

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA Nos: 1160 to 1162/Ahd/2018
Assessment Years: 2012-13 to 2014-15**

M/s. Lotus Enterprise Grounds Floor, 1 & 2, Blue Bell Complex, Atma Jyoti Ashram Road, Vadodara PAN No: AAFL 2145H (Appellant)	Vs	The DCIT, Central Circle-1, Vadodara (Respondent)
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**Appellant by : Shri S.N. Soparkar, Sr. Advocate.
Respondent by : Shri Vidhyut Trivedi, Sr. D.R. &
Shri Alok Kumar, CIT/DR**

Date of hearing : 29-06-2022
Date of pronouncement : 31-08-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeals relate to the same Assessee , pertaining to Assessment Years (A.Y) 2012-13 to 2014-15 and are against the consolidated order passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad, (in short referred to as CIT(A)), dated 28-02-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the “Act”) for the said years .

2. It was common ground that the issue involved in all the appeals was identical arising from common set of facts. All the appeals were therefore taken up together for hearing and are being disposed of by way of this common consolidated order for the sake of convenience.

2. 1. The solitary issue involved in all the appeals, it was stated, related to addition made to the income of the assessee on account of alleged on-money received by it in the business of real estate development carried out. It was contended by the Id. Counsel for the assessee that in all the three years involved the addition was based on a common premise and his arguments therefore were to be considered with respect to all the three years involved.

3. Briefly referring to the facts of the case Id. Counsel for the assessee pointed out that a search operation was carried out in the Bafna Panchal Group of cases on the 7/01/2014 and survey was carried out in the case of the assessee on the very same date. On the basis of documents/loose papers found during the course of search/survey, notice u/s. 148 of the Act was issued for two assessment years i.e. A.Y. 2012-13 & 2013-14. In response to the same, return of income was filed by the assessee for the said years and for A.Y. 2014-15 regular return of income u/s 139(1) of the Act was filed. That thereafter assessment was framed making addition on account of on- money received by the assessee treating it as its undisclosed sales. Ld.Counsel for the assessee stated that the addition was based primarily on the statement recorded during survey u/s. 131(1A) of Mr. Devji Sorathia ,who it was alleged by the department had purchased four shops

from the assessee (207 to 211) and had stated to have purchased the shops @ 2400 sq. Ft., whereas the average rate as per the books of accounts was noted to be Rs.1600 per sq. ft by the Assessing Officer(AO). Ld. Counsel for the assessee pointed out that the A.O accordingly held that the difference in rate was the on-money received by the assessee and accordingly applying the differential rate of Rs.800 per sq. ft. to all the properties agreed to be sold by the assessee during all the impugned three years, he worked out the undisclosed sales for each year as Rs. 79,52,935/- , 87,88,960/- and Rs. 1,65,01,590/- for A.Y. 12-13 , 13-14 and 2014-15, respectively. The working/calculation of the undisclosed sales for each year was pointed out to us from page 10 of the assessment order as under:

Office/shop no.	Area sq. ft	SALE DEED VALUE	Avg selling rate	FYof booking	Difference <\$> Rs.800/- per sq. ft	Difference from the maximum rate charged in a year	I Working of on-money receipts
A	B	c	D=C/B	E	F	H	I = H * B
212	295	320000	1085	2011-12	236000	773	228035
212	295	320000	1085	2011-12	236000	773	228035
308	395	490000	1241	2011-12	316000	617	243715
1	635	955500	1505	2011-12	508000	353	224155
6	635	825000	1299	2011-12	508000	559	354965
105	600	630000	1050	2011-12	480000	808	484800
214	295	320000	1085	2011-12	236000	773	228035
303	LIME	640000	1620	2011-12	316000	238	94010
8	635	1180000	1858	2011-12	508000	0	0
305	395	500000	1266	2011-12	316000	592	233840
306	395	500000	1266	2011-12	316000	592	233840
301-302	915	1000000	1093	2011-12	732000	765	699975
309-310	570	620000	1088	2011-12	456000	770	438900
108	600	630000	1050	2011-12	480000	808	484800

7	635	825000	1299	2011-12	508000	559	354965
103-104	1200	1260000	1050	2011-12	960000	808	969600
109-110	1200	1260000	1050	2011-12	960000	808	969600
112-A	2050	2100000	1024	2011-12	1640000	834	1709700
	12140	14375500	1184		9712000		7952935
10	635	1175000	1850	2012-13	508000	0	
405	395	600000	1519	2012-13	316000	331	130745
414-415	590	875000	1483	2012-13	472000	367	1216530
211-A	295	320000	1085	2012-13	236000	765	225675
2 12- A	295	320000	1085	2012-13	236000	765	1225675
416	295	320000	1085	2012-13	236000	765	225675
318	295	445000	1508	2012-13	236000	342	100890
407	285	310000	1088	2012-13	228000	762	217170
215	295	320000	1085	2012-13	236000	765	225675
216	295	320000	1085	2012-13	236000	765	225675
307,	395	490000	1241	2012-13	316000	609	240555
417	295	320000	1085	2012-13	236000	765	225675
304	395	640000	1620	2012-13	316000	230	90850
204	595	885000	1487	2012-13	476000	363	215985
9	635	825000	1299	2012-13	508000	551	349885
5	635	825000	1299	2012-13	508000	551	349885
2	635	825000	1299	2012-13	508000	551	349885
3	635	825000	1299	2012-13	508000	551	349885
4	635	825000	1299	2012-13	508000	551	349885
111-112	1200	1260000	1050	2012-13	960000	800	960000
311-317	4380	4592000	1048	2012-13	3504000	802	3512760
	14110	17317000	1227		11288000		8788960
406	395	450000	1139	2013-14	316000	1244	491380
409	285	450000	1579	2013-14	228000	804	229140
408	285	521000	1828	2013-14	228000	555	158175
404	395	600000	1519	2013-14	316000	864	341280

403	395	650000	1646	2013-14	316000	737	291115
14	635	750000	1181	2013-14	508000	1202	763270
11	635	775000	1220	2013-14	508000	1163	738505
12	635	775000	1220	2013-14	508000	1163	738505
106	600	1430000	2383	2013-14	480000	0	0
107	600	900000	1500	2013-14	480000	883	529800
211	2050	1850000	902	2013-14	1640000	1481	3036050
401-402	1015	1850000	1823	2013-14	812000	560	568400
15	1865	2100000	1126	2013-14	1492000	1257	2344305
201,201-A,202,203,205,206	4395	4200000	956	2013-14	3516000	1427	6271665
	14185	17301000			11348000		16501590
Total of all years	40435	31692500			32348000		33243485
207,208,209,210,210A	1425	1401000	983	2011-12	2019000		2019000
Grand Total	41860	33093500			34367000		35262485

4. Ld. Counsel for the assessee contended that the Id. CIT(A) however restricted the undisclosed sales to 12,79,000/-, 14,09,600/- and 51,41,600/- for all the three impugned assessment years by calculating the same on the carpet area sold and not the super built up area as done by the A.O. and restricted the addition, his reasoning being that the sale deed executed by the assessee was on carpet area and not on super built up area and therefore the excess differential received by the assessee as per the statement of Mr. Sorathia of Rs. 800 per sq. Ft was to be applied on the carpet area and not as done by the AO applying it on the super built area for calculating the undisclosed income. He pointed out that the Ld CIT(A)

thereafter went on to apply a net profit rate of 17.5% to the total turnover of the assessee including both the disclosed and undisclosed sales and worked out the net profit accordingly earned by the assessee for the impugned years. Reducing the income originally returned by the assessee for the impugned years from the net profit so computed the Id. CIT(A) made addition of difference to the income of the assessee, thus restricting the addition to Rs. 10,71,290/-, 18,45,389/- and 12,65,787/- for all the three impugned years respectively. In this regard he drew our attention to the table at page 24 of the CIT(A) reflecting the above figures as under:

(Copy)

<i>A.Y</i>	<i>Business Income (BI) before Interest and Remuneration(Rs)</i>	<i>Turnover as per books (Rs)</i>	<i>On-money as computed (Rs)</i>	<i>N.P at 17.5% (Rs) (Book TO + On-money)</i>	<i>Difference^ enhanced NP and BI to be added to T.L (Rs)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)=(5)-(2)</i>
<i>2012-13</i>	<i>9,91,909</i>	<i>1,05,10,710</i>	<i>12,79,000 (6,00,0000 + 6,79,000)</i>	<i>20,63,199</i>	<i>10,71,290</i>
<i>2013-14</i>	<i>22,76,301</i>	<i>2,21,42,914</i>	<i>14,09,600</i>	<i>41,21,689</i>	<i>18,45,389</i>
<i>2014-15</i>	<i>19,72,469</i>	<i>1,33,62,719</i>	<i>51,41,600</i>	<i>32,38,256</i>	<i>12,65,787</i>

5. Thus, Id. Counsel for the assessee contended, while the A.O. had made addition on account of entire undisclosed income worked out by him, the Id. CIT(A) had in the first place reduced the quantum of undisclosed sales and further made addition only on account of net profit earned on the same, applying an estimated net profit rate to the total turnover of the assessee. Id. Counsel for the assessee contended that both the Revenue and the assessee had come up in appeal against the said order of the Id.

CIT(A),but the Revenue's appeal had been dismissed on account of low tax effect involved.

6. Having pointed out the facts relating to the case as above, Id. Counsel for the assessee proceeded to make his arguments against the order of the Id. CIT(A). His arguments in brief against the same were as under:

- i) that the addition was based entirely on the statement of an alleged allottee of the property sold by the assessee, Mr. Devji Sorathiya, which statement was unreliable and could not be taken cognizance of for the following reasons:
 - he had nothing to do with the property whose actual allottees were his wife and son and both had denied payment of any on- money, by way of an affidavit filed. Our attention was drawn to the copy of the affidavit placed before us at PB 121 & 122.
 - Mr. Sorathia himself was not directly aware of the rate at which the property was allotted having admitted in his statement that it was his son from whom he had confirmed on phone the rate of Rs. 2400 per sq. ft. In this regard he drew our attention to the copy of the statement recorded of Mr.Devji Sorathia u/s 131(1A) of the Act on 07-01-2014 placed before us at paper book page no 119- 120. He pointed out therefrom that on being put the question as to with whom Mr.Sorathia had entered into dealing with for four shops purchased from the assessee, he had replied that it was his son who had entered into the dealings and he therefore had no idea with whom the dealings were done . That thereafter he was asked whether he had any knowledge /information of the rate at which the properties

were bought, to which he had replied that since it was his son who had done the dealings, he had confirmed the rates from him on phone that it was done at Rs.2400/- per sq. ft. Ld.Counsel contended that this admission of rate of Rs2400 per sq. ft paid for purchase of property by Mr. Sorathia was therefore only here say and not on the basis of his own knowledge and information.

ii) That as per the order of the Ld. CIT(A) no other incriminating material relating to undisclosed receipt was found during survey or search operation carried out in the group cases. And in the absence of any material to support the statement of Mr. Sorathia which in any case was based on here say his statement recorded during survey had no meaning. Reliance was placed on the following decision in this regard:

- (i) Paul Mathews & Sons vs. CIT [2003] 129 taxmann.com 416
- (ii) CIT vs. S. Khader Khan Son [2012] 254 CTR 228 (SC)
- (iii) CIT vs. S. Khader Khan Son [2008] 300 ITR 157
- (iv) CIT-III, vs. Golden Finance [2014] 220 taxmann.com 162 (Guj.)

iii) Without prejudice to the above, Ld. Counsel for the assessee contended that if the statement was held believable it could not in any case be applied across board to all the transactions undertaken by the assessee during the impugned three years. In this regard, Ld. Counsel for the assessee contended that in the absence of any incriminating material found, based on the statement of one person only who was not even the original allottee of any property, the extrapolation of rate could not have been done across board to all

transactions undertaken. He further drew our attention to a table at page 21 & 22 of the CIT(A) which was the working of on money receipt as per the directions of the Id. CIT(A) on the carpet area, pointing therefrom that in most of the cases it was found that no extra money had been charged by the assessee. The table is reproduced as under:

Office/ Shop No (i)	Carpet Area (Sq. ft.) (2)	Total Sale value (Rs) (3)	Average Selling Price (Rs) (4)=(3)/(2)	Undisclosed on-money receipt (5)={Rs.2400-__ (4) x (2)_
		A.Y. 2012-13		
212	178.75	320000	1 790	1 09 000
212	0.00	0	0	0
308	240.00	5 50 000	2 292	26 000
1	389.00	9 55 500	2456	0
6	389.00	9 51 000	2 445	0
105	367.00	10 00 000	2 725	0
214	178.75	4 40 000	2,462	0
303	240.00	6 40 000	2 667	0
8	389.00	1 1 80 000	3033	0
305	240.00	5 00 000	2 083	76 000
306	240.00	5 00 000	2 083	76 000
301-302	555.00	10 00 000	1 802	3 32 000
309	175.00	3 90 000	2229	
310	175.00	3 90 000	2 229	30 000
108	367.00	9 00 000	2 452	0
7	389.00	17 00 000	4370	0
103-104	734.00	21 00000	2 861	0
109-110	734.00	28 00 000	3815	0
112-A	1 260.00	48 00 000	3 810	0

		A.Y. 2013-14		
10	389.00	11 75000	3021	0
405	240.00	6 00 000	2 500	0
414-415	175.00	8 75 000	5 000	0
211-A	178.75	4 00 000	2238	29 000
212-A	178.75	4 00 000	2238	29 000
416	175.00	4 00 000	2286	20000
318	178.75	4 45 000	2 490	0
407	175.00	4 00 000	2 286	20000
215	178.75	4 00 000	2238	29000
216	178.75	4 00 000	2 238	29000
307	240.00	8 50 000	3 542	0
417	175.00	4 00 000	2286	20000
304	240.00	6 40 000	2 667	0
204	363.00	8 85 000	2 438	0
9	389.00	9 00 000	2314	33 600
5	389.00	10 00 000	2571	0
2	389.00	20 25 000	5206	0
3	389.00	20 25 000	5206	0
4	389.00	20 25 000	5206	0
111-112	734.00	28 00 000	3 815	0
311-317	3 000.00	60 00 000	2 000	12 00 000
	A.Y. 2014-15			
406	240.00	4 50 000	1 875	1 26 000
409	175.00	4 50 000	2571	0
408	175.00	5 21 000	2977	0
404	240.00	6 00 000	2 500	0
403	240.00	6 50 000	2 708	0
14	389.00	7 50 000	1 928	1 83 600

11	389.00	7 75 000	1 992	1 58 600
12	389.00	7 75 000	1 992	1 58 600
106	367.00	14 30 000	3 896	0
107	367.00	1475000	4 019	0
211	1 260.00	18 50 000	1 468	1 1 74 000
401,402	555.00	18 50 000	3 333	0
15	1 145.00	21 00000	1 834	6 48 000,
201 to 206	2 872.00	42 00 000	1 462	26 92 800
TOTAL of 3 AYs				72,30,200

iv) That in any case the 17 .5 % net profit rate could not have been adopted since it was based on the profits disclosed by the other group concerns to the Hon'ble Settlement Commission. It was contended that the orders passed by the Settlement Commission had no binding force and further were based on the facts of each particular case and the Id. CIT(A), without being aware of the facts of those cases, applied the net profit rate surrendered in the other group concern. Ld counsel for the assessee contended that the assessee having returned net profit of 10%, 10%, 15% in all the three years involved, the said net profit should be accordingly applied.

7. Per contra Id. D.R. contended that the statement of Mr. Devji Sorathia could not be dismissed as unreliable since document found during survey at the assesses premises revealed him to be the co-owner of 4 shops with his son ,though subsequently the allotment was made in the name of

his wife and son. He contended that Mr.Sorathiyas connection with the property cannot therefore be ruled out completely. Ld.DR further contended that the fact of on-money received was arrived at also on the basis that within a period of time properties were allotted at different rates which was not justifiable since there couldn't possibly be much fluctuation in price of property in a short period of time. Further he pointed out that the admission of on money receipt by other group companies to the Settlement Commission was also the basis of making the addition of undisclosed sales by the contended that besides Mr .In this regard he drew our attention para 6.8 of the Assessment order as under:

6.8 Without prejudice to what is stated so far, the determination of on-money receipts considering Rs.800 per sq. ft. is further evaluated by comparing another method of determination of on-money receipts. The rate of any property or commodity is at a particular level at the time of certain time period. In the case of the assessee, it is observed that in F Y 2011-12, the assessee has charged Rs.1858 per sq. ft. for office no. 8 which is the maximum price charged from the customer in the year. Similarly, in F Y 2012-13 and 2013-14, the assessee has charged maximum rate of Rs.1850 per sq. ft. for office no. 10 and Rs.2383 per sq. ft. for office no. 106 respectively. If it is considered that the assessee has not charged on-money from these purchasers in whose case actual sale price documents are prepared, it is also proved that the assessee has accommodated other customers to whom the sales of the offices/shops are made in the concerned year. Therefore, if the yearwise maximum price is taken as actual rate of that year and the same rate is applied to other buyers in the concerned year, the amount of on-money could be worked out as mentioned in Column No. T of the tabular calculation at Para No. 6.7 above. The total undisclosed income in this method from FY 2011-12 to 2013-14 comes to Rs. 3,52,62,485/-. The total undisclosed income calculated through both the above mentioned methods is very close to each other as the difference is Rs.8,95,485/- only (Rs. 3,52,62,485/ less Rs. 3,43,67,000/-). This difference is mainly due to static calculation without considering location of the property, direction etc in the case of on-money valuation of Rs. 3,52,62,485/-. Therefore, the undisclosed income calculated in the first method i.e. at the rate of Rs.800/- per sq. ft. based on the statement of one of the buyers is considered in the case of the assessee. The undisclosed income in respect of unit No. 207, 208, 209, 210, 210A for which statement of Sh. Devjibhai Sorathia was recorded during the course of survey proceedings is calculated separately, which comes to Rs. 20,19,000/- for F Y 2011-12 as mentioned towards bottom of the table at Para No. 6.7 above.

8. Ld. D.R. contended that the AO's finding that even as per the maximum rate charged by the assessee being applied to the other parties, for determination of on money received, the quantum of undisclosed income came to the same as based on the statement of Mr. Sorathiya and therefore the AO had adopted the basis of statement of Mr. Devji Sorathia for determining the undisclosed income. He further contended that all the case laws referred to by the Ld.counsel for the assessee were distinguishable. Ld.D.R. further contended that the extrapolation was also based on the admission of the group concern before Settlement commission as also the net profit rate applied.

9. We have heard both the parties and have gone through the orders of the authorities below as also the documents and case laws referred before us.

The grievance of the assessee before us against the order of the Ld.CIT(A) is twofold:

- on account of holding that the assessee had earned on money on booking/allotment of its properties during the impugned years before us. and
- against estimating profits for the said years by application of 17.5% rate on the accounted and unaccounted sales of the assessee.

10. The on-money, held by the Ld.CIT(A) to be earned by the assessee and the profits estimated for the impugned years before us is as under:

A.Y	On-money as computed (Rs)	N.P at 17.5% (Rs) (Book TO + On-	Difference^ enhanced NP and BI to be
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		money)	added to T.L (Rs)
2012-13	12,79,000 (6,00,0000 + 6,79,000)	20,63,199	10,71,290
2013-14	14,09,600	41,21,689	18,45,389
2014-15	51,41,600	32,38,256	12,65,787

11. The on money has been worked out by treating the rate at which properties were actually sold at Rs.2400 per sq.ft. Reducing therefrom the rate at which the transaction was recorded, the difference rate, which came to Rs.800/- per sq.ft., applied to the area of each property sold ,was treated as on-money received by the assessee .This rate of Rs.2400/- per sq. ft adopted by the department as the actual rate of sale of properties, was based on the statement of one Mr.Devji Sorathiya who was summoned for recording his statement u/s 131(1A) of the Act during survey proceedings conducted on the assessee on 07-01-2014.The Revenue authorities have justified the on-money alleged to be received by the assessee in each year on another basis also by taking the maximum rate at which property was sold in a particular year to be the actual rate and treating the properties sold at lower rates accordingly to having been accommodated by taking on-money. The reasoning being that the rate of property is at a particular level at the time of certain time period. It is also an undisputed fact that six group concerns of the assessee firm (Bafna group) had filed settlement petition before the Hon'ble Settlement Commission ,in consequence to search action undertaken on them, and had admitted to on money received on sale of units by them. The application of

net profit rate of 17.5% to the total disclosed as well as undisclosed turnover is also based on the disclosure made by the group entities to the Settlement commission and accepted by it.

12. Having outlined the basic and relevant facts pertinent for adjudication of the issues before us, we shall now proceed to deal with both the contentions of the Ld.Counsel for the assessee before us.

13. We shall first deal with the challenge of the assessee to the basis with the Revenue for holding that on money had been received on properties sold by the assessee, since the sustainability of the net profit addition rests on this finding, for the reason that in the absence of any on money received by the assessee, there is no other reason brought to our notice for rejecting the book results of the assessee as unreliable.

14. The argument of the Ld.Counsel for the assessee, in this regard that the statement of Mr.Devji Sorathia revealing higher rate having been agreed to be paid, as compared to the contracted rate, which was the primary basis for finding that on money had been received, was unreliable, we find merit in the same. Mr.Sorathia, it is not denied, is neither the owner of the stated shops, which were in fact owned by his son and wife, nor was his basis of stating the rate of purchase of shops at Rs.2400/- based on his own knowledge. It was admittedly based on what he was told by his son on phone. Mr.Sorathiya himself has admitted to the same in his statement recorded during survey which is evident from the copy of the statement filed before us at P.B 119-120. This fact is not denied

by the Revenue. His statement is in fact found to be incorrect since his son, who is the allottee of the property had denied paying any on- money , stating so on oath by way of filing an affidavit in this regard. The Revenue has made no effort to prove the fact stated on oath by Mr.Sorathiya's son to be false. Nor is this the plea of the Revenue before us. Therefore the fact stated on oath by Mr. Sorathiyas son , who is the allottee of properties by the assessee, and clearly therefore fully aware of the rate at which transaction was entered, and which fact has not been found to be falsely stated by the Revenue, undoubtedly carries more weight and is more reliable than that stated by Mr.Sorathiya who himself admitted to having no knowledge of the rate and had stated to have confirmed the same from his son on phone. The contention of the Revenue that documents found during survey revealed Mr.Sorathiya as being the original allottee and therefore his statement was believable, we find, is of no consequence in view of the fact that Mr. Sorathiya ,as per his own admission, himself had no knowledge of the rate of allotment which he had got to know from his son and as we have noted above his son denied any extra amount agreed to be paid for the properties allotted to him.

Therefore, we hold, no credence can be given to the statement of Mr.Sorathiya relating to the rate of Rs.2400/- per sq. ft being the actual rate at which the properties were sold by the assessee.

15. The contention of the Revenue that the admission of on money received by other entities of the group to the settlement commission lends credence to the statement of Mr.Sorathiya, we find is also not acceptable.

Nothing has been brought to our notice by the Revenue to demonstrate the parity of the facts and circumstances of those cases with that of the assessee. The Revenue has not even pointed out the facts and circumstances in which surrender/admission had been made by each such concern to the Settlement Commission. It appears to be a sweeping generalized exercise of the Revenue in treating the facts and circumstances of the assessee's case being similar to the other group cases. Assessment of incomes cannot be done on this basis. There is no basis, therefore, we hold, for drawing an analogy from the group concerns admission before the settlement commission, with the assessee's case so as to derive that the assessee also had received on money.

16. As for the contention of the Revenue that even applying the alternate basis of determining the on money received by the assessee by taking the maximum rate charged during the year as the actual rate, we find that the same also cannot be the basis. The logic applied that rates are constant during a particular period does not impress us, until demonstrated statistically. It is not to be forgotten that the exercise being indulged into by the Revenue authorities is determination and assessment of income of assessee. The said exercise may not require finding of income earned to be established with certainty to make any addition of the same, and can be made on the basis of surrounding facts and circumstances demonstrating to a large degree the fact of earning income, but still there has to be a substantial basis for the same. Pure assumptions, estimations and guess works cannot be the basis for determining incomes. The endeavour of the

Revenue in treating the maximum rate for property sold during the year as being the actual rate for all properties sold, appears to be an exercise to this end only. This basis is also held to be unacceptable and thus rejected.

17. Even otherwise the assessee has demonstrated that even as per the this exercise, in maximum cases no on- money was noted to be received by the assessee. The basis for holding that the assessee received on - money clearly did not apply to maximum properties sold. The said facts and circumstances lead to the inescapable conclusion that the basis therefore was ill conceived.

18. In view of the above we hold that there was no basis warranting a finding of on money received by the assessee.

19. Having held so the addition made by applying net profit rate to the total turnover of the assessee also does not survive since as stated above no other basis has been brought to our notice for rejecting the books of the assessee as not capable of presenting the true picture of profits earned.

The addition made therefore by estimating profits for all the three years of Rs.10,71,290/-,Rs.18,45,389/- & Rs.12,65,787/- respectively is deleted.

20. Having adjudicated the common issue arising in all the three appeals before us , we now proceed to adjudicate the appeals before us. We have noted that identical grounds were raised in all the appeals .we shall

therefore reproduce the grounds raised in the assesses appeal for A.Y 2012-13 and dispose off all the appeals accordingly.

ITA No.1160/Ahd/2018 (Asstt.Year 2012-13):

21. The effective grounds of appeal are as under:

"1. In the facts and in the circumstances of the case, the learned CIT(A) has erred in rejecting the relevant ground of appeal raised by the appellant before him challenging the validity of the proceedings initiated u/s.147 of the I.T. Act.

2. In law and in facts and circumstances of the case of appellant, the Assessing Officer has erred in initiating reassessment proceedings within four years without any tangible material on record which shows that income has escaped assessment and consequently reassessment carried out u/s 143(3) r.w.s 147 of the Act is bad in law and required to be quashed.

3. In law and in facts and circumstances of the case of appellant, the Ld. CIT(A) has failed to appreciate the fact that the present reopening carried out u/s 147 is consequent to search action carried out at Bafna Panchal Group cases u/s 132 of the Act and accordingly present assessment is required to be carried out u/s 153C of the Act and accordingly notice issued u/s 148 of the Act is bad in law and consequential order passed u/s 143(3) r.w.s 147 of the Act is required to be quashed.

4. In law and in facts and circumstances of appellant's case, the Ld. CIT (A) has erred in estimating net profit on the Turnover shown in the books of accounts as well as on money of Rs.12,79,000/- calculated on the basis of statement of Shri Devji Sorathia without appreciating the fact that there were no evidences found during the course of survey/ search proceedings which indicates that the Appellant has earned on money on sale of shops/offices as stated in the statement of Shri Devji Sorathia.

5. In law and in facts and circumstances of appellant's case, the Ld. CIT(A) has erred in calculating on money on sale of shops/ offices in respect sale of all shops / offices and in all assessment years merely on the basis of

statement of single buyer Shri Devji Sorathia without appreciating the fact that statement of one buyer cannot be taken as base for making addition in respect of sale of other shops/ offices particularly when there are no evidences on record found during the course of search proceedings which indicates that the Appellant has earned on money as stated in such statement.

6. *In law and facts and circumstances of appellant's case, the Ld. CIT (A) has directed A.O. to make addition on account of low gross profit for Rs.10,71,290/- on turnover shown in books of account and on money calculated as per the rate mentioned by Shri Devji Sorathia in his statement recorded during the course of survey proceedings u/s 131(1 A) of the Act without appreciating fact that both AO and CIT(A) has not found any discrepancies in books of account maintained by the appellant and same was not subject matter of addition made by A.O.*

6.1 *In law and facts and circumstances of appellant's case, Ld. CIT (A) has grossly erred in estimating profit @ 17.5% in case of appellant relying upon order of Settlement Commission passed in case of group cases of appellant, without appreciating the fact that, there is no on-money taken by the appellant in present project whereas in case before Hon'ble Settlement Commission, during the course of search evidences were found that said concern have taken on-money on various projects executed by them. Addition made by the AO deserves to be deleted.*

22. Ground No.1 , 2 & 3 were stated to be not pressed by the Ld.Counsel for the assessee before us. The same are therefore dismissed as not pressed.

23. Remaining grounds,i.e Ground No.4-6 & 6.1, it was stated by both the parties, related to the issue of addition made to the income of the assessee by holding that it earned on-money on sale of property and by applying estimated net profit rate of 17.5% to the total turnover of the assessee including both disclosed as well as undisclosed sales. The said

issue having being adjudicated by us above, in favour of the assessee from para 9 to 19, these grounds of appeal are accordingly allowed.

24. In the result, the appeal for the Asst.Year 2012-13 is partly allowed.

25. Since the grounds of appeals are noted to be identical in the rest of the appeals also the appeal of the assessee in ITA No.1161/Ahd/2018 (Asstt.Year 2013-14) and ITA No.1162/Ahd/2018 (Asstt.Year 2014-15) is also partly allowed.

26. All the appeals of the assessee are partly allowed.

Order pronounced in the open court on 31 -08-2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER