger account of Bank Charges is placed at PB Page No. 155 to 158.

(vi) Further, in order to sell the properties in his various projects, the assessee was required to avail services of various brokers and commission agents. In consideration of availing such services the assessee was required to incur expenses towards brokerage and commission. It is submitted that during the relevant previous year, the assessee had shown sales aggregating to a sum of Rs. 4,66,88,800/- and for effecting such sales, he was required to make payment of brokerage of Rs. 36,00,000/- as shown in the Schedule 16 of the Audited Financial Statements. A copy of the statement showing details of payment of brokerage is placed at PB Page No. 159.

3.00 The Hon'ble ITAT Delhi Bench in the case of Amrapali International vs. ACIT (2012) 31 CCH 403 DelTrib has held that without bringing on record any specific instance that the vouchers are not maintained or the expenses are not related to the business of the assessee no lump-sum disallowance made on the estimation basis can be made.

3.01 The Hon'ble High Court of Delhi in the case of Friends Clearing Agency (P) Ltd. vs. CIT (2011) 332 ITR 269 (Del) held that when certain expenses are allowed in the earlier assessment years without any

disallowance than merely for the want of vouchers no disallowance can be made in the relevant year.

3.02 It is submitted that most of the payments have been made by the assessee through account payee cheques only.

3.03 The assessee has maintained complete details in respect of each and every expenditure incurred by him in respect of the subject expenses. It is further submitted that the assessee is also ready to produce the entire books of account along with the relevant bills, vouchers etc. in respect of the expenses so claimed, if so directed by Your Honor in this regard.

3.04 It is submitted that the entire expenses have been incurred by the assessee exclusively and necessarily for the purpose of its business only, and therefore, the same are wholly allowable under the provisions of section 37(1) of the Act.

4.00 Without prejudice to the above, it is submitted that the action of the ld. AO in making 30% ad-hoc disallowance of project development expenses, administrative expenses, financial expenses and selling & distribution expense aggregating to a sum of Rs. 1,25,79,722/- is quite excessive and arbitrary. It is submitted that the assessee in his Profit & Loss account has, suo motu, shown taxable net profit amounting to Rs. 64,11,694/- in his return of income, against the sales of plots at Rs. 4,66,88,800/- thereby giving a rate of Net Profit of 13.73%, which by any stretch of imagination, cannot be said to be lower warranting any further addition [refer PB Page No.37]. It would be appreciated that although in the case of the assessee, its total turnover, being in excess of the prescribed limit, the provisions of section 44AD, then prevailing, were not applicable. But, even if the provisions of such section are made applicable, in the assessee's case, its net profit would work out to be at Rs. 37,35,088/- only i.e. 8% of the total turnover as against the taxable business profit of Rs.64,11,694/- shown by the assessee. It is submitted that, if the ad-hoc disallowance of expenses made by the ld. AO is permitted to be upheld, it would give such an unrealistic figure of the net profit which is not possible in the line of trade of the assessee. It is submitted that, after adding the amount of disallowance of expenses at Rs. 1,25,79,722/- to the taxable net profit of Rs. 64,11,694/- shown by the assessee, there would result an exorbitantly high net profit of RS. 1,89,91,416/-, thereby resulting into a Net Profit rate of nearly 40.67% , which, even by applying any exaggeration, can be said to a real or achievable profit by a person dealing in real estate. It is submitted that the ad-hoc additions so made by the ld. AO, by way of disallowance of expenses, deserves to be deleted on this count alone.

5.00 Your Honours, since in the appellant's case, the assessment has been framed under s. 144 of the Act, without affording any reasonable opportunity of being heard to the assessee, the assessee could not furnish certain documentary evidences before the ld. AO. It is submitted

that since the aforesaid documents were quite vital to adjudicate the issue on hand, the same were furnished before the ld. CIT(A) as additional evidences along with an application under Rule 46A of the Income-tax Rules, 1962.

6.00 Your Honours, the entire submission of the assessee along with documentary evidences were forwarded by the ld. CIT(A) to the AO for his remand report. In the instant case, the AO also carried out remand proceedings and in pursuance thereof, the assessee furnished his replies from time to time along with necessary documentary evidences. The reply letters so filed by the assessee before the AO are placed at page no. 52 to 56 of our Paper Book prepared separately in respect of Remand Proceedings. Further, the AO has submitted his remand reports before the ld. CIT(A) on two occasions. The Remand Reports dated 21-06-2019 and 28-07-2020 have been respectively placed at page no. 11 to 20 and 113 to 121 of our separate Paper Book for Remand Proceedings. In response to the aforesaid Remand Reports, the assessee had also filed his rejoinders vide his two letters dated 12-07-2019 and 20-08-2020 which are also placed at page no. 42 to 45 and 134 to 146 respectively in our separate Paper Book for Remand Proceedings.

7.01 The ld. CIT(A) noted that the AO had made a flat disallowance of 30% merely for the reason that during the course of the assessment proceedings without any cogent basis merely on the premises that the assessee could not produce the necessary documentary evidences before him in support of the claim of the expenses. However, as per the ld. CIT(A), in the instant case, the assessment was framed, ex-parte, under s.144 of the Act and according to the assessee, he was not given any sufficient opportunity of being heard. But, at the same time, the ld. CIT(A) also observed that during the course of the remand proceedings too, the assessee could not produce the bills and vouchers in support of the expenses claimed. As per the ld. CIT(A), it is a settled law that the onus of proving the claim of any deduction of expenses exclusively lies upon the assessee only. Thus, as per ld. CIT(A), it cannot be concluded that all the expenses so claimed by the assessee were actually incurred and if incurred, were incurred only for the purpose of the business.

7.02 The ld. CIT(A) further held that since he was inclined to reject the books of account of the assessee and also inclined to estimate the turnover as well as net profit of the assessee, the ld. CIT(A) held that having estimated the rate of net profit, no separate disallowance of expenses would be warranted in respect of the expenses claimed by the assessee. Accordingly, the addition of Rs.1,25,79,722/- made by the AO on account of ad-hoc disallowance of expenses was fully deleted by the ld. CIT(A). The action of the ld. CIT(A) in deleting of the impugned addition has been challenged by the Revenue before this Hon'ble Bench.

In view of the above facts and circumstances, without accepting the action of the ld. CIT(A) in estimating the net profit @15%, it is submitted that the addition of Rs.1,25,79,722/- was rightly deleted by the ld. CIT(A)

and therefore, the action of the ld. CIT(A) deserves to be upheld by this Hon'ble Bench and the Revenue's Ground on this issue deserves to be dismissed.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

<i>S. No.</i>	<i>Description of the document</i>	<i>Page No.</i>
<i>1</i>	<i>Audited Profit & Loss Account of the assessee</i>	<i>42</i>
<i>2</i>	<i>A copy of statement showing the date wise and description wise details of material expenditure amounting to Rs. 2,22,60,112/-, and as also, a copy of statement showing details of payments made to labour contractors at Rs. 70,13,230/-</i>	<i>117-124</i>
<i>3</i>	<i>Copies of statements/ledger accounts showing details of various establishment expenses, aggregating to a sum of Rs. 88,35,927/-</i>	<i>125-154</i>
<i>4</i>	<i>A copy of the ledger account of Bank Charges in the books of account of the assessee for the relevant previous year.</i>	<i>155-158</i>
<i>5</i>	<i>A copy of the statement showing details of payment of brokerage of Rs.36,00,000/- on sale of plots</i>	<i>159</i>
<i>6</i>	<i>1ST Remand Report of the AO dated 21-06-2019 for the A.Y. 2012-13</i>	<i>11 to 20 of Remand Report PB</i>
<i>7</i>	<i>1ST Rejoinder of the assessee dated 12-07-2019 for the A.Y. 2012-13</i>	<i>42 to 45 of Remand Report PB</i>
<i>8</i>	<i>2ND Remand Report of the AO dated 28-07-2020 for the A.Y. 2012-13</i>	<i>113 to 121 of Remand Report PB</i>
<i>9</i>	<i>2ND Rejoinder of the assessee dated 20-08-2020 for the A.Y. 2012-13</i>	<i>134 to 146 of Remand Report PB</i>

16.1 We have heard rival contentions and perused the records placed before us. We note that in the instant case, the ld. AO has made the disallowance merely on ad-hoc basis without assigning any cogent basis. We find that during the course of the appellate proceedings before the ld. CIT(A) as also before us, the assessee has furnished the complete details of all the expenses claimed by him in his Profit & Loss

Accounts for both the assessment years. We also find that the assessee has also furnished the copies of the ledger accounts relating to the expenditure. The ld. DR could not find any specific defect or discrepancy in the various documentary evidences furnished by the assessee before us. We also find that the assessee has claimed expenditure in his Profit & Loss Accounts in respect of project development expenses, salary to staff, office rent, power & electricity, bank charges, brokerage & Commission, advertisement etc. as per the details given in the Schedules to the audited Profit & Loss Accounts filed before us. We find that the nature of all the expenses are those which are necessarily required to be incurred by a real estate developer during the course of his business. We also find that the assessee has shown net profit @13.73% for A.Y. 2012-13 and @22.43% for A.Y. 2013-14 and considering the nature of business of the assessee, the same can be said to be quite reasonable. We find that during the Remand Proceedings, the ld. AO could not bring on record any specific expenditure which according to her was not allowable or was not supported by documentary evidences. The ld. AO merely on the guess work, has made the disallowance which is not permissible in the eyes of the law. Thus, we find no infirmity in the action of the ld. CIT(A) in deleting the entire ad-hoc additions on this count made by the AO. Consequently, the Ground Nos. 3 & 2 of the Revenue

respectively for A.Y. 2012-13 and A.Y. 2013-14 are hereby dismissed.

17. Ground Nos. 4 and 3 of the Revenue for A.Y. 2012-13 and A.Y. 2013-14

17.1 Through these grounds of appeal, the revenue has challenged the action of the ld. CIT(A) in deleting the additions of Rs.9,10,11,278/- and Rs.4,96,06,927/- respectively for A.Y. 2012-13 and A.Y. 2013-14 made by the AO on account of bogus sundry creditors and advances against properties shown by the assessee in his financial statements. According to the AO, the assessee had been provided ample opportunities to explain the same along with the documentary evidences. However, the assessee did not respond and comply with the notices and did not file any details or furnished any documentary evidence to substantiate the claim of aforesaid creditors. Accordingly, the AO made an ad-hoc addition of Rs.9,10,11,278/- @30% of the total creditors of Rs.30,33,70,927/- for A.Y. 2012-13. Likewise, an ad-hoc addition of Rs.4,96,06,927/- @10% of the total creditors of Rs.49,60,69,273/- was also made by the AO for A.Y. 2013-14.

17.2 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the assessment year under consideration before the ld. CIT(A). During the course of the first appellate proceedings, the assessee made detailed

written submissions along with the documentary evidences. The ld. CIT(A) after considering the remand reports submitted by the AO as well as the rejoinders of the assessee thereon, noted that in the Statute, there is no provision which empowers an Assessing Officer to make an ad-hoc disallowance out of the creditors shown in the financial statements. Thus, the ld. CIT(A) found no substance in the ad-hoc additions of Rs.9,10,11,278/- and Rs.4,96,06,927/- made by the AO in the income of the assessee respectively for A.Y. 2012-13 and A.Y. 2013-14. Accordingly, the ld. CIT(A) deleted the entire additions of Rs.9,10,11,278/- and Rs.4,96,06,927/- respectively for A.Y. 2012-13 and A.Y. 2013-14 made by the AO on account of bogus sundry creditors and advances against properties. The ld. CIT(A) has given his detailed findings from para (9.1) at page no. 73 to para (9.4) at page no. 77 of his Order for A.Y. 2012-13 and from para (9.1) at page no. 58 to para (9.4) at page no. 61 of his Order for A.Y. 2013-14.

17.3 Aggrieved with the Order of the ld. CIT(A), the revenue is in appeal before us.

17.4 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

17.5 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

“LEAD YEAR: A.Y. 2012-13:

D. Key Points of Assessee’s Submission and Relevant Pages of the Paper Book:

In this context, it is submitted as under :

1.00 Your Honours, the assessee is engaged in the business of development of colonies on the pieces of land purchased by him from time to time. As a normal trend of the colonizers business, the assessee too, after purchase of the land and obtaining primary sanctions and approvals from various government authorities and agencies, commences development of colony and such land and at the same time, during the currency of the development work, starts accepting bookings from various customers who are intended to buy any plot or project in the colony under development.

2.00 It is submitted that during the previous year under consideration, the assessee was developing as many as six colonies, titled as ‘Madan Vihar Colony’, ‘Madan Vihar Extension’, ‘Royal Estate Colony’, ‘Royal Residence Colony’, ‘Royal Town Colony’ and ‘Shree Royal Town Colony’. The assessee, pending the completion of development work and as also pending execution of the sale deed, had received advance money from various customers. At the end of the relevant year, the assessee was having advances aggregating to a sum of Rs. 30,19,88,287/-. The project wise details of such advances have been given in the Schedule – 7 of the Audited Financial Statements of the assessee, for the relevant previous year [refer PB Page No.40].

2.01 It is submitted that, most of the advances from the customers were received by the assessee through banking channels only and details of each and every receipt of advance, have fully been maintained and recorded in the books of account of the assessee.

3.00 Your Honours, the factum of receipt of advances by the assessee from various customers was also noted by the survey party, who conducted survey under s. 133A of the Act in the assessee’s case on 21-09-2012. It is submitted that the survey party had duly found the copies of the application forms, duly filled up and signed by the various customers, who had given advances to the assessee against booking of plots in various colonies developed by the assessee. Copies of some of the application forms are placed at PB Page No.160 to 171.

3.01 Your Honours, the notings, as regard to the receipt of advances, by the assessee against sale of plots were also found made by the survey party, in the various records impounded during the course of the survey operations. It is submitted that in the impugned assessment order, the Id. AO, at Para (8), has made reference of two diaries impounded and inventorized during the course of the survey operations, as BI-13 & BI-16. Based upon such diaries, the Id. AO himself, has made a working and

given a finding that in such diaries, notings regarding receipt of a sum of Rs. 31,45,77,945/-, were made by the assessee. It is submitted that, the nature of such diaries and as also break up of the receipts recorded in such diaries, have been discussed at length by us, in the preceeding paras, relating to the Ground No. 5, raised before Your Honour.

3.02 Your Honours, on a perusal of the table, summarizing the nature of various receipts and payments noted in the subject diaries viz. BI-13 & BI-16, given at Para 5.02 relating to Ground No. 5, supra, it shall be observed by Your Honour, that as per these two diaries, the assessee had made receipts of advances, in form of cash, from various customers against sale of properties, in two assessment years, at an aggregate sum of Rs.19,84,15,725/- . It is submitted that in such table, only the restricted details of cash receipts and that too, made by only of the clerical staff members, have been given. It is submitted that besides receiving advances in the form of cash, the assessee had also received substantial sum by way of account payee cheques and such cheques, got duly encashed through the regular bank accounts maintained by the assessee.

4.00 Your Honours, thus in nutshell, the assessee during the course of his ordinary business of development of colonies, received advances from various customers, either in the form of cash or in the form of account payee cheques, and such receipts, with full details, were duly recorded by the assessee in his books of account.

5.00 Your Honours, in the instant case, the ld. AO, without giving any basis, merely on surmises and conjectures, held 30% of the advances shown by the assessee in his books of account at Rs. 30,33,70,927/- as income of the assessee. Accordingly, the AO vide Para (10) of his Order, made an addition of Rs. 9,10,11,278/- in the assessee's income.

6.00 Your Honours, the only ground taken by the ld. AO, for making the impugned addition is that during the course of the assessment proceedings, the assessee had not filed any documentary evidences confirming receipt of advances. In this regard, it is submitted that during the course of the assessment proceedings, before the ld. AO, the assessee had produced copies of the booking forms, duly signed by the various customers, who made booking in the assessee's various projects. Besides, in order to establish the identity of the customers and the genuineness of the transactions of booking advances, had also produced the copies of the various sales deeds, executed by the assessee, in subsequent years, in favour of various customers, from whom he had received booking advances. However, unfortunately, the ld. AO, for the reasons best known to him, has not brought such fact on record.

6.01 Your Honours, now, in order to establish the genuineness and authenticity of the amount of advances aggregating to Rs. 30,33,70,927/- shown by the assessee in his audited books of account, we had furnished a statement showing the details of the booking advances so

received, which is placed at PB Page no.172 to 226. In such statement, we have furnished all the necessary details such as the name of the customer, his address, the description of the property against which the advance was made, amount of advance and amount of consideration stipulated for sale of the property.

6.02 Your Honours, further, to support the above statement, showing the details of advances, we had also submitted copies of sale deeds duly executed in favour of the customers, in respect of the plots sold, in subsequent years, in a separate Volume – 4 marked as Registered Sale Deeds. It shall be appreciated that the fact of execution of the sale deed and that too, registered sale deed, after payment of requisite Stamp Duty, by itself, proves the sanctity and genuineness of the claim of the assessee as regard to acceptance of advances.

7.00 Your Honours, since in the appellant's case, the assessment has been framed under s. 144 of the Act, without affording any reasonable opportunity of being heard to the assessee, the assessee could not furnish certain documentary evidences before the ld. AO. It is submitted that since the aforesaid documents were quite vital to adjudicate the issue on hand, the same were furnished before the ld. CIT(A) as additional evidences along with an application under Rule 46A of the Income-tax Rules, 1962.

8.00 Your Honours, the entire submission of the assessee along with documentary evidences were forwarded by the ld. CIT(A) to the AO for his remand report. In the instant case, the AO also carried out remand proceedings and in pursuance thereof, the assessee furnished his replies from time to time along with necessary documentary evidences. The reply letters so filed by the assessee before the AO are placed at page no. 52 to 56 of our Paper Book prepared separately in respect of Remand Proceedings. Further, the AO has submitted his remand reports before the ld. CIT(A) on two occasions. The Remand Reports dated 21-06-2019 and 28-07-2020 have been respectively placed at page no. 11 to 20 and 113 to 121 of our separate Paper Book for Remand Proceedings. In response to the aforesaid Remand Reports, the assessee had also filed his rejoinders vide his two letters dated 12-07-2019 and 20-08-2020 which are also placed at page no. 42 to 45 and 134 to 146 respectively in our separate Paper Book for Remand Proceedings.

9.01 The ld. CIT(A) noted that the assessee by furnishing all the necessary details with documentary evidences could said to be able to substantiate the sundry creditors, as appearing in the audited balance sheet, as on 31/03/2012. As per ld. CIT(A), the furnishing of various documentary evidences by the assessee have duly been accepted by the AO making the Remand Report. The ld. CIT(A) noted that the AO has not found any specific discrepancy or defect in the documents or details furnished by the assessee. The ld. CIT(A) further observed that the assessee had maintained regular books of account and the same were also audited u/s.44AB of the Act. As per the ld. CIT(A), the AO himself,

while framing the assessment, has given a finding, at para (7) of the impugned Order, that the assessee was developing various colonies and was making bookings of plots. The ld. CIT(A) also found that during the course of the survey proceedings, the booking forms were found in the premises of the assessee. As per ld. CIT(A), in the line of the business of the assessee, it is an usual practice that the payments against sale of properties take place in installments and till the full and final payment is received, the possession is not handed over and sale deed is also not executed. Thus, as per ld. CIT(A), for an assessee, following the mercantile system of accounting, till the sale is recognized upon receipt of full payment and handing over of the possession, it continues to be shown in the books as advances only.

9.02 In view of the ld. CIT(A), the amount of advances would be taxable when they would partake the character of revenue and when the sale is fructified and not on any earlier occasion, otherwise, the same would result into taxation of the same receipts twice which is not permissible in the law. As per ld. CIT(A), the assessee has furnished the complete details of sundry creditors and has also furnished the necessary documents in support of such details. The ld. CIT(A) noted that in most of the cases of advances, sale deeds have subsequently been executed in favour of the customers. In such circumstances, in considered opinion of ld. CIT(A), per se, the genuineness of the creditors cannot be disbelieved. The ld. CIT(A) also found that it was not the case of the AO that any of the customers to whom a letter u/s. 133(6) of the Act was issued by her, during the course of the remand proceedings, denied the making of payments by him to the assessee or purchase of any property by him from the assessee. The ld. CIT(A) found sufficient merit in the rejoinder made by the counsel of the assessee contending that first of all, the notices u/s. 133(6) were issued behind the back of the assessee. The ld. CIT(A) also noted that the assessee was never made aware of outcome of issuance/servicing of the notices to various customers. The factum and reason for non-servicing of the letters were not brought to the knowledge of the assessee by the AO. The ld. CIT(A) found force in the contention of the assessee that the very reason for return of the notices might be that in the last 8-10 years, the customers might have changed their addresses.

9.03 The ld. CIT(A) also found merit in the contention that having handed over the possession of the properties sold to the customers, after execution of the registered sale deeds, the customers were not in the control of the assessee and therefore, the assessee could not have compelled the customers to comply with the letters issued u/s. 133(6) of the Act. Further, in view of ld. CIT(A), the transactions of payments by the customers to the assessee have been taken place almost 10-12 years back, no adverse inference can be drawn only on the basis that the customers who have responded the notices and confirmed the transactions, did not mention the exact dates of payments by them. As per ld. CIT(A), every customer cannot be expected to have date wise details of payments made by him of a transaction which has taken place

long back. It is a common practice in the real estate trade that a colonizer or builder enters into agreement with any customer for sale of properties, with the stipulation that the customer would make the payment of agreed sales consideration in installments. Further, only after receipt of the entire sales consideration, possession of the properties is handed over to the customer and sale deed is accordingly executed. In view of ld. CIT(A), the very fact of registration of sale deed, before a Government Authority, being Sub-Registrar of Property, establishes the identity of the transaction and as also, genuineness of the transaction. As per ld. CIT(A), in the cases of credits relating to sales proceeds, the onus of an assessee is relatively lighter to establish the creditworthiness of the transactions as all such transactions takes place on quid-pro-quo basis only. Thus, in considered opinion of ld. CIT(A), the assessee could be able to establish the receipt of advances from various customers during the year under consideration. The ld. CIT(A) noted that during the course of remand proceedings, the assessee had furnished the details of advances lying as opening balance, details of advances received during the year giving break-up of advances received through banking channels and in the form of cash and as also, closing balance of creditors before the AO and such details were also furnished before him during the course of the appellate proceedings. The assessee claimed that the AO had issued notices to almost all the customers and barring a few, all the notices had got duly served which establishes the existence of the customers. As per the ld. CIT(A), the existence of customers is further established by the execution of sale deeds in their favour and therefore, the existence of opening balance cannot be ruled out. The ld. CIT(A) found merit in the contention of the assessee that since for the earlier years, he had opted for presumptive taxation under section 44D of the Act and therefore, he was not statutorily required to maintain any books of account but, mere non-maintenance of books of account for earlier years cannot, ipso facto, result into non-acceptance of claim of the assessee as regard to existence of the opening balance of creditors. The ld. CIT(A) also found that in the Statute, there is no provision which empowers an Assessing Officer to make an ad-hoc disallowance out of the creditors shown in the financial statements. The provisions of section 68, although not invoked properly by the AO without examining any books of account, also require the AO to examine each and every credit entry independently and any ad-hoc lump-sum addition, by taking a certain percentage of the total creditors, is neither warranted nor permissible. Thus, the ld. CIT(A) found no substance in the ad-hoc addition of Rs.9,10,11,278/- made by the AO in the income of the assessee and accordingly, the ld. CIT(A) deleted the entire addition of Rs.9,10,11,278/-. The action of the ld. CIT(A) in deleting of the impugned addition has been challenged by the Revenue before this Hon'ble Bench.

In view of the above facts and circumstances, it is submitted that the addition of Rs.9,10,11,278/- was rightly deleted by the ld. CIT(A) and therefore, the action of the ld. CIT(A) deserves to be upheld by this Hon'ble Bench and the Revenue's Ground on this issue deserves to be dismissed.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

<i>S. No.</i>	<i>Description of the document</i>	<i>Page No.</i>
1	<i>Audited Balance Sheet of the assessee</i>	<i>40</i>
2	<i>Copies of specimen application forms, duly filled up and signed by the various customers, who had given advances to the assessee against booking of plots in various colonies developed by the assessee</i>	<i>160-171</i>
3	<i>A statement showing the details of the booking advances aggregating to Rs. 30,33,70,927/- received by the assessee</i>	<i>172</i>
4	<i>1ST Remand Report of the AO dated 21-06-2019 for the A.Y. 2012-13</i>	<i>11 to 20 of Remand Report PB</i>
5	<i>1ST Rejoinder of the assessee dated 12-07-2019 for the A.Y. 2012-13</i>	<i>42 to 45 of Remand Report PB</i>
6	<i>2ND Remand Report of the AO dated 28-07-2020 for the A.Y. 2012-13</i>	<i>113 to 121 of Remand Report PB</i>
7	<i>2ND Rejoinder of the assessee dated 20-08-2020 for the A.Y. 2012-13</i>	<i>134 to 146 of Remand Report PB</i>

18.1 We have heard rival contentions and perused the records placed before us. We observe that the appellant is engaged in the business of developing of colonies and in such business, after purchase of raw lands and procuring various government approvals, pending the development of the project, bookings are made and against such bookings, advances are received from the customers. Ld.AR contented before us that the appellant following the mercantile system of accounting was recognizing such advances as his revenue only in the year in which the full payments of the agreed sales consideration were received and the possession of the properties was given to the customers followed by the

execution of the registered sale deeds. Ld.AR further contended that during the course of the survey proceedings, the survey party had also noted such fact as during such proceedings, applications for booking of properties were found in the business premises of the appellant. Ld.AR further claimed that most of the advances were received through banking channels only. During the course of the survey proceedings, two diaries inventorized as BI-13 & BI-16 were impounded and in such diaries too, the details of many transactions relating to the receipt of advances by the appellant from various customers were clearly found mentioned. In order to establish the genuineness of the claim as regard to the sundry creditors, the appellant has furnished some specimen copies of the booking forms. Assesse has also furnished the details of the advances received showing the necessary details such as name of the project in respect of which advance was received, the name of the customer, the outstanding balance as on 31/03/2012 & 31-03-2013 and as also, the details of sale deeds executed in subsequent years at various pages in the Paper Books filed for both the assessment years. The assessee also furnished a consolidated statement of advances against properties under the various projects in his Paper Books contending that out of the total creditors outstanding as on 31/03/2012, advances amounting to Rs.10,18,75,171/- were lying as opening balances and the same were not received during the year

under consideration. The appellant has also furnished the copies of the registered sale deeds subsequently executed. The appellant further contended that out of the total advances received during the previous year relevant to A.Y. 2012-13 and A.Y. 2013-14, a substantial sum was received through banking channels and only the balancing sum was received in cash. The appellant also agitated the making of the addition on the legal ground that since as per the AO's own version, during the course of the assessment proceedings, the appellant had not produced any books of account and therefore, the question of finding any credit entry as regard to the sundry creditors and consequently, the question of invoking the provisions of section 68 does not arise. According to the appellant, finding of some entries in the books of account are *sine-qua-non* for invoking the provisions of section 68 of the Act.

18.2 We find that the assessee made the same explanation before us which was made by him before the ld. CIT(A) and a copy of the written submission as well as all the documentary evidences furnished by the appellant before the ld. CIT(A) was duly forwarded by the ld. CIT(A) to the AO for her verification and counter comments. We find that the AO, in her Remand Report, has accepted the furnishing of various documentary evidences such as specimen copies of the booking forms, project-wise details of the names, addresses of the customers, amounts of advances received from various customers, the

details of advances outstanding as on 01/04/2011, 31/03/2012 & 31-03-2013 and as also, the copies of relevant sale deeds executed by the appellant in favour of the customers from whom the advances were received. We find that the Ld.AO disregarded the existence of opening balance on the only ground that for the earlier years, the appellant had not maintained any books of account but had only declared his income on presumptive basis under section 44AD of the Act. The AO further commented that to verify the genuineness of the advances taken, notices u/s.133(6) were issued to the purchasers of the plots. According to the AO, in most of the cases, the replies were not received and in some cases, the original letters returned unserved. In cases where replies have been received, the dates of payments were not mentioned. According to the AO, in these circumstances, the genuineness of the creditors could not be verified.

18.3 In our considered view, the appellant by furnishing all the necessary details with documentary evidences could said to be able to substantiate the sundry creditors, as appearing in the audited balance sheet, as on 31/03/2012 and as on 31-03-2013. We find that the furnishing of various documentary evidences by the appellant have duly been accepted by the AO making the Remand Report. We find that the AO has not found any specific discrepancy or defect in the documents or details furnished by the appellant. We also find that the appellant had maintained regular books of

account and the same were also audited u/s.44AB of the Act. We find that the Ld. AO while framing the assessment, has given a finding, at para (7) of the impugned Order for A.Y. 2012-13, that the appellant was developing various colonies and was making bookings of plots. We also find that during the course of the survey proceedings, the booking forms were found in the premises of the appellant. In the line of the business of the appellant, it is a usual practice that the payments against sale of properties take place in installments and till the full and final payment is received, the possession is not handed over and sale deed is also not executed. Thus, for an assessee, following the mercantile system of accounting, till the sale is recognized upon receipt of full payment and handing over of the possession, it continues to be shown in the books as advances only. In our view, the amount of advances would be taxable when they would partake the character of revenue and when the sale is fructified and not on any earlier occasion, otherwise, the same would result into taxation of the same receipts twice which is not permissible in the law. We find that the appellant has furnished the complete details of sundry creditors and has also furnished the necessary documents in support of such details. We find that in most of the cases of advances, sale deeds have subsequently been executed in favor of the customers. In such circumstances, in our considered opinion, *per se*, the genuineness of the creditors

cannot be disbelieved. We also find that it is not the case of the AO that any of the customers to whom a letter u/s. 133(6) of the Act was issued by her, during the course of the remand proceedings, denied the making of payments by him to the appellant or purchase of any property by him from the appellant. We find sufficient merit in the rejoinder made by the counsel of the appellant contending that first of all, the notices u/s. 133(6) were issued behind the back of the appellant. We also find that the appellant was never made aware of outcome of issuance/servicing of the notices to various customers. The factum and reason for non-servicing of the letters were not brought to the knowledge of the appellant by the AO. We find force in the contention of the appellant that the very reason for return of the notices might be that in the last 8-10 years, the customers might have changed their addresses. We also find merit in the contention that having handed over the possession of the properties sold to the customers, after execution of the registered sale deeds, the customers were not in the control of the appellant and therefore, the appellant could not have compelled the customers to comply with the letters issued u/s. 133(6) of the Act. Further, in our view, the transactions of payments by the customers to the appellant have been taken place almost 10-12 years back, no adverse inference can be drawn only on the basis that the customers who have responded the notices and confirmed the transactions, did not mention the exact dates

of payments by them. In our view, every customer cannot be expected to have date wise details of payments made by him of a transaction which has taken place long back. It is a common practice in the real estate trade that a colonizer or builder enters into agreement with any customer for sale of properties, with the stipulation that the customer would make the payment of agreed sales consideration in installments. Further, only after receipt of the entire sales consideration, possession of the properties is handed over to the customer and sale deed is accordingly executed. In our view, the very fact of registration of sale deed, before a Government Authority, being Sub-Registrar of Property, establishes the identity of the transaction and as also, genuineness of the transaction. In our considered view, in the cases of credits relating to sales proceeds, the onus of an assessee is relatively lighter to establish the creditworthiness of the transactions as all such transactions takes place on *quid-pro-quo* basis only. Thus, in our considered opinion, the appellant could be able to establish the receipt of advances from various customers during the year under consideration. The appellant submitted that during the course of remand proceedings, he had furnished the details of advances lying as opening balance, details of advances received during the respective years giving break-up of advances received through banking channels and in the form of cash and as also, closing balances of creditors before the AO. Such details were

also furnished before us during the course of the appellate proceedings. We find that the existence of customers is established by the execution of sale deeds in their favor and therefore, the existence of opening balance cannot be ruled out. We also find merit in the contention of the appellant that since for the earlier years, he had opted for presumptive taxation under section 44D of the Act and therefore, he was not statutorily required to maintain any books of account but, mere non-maintenance of books of account for earlier years cannot, *ipso facto*, result into non-acceptance of claim of the appellant as regard to existence of the opening balance of creditors. The provisions of section 68, although not invoked properly by the AO without examining any books of account, also require the AO to examine each and every credit entry independently and any ad-hoc lump-sum addition, by taking a certain percentage of the total creditors, is neither warranted nor permissible. In view of the facts and circumstances of the case, We thus find no infirmity in the action of the ld. CIT(A) in deleting the ad-hoc additions of Rs.9,10,11,278/- and Rs.4,96,06,927/- respectively for A.Y. 2012-13 and A.Y. 2013-14 made by the ld. AO in the income of the appellant on this count. Accordingly, the ground no. 4 for A.Y. 2012-13 and Ground no. 3 for A.Y. 2013-14 of the Revenue are dismissed.

19. Ground No. 1 of the Assessee for A.Y. 2013-14

9.1 Through this ground of appeal, the assessee has challenged the action of the ld. CIT(A) in upholding the assessment order passed under s.144 of the Act passed by the AO without serving any valid notice under s.143(2) of the Act.

19.2 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the assessment year under consideration before the ld. CIT(A). The ld. CIT(A) after considering the remand reports submitted by the AO as well as the rejoinders of the assessee thereon, noted that the AO had given sufficient opportunity of being heard to the assessee by issuing notices under s.142(1) from time to time. The ld. CIT(A) also found that even during the course of the appellate proceedings, the various documentary evidences furnished by the assessee in his support were duly admitted under Rule 46A of the Income-Tax Rules, 1962 and therefore, it cannot be said to be a case of non-affording of any opportunity of being heard to the assessee.

19.3 Aggrieved with the Order of the ld. CIT(A), the assessee is in appeal before us.

19.4 Before us, learned CIT(DR) vehemently argued supporting the observations of the ld. CIT(A) on this issue.

19.5 Per Contra, Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

“D. Key Points of Assessee’s Submission and Relevant Pages of the Paper Book:

In this context, it is submitted as under :

1.00 That, at the outset, it is submitted that the learned AO never served a valid notice under s.143(2) of the Act to the assessee.

2.00 That, on a perusal of the first para of the assessment order, it would be observed that according to the learned AO, the first Notice dated 05-09-2014 under s.143(2) of the Act for the relevant assessment year was issued to the assessee and was served upon the assessee. In the body of the assessment order, the ld. AO has not brought any details as regard to the date on which the Notice under s. 143(2), alleged to be issued, was served upon the assessee.

3.00 Your Honour, the fact remained that, as per assessee, no notice was ever served upon him. Since, the very first notice issued under s. 143(2) of the Act, did not get served upon the assessee, the ld. AO was not legally competent and having jurisdiction to carry out the assessment proceedings and under such circumstances, the assessee chose not to participate in the assessment proceedings so carried out illegally.

3.01 Your Honours, in evidence of the assertion of the assessee to the effect that no Notice under s. 143(2) dated 05-09-2014, was served upon the assessee, an Affidavit, duly sworn before the Notary Public, by the assessee was duly furnished before the ld. CIT(A) which is placed at PB Page No. 55 & 56.

4.01 Your Honours, the Hon’ble High Court of Delhi in the case of CIT vs. Lunar Diamonds Ltd. (2006) 281 ITR 001 (Del.) has dismissed the appeal of the revenue against the order of the authorities below who had consistently held that in absence of proof of service of Notice under s. 143(2), the legality of the assessment order cannot be upheld. In this case too, the assessee had furnished an Affidavit, to the effect that the notice under s. 143(2) did not get served upon him and on the basis of such Affidavit, it was held that the proof of services of notice had got shifted to the Revenue. A copy of the judgment of the Hon’ble Delhi High Court is placed at PB Page No. 57 to 61.

4.02 Your Honours, the Hon’ble High Court of Delhi in the case of CIT vs. Hotline International (P) Ltd. (2007) 296 ITR 333 (Del.) has also held that since there was no proper service of notice on the assessee, the

proceedings are bad in law. A copy of the judgment of the Hon'ble Delhi High Court is placed at PB Page No. 62 to 67.

4.03 In similar circumstances, the Hon'ble ITAT, Delhi, in the case of Wg. Cdr. Sucha Singh C/o. Manoj Kumar Kanth vs. ITO (2017) 7 TMI 1046 (ITAT Del), has also quashed the Assessment Order on the issue of notice u/s. 143(2) which was not validly served on the assessee. A copy of the judgment of the Hon'ble ITAT is placed at PB Page No. 68 to 72.

4.04 Your Honours, the Hon'ble Supreme Court in the case of ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC) has even held that the block assessments framed after issuing notices under s. 158BC but without issuing any notice under s. 143(2) are illegal and void-ab-initio. The Hon'ble Court also held that an omission on the part of the assessing authority to issue notice under s. 143(2) cannot be a mere procedural irregularity and the same is not curable. A copy of the judgment of the Hon'ble Supreme Court is placed at PB Page No. 73 to 79.

4.05 Reliance is also placed on the following judicial pronouncements :

- i) CIT vs. Vardhman Estate Pvt. Ltd. (2006) 287 ITR 368 (Del.)*
- ii) CIT vs. Mahi Valley Hotels & Resorts (2006) 287 ITR 360 (Guj.)*
- iii) Kiran Prakashan vs. Department of Income Tax (2017) 391 ITR 0031 (Patna)*
- iv) UP Hotels Ltd. vs. CIT (2016) 283 CTR 0417 (All.)*
- v) CIT vs. Rajeev Sharma (2010) 336 ITR 678 (AllHC)*
- vi) ITO vs. M/s. NVS Builders Pvt. Ltd. [ITA No. 3729/Del/2012 vide Order dated 08-03-2018]*
- vii) ITO vs. Shri Neeraj Goel 2018 (3) TMI 668 (ITAT Del)*
- viii) ITO vs. Naseman Farms Pvt. Ltd. (2015) 44 CCH 0003 (DelTrib)*
- ix) TML Drivelines Ltd. vs. DCIT, Mumbai 2018 (2) TMI 1516 (ITAT Mum)*
- x) Virendra Dev Dixit vs. ACIT (2011) 331 ITR 483 (AllHC)*
- xi) CIT vs. Bharat G Patel (2014) 88 CCH 0032 (GujHC)*
- xii) Mohinder Kumar Chhabra vs. ITO (2014) 31 ITR (Trib.) 0093 (Del)*
- xiii) Addl. Director of Income Tax (Exemptions) vs. Vodithala Education Society (2015) 144 DTR (Hyd)(Trib) 0018*
- xiv) Suresh Exports Pvt. Ltd. vs. DCIT (2016) 48 ITR 333 (Trib.Mum)*
- xv) ACIT vs. Ravnet Solutions Pvt. Ltd. & Anr. (2017) 49 CCH 0156 (DelTrib)*
- xvi) Pr. CIT vs. Hindustan Candle Manufacturing Co. Pvt. Ltd. 2018 (12) TMI 468 (BomHC)*
- xvii) DCIT vs. Cameron Singapore Pte. Ltd. 2018 (11) TMI 873 (RajHC)*
- xviii) PCIT, Kolkata vs. Oberoi Hotels Pvt. Ltd. 2018 (6) TMI 1472 (KolHC)*

*xix) PCIT, Mumbai vs. Shri Jawahar Hiranand Bhatia 2018 (3)
TMI 1166 (BomHC)*

5.00 The ld. CIT(A), at para (4.1) & (4.2) on page no. 54 of his Order, has dealt with the subject issue. However, the ld. CIT(A) without giving any specific finding on the legal issue of non-issuance of notice u/s. 143(2) of the Act dismissed the legal ground of the assessee.

In view of the above facts and circumstances and as also, the various judicial pronouncements, it is submitted that since, there was no servicing of any notice under s.143(2) by the learned AO on the assessee, the Assessment Order so passed under s.144 deserves to be quashed on this legal ground alone.

E. Key Papers filed in the Paper Book on which the assessee wish to place reliance:

<i>S. No.</i>	<i>Description of the document</i>	<i>Page No.</i>
<i>1</i>	<i>Xerox copy of relevant Notice issued by AO u/s 142(1) during the course of assessment proceedings.</i>	<i>50-54</i>
<i>2</i>	<i>Copy of Affidavit, duly sworn before the Notary Public, by the assessee to the effect that no Notice under s. 143(2) dated 05-09-2014, was served upon him.</i>	<i>55-56</i>
<i>3</i>	<i>Copy of judgment of the Hon'ble Delhi High Court in the case of CIT vs. Lunar Diamonds Ltd. (2006) 281 ITR 001 (Del.)</i>	<i>57-61</i>
<i>4</i>	<i>Copy of judgment of the Hon'ble Delhi High Court in the case of CIT vs. Hotline International (P) Ltd. (2007) 296 ITR 333 (Del.)</i>	<i>62-67</i>
<i>5</i>	<i>Copy of judgment of the Hon'ble ITAT, Delhi in the case of Wg. Cdr. Sucha Singh C/o. Manoj Kumar Kanth vs. ITO (2017) 7 TMI 1046 (ITAT Del)</i>	<i>68-72</i>
<i>6</i>	<i>Copy of judgment of the Hon'ble Supreme Court in the case of ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)</i>	<i>73-79</i>

20. We have heard rival contentions and perused the records placed before us. We find ourselves in agreement with the findings of the ld. CIT(A) that during the course of the assessment proceedings as well as the first appellate proceedings, the assessee was given sufficient opportunity of being heard. We also find that on merits, the assessee has already been given substantial relief in respect of the entire

additions made by the ld. AO in his order of assessment for A.Y. 2013-14 and therefore, the ground raised by the assessee has become academic in nature. Accordingly, the ground no. 1 of the Assessee for the A.Y. 2013-14 is hereby dismissed.

21. In the result, the appeals of the Revenue in ITA No..64-69/Ind/2021 for AY 2011-12 to AY 2013-14 are dismissed and the appeals of the assessee in ITA 328 to 330/IND/2020 are partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 11.03.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 11 .03.2022

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Sr. Private Secretary I.T.A.T., Indore