

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 5231/Del/2011 : Asstt. Year 2005-06

ITA No. 5392/Del/2011 : Asstt. Year 2006-07

ITA No. 5579/Del/2011 : Asstt. Year 2007-08

ACIT, Central Circle-2, New Delhi	Vs.	M/s Majestic Properties (P) Ltd., 1/18B, Asaf Ali Road, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM7158E		

Assessee by : Dr. Rakesh Gupta, Adv. &

Sh. Deepesh Garg, Adv.

Revenue by : Ms. Shivani Singh, CIT DR

Date of Hearing: 22.07.2022

Date of Pronouncement: 14.10.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the Revenue against the orders of Id. CIT(A)-III, New Delhi dated 14.09.2011, 21.09.2011 and 17.10.2011.

2. Since, the issues involved in all these appeals are identical, they were heard together and being adjudicated by a common order.

3. in ITA No. 5231/Del/2011, following grounds have been raised by the Revenue:

"1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,80,000/- made by the

Assessing Officer on account of undisclosed investment.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.15,02,88,986/- made by the Assessing Officer on account of undisclosed receipts."

4. A search & seizure operation was conducted u/s 132 of the Income Tax Act, 1961 on 26.02.2009 at the premises of the assessee. The Assessing Officer after going through the seized material found and seized made addition on account of undisclosed investment and unaccounted receipts. Aggrieved, the assessee filed appeal before the Id. CIT(A) who held that the additions have been made without any tangible, incriminating material demonstrating the liability to tax.

5. Hence, the appeal before us by the revenue.

6. For the sake of ready reference and completeness, the order of the Id. CIT(A) is reproduced as under:

Investments/Income recorded in a diary

"1. In this regard, during the course of the assessment proceedings the assessee company and its directors have been requested to explain each and every paper found and seized during the course of assessment proceedings. The seized note books include Annexure A/2 seized from the residential premises having page No. 1 to 8. In this annexures on various pages certain figures are mentioned. In these figures amount has been mentioned in coded form. After a no. in one or two digit mark of is equal to = is mentioned and thereafter some

no. are also mentioned. For example 2=00, =70, 1=50 etc. on page No. 6 of this diary sign of is equal to = is repeated twice such as 2=41=64. In the narration the assessee has mentioned name of the person such as Rajeev, Nitin, Cash PL April 05, Paid to SH Jewel P.L., Rohit VK, Rohit Cash PL House etc. mentioned. On the top of the entries name of the person in coded form such as J.N., 20 No. etc. mentioned.

2. As per the pattern of the figures mentioned on the papers, it is revealed that in this diary, accounts of certain persons are mentioned whose name are written in the coded language. Under the name of the person in coded language, financial transactions are mentioned. Looking the pattern of mentioning the figures, it is revealed that the figures are mentioned in lacs. In other word, the No. mentioned prior to Sign of = are represents the figures in lacs and mentioned after the mark of = are represents the amount in thousand. For example if 25=20 is written. It means the figure mentioned prior to the sign of = is represents lacs and after the = sign represent the thousands. It is therefore, 25= is twenty five lac and =20 means 20 thousand. In totally 25=20 is represents the amount of Rs.25,20,000/-. In this diary, for mentioning the figure the sign of = is used in twice such as 2=41=64, it means 2 crore forty one lac and sixty four thousand (2,41,64,000/-). All the pages are reproduced hereunder in tabular form:

Annexure A/2

Opposite side of Page No. 2		Page No. 2	
		J.N.	
5=00	Rajeev	Cash P.L.	2=00
2=00	Nitin	Paid SH Jewel P.L.	=70
7=00		Rohit VK	1=50

		<i>Office Meenakshi</i>	=50
		<i>Old B/f office (Pilla)</i>	2=05
		<i>Rohit Cash P.L. House</i>	1=00
			7=75
		<i>Rohit Cash P.L. A/c 06/05/08</i>	2=00

<i>Opposite side of Page No. 3</i>		
<i>20 No.</i>		
<i>01.04.03</i>	<i>CR</i>	<i>24.06</i>
<i>A/CT/F/SH</i>		
<i>20 No. P.S.</i>		
<i>01.04.03</i>	<i>CR</i>	<i>6=40</i>
<i>A/cT/F8Ha/c</i>		

<i>Opposite side of Page No. 4</i>		
<i>N-166</i>		
<i>01.04.03</i>	<i>CR</i>	<i>13.08</i>
<i>A/C Nil</i>		

<i>Opposite side of Page No. 5</i>		
<i>SM</i>		
<i>01.04.03</i>	<i>CR</i>	<i>20.00</i>
<i>Int 1/4/03 To 31/12/08</i>		<i>10=35</i>
<i>1/1/2009</i>		<i>30=35</i>

<i>Opposite side of Page No. 6</i>			<i>Page No. 6</i>		
<i>D-96</i>			<i>"Aaye"</i>		
<i>31/4/05</i>		<i>2=41=64</i>	<i>1/8</i>	<i>cash</i>	<i>10=00</i>
<i>Int. 1/5/05 to 30/4 @75 paisa</i>		<i>19=50</i>	<i>25/1/2006</i>		<i>25=00</i>
		<i>2=61=14</i>	<i>31-1-2006</i>		<i>15=00</i>
	<i>Paid</i>	<i>35=00</i>			
<i>1.6.6</i>	<i>B/F</i>	<i>B/02=26=14</i>			
<i>1.6.06</i>	<i>CR</i>	<i>2</i>			
<i>Uchani</i>	<i>Upto</i>	<i>11=14</i>			
	<i>30.5.08</i>				

	31/10/07	5			
	Cash				

3. In this regard the assessee has been requested to furnish the details of the transactions mentioned in the diary. However the assessee has failed to furnish satisfactory reply in respect of the figures mentioned in such diary. This diary is found from the residential premises of the assessee and on page no. 2, 6 "Cash" is written and on the page No. 3, 4, 5 and 6 the accounting term CR (credit) has also been mentioned. Hence it is evident that the financial transactions are noted in this diary and the diary is an account book of the persons whose name is noted on the top of the each page. Now onus is shifted on the assessee to establish the transactions with supporting documentary evidences. However, the assessee has totally failed to explain and establish the contents/ figures mentioned in this diary.

4. As mention above, it is clear that the financial transactions are noted in the diary and the diary is in the form of account as the accounting term cash and CR is mentioned in the diary. On perusal of the entries it is noticed that the figures cannot be in thousand to establish following entries be considered Office Meenakshi =50. Meenakshi is serving in the office and if the figures considered as hundred it means only Rs.500 has been given to her. Such type of advance can be given from the office only. If the figures considered as in lakhs then it will be treated as 50,000/-. If the advance has been given amounting to Rs.50,000/- and such type of transactions can be written in a diary maintained at home. The assessee has failed to co-relate

these entries with the regular books of accounts maintained by the assessee. It therefore, it is clear that these transactions are out of books of accounts. This diary is found from the residence premises of the director of the assessee and hence it is duty of the assessee to prove each and every contents of the diary and explain & co relate with the book entries maintained by the assessee. The assessee has totally failed to prove thereby explain the figures with books of accounts. It is worthwhile to mention here that the onus is on the assessee to explain each and every item including books of accounts (Diaries etc.) found during the course of the search proceedings. The assessee has totally failed to submit any substantial explanation with evidences to co relate the financial transactions with the books of accounts. The assessee has nothing to explain the entries because all the entries mentioned in this diary are out of books of accounts. Whichever entries made in this diary are the figures of loan given to the persons which name is mentioned in the diary in coded language in lacs of rupee. The year wise quantum of the amount is mentioned hereunder:

5. Opposite side of Page No. 2:

On the opposite side of this page April 05 is mentioned. It means these transactions are related to the A.Y. 2006-07 and total amount involved in this page is Rs. 7=00 means Rs.7,00,000/-.

Page No. 2

On this page period of April 05 is mentioned it means these entries are pertains to the F.Y. 2005-06 (A.Y. 2006-07) and total amount involved is 7=75 means Rs.7,75,000/-.

6. Opposite side of Page No. 3

This page is an account of the person 20 No (Coded language). The date mentioned on this page is 01.04.03 means this page is pertains to the F.Y.2003-04 relevant to the A.Y. 2004-05. The total amount involved is 24.06 means Rs.24,06,000/-. Below the entry A/c T/f/SH is also mentioned and credited in the concern as 'CR' is also mentioned. Means Rs.24,06,000/- received from the person of '20 No.' and credited in the account of firm M/s Shriram Hariram Jewellers.

Below this entry (Account) the name of 20 No P.S. is also appears. And again the date mentioned in this account is 01.04.03 means this page is pertains to the F.Y.2003-04 relevant to the A.Y. 2004-05. The total amount involved related to this person is 6=40 means Rs.6,40,000/-. Below the entry A/c T/8H a/c is also mentioned means the amount is transferred to the account of the person 8H (Coded language) account.

7. Opposite side of Page No. 4

This page is an account of the person N-166 (Coded language). The date mentioned on this page is 01.04.03 means this page pertains to the F.Y.2003-04 relevant to the A.Y. 2004-05. The total amount involved is 13.18 means Rs. 13,18,000/-. Below the entry A/c Nil is also mentioned means the amount is received and the balance of this account is Nil.

