

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**  
**आयकरअपीलसं./ITA Nos.15/SRT/2021 & 27/SRT/2021**

**(निर्धारणवर्ष / Assessment Year: (2017-18)**  
**(Virtual Court Hearing)**

M/s. Poonam Developers, 402, Amar Chambers, Opp. Lal School, Station Road, Valsad- 396001.	<b>Vs.</b>	The ACIT, Central Circle-1, Vapi.
<b>(Assessee)</b>		<b>(Revenue)</b>
The ACIT, Central Circle-1, Vapi.	<b>Vs.</b>	M/s. Poonam Developers, 402, Amar Chambers, Opp. Lal School, Station Road, Valsad-396001.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAXFM9582G</b>		
<b>(Revenue)</b>		<b>(Assessee)</b>

<b>Assessee by</b>	Shri Hardik Vora, AR
<b>Respondent by</b>	Shri Sita Ram Meena, Sr. DR
<b>Date of Hearing</b>	11/02/2022
<b>Date of Pronouncement</b>	06/05/2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned cross appeals filed by assessee and revenue pertaining to Assessment Year (AY) 2017-18, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals)-4, Vapi [in short “the ld. CIT(A)”] in Appeal No. CIT(A), Surat-4/10124/2019-20 dated 01.01.2021, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) dated 28.12.2019.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No. 27/SRT/2021 for assessment year 2017-18, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeal raised by the Revenue (in lead case) in ITA No. 27/SRT/2021 for AY.2017-18 are as follows:

*“1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.2,06,20,800/- made on account of unexplained cash credit u/s. 68 of the Act with considering the facts that the assessee itself accepted that On-Money receipts as unaccounted income in the form of advances.*

*2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in directing to tax the on-money receipt as regular business income and not to treat the same as unexplained cash credit u/s. 68 of the Act which is to be taxed under the provisions of sec. 115BBE of the Act.*

*3. It is, therefore, prayed that the order of the Ld. CIT (A)-4, Surat may be set aside and that the order of the AO may be restored to the above extent.*

*4. The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

4. The grounds of appeal raised by the assessee, in cross appeal, in ITA No.15/SRT/2021 are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income –Tax (Appeals) has erred in confirming Rs.51,55,200/- i.e. 20% of Rs.2,57,76,000/- as profit of assessee.*

*2. It is therefore prayed that the above addition/disallowance made by the assessing Officer may please be deleted.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

5. Succinct facts are that a survey under section 133A of the Income Tax Act was conducted upon the assessee on 21.02.2018, at site office, Orion Villa, Naroli char Rasta, Silvassa and at other places. The assessee is in the business of construction and undertaken a project named in the style of “Orion Villa in Silvassa”. During the course of survey proceedings, certain books of accounts, loose papers and whatsapp chats were found and impounded. On perusal of the impounded material, it was noted by the assessing officer that assessee has received ‘on-money’ on selling of residential units, where advances were received during the Financial Year relevant to assessment year 2017-18. During

the scrutiny proceedings, the assessee was asked to explain why the 'on-money' receipts should not be added to the total income of the assessee.

6. In response to the show cause notice, the assessee submitted the following written submissions before the assessing officer:

*" the chart of bookings has been prepared by the partner of the assessee was in a rough form and non-authenticated documents and the survey party has derived the 'on-money' receipts on the basis of this rough estimations. The assessee further states that no booking party had confirmed payment of 'on-money' to the assessee firm, meaning thereby, the assessee firm had prepared the paper, on which the survey party had worked for on money amount, to show to other builder for getting the sale of the entire project to them, that the project is running well. The assessee firm has not received any such amount as stated in the notice. On perusal of the seized material on request, it is submitted that the actual receipts are only those seen in page 23-26 of Annexure BF-2 for the financial year relevant to AY 2017-18. It is further categorically stated that no sale deed has been registered during the year, only some rough sale agreement was entered with the parties, a list of which is annexed."*

7. Without prejudice to the above, the assessee also submitted before the assessing officer that only profit element may be taxed. However, assessing officer rejected the contention of the assessee and made addition to the tune of Rs.2,57,76,000/- under section 68 of the Act.

8. On appeal, Id CIT(A), keeping in view the facts of the assessee's case, restricted the addition @ 20% as net profit of the total gross receipts as income of the assessee. Aggrieved, by the order of Id CIT(A), the Assessee, as well as, Revenue, both are in cross appeals before us.

9. Shri Sita Ram Meena, Learned Sr. DR for the Revenue vehemently argued that addition worked out by the assessing officer should be sustained. He further stated that Id CIT(A) was not justified to restrict the addition @ 20% of the total gross receipts as income of the assessee. The Id CIT(A) ought to have confirmed the addition made by the assessing officer.

10. On the other hand, Shri Hardik Vora, Learned Counsel for the assessee begins by pointing out that addition made by assessing officer is based on some impounded materials and whatsapp chat found during the course of survey.

These impounded materials and whats app chat, do not contain the message that assessee has received 'on-money', therefore entire addition made by the assessing officer should be deleted. Alternatively, Learned Counsel pleaded that assessee's net profit ranges between 4% to 6% , therefore, addition made by the Id CIT(A) @ 20% of gross receipts is very higher side and it is kind of a high pitched assessment. He further contended that only profit element, (as per audited books of accounts), out of the gross receipts is chargeable to tax. The Id Counsel cited several case laws in support of his contention that only profit element, as per audited books of the assessee should be taken as income of the assessee.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessing officer stated that assessee received 'on-money' from customers on sale of flats (Villa), the details of the same are as follows:

<i>Villa Type</i>	<i>No. of Villas</i>	<i>Amount of On-money receipt</i>
<i>A76</i>	<i>1</i>	<i>44,00,000/-</i>
<i>B1</i>	<i>4</i>	<i>46,50,000/-</i>
<i>B2</i>	<i>9</i>	<i>1,16,95,000/-</i>
<i>B4</i>	<i>9</i>	<i>50,31,000/-</i>
	<b><i>Total</i></b>	<b><i>2,57,76,000/-</i></b>

The Assessing Officer further mentioned in para no. 5.1 that there is no dispute with regard to the fact of receipt of 'on-money' from sale of units. This clearly shows that amount of Rs.2,57,76,000/- is business receipts, and since these are business receipts therefore these receipts are taxable as per the profit declared by the assessee in audited books of accounts. These facts have been admitted by one of the partner of the assessee firm, Mr. Rajesh Ahir, who has categorically admitted and accepted in his statement during the course of survey proceedings that two columns against each of the party A and B, out of which column B represents cash i.e 'on-money' and column A represent money received through

cheques. The Assessing Officer mentioned these details on page no. 4,5 & 7 of the assessment order. Hence it is proved by the facts stated by the assessing officer in the assessment order that additions of total gross receipts have been made and not the profit amount. However, on appeal by assessee, Id CIT(A) restricted the addition to 20% of gross receipts, assuming profit element @ 20%. We note that 20% net profit is very higher side as compared to net profit rate of assessee which ranges between 4% to 6%. The Id CIT(A) has to bring on record some material to justify the rate of profit estimated by him and the basis of such estimate. This has been so held by the Hon'ble Calcutta High Court in the case of Ranicherra Tea Co. Ltd., 207 ITR 979. The Id CIT(A) has conterminous power, he can do what the assessing officer can do. The assessing officer cannot make a pure guess as has been held in the case of Dhakeshwari Cotton Mills reported in 26 ITR page 775. Moreover, he has determined the gross profit when for the purpose of computation of total income it is not the gross profit but net Income which has to be added to the total income. The assessee's own records are one of the factors which has to be considered and kept in mind while estimating the profit as has been held in the case of Delta Engineering Co. reported in 186 ITR 383. Similar view have been taken in the case of Action Electricals (Delhi) reported in 258 ITR 188. The Allahabad High Court in the case of Shyam Bidi Works (Appeal No. 64 of 2005 vide judgement dated 18th July 2014) has approved the action of the authorities wherein the rate of profit accepted in earlier years was adopted. Further it is the net profit and net income which has to be added and not the gross profit since indirect expenses are also incurred in the business. Lord Macnaghten, in the case of London County Council v Attorney-General 1901 AC 26, 35-6 (HL), 4 TC 265, 293, stated as follows: S

*“Income Tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct.”*

Therefore, net profit is taxable income. Hence, considering the facts and circumstances of the case, we direct the assessing officer to compute the net

profit @ 8% of the gross receipts. Since we have adjudicated the issue involved in assessee`s case, taking into account, the peculiar facts and circumstances, as narrated above, therefore, it is made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

12. In the result, appeal of the Revenue is dismissed whereas appeal filed by the assessee is partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 06/05/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 06/05/2022

**SAMANTA**

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat