

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 3522 & 3523/MUM/2019  
(A.Ys: 2012-13 & 2014-15)**

M/s. RahulRaj Estates Pvt. Ltd., 133, Gurukrupa, Kazi Sayad Street Masjid Bunder, Mumbai - 400003  <b>PAN: AABCR0373F</b>	v.	Pr.CIT –(Central)-4 6 <sup>th</sup> Floor, Room No. 663 Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Reepal Tralshawala</b>
<b>Department by</b>	:	<b>Shri T. Shankar</b>
<b>Date of Hearing</b>	:	<b>10.02.2022</b>
<b>Date of Pronouncement</b>	:	<b>27.04.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** These appeals are filed by the assessee against different orders of the Learned Principal Commissioner of Income Tax, Central - 4, Mumbai [hereinafter in short "Ld. Pr.CIT"] dated 27.03.2021 for the A.Ys. 2012-13 and 2014-15.

**2.** Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 3522/MUM/2019 for Assessment Year 2012-13 as a lead case.

**3.** Brief facts of the case are, assessee filed its return of income u/s.139(1) of the Income Tax Act (hereinafter, 'the Act') on 30.09.2012 wherein deemed total income u/s 115JB was at ₹.82,43,377/-. A search and seizure action u/s.132 of the Act was carried out on 18.02.2014 in the case of Raj K Shah & Group at its office and residence of the key person Raj K Shah. The assessee is a Private Limited Company in which Raj K Shah is a Director. The assessment in the case of the assessee company was completed u/s 143(3) r.w.s. 153C of the Act, determining total income at ₹.2,89,66,121/- on 30.12.2016. In response to notice u/s.153C of the Act, assessee filed return of income manually declaring total income at ₹.12,48,04,590/- on 11.01.2016. However, in view of the fact that the assessee company failed to pay the self-determined Self-Assessment Tax of ₹.5,67,86,980/-, the Assessing Officer treated the manual return to be invalid u/s 139 of the Act.

**4.** While verifying the assessment records Ld.Pr.CIT, Mumbai observed that Assessing Officer having invalidated the manual return filed by the assessee in response to notice u/s.153C, he ought to have considered the details of manual return while completing the assessment u/s 143(3) r.w.s. 153C of the Act. Since the assessment was prima-facie erroneous and prejudicial to the interest of revenue, proceedings u/s. 263 of the I.T. Act were initiated by issue of notice u/s. 263(1) of the Act and served on the assessee. In response assessee filed its submission letter date 15.02.2019 in response to the show cause notice dated 05.02.2019 to the assessee, the relevant submissions are reproduced below: -

*"(a) The AO has taxed entire receipts worked out on the basis of 15 red colored notebook in AY 2011-12 and after due application of mind, rejected the revised return of income for AY 2012-13. Assessment on the basis of return of income filed u/s 153C of the Act with additional income disclosed therein for AY 2012-13 will amount to double taxation of same receipts.*

*(b) The assessee's appeals being pending for disposal before the CIT(A), notice u/s. 263 is bad in law.*

*(c) Further, the assessee has placed reliance on various case laws w.r.t. ambit of sec. 263."*

**5.** After considering the submissions of the assessee, Ld. Pr.CIT rejected the submissions made by the assessee in all the three grounds raised by the assessee in its letter by relying on several case laws and he held that Assessment Order passed by Assessing Officer is erroneous and

prejudicial to the interest of the Revenue within the meaning of section 263 of the Act. Therefore, he set aside the Assessment Order and directed the Assessing Officer to pass denovo afresh Assessment Order conducting the necessary enquiries as per law.

**6.** Aggrieved with the above order assessee preferred appeal before us raising following grounds in its appeal: -

*1. On the facts and in the circumstances of the case, the order passed by the learned Pr. CIT (Central) — 4, Mumbai u/s.263 of the Income-tax Act is ab initio void being bad in law.*

*2. On the facts and in the circumstance of the case, the learned Pr. CIT erred in setting aside the assessment order dated 31<sup>st</sup> December 2016 passed by the Dy. Commissioner of Income Tax, Central Circle — 8(1), Mumbai and directing the Assessing Officer to pass a fresh Assessment Order.*

*3. On the facts and in the circumstances of the case, the learned Pr. CIT erred in holding the assessment order passed under section 143(3) r.w.s. 153C of the Act as erroneous or prejudicial to the interest of revenue wherein additional income disclosed by the Appellant was not considered. The Pr. CIT ought to have appreciate that any further addition in this regards will amount to double taxation of single receipts and against the provision of Income Tax Act.*

*4. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."*

**7.** Ld. AR submitted his written submissions which is reproduced below: -

**"Facts of the case:"**

2. The following are the facts of the case relevant to dwell upon the issue as to whether the Pr. CIT was justified in passing the revision order u/s.263 of the Act:-

(a) A search and seizure action under section 132 of the Act was carried out on 18.02.2014 in the case of Raj K. Shah (Director of the Appellant Company) at his office and residential premises. However, there is No Search Warrant in the name of the Appellant herein and thus the assessment proceedings were carried out invoking provisions of sec. 153C of the Act;

(b) During the course of search proceedings, 15 red coloured notebooks were found from the possession of Raj K. Shah, wherein certain noting of receipts and payments were found relating to On-money received from bookings done by various customers;

(c) The explanation given in course of search action in respect of the contents of 15 red coloured notebooks was that:

(i) the noting in the said notebooks were made by unprofessional clerk in respect of unaccounted receipts and payment of the two commercial projects i.e. RahulRaj Mall developed by the "RahulRaj Estates Pvt. Ltd", the Appellant herein and RRahulRaj Textile City developed by the RRahulRaj Realtor Pvt. Ltd., sister concern of the Appellant herein;

(ii) the project "RRahulRaj Textile City developed" by RRahulRaj RealtorsPvt. Ltd. was abandoned and closed down;

(iii) there were various discrepancies, cancellations and refunds of On-money receipts reflected in the noting made in the said notebooks;

(d) in the statement recorded of Shri Raj K. Shah, total unaccounted income of Rs.28 crs. was offered to tax in respect of the 15 red coloured notebooks containing the noting in respect of On-money received. This entire offer was made in the hands of the Appellant herein since the project in other sister concern was abandoned. Further, the basis of arriving at the unaccounted income of Rs.28 crs was the Application of Funds taken via accommodation entries, etc. in books of account of Shri Raj K. Shah AND the Appellant herein as also the excess jewellery found in the course of search action. This Application of Funds is tabulated as under-

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Accommodation entries taken in books of Raj K Shah in A.Y.2011-12</i>	<i>7,87,83,391</i>
<i>Accommodation entries taken in books of Raj K Shah in A.Y. 2012-13</i>	<i>16,00,00,000</i>
<i>Accommodation entries taken in books of RahulRaj Estates Private Limited from Rose Gems Private Limited received in A.Y. 2012-13</i>	<i>3,00,00,000</i>
<i>Accommodation entries taken in books of Raj K Shah from Minaxi Diamonds in AY 2013-14</i>	<i>1,00,00,000</i>
<i>Excess jewellery found during the course of search</i>	<i>11,42,104</i>
	<i>27,99,25,495</i>
<i>Offer in statement Rounded off to</i>	<i>28,00,00,000</i>

(e) Based upon the statement recorded and offer made as above as per application of funds, the total unaccounted income of Rs.28 crs was offered in the hands of the Appellant herein and bifurcated in 3 Asst. Years 2012-13, 2013-14 and 2014-15 on the contention that the Appellant herein follows project completion method of accounting and the project was completed and occupancy certificate received in July 2011 and thereafter agreements for sales were executed and profits offered in the regular books of account. Based upon the same and following the method of accounting regularly employed i.e. project completion method of accounting, the total amount of Rs.28 crs. was bifurcated and offered in the assessment years as per following tabulation-

<i>Assessment year</i>	<i>Sales offered as per audited financials</i>	<i>%of total offer</i>	<i>Undisclosed income offered</i>
<i>2012-13</i>	<i>35,25,23,880</i>	<i>44.94</i>	<i>12,58,38,469</i>
<i>2013-14</i>	<i>13,18,22,552</i>	<i>16.81</i>	<i>4,70,55,956</i>
<i>2014-15</i>	<i>30,00,45,550</i>	<i>38.25</i>	<i>10,71,05,575</i>
<i>Total</i>			<i>28,00,00,000</i>

(f) On the basis of the evidences found in the form of 15 red coloured notebooks containing noting regarding on-money receipts in respect of project undertaken by the Appellant herein and on the basis of the statement of Raj K Shah recorded under section 132(4) of the Act on 18.02.2014 making the offer as above, the A.O. issued notice under section 153C of the Act on 30.10.2015 for both the years;

(g) In response to notice received under section 153C r.w.s. 153A(1)(a) of the Act the Appellant herein has filed return of income on 11.01.2016 declaring total income of Rs.12,48,04,590/- for AY

2012-13 including the amount of Rs.12,58,38,469/- offered as per above tabulation. Similarly Appellant herein has filed return of income on 11.01.2016 declaring total income of Rs.11,60,88,072/- for AY 2014-15 including the amount of Rs.10,71,05,575/- offered as per above tabulation.

3. The A.O., after analyzing the various contentions made in respect of the 15 red coloured notebooks, worked out unaccounted receipts of on-money based upon the noting made in the 15 red colored notebooks and arrived at total unaccounted receipts to Rs. 107 Crores.

4. The A.O. further held that the entire on-money receipts as per the noting in the red coloured notebooks related to Financial Year 2010-11 and thus, taxed the entire on-money receipts as worked out by him in the Assessment year 2011-12.

5. The detailed break up of additions made in the case of M/s. RahulRaj Estates Pvt. Ltd i.e. Appellant herein and sister concern of the Appellant i.e. M/s.RRahulRaj Realtor Pvt. Ltd is summarized as under:

Sr. No.	Particulars	Rahulraj Estate Pvt. Ltd. (RahulRaj Mall)	RRahulRaj Realtors Pvt. Ltd. (RRahulRaj Textile City)	Total
1	Receipt	46,94,71,274	60,08,50,444	107,03,21,718
2	Scrap Sale	22,72,100	22,72,100	45,44,200
	Total	47,17,43,374	60,31,22,544	107,48,65,918

The AO has thus made the entire addition of On-money receipts as worked out by him in the order passed for Assessment year 2011-12.

[Paper book pages 65 to 84- copy of asst. order for AY 2011-12]

7. As stated above, the Appellant herein had offered total unaccounted income amounting to Rs.28 crores towards on-money receipts (suppression of sales) in 3 assessment years and this amount of Rs.28 crores was based upon the Application of funds as explained above.

8. *However, the Appellant could not pay Self-Assessment Tax in respect of income offered in the return of income filed u/s.153C of the Act for AY 2012-13 and AY 2014-15 and could not pay the same even in response to the notices issued for defective returns by the AO u/s.139(9) of the Act for both these years.*

9. *In view of the defective returns for want of payment of Self-Assessment Tax, the AO ignored the return of income filed u/s.153C of the Act for AY 2012-13 and AY 2014-15 as if no return of income were filed by the Appellant for these two years in response to notice issued u/s.153C of the Act.*

10 *In respect of the invalidation of return of income for both the AYs 2012-13 and 2014-15, the AO has made the following observation in para 7.13 and 7.14 in the Assessment orders of all the 3 years i.e. AY 2011-12, AY 2012-13:-*

*"7.13 Invalidation of Return of Income filed u/s.153C for A. V 2012-13 & 2014-15: However, the return of income for A. Y. 2012-13 and 2014-15, filed manually, were invalidated by the fact that Self-Assessment Tax remained unpaid for more than 11 months. Vide letter dated 15.11.2016, the assessee had been intimated about the defect in the return of income for A. Ys 2008-09, 2012-13, 2013-14 and A.Y 2014-15. The assessee had been given 15 days time to rectify the defect in the return by paying Self Assessment Tax. Vide letter dated 05.12.2016, it was intimated to the assessing officer that Self Assessment Tax had been paid for A. Y 2008-09 and 2013-14. Further, final intimation u/s 139(9) of the Act was served on the assessee on 26.12.2016 requiring the assessee to pay Self Assessment Tax for A. Ys 2012-13 & 2014-15 by 28th December 2016 as the assessment proceedings u/s 153C r.w.s 143(3) were required to be completed. However no communication was received by the office of undersigned assessing officer on the same. Accordingly, the return of income for A. Y 2012-13 and A. Y 2014-15 stands invalidated and deemed as if the assessee failed to furnish the return. The provision of the Act shall apply accordingly. Accordingly, the income offered for A. Ys 2012-13 & 2014-15 stands nullified as the return of income u/s 153C for the respective years is invalidated. Thus the income offered for A. Y 2013-14 amounting to Rs. 4,70,55,9601- shall only be considered as offer of income by the assessee group in the light of*

*statement recorded u/s 132(4) of Shri Raj KShah on 18.02.2014.*

*7.14 The assessee has contended that the offer of income in the case of the assessee was made (as discussed in para 7.11) by apportioning the particulars as laid down in the table at para 7.12 as per the Sales Offered and percentage of sales per year to the total, since the assessee follows Project Completion method. However, since the amounts in question pertain to "unaccounted receipts", the theory of applicability of project completion method is rejected as these receipts would have never been accounted as per project completion method had the search and seizure action not happened. Since the 15 red colored notebooks pertain to a specific period i.e F. Y 2010-11, the unaccounted receipts pertaining to RRM as on the last day of FY 2010-11 have been added to the total income of the assessee for the A. Y 2011-12. Exception to the addition is only made in the case of bogus unsecured loan of Rs.3 crores availed from Rose Gems Pvt. Ltd (M/s. Rose Gems Pvt. Ltd. is one of the bogus concern managed and controlled by Bhanwarall Jain Group) during F.Y 2011-12 relevant to A.Y 2012-13 in the books of M/s. RahulRaj Estates Pvt Ltd which has been added to the total income of the assessee for that year."*

*11. With the aforesaid observation the A.O. has held the return of income filed under section 153C of the Act for both the AY 2012-13 and 2014-15 as invalid and defective.*

*12. The AO in the above observation also very clearly noted that the entire on-money receipts related to FY 2010-11 and is thus taxed in AY 2011-12, and the contention of the Appellant that total amount of Rs.28 crores is offered in respect of on-money receipts based upon 15 red colored notebooks and apportioning the same in subsequent years following project completion method of accounting was rejected.*

*13. With respect to the Application of Funds i.e. accommodation entries taken in the books of account of Shri Raj K. Shah and the Appellant herein as also the excess jewellery seized in the course of search action and for which the Appellant had asked set off against the source of funds being on-money receipts, the same is also rejected by the AO since the AO has added the accommodation entry relating to the Appellant amounting to Rs.3 crores in its hands in AY*

2012- 13 and the remaining amount of accommodation entries and excess jewellery is added in the assessment orders passed in the case of Shri Raj K. Shah.

14. The total addition made by the AO in respect of on-money, accommodation entries and excess jewellery in all the entities of the present group is tabulated as under-

<b>SR.NO</b>	<b>Nature of Addition</b>	<b>RahulRaj Estates P. Ltd. (Appellant)</b>	<b>RRahulRaj Realtors P. Ltd.</b>	<b>Shri Raj K Shah.</b>	<b>Total</b>
1	On-Money receipts	46,94,71,274	60,08,50,444	NIL	107,03,21,718
2	Scrap Sales	22,72,100	22,72,100	NIL	45,44,200
3	Accommodation Entry	3,00,00,000	NIL	24,87,83,391	27,87,83,391
4	Excess Jewellery	NIL	NIL	11,42,104	11,42,104
	<b>Total</b>	<b>50,17,43,374</b>	<b>60,31,22,544</b>	<b>24,99,25,495</b>	<b>135,47,91,413</b>

15. From the above table, it can be seen that the AO has made addition in respect of both the source of funds as well as the application of funds. The AO has made the addition of gross on-money receipts of Rs. 107.03 crores; scrap sales of Rs.45.44 lakhs; accommodation entries taken of Rs.27.87 crores and excess jewellery found of Rs.11.42 lakhs.

16. In other words, the unaccounted income offered of Rs.28 crores is also added by the Assessing Officer apart from making addition of gross on-money receipts and scrap sales of Rs. 107.48 crores as seen from the above table.

**Proceedings u/s.263:**

17. The Pr. CIT issued notice u/s.263 of the Act dated 05.02.2019 for both the Asst. Years 2012-13 and 2014-15 (identically worded except for figures) on the ground that the AO has invalidated the return of income filed in response to notice u/s.153C of the Act and not added the additional income declared in the return of income filed u/s.153C of the Act. Thus, the assessment order passed is erroneous in so far as it is prejudicial to the interest of revenue and thus, show caused as to why assessment order should not be revised u/s.263 of the Act.

[Paper book pages 88-89 & 111-112 — copy of notice u/s.263]

18. In response to the above notice, the Appellant filed detailed submission highlighting the facts as referred above and stating that the assessment order passed by the AO is not erroneous in so far as

*prejudicial to the interest of the revenue since the AO has considered the entire facts of the case and made proper inquiries and verification and has not allowed any relief in the assessment order without making any inquiry. The Appellant relied upon several decisions for the contention that the AO has taken one of the views and the CIT is not justified to replace the same by his opinion without pointing out as to how the assessment order was erroneous in so far as prejudicial to the interest of the revenue.*

*[Paper book pages 90 to 110 & 113 to 131 — reply to 263 notices]*

19. *The Pr. CIT passed order u/s.263 of the Act for both the Asst. Years vide order dated 27.03.2019 and held as under-*

*"5.2 I have gone through the assessee's submission and following observations are made:*

*(a) The assessee 's submission that the entire receipts were taxed by the AO in AY 2011-12 after due application of mind is not found acceptable. The said conclusion is neither apparent from the assessment order nor the assessment records. The Assessment order clearly shows that the AO has not taken into consideration the details of undisclosed income submitted by the Assessee, vide the manual revised return u/s 139(5) of the Act. The AO has held the manual return to be invalid for non-payment of Self Assessment Tax, without taking into consideration the information and figures regards income suo moto offered in manual return, even as it was treated as invalid for non-payment of Self Assessment Tax, while assessing the total income u/s 143(3) of the Act. Hence, the order is found to be erroneous in so far as it is prejudicial to the interest of revenue in terms of Section 263 of the Act.*

*(b) The submission of the assessee w. r. t. pendency of appeal at CIT(A), is not found tenable in view of the fact that the subject matter / grounds of appeal for such appeal are different from the proceedings u/s 263.....*

*(c) The AO has not considered the figures reported in the manual revised return of income filed u/s 139(5) of the Act while assessing the total income of the assessee and hence, the case of the assessee clearly falls under clause (a) of Explanation 2 to the section 263 wherein;*

(a) *The order is passed without making inquiries or verification which should have been made, or*

.....

*is deemed to be erroneous in so far as it is prejudicial to the interest of revenue."*

20. *Thus, in para 5.2, the Pr. CIT applied clause (a) of Explanation 2 to sec.263 of the Act, and finally in para 7 of the order, gave finding that the assessment order was erroneous and prejudicial to the interests of Revenue. Accordingly, the Pr. CIT set aside the assessment order and directed the Assessing Officer to reframe the assessment de novo afresh.*

**Proposition and Contentions:**

21. *From the facts stated above as also various tabulations made above, it is undisputed fact that-*

- a) *the entire on-money receipts is taxed by the AO in AY 2011-12 and thus, no addition is made once again to the total income assessed for AY 2012-13 and 2014-15 after holding the returns for both these years as invalid due to defective returns for want of payment of Self-Assessment tax;*
- b) *the Assessment orders passed were not erroneous in so far as it is prejudicial to the interest of the revenue since the AO has after analyzing the seized records i.e. 15 red colored notebooks concluded that entire addition of on-receipts pertained to AY 2011-12 and thus, added in that year;*
- c) *having already added gross on-money in AY 2011-12, there is no reason to again add the same in subsequent assessment years i.e. AY 2012-13 and 2014-15 and thus, no addition was made towards on-money to the original returned income after holding the returns filed u/s.153C as invalid and even though on-money income was offered in these years;*
- d) *however, the AO made addition of accommodation entry taken of Rs.3 crores in AY 2012-13 in the hands of the Appellant herein thereby rejecting the claim of set off of application of funds from source of funds;*

e) *the other accommodation entries and excess jewellery aggregating to more than Rs.24 crores that were offered in the statement recorded of Shri Raj K Shah and part of Rs.28 crores is separately added in the assessment orders passed in the case of Shri Raj K. Shah for respective assessment years in which the same falls after detailed discussion on this issue. Thus, entire amount of Rs.28 crores is added again based upon the disclosure made in the statement relating to application of funds.*

*[Copy of assessment order of Shri Raj K. Shah for AY 2011-12 to AY 2014-15 are attached with this written submission]*

22. *The order passed by the Pr. CIT is based on incorrect facts and baseless allegations and the observations made in para 5.2 of the order as reproduced hereinabove are contrary to the factual position. The observation of the Pr. CIT in para 5.2 — clauses (a) to (c) are factually incorrect and rebutted as under-*

(i) *it is undisputed fact that entire on-money addition is made by the AO in AY 2011-12 whereas the Pr. CIT observes that the same is neither apparent from assessment order nor assessment records. In fact, the AO has in very clear and categorically held in para 7.13 and para 7.14 of the assessment order of all the 3 Asst. years 2011-12, 2012-13 and 2014-15 that entire on- money receipts are taxed by him in AY 2011-12 and also rejected the contention of the Appellant to tax the same on the basis of project completion method of accounting and in subsequent years as offered by the Appellant;*

(ii) *The AO has added gross on-money receipts of more than Rs.47 crores including scrap sales in hands of the Appellant herein as against the offer of Appellant of Rs.28 crores;*

(iii) *The AO has duly considered all the figures and amounts in the assessment order and tabulated the same from para 7.9 onwards and that the accommodation entries are not allowed for set off against source of income and added separately in the respective Assesse case to which it pertains — as shown in the chart tabulated in para 14 hereinabove*

(iv) *the Appellant has filed appeals to CIT(A) for all the years and thus, the issue of taxation of on-money, its quantification and year of taxability as also the claim of set off of Application of funds from source of funds are open before the CIT(A) and thus, having already filed appeal to the CIT(A) for all these years on 27.01.2017 [refer pages 85 to 87 of paper book filed], the notice issued u/s.263 of the Act on 05.02.2019 is invalid and not tenable;*

23. *The power of Pr. CIT u/s.263 of the Act for passing revision order is limited and the order has to show clearly as to how the assessment order passed is erroneous in so far as prejudicial to the interest of revenue.*

24. *Nowhere in the entire order passed u/s.263 of the Act, the Pr. CIT has even prima facie proved that the assessment order passed is erroneous in so far as prejudicial to the interest of the revenue. The observations made in para 5.2 of the order u/s.263 of the Act are contrary to the factual position as stated hereinabove in detail.*

25. *The Assessing Officer has passed the assessment order under section 143(3) r.w.s. 153(C) of the Act after thorough enquiries and after considering the replies filed by the Appellant along with evidences and documents.*

26. *The Assessing Officer has passed assessment order after due application of mind. The A.O. has in assessed order itself has given detailed finding on analysis of alleged "15 red Coloured note book". After analysis of seized material and after due application of mind the total receipts was assessed in A.Y. 2011-12. As the on-money receipts were taxed in A.Y. 2011-12, the A.O. has not made any further addition in A.Y. 2012-13 and AY 2014-15 on account of same issue of on-money disclosure made by the Appellant on the basis of project completion method of accounting and offering the income to the extent of Application of funds totaling to Rs.28 cr.*

27. *The A.O. has after due application of mind not made addition of the on-money as disclosed in the return u/s.153C of the Act for AY 2012-13 and 2014-15 in order to avoid double taxation of the same on-money issue, which the AO taxed entirely on gross basis in AY 2011-12.*

28. Had the AO once again added the on-money disclosed and offered by the Appellant in AY 2012-13 and 2014-15 after holding the return u/s.153C as invalid, the AO would have contradicted his own stand of —

(a) firstly, taxing the entire gross on-money receipt plus scrap sales of Rs.47 cr. as against the offer of the Appellant of Rs.28 cr. as this would have lead to conclusion that the AO has accepted the offer of Rs.28 cr.;

(b) secondly, AO has taxed entire gross on-money receipts in AY 2011-12 as per the noting in 15 red colored notebooks by rejecting the contention that it has to be taxed on project completion method of accounting in subsequent years whereas if addition were made again on basis of disclosure of Appellant in AY 2012-13 and 2014-15, then it would show that the AO has accepted the contention of the Appellant to tax the on-money receipts in the years in which the project is completed and on the basis of apportionment as done by the Appellant.

29. Hence the assessment order passed is NOT erroneous in so far as prejudicial to the interest of revenue and accordingly order passed under section 263 of the Act deserves to be quashed. In this regards, the Appellant relies upon the following decisions for the proposition that the AO having taken one of the possible views after considering the entire facts of the case and due application of find, the same cannot be replaced only because the CIT has different opinion in the matter-

- a) CIT vs. Kwality Steel Suppliers Complex 395 ITR I (SC)
- b) CIT v. Max India Ltd. 295 ITR 282 (SC)
- c) Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)
- d) CIT vs. Greenworld Corporation, 314 ITR 81 (SC)

8. On the other hand, Ld.DR relied on the orders passed by the Ld.Pr.CIT.

9. Considered the rival submissions and material placed on record, we observed that in search proceedings 15 red colored notebooks were found from the premises of Raj K Shah which contain noting of receipts and payments. When these notings in 15 red colored notebooks were confronted with the Raj K Shah and a statements recorded on oath u/s.132(4) on 18.02.2013, he accepted that noting's in 15 red colored notebooks pertained to unaccounted on money receipts from shop bookings in two projects namely Rahul Raj Mall and Rahul Raj Textile City which had been undertaken by RahulRaj Estates Pvt. Ltd., and or Rahulraj Realtor Pvt. Ltd., respectively. Subsequently Assessing Officer verified the contents of the 15 red colored notebooks seized during the search and it was analysed based on the types of transactions like, transactions with Shroff, transaction with Raj K Shah, repurchases/cancellation of shop bookings. Based on the submissions of the assessee and statement recorded u/s. 132 of the Act, the assessee vide submission dated 01.09.2016 had stated that he has offered the amount of ₹.28 Crores in the hands of one of the real-estate entity viz. Rahul Raj Estates Private Limited i.e. assessee company in which he is the director, in the return of income filed u/s. 153C of the Act for the below mentioned Assessment Years :-

Assessment year	Income offered
2012-13	12,58,38,469
2013-14	4,70,55,956
2014-15	10,71,05,575
Total	28,00,00,000

**10.** Accordingly, assessee filed manual return for the above said Assessment Years. For the assessment year under consideration the Assessing Officer observed that the return filed manually were invalidated by the fact that Self-Assessment Tax remained unpaid for more than 11 months. We observed that Assessing Officer intimated the same to the assessee and assessee was given 15 days' time to rectify the defect in the return by paying Self-Assessment Tax. Further several intimations were made to the assessee regarding defects in the return and since Assessing Officer has not received any communication from the assessee, he treated the return filed by the assessee manually as invalid. We observed that Assessing Officer himself observed that assessee has offered ₹.12,58,38,469/- based on the Project Completion Method. However, he himself rejected the project completion method on unaccounted receipts. He observed that theory of applicability of project completion method is rejected as these receipts would have never been accounted as per project completion method had the search and seizure action not happened. Further, Assessing Officer observed that since 15 red colored

notebooks pertain to a specific period for the Financial Year 2010-11. The unaccounted receipts pertain to RRM on the last date of Financial Year 2010-11 have been added to the total income of the assessee for the A.Y.2011-12. After recording that and rejecting the manual return filed by the assessee he proceeded to complete the assessment based on the original return of income filed by the assessee.

**11.** Ld. AR submitted that Assessing Officer verified all the relevant seized documents and submissions of the assessee, he submitted that Assessing Officer has enquired and analysed all the receipts as per 15 red colored notebooks. He further submitted that the Assessing Officer after due application of mind arrived at a conclusion for invalidating the return of income for the Assessment Years 2012-13, 2013-14 and 2014-15 and taxed entire receipts in A.Y. 2011-12 which interalia includes the additional income disclosed by the appellant in the return of income u/s.153C of the Act. On verification of the above submission, we observed that Assessing Officer has in fact made the total addition in A.Y.2011-12 itself. The relevant extract of the par 7.14 of Assessment Order passed u/s. 143(3) r.w.s. 153C relevant for the A.Y. 2011-12 are reproduced below: -

"7.14 The assessee has contended that the offer of income of the case of the assessee was made (as discussed in para 7.11) by apportioning the particulars as laid down in the table at para 7.12 as per the Sales Offered and percentage of sales per year to the total, since the assessee follows Project Completion method. However, since the amounts in question pertain to "unaccounted receipts", the theory of applicability of project completion method is rejected as these receipts would have never been accounted as per project completion method had the search and seizure action not happened. Further, since the 15 red colored notebooks pertain to a specific period ie F.Y 2010-11, the unaccounted receipts pertaining to RRM as on the last day of F.Y 2010-11 need to be added to the total income of the assessee for the A-Y 2011-12. Exception to the addition is only made in the case of bogus unsecured loan of Rs. 3 crores availed from Rose Gems Pvt. Ltd (M/s Rose Gems Pvt. Ltd. is one of the bogus concern managed and controlled by Bhanwarlal Jain Group] during F.Y 2011-12 relevant to AY 2012-13 in the books of M/s RahulRaj Estates Pvt Ltd which has been added to the total income of the assessee for that year. Unaccounted receipts pertaining to RRM amounting to 46,94,71,274/- are added to the total income of the assessee for the year. Penalty proceedings initiated u/s 271(1)(c) for concealment of income"

**12.** It clearly shows that the Assessing Officer has made total addition of unaccounted receipts found in 15 red colored notebooks was already made in A.Y. 2011-12. The initiation of 263 proceedings based on the invalidation of manual return filed by the assessee u/s. 153C is not proper, considering the fact that same income cannot be added in two Assessment Years. Therefore, we are in agreement with the submissions of the Ld. AR. Accordingly, we are inclined to set-aside the order passed u/s. 263 of the Act, hence, grounds raised by the assessee in this regard is allowed.

**13.** Coming to the appeal relating to A.Y. 2014-15, since facts in this appeal are mutatis mutandis, therefore the decision taken in A.Y. 2012-13 is applicable to this assessment year also. Accordingly, this appeal is also allowed.

**14.** In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 27.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 27.04.2022  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

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