8. Opposite side of Page No. 5

This page is an account of the person SM (Coded language). The date mentioned on this page is 01.04.03 means this page is pertains to the F.Y.2003-04 relevant to the A.Y. 2004-05. The total amount involved for the period is 20.00 means Rs.20,00,000/-. Below the entry the amount of Interest from 1/4/03 to 31/12/2008 is mentioned. Means for the period started from 01/04/03 to 31/12/08 interest has been calculated. If the rate of interest of 0.75% P.M.(As mentioned on the page No.6 of this diary) is taken then the interest of the period 01.04.2003 to 31.12.2008 will exactly been 10,35,000/- which mentioned as 10=35. This amount of interest is pertains to the F.Y. 2003-04 to 2008-09. On the principal amount of Rs.20 lacs the year-wise calculation of the interest is as under:

<i>F.Y.</i>	<i>A.Y.</i>	<i>Month</i>	<i>Amount of Interest</i>
<i>2003-04</i>	<i>2004-05</i>	<i>12</i>	<i>180000</i>
<i>2004-05</i>	<i>2005-06</i>	<i>12</i>	<i>180000</i>
<i>2005-06</i>	<i>2006-07</i>	<i>12</i>	<i>180000</i>
<i>2006-07</i>	<i>2007-08</i>	<i>12</i>	<i>180000</i>
<i>2007-08</i>	<i>2008-09</i>	<i>12</i>	<i>180000</i>
<i>2008-09</i>	<i>2009-10</i>	<i>9</i>	<i>135000</i>
<i>Total</i>			<i>1035000</i>

Below the interest amount total of the principal and interest (20.00 and 10=35) of 30=35 is mentioned.

As per the above working it is evident that the amounts mentioned in the diary on the above mentioned pages are nothing but financial transactions and in the amount of lacs only.

9. Opposite side of Page No. 6

This page is an account of the person D-96 (Coded language). The date mentioned on this page is 30/4/05 means this page is pertains to the F.Y.2005-06 relevant to the A.Y. 2006-07. The total amount involved for the period is 2=41=64. On this page the sign of = used twice, means the first figure before the first sign of = mentioned is in the amount of crore and between the two sign of = represents the value in lacs. It means the amount involved is Rs.2,41,64,000/-. Below the amount of Int 1/5/05 to 31/4 @ 75 paise is mentioned and interest amount is presented as 19=50. This interest amount is pertains to the A.Y. 2006-07 and 2007-08 which worked out to Rs.19,93,530/- and of Rs.1,81,230/- for the A.Y. 2006-07 and 2007-08 respectively. Below the entry total 2=61.14(Rs.2,61,14,000/-) and payment of Rs.35.00(Rs.35,00,000) is mentioned and thereafter balance of 02/26.14(Rs.2,26,14,000/-) is mentioned.

10. Thereafter again the transaction dated 1.6.06 of 2 and dated 30/5/CR 11.14 and 31/10/07 cash 5 is mentioned. Means they have invested Rs.2,00,000/- on 01.06.2006, Rs. 11,14,000/- in the same A.Y. i.e. 2007-08 and Rs. 5 lacs on 31.10.2007 i.e. A.Y.2008-09.

The Year-wise unaccounted investment / income is mentioned hereunder:

Page No.	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Total
Page no.2	0	0	700000	0	0	0	700000
Opposite side of page no.2	0	0	775000	0	0	0	775000
Opposite side Page no. 3	3046000	0	0	0	0	0	3046000

Opposite side Page no.4	1318000	0	0	0	0	0	1318000
Opposite side Page no. 5	2180000	180000	180000	180000	180000	135000	3035000
Opposite side Page no. 6	0	0	26157530	1495230	500000	0	28152760
Total	6544000	180000	27812530	1675230	680000	135000	37026760

As discussed above the entries mentioned in these papers of the diary inventorised as Annexure A/2 are nothing but financial transactions of the assessee with other persons as mentioned in the diary in coded language. As discussed above, Cash 'Aaye' etc. mentioned. Further accounting code such as 'Cr.' A/c 'Trs.' Etc. mentioned. The assessee has totally failed to prove that these transactions are mentioned/ reflected in the regular books of accounts. The amount mentioned in the diary on various pages is nothing but financial transactions of the assessee. As mentioned above during the year under consideration the assessee has given loan/made investment of Rs. 1,80,000/- is added to the total income of the assessee. As the director of the assessee company Sh. Rajat Gupta is the main person of the company and the above documents had been seized from his residential premises. However, the entries in the diary / slip pad seized relate to M/s Majestic properties Pvt. Ltd. Hence, the addition is made in the case of the assessee on substantive basis and the addition is made in the case of Sh. Raj at Gupta on this account on protective basis.

(Addition : Rs. 1,80,000/-)"

The appellant vide submission dated 8.9.2011 has made the following detailed reply:-

"Sir, it is a case of search and during search no unaccounted cash, jewellery etc. were found. Page No. 1 of this annexure mentions list of items meant for some Pooja and the same has been accepted by Ld AO. AO has deciphered the rough notings on other pages by adding 00, 000, some in lac and some in crore at his whims and caprice. Such as on page No. 2, 5=00, 2=00 has been deciphered as 5 lac and 2 lac respectively, on page no. 6, 2=41=64 and 2/26.14 has been deciphered as 2,41,64000/- and 2,26,14000/- respectively. Therefore, in one case ' = ' is being considered a decimal in figures in lac and in other case 7' is also deciphered as decimal in figures in crore. Similarly regarding notings on Page No. 6, Ld AO has mentioned that the appellant has invested Rs.2,00,000/- on 01.06.2006, Rs.11,14,000/- in the same A.Y. i.e. 2007- OS and Rs. 5 lacs on 31.10.2007 i.e. A.Y.2008-09. But in no case, Ld. AO could find the investments. For page nos 3, 4 and 5, Ld. AO himself has mentioned 'coded language' and has decoded the notings in his own way in the form of lac by adding zeros arbitrarily and with all suspicion. In the same way all figures have been deciphered and have been decoded merely on the basis of guess and suspicion. Therefore, the afore mentioned loose papers/note book did not constitute to be a documents or account books. In any case it was wholly uncorroborated. Ld. AO was framing assessments of the entire group and in no case these facts and figures could be corroborated. It prima facie proves that Ld AO has assumed certain transactions have taken place of certain amounts imaginary without any corroborating evidence in his

possession, either oral or documentary. No papers in fact were found during search and seizure operation to support his conclusion that there was an unrecorded investments/income was made or earned. No further enquiry was considered to be necessary for substantiating his action. The addition of Rs. 180000/- has been made purely on guess basis by using his imaginary whims in decoding and deciphering the notings. This is the amount of interest calculated on imaginary basis and by deciphering the rate from a rough calculation on page-6 which has got cross lines, it means, there may be some unknown estimate or rough calculation which could not be corroborated neither with the appellant's business nor his books of accounts. This action apparently proves the unreliable and unrealistic attitude of Ld AO while framing assessment and without exercising his quasi judicial mind. 4. Ld AO has rejected the explanation without giving any reason for the same. No further enquiry or material has been gathered by Ld AO to reject the explanation. It is a decided fact that mere existence of reasons for suspicion would not tantamount to evidence. Narayan Chand Baidya Vs. CIT 20 ITR 287 (Cal). it should not be based on mere suspicion, conjecture or guess work or on irrelevant or inadmissible material. Dhirajlal Girdharilal Vs. CIT 26 ITR 736 (SC), Lalchand Bhagar Ambica Ram Vs. CIT 37 ITR 288 (SC), Umacharan Shaw & Bros Vs. CIT 37 ITR 271 (SC), Omar Salay Mohamed Sait Vs. CIT 37 ITR 151 (SC), Page 170 "On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort. Its

findings, even though on questions of fact, will be liable to be set aside by this court."

These cases have been followed by several High Courts International Forest Co Vs. CIT 101 ITR 721 (J & K). There must be something more than bare suspicion to support the assessment Dakeshwari Cotton Mills Ltd Vs. CIT 26 ITR 775, 82 (SC). Further reliance is placed on following cases that no addition could be made merely on the basis of uncorroborated loose papers:

Atul Kumar Jain Vs. DCIT TTJ 064 786 (Del)

ACIT Vs. Kirori Lal Aggarwal 50 TTJ 393 (Jab)

Kantilal & Bros Vs. ACIT 52 ITD 412 (Pune)

ADDI ITO Vs. T. Mudduveerappa Sons 45 ITD 12 (Bang)

M. V. Mathew Vs. ITO 46 TTJ 353 (Coch)

ITO Vs. W.D. Estate Pvt. Ltd. 45 ITD 473 (Bom)

CIT Vs. SMS Investments Corpn. P Ltd. 207 ITR 364fRaj)

CIT (Central II) Vs. K.K. Gupta 308 ITR 230(Delhi)

ACIT Vs. Shailesh S. Shah 63 ITD 153 (Bom). "the AO has not given any reasoning or finding or has not mentioned any evidence or material, as to how or on what basis the figures referred to above were considered as assessee's income, we are of the opinion that the AO has not invoked any of the deeming provisions of Sections 69 to 69D and therefore, it is clear that these figures have been considered as assessee's income under the substantive provision of IT Act. Under the substantive provision of IT Act, it is now settled law that every receipt is not necessarily or cannot necessarily be income in the hands of the recipient and therefore, the question whether any particular

receipt is income or not depends on the nature of the receipt and true scope as well as the fact of the relevant taxing provisions- as has been Held by Hon'ble Bombay High Court in the case of Mehbood Productions P Ltd Vs. CIT 106 ITR 768. In view of this settled proposition, it follows that revenue can tax only those receipts, which, first have been proved to be income in the hands of the recipients and secondly, the same have to proved as non-exempt from tax. We are therefore, of the opinion that it is revenue's onus, before assessing any receipt as taxable income; to prove that the receipt in the hands of the recipient is income and this can be proved or established only on the basis of some material evidence." But in this case, all these elements are not present.

5. *Regarding presumption contained in Sec 132(4A) cannot be pressed into service in this block assessment, reliance is placed on M/s. Rajpal Singh Ram Avtar Vs. ITO 39 TTJ (Del) 544, Pushkar Narain Saraf Vs. CIT 183 ITR 388 (All).*

6. *Further, In this regard, two points arise: First whether these noting on loose papers/notebook amount to be a books of accounts and the Second is what may be the source of these amounts because in the entire search proceedings, no unaccounted source of funds beyond the recorded transactions was found.*

6.1 *The question whether that hand written loose papers/note book seized from the premises of raided party falls within the meaning of a document/ account books? The word 'document' has been defined in section 32 of the Indian Evidence Act to mean-any matter expressed or described upon any substance by*

means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. The word 'document' has also been similarly defined in the General Clauses Act. According to the Hon'ble Supreme Court in the case of Ramj Dayawala & Sons (P) Ltd. Vs. Invert Imports AIR (1981) SC 2085 'mere proof of handwriting of a document would not tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence or the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e. by the evidence or those persons who can vouch safe for the truth of the facts in issue.' In this case it is also contended that even the handwriting is not proved not to speak of the contents reliance is placed on: V. C Shukla JT (1998) 2 SC 172 and LK Advani on Crl revision petition No. 265 of 1996 in connection with the interpretation of the terms, documents and books of accounts. It is also very pertinent to mention that the term 'document' has to be read as per the meaning in Black Law Dictionary, Evidence Act and General Clauses Act along with the meaning of the words 'describe' and 'express' used in the definitions under the Indian Evidence Act and General clauses Act to support the contention that the document should have graphic presentation and distinct manifestation leaving no room for guess, surmise and conjecture and it should be capable of being evidentiary use. If this kind of loose papers/note books are to be considered as document for the purpose of assessment of income in IT Act, it would create rather a

dangerous situation as any person having a little knowledge of the affairs of any person would create such document and thereby create all kinds of problems as apparently seem to have been done in this present case.

*6.2 Regarding the Second Point we reiterate that during the year under appeal, the appellant has purchased further land that too from Meerut Development Authority, at Meerut and booking amounts were received from some of the parties for their Mall project, the same are duly accounted for in regular books of accounts and for Jaipur land was only purchased, no development could be started. In addition to the above, the AO has mentioned all kinds of details in assessment order, Para 4.5 to 4.8, but no enquiry was made at all in spite of the fact that after search all group cases were being assessed in his jurisdiction. The reason for the same is that in those cases no unaccounted source could be established which might be correlated with these purely estimates hence this addition was made independently in the absence of any evidence, material or corroboration. In *Sneh Enterprises Vs. Commissioner of Customs (2006) 7 SCC 714, 721*, it was held 'while dealing with a taxing provision, the principle of strict interpretation should be applied. The court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another act, which are not attracted. It is also trite that while two interpretations are possible, the court ordinarily would interpret the provisions in favour of a taxpayer and against the revenue.'*

That Third Member decision of Mumbai Bench of ITAT in the case of S. P. Goyal Vs. DCIT. ITA No. 4117 of 1999 becomes relevant: The matter has been discussed at length by Ld. Third Member, but the ultimate conclusion, which has been reached is that a mere entry on a loose sheet of paper and where the assessee claims that it was only a planning done, but not supported by actual cash when there is no documentary evidence to support the passing of cash and further there is no evidence about the existence of the amount mentioned in the loose sheet of paper as embedded in either cash, jewellery or investment, then the assessee's explanation cannot be rejected and addition made by the AO would, therefore, not be sustainable. Even in the present case the entire addition rests on the hand written loose papers/note book seized from the searched party and no other material has been adverted to and which would conclusively show that the amounts as mentioned in the hand written papers/note book proceeded from, one side to the other.

CIT Vs. Anil Bhalla 322 ITR 191 (Del) 'To support the addition on account of unexplained expenditure on the basis of jottings on a loose sheet of paper, it is necessary to establish that the notings represent unaccounted transaction, with the help of independent corroborative evidence. In this case apart from the noting, on the said paper, no other independent material or evidence has been brought on record. Accordingly, the allegation of unexplained expenditure outside the books of account has not been established in the assessment order. The addition is deleted.'

7. *The AO has suspected imaginary profits from the project which was not even started at Meerut, has been recorded in these loose papers/notebook. The same matter has been taken in Ground No. 5 where there was no project in saleable condition and question of profits on purchase of land from Meerut Development Authority cannot arise. The AO has contradicted his statement regarding the source of unrecorded funds claimed to be noted in this annexure allegedly earned from its projects in hand because in this year an amount of Rs. 1,80,000/- has been adopted from this annexure and from projects a substantial amount has been claimed to be earned as profits, the question arises where is that money, no correlation could be established between these two guessed statements.*

It is therefore, requested to allow the ground."

Finding on Ground of Appeal No 4:-

I have carefully gone through the notings made on the document at Annexure A-2 which has been seized from the residential premises of Sh. Raj at Gupta, the Director of the appellant company. The deciphering & interpretation of these seized documents done by the AO in his finding, referred to above. It is noted from paras 4.3 & 4.4 of the order of the AO that the assessee has failed to furnish satisfactory reply in respect of figures/notings/recordings made in the pages of Annexure A-2 , even upon request made to furnish the details of the transaction mentioned in the said diary . That as per the A.O. the diary is in the nature of an account book of the persons whose names has been noted on the top of each page. The A.O. is of the view that the figures written in these

documents relate to financial transactions as the words Cash, Aaye, A/c, Cr., Trs. which all denote accounting code. That therefore the onus is now shifted on to the assessee to establish the transactions with supporting documentary evidences. That the assessee has totally failed to explain and establish the contents/figures mention in this diary and correlate these entries with the regular books of accounts maintained by the assessee. That it is the duty of the assessee to prove each and every content of the diary and explain each and every item including books of accounts (diaries etc.) found during the course of search and co-relate with the book entries maintained by the assessee That the assessee has nothing to explain the entries because all the entries mentioned in this diary are out of books of accounts. The A.O. concludes that the entries made in this diary are the figures of loan given to the persons whose name is mentioned in the diary in coded language in lacs of rupee. Thereafter in para 4.5 to 4.9 of the order the A.O. goes on to interpret year wise quantum of the amount on each page of the dairy, which has already been referred above in para 4 of this appellate order. The recordings made in code has been deciphered in the following manner viz. the amounts which have been written as 2=41=64 has been interpreted as Rs. 2 Crores 41 Lakhs and 64 Thousand.

Coming to the impugned AY 2005-06 the AO has in paras 4.8 & 4.10 of his order has interpreted opposite side of page no. 5 that this page relates to an account of the person SM (coded language) and the figure of 20.00 means Rs. 20,00,000/-. That below the figure of 20.00 the amount of interest for 01.04.03 to 31.12.08 is mentioned and the interest has been calculated at

10=35 which have been interpreted by the AO at Rs. 10,35,000/- for a period between 01.04.3 to 31.12.08. That this works out to a rate of interest at 0.75%pm. Accordingly, the amount of interest for AY 05-06 has been calculated at Rs. 1,80,000/- in para 4.8 as well as 4.10, which has been added to appellant's unaccounted income for the year.

As against the findings of the AO, the ground taken by the appellant is that the AO has decoded the notings in his own way and in the form of Crore/Lac/Thousand by arbitrarily adding zeros on basis of guess and suspicion. The appellant has also argued that the aforesaid loose papers do not constitute/qualify to be account books and in any case it is wholly uncorroborated. Relying upon various decisions as referred in para no 4.1 above, the appellant also submitted that the impugned seized note book does not fall within the meaning of word document as defined in Section 3 of the Indian Evidence Act, or within the meaning of General Clauses Act as per which a document should have graphic representation and distinct manifestation leaving no room for guess, surmise and conjecture and it should be capable of having evidentiary value. That no papers were found during the search to support the AO's conclusion that there were any unrecorded investments/income. That no further enquiry was conducted by the AO to substantiate his conclusion.

On a careful consideration of the AO's finding and appellants submissions and the case laws upon which reliance has been placed by the appellant, when applied to the facts of the case, it is my considered view that while the jottings on this diary do

appear referring to financial transactions but nevertheless are not capable of any intelligible interpretation and consequent inference by itself. There is no corroboration found from any other document seized, neither any investigation has been done by the AO to corroborate his basis for deciphering of the figures written on the documents as depicting rupees in Crores/ Lacs /thousands. It is seen from the assessment order that the AO has made the addition to income on the ground that the assessee has failed to correlate these entries with the regular books of accounts maintained by him and has also failed to discharge the onus and duty cast on the assessee to prove each and every content of the diary. In my view, in a case where an assessee is not forthright and transparent in this explanation or fails to give satisfactory explanation regarding the contents of a document seized from his premises/possession (the notings being unintelligible and cryptic in nature) then the burden to substantiate or prove the contents of the document shifts over to the person who is making such assertion that is the assessing officer in this case. This substantiation or drawing of logical and reasonable inference could either be derived from the contents written on the document itself, which are speaking in nature or in case the same are not speaking/ coherent then to a rational correlation can be made by the assessing officer in conjunction with other corroborative material. Section 292C of the Act does raise a presumption against the assessee who has been searched upon, that the contents of books of accounts and other documents found from his possession or control are true. However, in my considered view the word contents used in this section presupposes that the contents are intelligible, comprehensible and speaking either by itself or in correlation

with other material or upon further investigation. Unless such is the case, mere jottings recorded on seized documents which are capable of several/various interpretations, lacks evidentiary value and is not sufficient enough to fasten tax liability on the assessee.

The above views find support from the ratio of the decision in Atul Kumar Jain vs. DCIT 64 TTJ 786 Delhi, in paras 6.4 to 6.13 thereof which are quite elaborate and illuminating on the subject and are therefore reproduced as under:-

6.4. We find that the AO has made out the case for making such addition based exclusively on the said piece of paper found and seized during the course of search. It is, therefore, to be examined whether the said paper found and seized is a document having evidentiary value to prove the fact of the transaction. The word "document" has been defined in s. 32 of the Indian Evidence Act to mean—any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. The word "document" has also been similarly defined in the General Clauses Act. The meaning of the word "describe" used in the definition as given in the New Shorter Oxford English Dictionary is "portray in words, recite the characteristics of, in detailed or graphic account of. The meaning of the word "express" used in the definition as per the New Shorter English Dictionary is "A graphic representation as image; an act of expressing or representing by words, signs or actions, expressions, a mode of speech, of phrase; an utterance.

According to the Hon'ble Supreme Court in the case of Ramji Dayawala & Sons (P) Ltd. vs. Invert Import AIR 1981 SC 2085, mere proof of the handwriting of a document would not tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

*6.5. Further, the Hon'ble Supreme Court in the case of Mohd. Yusuf & Anr. vs. D. & Anr. AIR 1968 Bom. 112 has observed that the evidence of the contents contained in document is hearsay evidence unless the writer thereof is examined before the Court. The Hon'ble Court, therefore, held that the attempt to prove the contents of the document by proving the signatures of the handwriting of the author thereof is to set at **nought**, the well-recognized rule that hearsay evidence cannot be admitted.*

6.6. If we consider the said piece of paper seized during search in light of the definition of the word "document" as given in the Indian Evidence Act and General Clauses Act and truthfulness of the contents thereof in light of the afore cited decisions of the Hon 'ble Supreme Court we find that the said paper contains jottings of certain figures by the same does not describe or express the substance of any transaction and even if

the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the transactions the way the AO has deciphered them without support of corroborative evidence of the parties attributed to the alleged transaction. The said paper, therefore, does not come within the compass of the definition of the word "document" to be used as an evidence. The paper seized, therefore, has no evidentiary value and accordingly the same cannot form the basis for assessing the undisclosed income.

6.7. The said piece of paper seized in search also does not represent the books of account. A book of account as per the Black's Law Dictionary means "A detailed statement, in the nature of debits and credits between persons; an account or record of debits and credits kept in a book; a book in which a detailed history of business transaction is entered; a record of goods sold or services rendered; statement in detail of the transactions between the parties. The book entry as per Black's Law Dictionary means "a notation, generally of figures or numbers, made in an accounting journal, consisting, in double entry book keeping, of debits and credits. Further, books of account means "books in which merchants, traders and businessmen generally keep their accounts. Entries made in the regular course of business; serial continuous and permanent memorials of business affairs.

6.8. The said piece of paper seized in search has not been proved to be written by the assessee relating to various business transactions in the normal course of business and, therefore, said paper also does not fall within the compass of

the meaning of the books of account having credibility of its acceptance without support of corroborative evidence which is admittedly missing. This view is supported by the ratio of decisions of the Hon'ble Supreme Court in the case of V.C. Shukla JT (1998) 2 SC 172; and L.K. Adwani in Crl. Revision petition No. 265 of 1996.

6.9 In the case of Rajpal Singh Ramautar vs. ITO, the papers seized from the premises contained certain figures, rate and consequent calculation but they did not bear any name. The assessee categorically denied its ownership and also explained that it was not in the handwriting of any of the partners or employees or any connected person. The Tribunal held that the initial onus laying upon the assessee was thus discharged. Further during the search or even after that nothing was asked by the Revenue regarding the seized papers. The Department thus completely failed to establish that the assessee made any unexplained investment during the relevant year and held that on the basis of the entries made in the paper no addition could be made.

6.10. In Dy. CIT Vs. Krorilal Aggarwal. A diary seized during search contained certain jottings. The Tribunal held that the jottings in diary neither represented books of account nor any document and, therefore, presumption u/s 132(4A) was not available and the addition made on the basis of the said jottings was deleted.

6.11. In the case of M.V. Mathew vs. ITO Unaccounted sum found noted in a diary and the assessee claimed that the same represented deposits from certain parties. The parties denied

having deposited the amount. The AO treated the amount as advance made by the assessee and addition on that account was made. In the absence of clinching evidence to show that the impugned sum was advanced the amount was treated as deposited and the addition made was deleted.

6.12. In ITO vs. W.D. Estate (P) Ltd., the AO made addition on the basis of a file, a table diary belonging to a disgruntled employee found during search at his premises. This showed sales and sale amounts allegedly received as "on" money by the assessee. However, there was absolutely no evidence to show that the assessee in fact received "no" money payments. The assessee contended that such additions were based on hearsay evidence. The Id. CIT (A) confirmed the additions partly after being influenced by a report published by the Ministry of Finance wherein truthfulness of notorious practice of payment of black money in real estate transactions in metropolitan city of Bombay was discussed. The Tribunal held that report of the Ministry of Finance which highlighted prevailing practice could not be an adequate substitute for tangible evidence and the additions made were not held justified.

6.13. In the case of CIT vs. SMC Investment Corporation (P) Ltd. loan was advanced by assessee and thereon simple interest was calculated by the AO and assessed on accrual basis whereas the assessee claimed that no interest income was received. A slip of paper was found in search showing calculation of interest and on that basis the AO presumed that interest was calculated on compound interest basis and the assessment was reopened. Debtor had not credited interest in its accounts and declined to

pay interest. Finding by Tribunal that on basis of seized paper no inference could be drawn that the assessee charged compound interest. Accordingly, reassessment proceedings were held invalid."

The jurisdictional high court in case of CIT vs. Girish Chaudhary 296 ITR 619 has also made similar observation. The relevant portion thereof is as under:-

There is no material on record to show as to on what basis the Assessing Officer has reached at the conclusion that the figure "48" is to be read as Rs. 48 lakhs. Similarly, the document recovered during the course of search in the present case is a dumb document and lead us nowhere. Thus, the Tribunal rightly deleted the addition of Rs. 48 lakhs made by the Assessing Officer on account of undisclosed income on the basis of seized material.

*The High Court referred to the judgment of the Apex Court in CBI vs. VC. Shukla 3 SCC 410 laying down-
"File containing loose sheets of papers are not 'book' and hence entries therein are not admissible under section 34 of the Evidence Act, 1872."*

It was held that the document was a dumb document and led nowhere. Appeal filed by revenue was dismissed.

In the case of Commissioner of Income-tax, vs. Atam Valves (P.) Limited 184 Taxmann 6, the Punjab & Haryana High Court has held as under on the issue of placing reliance on loose slips:-

"2. During the pendency of assessment proceedings, a survey was conducted by the Department under section 133A of the Act on 27-9-2005 in the premises of the assessee and certain incriminating documents were found including a 'Slip Pad' containing payment of wages to various persons. The slips were written by Manoj Jain, an employee of the assessee, who was confronted with the slips, apart from questioning of the Director. Manoj Jain as well as Director of the assessee explained the position as to how the slips had been written and the stand of the assessee was that the same did not represent payment of wages during the year in question but were for the earlier year. However, the Assessing Officer did not accept the explanation and made an addition. The Id. CIT(A) as well as the Tribunal partly set aside the addition. It was held that even though explanation of the assessee that the loose papers did not relate to payment of wages during the year in question may not be accepted, in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the Assessing Officer. It was observed:-

"Now the question is regarding estimating the income on the basis of these loose slips. In our opinion, the Assessing Officer is not justified in estimating the sales on the basis of loose slips without substantiating that the assessee has actually made the sales to that extent of estimation made by the Assessing Officer and having no iota of evidence in the form of sale bills or bank account or movable and immovable property which represent earning of unaccounted income by the assessee. As such, the Id. CIT(A) to that extent is justified in holding that estimation

of sales on the basis of loose slips represented payment of wages is not possible."

5. No doubt, a false explanation of assessee may be a circumstance to be taken into account for recording a finding of undisclosed income and some degree of guess work is also permissible in such a situation, as held by the Supreme Court in Kachwala Gems vs. Jt. CIT (2007) 288 TTR 10, relied upon by the learned counsel for the revenue, it depends upon facts and circumstances of each case as to what is to be fair estimate of undisclosed income. The Id. CIT(A) as well as the Tribunal held that in the circumstances, the estimate of addition, to the extent assessed by the Assessing Officer, was not called for and the same was partly liable to be set aside."

Reliance is also placed by the appellant on the observations made by the jurisdictional High Court in CIT Vs. Anil Bhalla 322 ITR 191 (Del), which are as below:-

'To support the addition on account of unexplained expenditure on the basis of jottings on a loose sheet of paper, it is necessary to establish that the notings represent unaccounted transaction, with the help of independent corroborative evidence. In this case apart from the noting, on the said paper, no other independent material or evidence has been brought on record. Accordingly, the allegation of unexplained expenditure outside the books of account has not been established in the assessment order.'

Following the ratio of the above decisions, when applied to the facts of the impugned case it is concluded that the jottings

made in the diary are by itself incapable of any intelligible interpretation and has not been corroborated or linked with any other material in order to make it capable of reasonable interpretation. Moreover the notings on this diary are not in the nature of books of accounts as each of the entry is independent of other and there is no opening or closing balance on day to day basis which is normally the case while maintaining books of accounts. In view thereof the addition to income for Rs. 1,80,000/- made on account of unaccounted interest income which has been calculated on the assumption that the figure of 20 represents Rs. 20,00,000/- and that the figure of 10=35 represents interest for Rs. 10,35,000/- between 01.04.03 to 31.12.08 is held to be based on surmise, assumption presumption and being uncorroborated through independent evidence is directed to be deleted. Ground of Appeal no. 4 is accordingly allowed.

Ground No. 5 (A.O.'s finding):-

During the course of search at 401, JOP Plaza, Sector-18, Noida, some loose papers had been found and seized as Annexure A-2 by the search party SOB-6A, and search at 208, Ocean Complex, Sector-18, Noida, some loose papers had been found and seized as Annexure A-2 by the search party SOB-6. These pages contain a letter dated 03.01.2008 of Sh. Abdul Bari addressed to Sh. Raj at Gupta, Chairman, M/s Majestic Properties Pvt. Ltd. The letter of Sh. Abdul Bari reads as under:

"January 03, 2008

To

Mr. Rajat Gupta,

Chairman

M/s Majestic Properties Pvt. Ltd.

1/18B, AsafAli Road,

New Delhi -110 002.

Sub : Full & Final Settlement of Account on registration from employment.

Ref. : Personal Meeting with Mr. Anuraag Gupta, Managing Director on 29.12.2008

Dear Sir,

Your kind attention is invited to the above mentioned subject.

At the outset, it is placed on record that the attitude of the Company Management is completely unprofessional, unfair and unethical in so far concerning making the full & final settlement of my accounts on my resignation from the company as Sr. Vice President (Marketing).

After my numerous emails and telecoms since Sept. '08, finally the company's Managing Director, Mr. Anuraag Gupta, could take out some of his precious time to fix up a meeting (where intentionally he made me to wait for more than an hour) to discuss the subject issue.

As it appears from the discussions with Mr. Anuraag Gupta (MD):

- 1. That he is being misguided and has not been properly briefed about the true and factual position on the subject issue.*
- 2. That I have been working in your company since last three years as member of the 'Care Team' with full devotion to the best of my professional abilities.*
- 3. That due to professional reasons, I has resigned from your company's employment w.e.f. 1st Sept., 2008 after serving written Notice in this regard.*

4. That since the date of my resignation, I have been in constant touch with the company for full and final settlement of my accounts and have reportedly been informed that my settlement is 'under process'.

5. That as per my records, information and as agreed upon by the company Management at the time of my Appointment & subsequently, the amount payable to me by your company is a sum (c) of Rs.2,71,11,319/- which is computed as under:

(A) Salary

Towards arrears of salary for the month of Aug. '08	Rs. 90,000
Towards reimbursement (bills submitted)	Rs. 60,685
Towards Earned Leave & Benefits	Rs. 1,12,134
Towards bonus for the year 2007-08	Rs. 90,000
Towards Annual increment (as per market assessment)	
40% increment for 12 months @ 36000 pm	Rs.4,32,000
30% increment for 5 months @ Rs. 37800 pm	Rs. 1,89,000
TOTAL	Rs. 9,73,819

(B) Sales Incentive *(@ 1% of sale value)

Meerut Mall (sale value of Rs. 60,00,00,000/-)	Rs. 60,00,000
Jaipur Township (sale value of Rs.2,01,37,50,000)	Rs.2,01,37,500
TOTAL	Rs.2,61,37,500
(C) Total payable (A + B)	Rs.2,71,11,319

5. That over and above the salary, I was also provided with a company owned skoda car (model: Octavia Make: 2006) and a Laptop (Make Sony) towards Compensation.

6. *That during my meeting with Mr. Anuraag Gupta, Managing Director of the company, I was shocked on being informed that the company has deducted a sum of Rs.90,000/- @ Rs. 30,000/- per month, towards car rentals for the period of 3 months while it was agreed during my personal meeting with your goodself. That till the time of full and final settlement, the said car will be retained by me without any cost liability.*

7. *That it was further informed to me that the company will be deduction the original purchase price of the said car from my account if I want to buy back the car which is totally unfair and illegal!. As a matter of fact, it was agreed during my personal meeting with our goodself that I will be entitled to retain the said car at the depreciated value of the same (as per company's Books of Accounts) and the amount shall be adjusted from the outstanding dues of my account.*

8. *That it is manifestly clear that your company is acting illegally in not making fair settlement of my legal dues and the action of your company accounts to dishonest misappropriation of property and cheating which are prima facie criminal offences under the statutory laws.*

It is, therefore, requested that your goodself may kindly personally intervene in this matter and instruct the concerned to settle my legal dues immediately in a fair and amicable manner based on mutual trust failing which I would be felt with no other remedy but to seek legal recourse at the cost and consequence of your company"

5.1 A perusal of this letter reveals that the person, Sh. Abdul Bari, has clearly mentioned in his letter that the assessee has made total sales to the tune of Rs.261,37,50,000/- from both of his projects, i.e. one commercial project at Meerut and one residential project at Jaipur. Further, as mentioned above, loose papers seized from another premise during the course of search, reveals as under:

<i>Old Sales:</i>					
<i>Type</i>	<i>Area</i>	<i>Rates</i>	<i>Total Cost</i>	<i>Unit</i>	<i>Total Sale Value</i>
<i>2 Bed Room</i>	<i>1225</i>	<i>1550</i>	<i>1898750</i>	<i>263</i>	<i>499371250</i>
<i>2 Bed Room</i>	<i>1615</i>	<i>1550</i>	<i>2503250</i>	<i>164</i>	<i>410533000</i>
<i>2+1 Bed Room</i>	<i>1340</i>	<i>1500</i>	<i>2010000</i>	<i>14</i>	<i>28140000</i>
				<i>441</i>	<i>938044250</i>
<i>Fresh Sales:</i>					
<i>Type A</i>	<i>1645</i>	<i>2000</i>	<i>3290000</i>	<i>128</i>	<i>421120000</i>
<i>Type A-(2 Bed Room)</i>	<i>1270</i>	<i>2000</i>	<i>2540000</i>	<i>16</i>	<i>40640000</i>
<i>Type B(2 Bed Room)</i>	<i>1615</i>	<i>2000</i>	<i>3230000</i>	<i>124</i>	<i>400520000</i>
<i>Type C</i>	<i>1340</i>	<i>2000</i>	<i>2680000</i>	<i>274</i>	<i>734320000</i>
<i>(2+1 Bed Room)</i>					
<i>Type D (2 Bed Room)</i>	<i>1225</i>	<i>2000</i>	<i>2450000</i>	<i>57</i>	<i>139650000</i>
<i>Type D (2 Bed Room)</i>	<i>1240</i>	<i>2000</i>	<i>2480000</i>	<i>34</i>	<i>84320000</i>
TOTAL				633	1820570000

Balance Unit : 633

<i>Type A</i>	<i>1645</i>	<i>128</i>	<i>5</i>	<i>40</i>	<i>50</i>	<i>33</i>
<i>Type A-</i>	<i>1270</i>	<i>16</i>	<i>5</i>	<i>11</i>	<i>0</i>	<i>0</i>
<i>Type B</i>	<i>1615</i>	<i>124</i>	<i>5</i>	<i>40</i>	<i>50</i>	<i>29</i>
<i>Type C</i>	<i>1340</i>	<i>274</i>	<i>5</i>	<i>50</i>	<i>90</i>	<i>129</i>
<i>Type D</i>	<i>1225</i>	<i>57</i>	<i>5</i>	<i>40</i>	<i>12</i>	<i>0</i>

Type D-	1240	34	5	25	4	0
Total		633	30	206	206	191

Total Sales	2758614250
Old Sales =	938044250
Booking Amount Received 15% of BSP =	140706637
Total cost of project	2479494000
Net Profit	279210250
Tax	0
Interest 13% on avg. 75 cr for 48 months	390000000
NPAT	-110789750
NPAT to Sales	-4468402487

5.2 These pages further strengthens the submission of Sh. Abdul Bari that on the date his resignation, i.e. 01.09.2008, the sale was to the tune of Rs.261.37 crore, and the same had rose up to Rs.275.86 crore from Jaipur project alone as on the date of search, i.e. 26.02.2009. Further, the net profit has been shown to have been calculated at Rs.27,92,10,250. Accordingly, the assessee was asked to explain the material seized by parties SOB-6 and SOB6A from two different premises during the course of search and correlate the same with its regular books of account. In response, the assessee vide its letter submitted as under:

"Annexure A-2 of SOB 6 contains page no 1 to 13, these pages are nothing but the trial balance, Profit & loss Account and balance sheets of group companies which are duly recorded in regular books of accounts and can be verified from the audited balance sheets. All these companies have been filling their ITRs

regularly within their respective jurisdiction. However, it seems that these facts mentioned in point no 7 of your notice requires explanations on annexure A-2 of SOB-6A. This annexure contains page no 1 to 91. page no 39 & 40 mentions the collection against booking of Jaipur Projects during the period 01.08.2008 to 11.11.2008, all these entries have been accounted for in the regular books of account of the assessee, to substantiate this contention the copy of ledger account of parties is being enclosed. Page no 33 to 37, these pages mentions the estimates and targets of Sales for Jaipur Projects. In order to substantiate this contention we invite your kind attention to the fact that the company has only completed one project of Melange Mall at Meerut and the another Project of Residential Group housing has been continuing at Jaipur. It is the common and general practice to decide and assess the cost of the project and the projected sale value of the Project in order to decide the selling price of the coming project. Sir, page no 33 & 34 mentions target sales realization, calculated on the basis of area of flat, selling rate and number of units. At the end of it the estimated profit part and other costs visualized to be incurred during the implementation has been mentioned. This contention is further cemented by the fact that the interest amount has been shown in round figure (13% on AVG 75cr for 48 months 390,000,000.00/-). On page no 35, 36, 37 & 38 the target sale realization has been calculated. At the end of page no 38 booking amount to be received 15 % of BSP (Basis sale Price) of Rs. 93,80,44,250/- which is mentioned as old sales and the details thereof are mentioned on page no 36, is worked out at Rs. 14,07,06,637/- exactly has been mentioned this amount has being duly accounted for in regular books of

accounts for your immediate reference the copy of ledger account is being enclosed. Therefore, the estimation and he targeted sales which are calculated by the marketing staff of the assessee cannot be considered as the actual sales and the profitability from those estimates should not be calculated merely on the basis of surmises and conjecture by disregarding the actual facts and documentary evidences. 'The inference should be drawn on totality of the circumstances' CIT Vs Naresh Khattar (HUF) 261 ITR 664 (Delhi). Regarding page no 41 of annexure A-3 of SOB-6 we submit that this is a letter dated 03.01.2008, sent by Mr. Abdul Bari, then Marketing Head of the company. On page no. 41 he has mentioned the details of his claims against the company after his resignation. He has mentioned his claim as sale incentives @ 1% on all estimated sales value (present & future) of Meerut Mall & Jaipur Township. Sir, being the marketing head MR. Abdul Bari was a part of core team as he himself mentioned in point no 2 of this letter on page no 42. Therefore, he was aware and well conversant with the estimation and determination of estimated cost and sales of the Projects, present & future as well. Keeping in view the above mentioned facts and documental evidences there cannot be any correlation with the apparition that the company has suppressed its sales. Further, in order to determine and verification of facts there can be independent field enquiry also in respect of the existing progress of Jaipur Project, regarding sale of Mall project, the transaction for registration of the shops are at the sector-8 or above, this facts can be verified from the sale deeds already filled with our previous submission."

5.3 *The assessee further submitted a letter of Sh. Abdul Bari contending therein as under:*

"1. I was working as Sr. VP sales and marketing with Magestic Properties Pvt. Ltd. Having its head office at 1/18B, Asaf Ali Road, New Delhi.

2. That I had sent a letter in Jan 2008 regarding my full and final settlement with the company.

3. That in the above mentioned letter I had mentioned 1% incentive on the sale of the projects developed by the company, i.e. Melange Mall - Meerut and Jaipur Project.

4. That against above incentive I was never meant that the company had made above mentioned sales till the date of my letter but it was the estimated figure which was complied by myself and the management. I had put my claim even on the estimated sales also because before January, 2008 I had left the job.

5. In this context, I have not received any incentive money so far."

5.4 *The contention of the assessee is not acceptable for the following elaborated reasons:*

(i) First of all, let us start from the letter of Sh. Abdul Bari dated January, 2008, seized during the course of search. This letter bears date 'January 08, 2008'. However, at point no. 3 of the letter, he has mentioned "that due to professional reasons, I had resigned from your company's employment w.e.f. 1st Sept.

2008 after serving written notice in this regard." So, if a person has resigned in September, 2008, as is evident (supra), then this letter must have been written after September, 2008 and it may be January 03, 2009. This letter was written by Sh. Abdul Bari after his resignation from the employment of the assessee company in the month of September, 2008. Therefore, it appears that there is a misprinting in the date of letter, as it many times happen in general parlance that on the first two-three days of the January people forget to change year being in practice of mentioning old year. Hence, the date mentioned in the letter is taken here as January 03, 2009 instead of January 03, 2008, being a clerical error.

(ii) The we consider the subsequent letter of Sh. Abdul Bari, which has been filed by the counsel of the assessee during the course of hearing, and reproduced above in preceding para, wherein he has mentioned at point no. 4 "that against above incentive, I was never meant that the company had made above mentioned sales till the date of my letter, but it was the estimated figure which was complied by myself and the management. I had put my claim even on the estimated sales also because before January 2008 I had left the job." It is surprised to note here that the Abdul Bari has not remembered as to when he had resigned from the job and has sent only the afterthought that these are merely estimated sales. The assessee company was not asked to submit confirmation of Sh. Abdul Bari. His present letter is self serving at the fag end of proceeding. It has no merit. So the contradictory state of affairs has been furnished by the assessee. The same are, therefore, rejected.

(iii) Now come to the chart with the heading "Target Sales Realization", seized during the course of search. The same has already been reproduced above in preceding para. If we go by the version of contention of the assessee, furnished by it during the course of hearing, in this chart, the target sale have been mentioned. If we correlate the chart with the letter of Sh. Abdul Bari, as has been done by the assessee itself in its reply, reproduced above in preceding para, then we will realize that they have a close connection between themselves and they are very much sequential. As is seen and summarized here that the target given in the chart till June 2008, then there is resignation of Sh. Abdul Bari of September, 2008 and finally his letter of claim for incentive over the sales dated January 03, 2009. The most connection between them is the figure of sale shown in the chart and claimed by Sh. Abdul Bari in his letter which has now become linch pin in the case of the assessee. The further contention of the assessee is that there cannot be any correlation with the apparition that the company has suppressed its sales is totally wrong and has no legs to stand, as in view of above discussion, it has now become crystal clear that the assessee is in regular practice of suppressing sales by not showing exact figures of sales and in turn also earning profit on sale made out of books of account.

5.5 From the above, it has become clear that the assessee has no merits in its reply (reproduced above). Therefore, the sale noted in the seized material found at the two noting, i.e. (i) as mentioned in the letter of Sh. Abdul Bari and (ii) as noted in the seized page showing target sale. Therefore, the sale / profit noted in the seized material is nothing but actual. The same has

been proved wrong here. Therefore, the figures which have been shown in the chart (reproduced above) seized during search, under the head 'Total Sales' of Rs.275,86,14,250/- is nothing but the actual sales of the assessee. Hence, the net profit worked out by the assessee is Rs.27,92,10,250/- is the amount of profit which has been received by the company. The same is however, earned out of books of account. As the assessee has not shown such undisclosed net profit of Rs.27,92,10,250/-, the same is, therefore, bifurcated in their WIP ratio on year-to-year basis in accordance with the Accounting Standard-7 and added to the total income of assessee accordingly.

5.6 As per seized material, Sh. Abdul Bari in his letter dated January 03, 2009 has claimed sales incentive @ 1% of the total sales of Rs.60,00,00,000/-As per books of account of the assessee and the details furnished by it during the course of assessment proceeding, however, reveal that the assessee has shown Booking amount received by it in earlier years i.e. since A.Y. 2004-05 to 2009-10 to the tune of Rs.31,91,25,112/- till the date of search (also shown in the chart below), i.e. 26.02.2009. As the project is a commercial project, and a perusal of chart reveals that the booking made by the assessee on different rates on the same floor and on the other floors of the mall, hence, in the absence of uniformity, the working of profit ratio as to the booking made by the assessee becomes difficult. Therefore, the net profit, keeping in view the project is a commercial project, is taken at @ 12% of the total sales, i.e. Rs.60,00,00,000/-, which comes to Rs.7,20,00,000/-. The same is distributed in the earlier years with a view that the assessee has been maintaining net profit margin of 12% from the first

year, since when it had started accepting booking against its project. The working of this net profit year-wise is given below in the chart.

	Meerut Project		Jaipur Project		
Asstt. Year	Booking accounted for of Meerut Project	Distribution of unaccounted profit being 12% N.P. (in Booking amount ratio)	WIP of Jaipur Project	Distribution of profit (in WIP ratio)	Total Addition al Profit (Meerut + Jaipur)
2004-05	8114300	1828800			1828800
2005-06	15805034	3564000	138439901	14672496	15028896
2006-07	39146951	8812800	15985077	16920141	25732941
2007-08	100676986	22665600	37523874	39759540	62425140
2008-09	55269792	12441600	36693691	38893988	51335588
2009-10	100772996	22687200	34810761	36911595	59598795
TOTAL	319786059	72000000	263453304	279210250	35121020

5.6 The above facts clearly reveals that the assessee has suppressed its sales. Hence, the book results, as declared by the assessee have been rejected under the provisions of Sec. 145(3) of the I.T. Act, 1961.

5.7 In view of above, the year-wise addition on account of undisclosed business profit is added to the respective years. However, from the note books / diaries seized from the residential premises of Sh. Raj at Gupta contains some Debit and Credit entries which is taken to be the account of unaccounted money received by him out of books. The same is discussed in preceding para of this order. Hence, in any year, where the bookings / sales have been made by the assessee from either or both of the projects, the same are treated as unaccounted receipts.

Therefore, no separate addition is made in those years on this account. But where in any year, there is no booking / sale from

the project(s), the same is treated as unaccounted receipts from other business activities of the assessee. Therefore, the same are added separately in those years."

9. Sir, This imaginary calculation of profits @12% from Mall Project for which the land was only purchased and no construction work was started during the year under appeal and Jaipur Housing Project for which the appellant did not do anything, is merely based upon a letter marked as page nos. 40-42 of Annexure A-3 of SOB-6 and Page nos. 33-38 of Annexure A-2 of SOB 6A. The first one is a letter written by Marketing Head Mr. Abdul Bari on 03.01.2008 after leaving the job from appellant company and the other one is the calculation sheets for costing and selling/booking price of flats of Housing Project at Jaipur. These papers apparently speak the truth and facts. Ld. AO has taken an imaginary cognizance without support of any evidence and even disregarding the contents of the papers and the dates and year mentioned thereon. Under what method of accounting and system the profitability of any construction project can be calculated even when only the land is purchased and no construction was carried on, merely nominal booking amounts were received from prospective buyers and the same were shown as 'current liabilities'. Moreover, out of these bookings some of them were refunded also.

10. Regarding these papers, a detailed submission was made during assessment proceedings as has been mentioned hereinabove. The entire correlation of the facts and figures was given. During assessment proceedings as mentioned by Ld AO in

para no. 5.3 of his order that Mr. Abdul Bari filed his written letter that the figures mentioned in above mentioned letter were merely estimated one compiled during his employment so that the selling price could be worked out. He was never meant that the company has done that much of sales and he has claimed the inventive on the estimated sales after leaving his job. Ld. AO did not even bother to call Mr. Abdul Bari to record his statement and to substantiate his action. His address and all details were furnished.

11 .The sale amount of Meerut project was taken from the letter of an aggrieved employee who made unrealistic and arbitrary claims against the appellant company. There was no base of calculation of profit from nominal booking amounts when no construction was carried on and the saleable asset was not even existing. There was no certainty for buying the property in Mall. The details of year wise all investments in projects were submitted and none of them was at all objected. The year wise detail of booking money and work in progress is being submitted as under:

MAJESTIC PROPERTIES PVT. LTD.

	ASSESSMENT YEAR						
<i>BOOKING AMOUNT RECD.</i>	<i>2004-05</i>	<i>2005-06</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-2009</i>	<i>2009-10</i>	<i>Grand Total</i>
<i>For Meerut Project</i>	<i>8114300</i>	<i>15805034</i>	<i>39146951</i>	<i>62369922</i>	<i>93576856</i>	<i>100772996</i>	<i>319786059</i>
<i>For Jaipur Project</i>	<i>0</i>	<i>242889828</i>	<i>3700370</i>	<i>142354161</i>	<i>357392598</i>	<i>-43358579</i>	<i>702978378</i>
<i>Investment in Meerut (WIP)</i>							
<i>Land Purchase</i>	<i>29451457</i>	<i>21076487</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>50527944</i>
<i>Expenses</i>	<i>185867</i>	<i>41972187</i>	<i>98780320</i>	<i>303120722</i>	<i>144454290</i>	<i>14422173</i>	<i>602935559</i>
	<i>29637324</i>	<i>63048674</i>	<i>98780320</i>	<i>303120722</i>	<i>144454290</i>	<i>14422173</i>	<i>653463503</i>
<i>Investment in Jaipur (WIP)</i>							

Land Purchase	0	138273760	7717900	2149700	0	0	148141360
Other Exp.	0	166142	8267178	35374174	36693692	26322913	106824099
	0	138439902	15985078	37523874	36693692	26322913	254965459

The above mentioned details reveal the fact that during the year under appeal, land was purchased in Meerut and a sum of Rs. 1,58,05,034/- for Meerut was received as booking money from prospective investors in project. For Jaipur land worth Rs. 13,84,39,902/- was purchased. The contents of assessment order clearly mention that all the facts and figures as per books of accounts of the appellant were accepted during assessment proceedings because the same were adopted for calculation of imaginary profits.

12. Sir, Ld AO has contradicted his view by adopting sale figure for Meerut Project from the letter of Mr. Bari at Rs. 60.00 Crore and on the other side he has accepted the total amount of booking received from buyers at Rs. 319786059/- till 2009. The name and addresses of all the parties who booked the shops were available, there was no enquiry from them to bring some evidence on record. This fact proves the non-judicious application of mind. The action of Ld. AO is further proved to be non-judicious in case of Jaipur project, he has taken the sale and profit from the letter of Mr. Abdul Bari and projections for determining the sale price of flats at Rs.201,37,50,000/- and Rs.27,92,10,250/- respectively and on the other hand he has accepted the total amount of bookings received from investors at Rs. 70,29,78,378/-and the value of land and the expenses incurred on the project. It is very pertinent to mention that the profits can only be earned when the product is in saleable condition. The profits have been adopted as per the letter of Mr.

Bari and those from calculation sheets for determining the sale price of flats mentioning the years 2007 and 2008, it means for the year under appeal as per Ld AO, the profit was earned without selling the product that was shops or flats in case of the appellant. When till 2009, the appellant could not receive the amounts adopted by Ld AO as sale, how the profits can be earned even in 2005 when the land for Meerut project was further purchased and the construction work could be started. All the facts and figures as per books of accounts were accepted but for the purpose of sale and profits the letter of Mr. Bari and budgetary/estimates were relied upon as the final evidence by disregarding the entire contents of books of accounts and other bills and vouchers. Besides, the calculation of pro rata profit for different years has been calculated on the basis of Work In Progress. The above mentioned chart clearly mentions that the initial years' investment in Jaipur Project is nothing but the purchase of land and no work was done. 'The inference should be drawn on totality of the circumstances' CIT Vs Naresh Khattar (HUF) 261 ITR 664 (Delhi).

13. Further, the adoption of calculation of year wise profits from Meerut Project on the basis of booking money and that in case of Jaipur project on the basis of work in progress prima facie proves the uncertainty in the mind of Ld AO for the income earned by the appellant from these projects.

14. Sir, Real Estate development is the business for which there are no accounting standards nor treatment in text books to suggest any uniform method of accounting. It is therefore, to conform to the generally accepted accounting principles To

recognize the accrual of revenue from real estate development business, there is an Accounting Standards i.e. AS-7, issued by The Institute of Chartered Accountants of India and the same was accepted by Ministry of Corporate Affairs under Companies (Accounting Standards) Rules 2006. As per this AS, the recognition of revenue in case of construction contracts as a self venture shall be when there is a certainty of completion of contract and substantial part of contract has been executed. This AS suggests two methods of recognition i.e. Percentage to completion and the other as completion of project method.

In this case, the land was only bought, no construction work could be started merely nominal present and future bookings from parties were received.

For verification of all the facts and figures, the balance sheet is being enclosed.

Therefore, the imaginary profits calculated on the basis of seized documents be deleted. Moreover, the suspicion that these imaginary profits were noted down on loose papers/notebook as has been taken in Ground No. 4 above, is also ruled out.

15. The further action taken on the basis of these imaginary facts and figures, the suspicion of suppressing sales is also ruled out and the books of accounts of the appellant cannot be rejected. No defect in books of accounts could be identified during whole assessment proceedings. Hon'ble Supreme Court has held "All that matters is that the explanation is prima facie reasonable, if it is so, it cannot be rejected on mere surmises." CIT V. Bedi & Co. Pvt Ltd. 230 ITR 580 (SC). SC further held

that ' realities of life and probabilities of life have to be taken care of while dealing with the fiscal laws." CIT V. Durga Prasad More 82 ITR 358 (SC)."

Finding on Ground of Appeal No 5

In Ground of Appeal No.5 the appellant has contested the calculation of consolidated profit at Rs. 15,02,88,986/- from Meerut project (Rs. 35,64,000/-) and Jaipur Project (Rs. 14,67,24,986/-) made by the AO on basis of estimates and targets. On going through the AO's finding on the issue it is seen that the estimation of income from Meerut & Jaipur project has its origin in Annexure -2 seized by the search party SOV-6A & SOB-6. Reference has been made to a seized letter dated 03.01.08 of Sh. Abdul Bari address to Sh. Rajat Gupta the Chairman of the appellant company which is on the subject of "Full and Final Settlement of Account on registration from employment". While this letter is dated January, 03, 2008 but since in the Reference portion of the letter "Personal Meeting with Mr. Anurag Gupta, M.D. on 29.12.08" has been mentioned as also the fact that elsewhere in this letter reference to emails and telecoms since Sept. 2008 have been made, there is no doubt in my mind that the date mentioned as January, 8 2008 is a typographical error and that the date on the letter should be correctly taken as January, 03 2009. This view is further supported from the fact that the Sh. Abdul Bari had resigned from the appellant company in Sept. 2008 and therefore the date of this letter cannot be January, 03 2008. Coming to the contents of this letter it is observed that Sh. Abdul Bari has in this letter essentially protested against the unprofessional,

unfair and unethical attitude of the company in not making the full and final settlement of his accounts upon his resignation from the Company as Senior Vice President (Marketing). In para 5 (B) of this letter Sh. Abdul Bari has calculated sales incentive receivable by him @ of 1% of sale value in case of Meerut Mall and Jaipur Township for Rs. 2,61,37,500/- in totality. The relevant part of this letter is as below:-

<i>5.(B) Sales Incentive *(@ 1% of sale value)</i>	
<i>- Meerut Mall (sale value of Rs.60,00,00,000/-)</i>	<i>Rs. 60,00,000</i>
<i>- Jaipur Township (sale value of Rs.2,01,37,50,000)</i>	<i><u>Rs.2,01,37,500</u></i>
<i>TOTAL</i>	<i>Rs.2,61,37,500</i>

In para 5.4 & 5.5 of the assessment order the AO has referred to above mentioned loose papers seized from assessee's premises relating to the residential project at Jaipur wherein on the top of these pages the words " Target Sales Realization" have been mentioned. The AO has correlated this chart with the aforesaid letter of Sh. Abdul Bari and is of the view that these have close connection. It is held in para 5.5 that the sale /profit noted in the seized material is nothing but actual and the word "total sales" of Rs. 275,86,14,250 written on the seized paper is the actual sale of the assessee. The AO is also of the view that the net profit worked out by the assessee in this seized document for Rs. 27,92,10,250/- is the amount of profit which has been received by the Company which is earned out of the books of accounts. Consequently, this undisclosed net profit has been distributed between AYs. 2005-06 to AY 2009-10 based on the figures of work in progress of Jaipur Project on year to year basis in accordance with Accounting Standard 7.

In para 5.6 of the assessment order the AO has recorded the finding that the total booking amount between AY 2004-05 to AY 2009-10 from Meerut Mall as per the books of accounts of the assessee is to the tune of Rs. 31,91,25,112/-, till the date of search i.e. 26.02.09. The AO has however estimated the net profit during AY 2004-05 to AY 2009-10 @ 12% on the total sales of this Mall project that is Rs. 60 Crores, (based on the above letter of Sh. Abdul Bari), considering the fact that the concerned project is a commercial one. This has been worked out for a total amount of Rs. 7.2 Crores between the above assessment years. The same has been distributed in these years in the ratio of booking amount received between AY 2004-05 to 2009- 10. In para 5.6 the AO has also recorded that as the assessee has suppressed his sales hence the book result declared by the assessee are rejected under provisions of section 145(3) of the IT Act.

As against the above finding of the AO the appellant's submission is that the whole working of income on Meerut Project has originated on basis of the letter written by Sh. Abdul Bari, upon leaving the job. That the AO has taken a imaginary cognizance of this letter without any evidence even when only the land at Meerut is purchased during the year and no construction was carried on for the Meerut project. That merely nominal booking amounts were received from prospective buyers which are shown as current liabilities in the balance sheet. The assessee also referred to another letter filed by Sh. Abdul Bari during the assessment proceedings which is to the effect that the figures mentioned in his letter dated 3 Jan. 2008(2009) were merely estimated one compiled during his

employment so that the selling price could be worked out. It has been submitted that Sh. Bari's letter was of an aggrieved employee who made unrealistic and arbitrary claims against the appellant company. The assessee has also furnished details of the booking amount received for Meerut project relevant for AY 2005-06 which is for Rs. 1,58,05,034/- from prospective investors. From the copy of balance sheet filed it has also been substantiated that the investment in Meerut project on land purchase during F.Y.2004-2005 is for Rs. 2,10,76,487/- and after including other expenses for Rs. 4,19,72,187/- the total investment in Meerut project as on 31.03.05 is for Rs. 9,26,85,998/-.

It has been contended that the AO has calculated profits merely on basis of booking money when only the land has been bought and no construction work was started during the year. Referring to the accounting standards that is AS-7 issued by the Institute of Chartered Accountants of India the appellant has argued that there are two methods of recognizing accrual of revenue from real estate development business that is percentage to completion and completion of project method and that neither of these two methods are applicable in the facts of the case.

As regards Jaipur project the appellant in his consolidated and common submission has reiterated that the letter written by Sh. Abdul Bari and the figures mentioned therein are merely estimates compiled by him during his employment so that he can claim incentive on the estimated sale after leaving his job. That during the year for the Jaipur project only land worth Rs. 13,84,39,902/- was purchased as also appearing in the balance

sheet and also recorded by the AO in his calculation made in para 5.6. Referring to the seized papers on which words "targets sale realization" has been mentioned the appellant has submitted that these are figures of projection for determining the sale price of flats, the projected cost and the income which can be earned on it.

It has been argued that the profits can only be earned when the product is in saleable condition. The profits have been adopted as per the letter of Mr. Bari and those from calculation sheets for determining the sale price of flats mentioning the years 2007 and 2008, it means for the year under appeal as per AO, the profit was earned without selling the product that was shops or flats in case of the appellant. That all the facts and figures as per books of accounts were accepted by the A.O. but for the purpose of sale and profits the letter of Mr. Bari and budgetary/estimates were relied upon as the final evidence by disregarding the entire contents of books of accounts and other bills and vouchers. Besides, the calculation of pro rata profit for different years has been calculated on the basis of Work In Progress. The above mentioned chart clearly mentions that the initial years' investment in Jaipur Project is nothing but the purchase of land and no work was done. 'The inference should be drawn on totality of the circumstances as held in CIT Vs Naresh Khattar (HUF) 261 ITR 664 (Delhi).

Again referring to the accounting standards that is AS-7 issued by the Institute of Chartered Accountants of India the appellant has argued that there are two methods of recognizing accrual of revenue from real estate development business that is

percentage to completion and completion of project method and that neither of these two methods are applicable in the facts of the case. That in this case only the land was bought, no construction work could be started merely nominal present and future bookings from parties were received. For verification of all the facts and figures, the balance sheet is being enclosed.

Upon a careful consideration of the AO's finding and appellant's submission it is observed that the letter dated 03.01.08 (correctly read as 03.01.2009) written by Sh. Abdul Bari has to be taken with a pinch of salt as apparently this letter is written by a former employee who is not satisfied with the settlement of his dues from the Company. Accordingly, while this letter can be the starting point for further investigation regarding its contents and with reference to the regular books of accounts but it would not be appropriate to base and estimate the entire working of profit merely on the basis of this letter. For similar reason even the second letter written by Sh. Abdul Bari & filed during the assessment proceedings by the assessee should not be taken as entirely true and correct.

I. Having observed so it is held that the profit estimated by the AO for Rs. 35,64,000/- on Meerut Project is devoid of any substance on account of following reasons:-

a. Firstly, there is no basis by which the AO has estimated the net profit rate as 12% of the total booking received for the Meerut project which is purely a guess made by the AO without citing any comparable case or confronting such comparable case to the appellant.

b. The AO has calculated total net profit received during A.Y.s 2004-05 to AY 2009-10 on Meerut project at Rs. 7.20 Crores, which is based on 12% net profit rate on total booking amount for these years at Rs. 60 Crores, as is referred to in the letter of Sh. Abdul Bari.

However the AO himself has acknowledged that the total booking amount for Meerut project during the above assessment years is at Rs. 31,97,86,059/- and therefore there was no reason for estimation of total net profit of Rs. 7.20 Crores from this project. In fact the total net profit for Rs. 7.20 Crores on the booking accounted for in the books of accounts at Rs. 31.97 Crores results in the net profit rate of 22.52% which obviously is not the same as estimated by the AO himself.

In view of the above fact the distribution of estimated unaccounted profit made by the AO in the booking amount ratio for the years also becomes fallacious and arbitrary.

From the copy of balance sheet filed by the appellant for AY 2005-06, it is apparently seen that uptill the year ending on 31.03.05 total booking amount received for Meerut project is for Rs. 2,39,19,334/- and total investment on account of land purchase and other expenses for Meerut project as on 31.03.2005 is Rs. 9,26,85,998/-. From the year wise investment in land & construction in Meerut project it is seen that the total of these expenses till AY 2009-10 is for Rs. 65,34,63,503/-.

Thus as uptill 31.03.05 only 14.18% of the total cost has been incurred and booking amount for only Rs. 2.39 Crores have

been received therefore accrual of income from the project cannot be computed in terms of AS-7.

It is seen from the order that the AO has rejected the book results and the provisions of section 145(3) of the IT Act have been invoked. However, there is no discussion in the order as to on what specific ground the AO is not satisfied about the correctness or completeness of the accounts of the assessee neither there is any reference as to non following of the method of accounting regularly followed by the assessee or violating the Accounting Standards as notified under sub section (2) of section 145 of the Act.

Keeping in view the above discussion in totality and entirety it is held that the addition made for Rs. 35,64.000/- as additional profit from Meerut project is totally based on conjecture and surmise and is therefore directed to be deleted.

Further the profit estimated by the AO for Rs. 14,67,24,986/- on Jaipur Project is also devoid of any substance on account of following reasons:-

On a perusal of pages 33 to 38 of A-2 SOB 6A it is apparent that the calculations are relating to "Target Sales Realization" as is written on the top of these pages. On page 33 of this Annexure from total targeted sale of Rs. 275.86 Crore the total cost of project for Rs 247.94 Crore has been deducted and a profit of Rs. 27.92 Crore has been worked out. After noting interest expense on the project for a period of 48 months at the rate of 13% on average Rs. 75 Crores the net profit after tax has been worked out for a negative figure of Rs. 11.07 Crores.

Thus from the nature of these documents and the calculation thereon it is observed that these are estimates and projections made by the appellant.

Having held so it is logical to infer that even the calculation of consolidated net profit for the project at Rs. 27.92 Crores made on page 33 to Annexure -A 2 is only a projected figure.

Accordingly, there would be no basis for distribution of profit for Rs. 27.92 Crores between AY 2005-06 to AY 2009-10 on the basis of year to year work in progress of Jaipur project which totals to Rs. 26.34 Crores for all these assessment years taken together.

In Real Estate business there cannot be a total profit of Rs. 27.92 Crores on total work in progress for Rs. 26.34 Crores as this would be a ridiculous and unimaginable profit.

From the details filed and from the copy of balance sheet and Schedules attached it is seen that during the year in case of Jaipur project out of the total investment for Rs. 13.84 Crores an amount of Rs. 13.82 Crores is on account of land purchase and there is other expense for Rs. 1.66 Lacs. Therefore when only investment in land has been made during the year there can be no case for loading an income of Rs. 14.67 Crores merely upon purchase of land.

It is seen from the order that the AO has rejected the book results and the provisions of section 145(3) of the IT Act have been invoked. However, there is no discussion in the order as to on what specific ground the AO is not satisfied about the correctness or completeness of the accounts of the assessee

neither there is any reference as to non following of the method of accounting regularly followed by the assessee or violating the Accounting Standards as notified under sub section (2) of section 145 of the Act.

Keeping in view the above discussion in totality and entirety it is held that the addition made for Rs. 14,67,24,986/- as additional profit from Jaipur project is totally based on conjecture and surmise and is therefore directed to be deleted."

7. Before us, during the arguments, the Id. DR strongly relied on the order of the Assessing Officer whereas the Id. AR supported the order of the Id. CIT(A) referring to the contents of the paper book filed.

8. Heard the arguments of both the parties and perused the material available on record.

Undisclosed Investment (Interest): Ground No. 1 : A.Y. 2005-06

9. The interest has been disallowed by the Id. CIT(A) on the grounds that unaccounted interest was computed by the revenue authorities on assumption basis. On going through the entire contents, since no amount receivable could deciphered, we decline to interfere with the reasoned order of the Id. CIT(A) on this issue.

Undisclosed Receipts:

10. We have gone through the entire contents. The revenue authorities determined unaccounted profit on Meerut project

and Jaipur project. The sole basis for making the addition was the letter dated 03.01.2008 written by the marketing head Sh. Abdul Bari after leaving the job from the assessee company. In the letter, the marketing head had sought the sales incentives @ 1% to the tune of Rs.2,71,11,319/-. The revenue has taken this figure as sacrosanct and worked backwards in determination of sales at Rs.275.86 Cr. on Jaipur project alone. The revenue deemed the target sales as total sales and brought the amount to tax based on the seized material of the party SOB 6A and SOB 6 Annexure A-2. The bookings accounted for Meerut project for the A.Y. 2005-06, A.Y. 2006-07 and A.Y. 2007-08 was Rs.1.58 Cr., Rs.3.91 Cr. and Rs.6.23 Cr. respectively whereas for the Jaipur project, the bookings were to the tune of Rs.24.28 Cr., Rs.0.37 Cr. and Rs.14.23 Cr. The land has been purchased in Meerut for a sum of Rs.1.58 Cr. and the land at Jaipur worth Rs.13.84 Cr. has been purchased. The revenue authorities have accepted the total amount of booking received of Rs.31.97 Cr. till 2009 whereas as per the letter of Sh. Abdul Bari, the sale figure has been considered as Rs.60 Cr. for determination of profits. Similarly, the revenue has accepted the total booking of Rs.70.29 Cr. towards the sale whereas for determination of the profits, the projection as mentioned by Sh. Abdul Bari of Rs.279 Cr. has been considered. While considering the letter of Sh. Abdul Bari for determination of sales to the tune of Rs.279 Cr. and working out the profits/undisclosed income consequently, while doing so, the revenue has not even recorded the statement of Sh. Abdul Bari and confronted the same to the Principle Officer of the company.

11. Hence, we decline to interfere with the order of the Id. CIT(A) who held with coherent reasoning that the addition has been made totally based on conjecture and surmises.

12. In the result, all the appeals of the revenue are dismissed.
Order Pronounced in the Open Court on 14/10/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 14/10/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR