आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

Appeal in ITA No	Assessee	Revenue	A.Y
628/Hyd/2022	Skill Promoters, Hyderabad PAN:AAYFS9165Q	ACIT, Central Circle 2(3) Hyderabad	2014-15
686/Hyd/2022	ACIT, Central Circle 2(3) Hyderabad	Skill Promoters, Hyderabad PAN:AAYFS9165Q	2014-15
629/Hyd/2022	-do-	-do-	2015-16
687/Hyd/2022	-do-	-do-	2015-16
630/Hyd/2022	-do-	-do-	2016-17
677/Hyd/2022	ACIT, Central Circle 2(3) Hyderabad	Skill Promoters (P) Ltd, Hyderabad PAN:AAWCS1257Q	2016-17
688/Hyd/2022	-do-	Skill Promoters, Hyderabad PAN:AAYFS9165Q	2016-17
622/Hyd/2022	Skill Promoters Pvt Ltd, Hyderabad PAN:AAWCS1257Q	ACIT, Central Circle 2(3) Hyderabad	2016-17
678/Hyd/2022	-do-	-do-	2017-18
623/Hyd/2022	-do-	-do-	2017-18
679/Hyd/2022	-do-	-do-	2018-19
624/Hyd/2022	-do-	-do-	2018-19
680/Hyd/2022	ACIT, Central Circle 2(3) Hyderabad	Skill Promoters Pvt Ltd, Hyderabad PAN:AAWCS1257Q	2019-20
625/Hyd/2022	Skill Promoters Pvt Ltd, Hyderabad PAN:AAWCS1257Q	ACIT, Central Circle 2(3) Hyderabad	2019-20
681/Hyd/2022	ACIT, Central Circle 2(3) Hyderabad	Skill Promoters Pvt Ltd, Hyderabad PAN:AAWCS1257Q	2020-21
626/Hyd/2022	Skill Promoters Pvt Ltd, Hyderabad PAN:AAWCS1257Q	ACIT, Central Circle 2(3) Hyderabad	2020-21

Assessee by:	Shri P. Murali Mohan Rao, CA
Revenue by:	Shri Jeevanlal Lavidiya,CIT (DR)
Date of hearing:	22/08/2023
Date of pronouncement:	31/10/2023

ORDER

Per Bench:

The above batch of appeals filed by the assessee and the Revenue are cross appeals and are directed against the separate orders dated 21.09.2022 of the learned CIT (A)-12 Hyderabad relating to A.Y 2014-15 to 2020-21 respectively. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. First, we take up ITA No.628/Hyd/2022 filed by the assessee and ITA 686/Hyd/2022 filed by the Revenue for the A.Y 2014-15 in the case of Skill Promoters as the lead case.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of construction and land development and derives income from house property and income from business. It filed its original return of income u/s 139(4) for the A.Y 2014-15 on 25.9.2014 declaring total income of Rs.3,37,12,080/-. A search and seizure operation u/s 132 of the I.T. Act was conducted in the case of the assessee's group on 22.10.2019. In response to notice u/s 153A, the assessee filed its return of income on 26.2.2021 declaring total income of Rs.3,37,12,080/-. Statutory notices u/s 143(2) and 142(1) were issued by the Assessing Officer to which the A.R of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

4. During the course of assessment proceedings, the Assessing Officer observed from the seized documents that the

assessee is maintaining a cash book of cash received from time to time wherein the details of the expenditure made in cash by the Site Supervisor Mr. Sujath Ali are mentioned. He observed that the assessee was confronted about these materials and Mr. Sujat Ali, in his statement recorded u/s 132(4), confirmed the expenditure incurred in cash on regular basis by the assessee company. The Assessing Officer further noted from the seized material that most of the expenditure was towards payment to labour, purchase of materials such as sand, cement, and other expenditure relating to construction activities. However, there is a clear violation of the provisions of section 40A(3). He noted that when the same was confronted with the Director of the assessee company for disallowing the same as per the provisions of the I.T. Act, the Director replied as under which has been reproduced by the Assessing Officer in the body of the assessment order:

> "*Q41. As your company M/s. Skill Promoters Put. Limited is claiming to allow the cash expenditure to the extent of Rs. 54.68 crore against the unaccounted cash receipts of Rs. 112.26 crore, please explain the reasons and show-cause, why the unaccounted cash expenditure should not be disallowed u/s. 40A/3) and 40a(ia) of the I.T. Act. 1961 and also explain the reasons, why the penalty provisions should not be initiated u/s 269SS and 269ST of the I.T. Act, 1961.*
>
> *Ans. In order to overcome the deficiencies in books of account and non-compliance of certain provisions of Income tax Act and to avoid protracted litigations, our company M/s. Skill Promoters Pvt. Ltd is voluntarily admitting an income of Rs.42.50 crore in addition to the regular income offered as well as undisclosed income offered in survey operation (which worked out to Rs.28 crore) in respect of all the relevant A. Ys. In view of this, we submit that our company's net profit percentage is estimated at 19% of total receipts/receivables of Rs.370 crs (approx.) which is more than the regular net profit declared by our company at 8%. Hence, we request the department to take a pragmatic view of our nature of business which invariably involves various unaccounted receipts and expenditure.*

5. However, the Assessing Officer did not accept the contention of the assessee on the ground that the assessee has violated several provisions of the I.T. Act and by admitting portion

of cash received as income, the assessee company cannot absolve itself of the willful defaults made in adhering to certain provisions of the I.T. Act. After considering the survey u/s 133A on 10.12.2015 and the search that took place on 22.10.2019, the Assessing Officer computed the disallowance to be made u/s 40A(3) for various years, the details of which are as under:

A. Survey u/s 133A on 10.12.2015 in the hands of M/s. Skill Promoters:

S.No	A.Y	FY	Amount
1	2014-15	2013-14	26,93,878
2	2015-16	2014-15	20,08,200
3	2016-17	2015-16	6,24,39,186
		TOTAL	6,71,41,264

B. Search u/s 132 conducted on 22.10.2019 (including survey material at construction site) in the hands of M/s. Skill Promoters Private Ltd:

S.No	A.Y	FY	Amount
1	2017-18	2016-17	5,96,690
2	2018-19	2017-18	14,33,00,785
3	2019-20	2018-19	14,07,71,562
4	2020-21	2019-20	4,11,48,625
	Total		32,58,17,662

The Assessing Officer accordingly made addition of Rs.26,93,878/- in the hands of the assessee for the A.Y 2014-15.

6. The Assessing Officer similarly noted that during the course of search proceedings, it was found that there is a price variation between the actual sale consideration received from the buyers and the sale value at which the commercial space is being registered. Further during the search operation, a pen drive was found and seized vide Annexure A/SPPL/OFF/01, at the chamber of Sri Mohammad Yousuf Jaffer, Sales & Marketing Manager/

Executive of the Company M/s. Skill Promoters Private Limited, located at 6th Floor, City Central Mall, Road No. 1, Banjara Hills, Hyderabad wherein it is clearly mentioned that the company has received cash over and above the registered value of the property. However, all these cash transactions were not accounted for in the books of account of the company M/s.Skill Promoters Private Ltd. The same was confronted to Sri. Mohammed Yousuf Jaffer, Marketing Manager of the company during the search proceedings. In the statement given on 22.10.2019, Mr. Jaffar stated that the said paper contains the sales details of M/s. Skill Promoters in respect of Project “Sarat City Capital Mall” and also stated that the said page contains the advances received by the company towards sale consideration of commercial space in "Sarat City Capital" (i.e., in Block-A of the Project) since F.Y.2008-09 to till date. In the above seized sheet, all the details of advances received towards sale consideration of commercial space i.e. Total Sale consideration of the commercial space, Total Paid till date (year wise), Advance received in cash and advance received through cheque are clearly mentioned. He noted that as per the said sheet, the assessee company has received the total receipts/advances on account of sale consideration of commercial space amounting to Rs. Rs.357.00 crores, which includes an amount of Rs.244.74 crore that was received through banking channel and an amount of Rs.112.26 crore that was received by way of cash.

7. During the post search proceedings, the assessee company furnished the Corrected/rectified figures in respect of actual advances received by the firm/company towards sale consideration of commercial space during the F.Ys.2008-09 to

2019-2020 after reconciling the books of account of the firm/company, as under:

(Rs. in Crores)

A.Y	Name of the entity	Bank Receipts (Rs.)	Cash Receipts (Rs.)	Total Receipts
2008-09 to 2013-14	Skill Promoters (Partnership firm)	61.56	14.74	76.31
2014-15		31.91	13.61	45.52
2015-16		35.20	10.81	46.01
2016-17		8.68	5.08	13.76
2016-17		0.71	8.29	9.00
2017-18		16.41	9.02	25.43
2018-19		40.18	27.51	67.70
2019-20		25.32	12.42	37.74
Sub-Total(A)		219.98	101.48	321.46
2020-21	-do-	43.72	10.93	54.66
Sub Total (B)		43.72	10.93	54.66
Total (A+B)		263.70	112.41	376.11

8. The Assessing Officer verified from the books of accounts maintained by the assessee in Tally accounting package that the company is recognizing sale consideration only to the extent of amounts received though banking channel. According to him, it is clearly evident from the seized incriminating evidences that the company has received sale consideration over and above the registered sale deed, in cash, which is not accounted for in the books of account of the company. Therefore, he treated an amount of Rs. 13,61,00,000/- as undisclosed income for the year under consideration and added back the same to the income returned by the assessee.

9. The Assessing Officer accordingly determined the total income of the assessee at Rs.17,25,05,958/-.

10. Before the learned CIT (A), the assessee apart from challenging the addition on merit, challenged the validity of the assessment u/s 153A in absence of any incriminating material

found during the course of search and the documents those were found were dumb documents being unauthenticated, unsigned and unreliable.

10.1 So far as the merit of the case is concerned, the assessee filed certain additional evidences and argued that only the profit embedded in Rs.13,61,00,000/- can be added and not the entire amount. It was argued that only 8% profit can be estimated. The disallowance u/s 40A(3) was also challenged and it was argued that the same was made on the basis of presumption and surmises.

10.2 Based on the arguments advanced by the assessee and the additional evidences filed before him, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) dismissed the grounds challenging the validity of assessment u/s 153A in absence of any incriminating material found during the course of search. He also rejected the request of the assessee to follow 8% as net profit which is being consistently adopted in the past by observing as under:

> *"6.2 I have perused the submissions of the AR. It is seen that a survey operation u/s.133A was conducted on 09-09-2015 in the business premises of M/s.Skill Promoters, Hyderabad. Subsequently assessment orders were passed by the AO for AY 2015-16 and 2016-17. In these orders, it was stated that the appellant was estimating profit @8% of the advances received since the project is a long gestation project and was yet to be completed. In the assessment order of AY 2016-17 u/s.143(3) passed on 14-12-2018, the assessee himself submitted at para (d) that only estimated profit is taken on the advances received and the gross construction cost is directly taken to the balance sheet. It was also stated that the assessee has estimated profit @8% of gross receipts. The relevant extract of the assessee's own submission that was reproduced in the assessment order is reproduced below:*

"(d) Mismatch in sales turnover reported in Audit Report and ITR (Form 3CD and Total Sales/ Gross Receipt in Part-AP&L.

(i) As mentioned earlier we are construction/developing a complex at Kondapur which is in the phase of construction since 7 years. As the project was not completed and under construction, we have been estimating the profits as percentage of gross receipts and filing our return.

(ii) In the profit and loss account, only estimated profit is taken and the gross collection and construction cost along with estimated profits is directly taken to Balance Sheet. For the financial year 2015-16, we have estimated a profit of Rs.1,48,29,259, which is 8% of gross receipts of Rs.18,53,65,740 as shown in point 40(a) of Audit Report".

6.3 While accepting the estimating of income @8% on the advances received, the AO has mentioned that the actual profit on the construction activity is yet to be worked out as the project is still in work-in-progress stage and therefore the estimation of 8% on advances received was found to be acceptable. In other words, it is an ad hoc estimation of profits by the assessee @8% on the advances received since the project Was still in the work in progress stage. This was accepted by the A0. This was so done since the final profit of its construction activity is yet to be worked out by the assessee. This ad hoc estimation by the assessee @8% cannot be accepted as the final profit earned by the assessee. This also cannot be seen as a binding precedent on the AO to follow this estimation even after discovery of receipt of unaccounted on-money cash receipts during search. When there was un-impeachable evidence found during the course of search that the assessee has received on-money totaling to Rs.112.41 crores which was also confirmed by the appellant's directors/partners, the estimation of profit @8% on the turnover does not arise. Therefore, the argument of the AR to adopt profit 8% on the gross receipts is specious and cannot be accepted. Accordingly, Ground no.3 of the appellant is DISMISSED."

11. So far as the addition of Rs.13,61,00,000/- made by the Assessing Officer being undisclosed income with respect to cash receipts on sale of property is concerned, the learned CIT(A) after considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, directed the Assessing Officer to delete the addition by observing as under:

"7.5. I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR, as well as the remand report and the counter-comments thereon. The

AR contended that the AO erred in treating the undisclosed income on account of cash receipts (on-money receipts) at Rs.13,61,00,000/- as its income. It was argued by the AR that the loose sheets are nothing but an un-authenticated, unsigned, unreliable dumb material, which do not co relate with any sale proceeds. It was stated that the seized material and pen drive are dumb documents and the AO erred by relying on the same. It was also pointed out that the seized material was not considered in totality and the AO ought to have computed only the profits of the firm and not the entire gross receipts of the firm. The AR also stated that the AO ought to have caused further enquiries with the parties making the payment and the assessee has offered income on the registered value of the commercial space and the books of account of the firm were audited by a Chartered Accountant. Therefore, the AR requested that the taxation of on-money may be deleted.

7.5.1 i have considered the assessment order and the submissions of the AR and the material on record. It is not in dispute that the seized material of Annexure A/SPPL/OFF/02 contained Pg.No.36 which has the details of year wise sale consideration, total paid, balance, cash, cheque, percentage received for the FYs 2008 09 to 2019-20 along with workings. It was also found from the seized material at pages 1-35 of Annexure A/SPPL/OFF/02 that certain customer wise details of sale consideration received in cash & cheque, agreement of sale reference number & financial year, name of the buyer etc., which confirms that cash and cheque were received from various buyers. Shri Mohd Yousuf Jaffer, Marketing Manager was confronted with these findings while recording his statement dated 26-11-2019. His reply to Q.No.11 provides details of buyer and the reference to agreement of sale and the cash and cheque amount. This directly contradicts the AR's argument that the seized material is dumb, unauthenticated material. For ready reference Q.No.11 of his reply is reproduced below:

"Q. 11.1 I am showing you the pages bearing Nos. 1-35 of Annexure-A/ SPPL/Off/02 which were found and seized at your chamber during the search and seizure operation conducted in the business premises of M/s. Skill Promoters Pvt. Ltd located at 6th Floor, City Central Mall, Road No.1, banjara Hills, Hyderabad on 22.10.2019 and explain the said material in detail.

Ans. I have gone through the above material seized vide Annexure No. A/ SPPL/Off/02 and also confirm that the said print outs have been taken from my HP Pren Drive (64GB) which was seized during the search proceedings u/s 132 of the I.T. Act on 22.10.2019 in my chamber at M/s. Skill Promoters Pvt.Ltd located at 6th Floor, City Central Mall, Road No.1, banjara Hills, Hyderabad. In this regard, I am submitting the following page-wise explanation as under:

Page Nos.	Agreement of sale – Ref No. & F.Y	Name of the buyer	Sale consideration
1-11	36/2017-18	Fatima Bilques (S.No.38)Mohd.Najeeb & Sadia Fathima)	Rs.70,00,000 through bank
	37/2017-18	Mohd.Ahsanuddin Khan & Syeda Najeeba Fatima	Rs.1,29,00,000/- out of which an amount of Rs.79,00,000/- received in cash and Rs.50,00,000/- through bank
	38/2017-18	Mohd. Najeeb & Sadia Fathima	Rs.25,42,000/- out of which an amount of Rs.10,00,000/- received in cash and Rs.15,42,000/- through bank
	39/2017-18	Narayana Rao & P Syamala Devi	Rs.67,00,000/- out of which an amount of Rs.42,00,000/- received in cash and Rs.25,00,000/- through bank.
	40/2017-18	Amanur Rasheed Zaina & Mohd. Abdul Raofe	Rs.1,87,50,000/- out of which an amount of Rs.1,12,50,000/- received in cash and Rs.75,00,000 through Bank.
12-25	06/2017-18	Javed, Pranitha Reddy, Rakshi Pranav Reddy, Muddireddy Nikhita Reddy	Rs.2,25,00,000/- out of which Rs.1,00,00,000/- through bank
	09/2017-18	M Satyanarayana Reddy	Rs.3,78,500,000/- out of which an amount of Rs.3,05,00,000/- received in cash and Rs.73,50,000/- through bank
	10/2017-18	Mohd. Qadaruddin Khan	Rs.73,50,000/- out of which an amount of Rs.28,50,000/- received in cash and Rs.45,00,000/- through bank
26-35	06/2015-16	Mohd. Hyder Khan	Rs.2,77,20,000/- out of which an amount of Rs.2,27,20,000/- received in cash and Rs.50,00,000/- through bank
	07/2015-16	Syed Nemathullah	Rs.2,77,20,000/- out of which an amount of Rs.2,72,20,000/- received in cash and Rs.50,00,000/- through bank
	08/2015-16	Sayeeda Shazia Moin	Rs.30,50,000/- out of which an amount of Rs.3,75,000/- received in cash and Rs.26,75,000/- through bank
	09/2015-16	Syed Mushtaq Ahmed Amir	Rs.30,00,000 through bank
	10/2015-16	Mohd. Waseeuddin & Husna Jabeen	Rs.37,00,000/- out of which an amount of Rs.23,00,000/- received in cash and Rs.14,00,000/- through bank
36-51	Sale Register for the FYs 2008-09 to 2019-20 along with year-wise receipts		In this register, all the details of sales made during the F.Y 2008-09 to 2019-20 wherein it is also mentioned the mode of receipts i.e. cash or bank.

Q.12. I am showing you the pages bearing Nos. 1-35 of Annexure A/ SPPL/OFF/02 which were found and seized at your chamber during the search and seizure operation conducted in the business premises of M/s. Skill Promoters Pvt. Ltd located at 6th Floor, City Central Mall, Road No.1, banjara Hills, Hyderabad on 22.10.2019 wherein it has been mentioned that most of the amount received in cash from the customers towards sale of commercial space belongs to M/s. Skill Promoters Pvt. Ltd. Please offer your comments.

7.5.2 A.Y- 2014 The above reply shows the agreement wise cash & cheques received from the buyers. Further, the evidences found during search were confronted which Shri Syed Mohammed Aslam, Managing Director/ Partner who in his statement dated 20-12-2019 and in reply to Question no.38 confirmed that these pertain to sale consideration received by the company from the customers during the period FYs 2008-09 to 2019-20. Similarly, the other Director/partner of the company viz. Shri Syed Naveeduddin Ahmed Quadri, in his reply to Question No.23 of his statement dated 20-12-2019 has also confirmed that these pertain to the receipt from customers towards sale consideration of commercial space at Sarat Capital Mall. It was also mentioned in the statement that they have reconciled the above figures and have arrived at actual receipts towards sale of commercial space to the extent of Rs.357.05 crores which includes cash receipts of Rs.112.41 crores. Accordingly, Shri Mohd Aslam filed an affidavit dated 20-12-2019 wherein he has disclosed Rs.42.45 crores by way of additional income by computing profit @19% on the gross receipts. However, the appellant has retracted the admission and had filed return u/s.153A declaring additional income of only Rs.6 crores across four years.

7.5.3 Secondly, it is not in dispute that the appellant has not recorded the entire sale receipts (cash & cheque) in the books of account nor has he recorded the cash expenses. In other words, neither the cash income that was received nor the cash expenses that have been incurred have been incorporated in the books of account. Therefore, the audited books of account filed by the appellant do not give a correct picture of the profits earned. Hence, the audited books of account are defective and cannot be relied upon. Hence, I proceed to reject the books of account u/s.145 of the Act as I am not satisfied about the correctness and completeness of the books filed by the assessee. Since the books of accounts are rejected, I proceed to work out the income on on-money receipts based on the best judgment that would depict the true position of profit. In a case where all the purchases and expenses are recorded in the books but the sales are suppressed or are under invoiced or sold outside the books in cash then, there can be no escape from the addition of the whole amount of the cash sales as was done by the AO. However, this is not the case here. It is not in dispute that there were cash expenses to the extent of Rs.39.29 crores that were found during the search. These expenses were not recorded in the books of account. The AO has also made a disallowance u/s.40A(3) of the Act on account of these cash expenses to the tune of Rs.39.29 crores in various years. In other words, the fact that there were unrecorded cash expenses was accepted by the AO in the assessment order. Therefore, the action of the

A0 in bringing to tax the entire on-money receipts on gross basis without setting off the unrecorded cash expenses is contradicting his own stand and is not correct. This is more so when the A0 himself has taken cognizance of these unrecorded cash expenses and disallowed the same. The Hon'ble Supreme Court in CIT vs Williamson Financial Services [2007] 165 taxmann 638 (SC) has observed as under:

"It is important to bear in mind that u/s.4, the levy is on total income of the assessee computed in accordance with and subject to the provisions of the Income Tax Act. What is chargeable to tax under Income Tax Act is not the gross receipt but the income under the Income Tax Act. The tax is on income but not on gross receipts".

7.5.4 There cannot be a selective use of the seized material that only favours the revenue. It is not correct to utilize some notings of on-money receipts on the loose sheets that are against the assessee and in the nature of income and ignore the other seized material which are not favourable to the revenue. A seized document should be read as a whole. This was so held in Chander Mohan Mehta vs.ACIT [1997] 71 ITD 245 (Pune-Trib) and Dhanvarsha Builders and Developers (P.) Ltd. v.DCIT[2006] 102 ITD 375 (Pune-Trib). The Hon'ble ITAT, Pune has eloquently explained this concept in Dhanvarsha Builder (cited supra), the relevant extract of which is reproduced below:

"6.2. It was also the argument of the learned Counsel that the impugned papers not only to show the receipts but also the expenditure. Therefore, it was argued that the document should be read as a whole and deduction for the expenditure incurred should be given to the assessee while computing undisclosed income. We have considered this argument also. We are of the view that the seized document should be read as a whole if it has to be relied upon. It cannot be read only to the extent it is advantageous to the revenue and not read when it becomes disadvantageous to the revenue. In other words, if we do not read the figure of expenditure of Rs. 4200 against the name of Rajender by doubting the expenditure, then all the receipts mentioned therein also comes under cloud of doubt. It is an accepted principle of interpretation of documents that they should be read as a whole as persons of common prudence will read them. They cannot be read in bits and parts to suit the convenience of one or other party. Therefore, the expenditure of 4200 will also have to be read on proper appreciation of the document...

7.5.5 Further, Section 292C of the Act causes a presumption that the books of account and other documents found during search belongs to the person searched and are true. If that be so, when the income on account of on-money was held to be valid then the cash expenses that are also reflected in the seized material cannot be ignored. Presumption u/s.292C of the Act applies both ways. It does not confer discretionary power on the department to presume or not to presume the correctness of the seized documents or to presume correctness in parts. This was explained by the ITAT, Kolkata in Vivek Kumar Katholia vs DCIT (2013) (142 ITD 394/32 taxmann.com 331). Therefore, it is held that the assessee is entitled for the benefit of cash expenditure that was found during the search operation. As stated in the earlier paras, the disallowance

u/s.40A(3) of cash expenditure by the AO himself goes on to prove that AO recognizes the incurring of cash expenditure, which otherwise could not be disallowed if the same were not recognized as expenditure. In other words, the AO taxing the cash receipts on gross basis without giving the benefit of cash expenses is not as per the harmonious interpretation of Section 292C of the Act.

7.5.6 The question now arises as to what extent of the cash expenses the assessee is entitled to set off against the on-money receipts? To put differently, what is the best estimate of the profit on the cash receipts, that have to be arrived since the books are now rejected. The AO has recognized cash expenses found during the course of search of Rs.39.29 crores. The Appellant has stated that its claim for cash expenses of Rs.18.68 crores on the same project was accepted by the AO during earlier survey proceedings which should also be given benefit. The A0's argument in the remand report that there is no proof that the impounded survey material and the material seized during search are on the same project, reflects lack of understanding of the facts of the case. The AO himself in AY 2016-17 has taken cognizance of the expenses of Rs.18.68 crores allowed during survey on the same project and has restricted these expenses to Rs.5,53,56,091/- for want of evidences. Therefore, the contention of the AO in the remand report has no basis and is rejected. The appellant further claimed evidence of cash expenses of Rs. 14 crores which was not seized by the search team. This shows that there is no certainty or authenticity in the claims of cash expenses as these were based on the notations on the rough sheets found during the search & survey. There is no foolproof evidence to authenticate these cash expenses by way of bills, third party confirmation etc. Hence, this method of computing profit after setting off of cash expenses found during search cannot be relied upon and is discarded.

7.5.7 A better method to find out the true position of profit is to take recourse to a reasonable estimation of income on fair basis after factoring the evidences that were found during search & survey. It is seen that during survey, the assessee has returned an income of Rs.10 crores in the ITR for AY 2015-16 against a cash turnover of Rs.32 crores found during survey. Subsequently, during assessment proceedings in AY 2016-17 after the survey action, the AO has made an addition of Rs.3.32 crores on account of unreconciled advances. This amount of Rs.3.32 crores was not offered in the ITR but was assessed on account of receipt of advances that could not be satisfactorily reconciled by the assessee. The AR submitted that the assessee has not challenged this addition. Accordingly, the percentage of profit offered by the appellant during the survey action is worded out at 31.25% (Rs.10 crores / Rs.32 crores). The amount of Rs.3.32 crores was not taken while computing the percentage of profit as this was assessed by the AO due to unreconciled advances during assessment proceedings and not declared as income in the ITR consequent to the survey action.

7.5.8 On the book results the assessee has offered profit at around 8%. Evidently, the profit on on-money receipts is much higher than the book profits and cannot be adopted to the on-money receipts. Applying Wednesbari principle, i.e., the principle of reasonableness, it is fair to adopt a percentage of profit on on-money receipts similar to the one offered during survey. Hence the profits on on-money receipts are estimated at 30% of the total cash receipts. This would

be in tune with the principle of consistency between survey and search proceedings. This estimate is applied only to the on-money receipts and not to the book results. Since the search team or the AO did not find any error in the book results the same are not disturbed. Even in the assessment order, only the on-money receipts were brought to tax and the book results were not disturbed. As a corollary, the assessee is not entitled to set off the profits declared on book results against the estimated income @30% on on-money receipts. However, the assessee's argument that during survey operation, it has declared profit on on-money receipts of Rs.32 crores on the same project and hence set off should be given against the survey income that was offered to tax has some merit. It is not in dispute that the survey was also done on the same project and income was offered and assessed by the AO after survey. Thus, the income offered on the same project during the survey cannot again be added in search proceedings as it would result in double taxation of the same income. Since the assessee has disclosed income on cash turnover of Rs.32 crores during survey, this turnover needs to be excluded from the on-money receipts of Rs.112.41 crores. The additional income of Rs.32 crores admitted during survey was assessed up to AY 2016-17 in the hands of the firm viz, M/s. Skill Promoters and the remaining on-money receipts excluding the survey income i.e., Rs.80.41 crores (Rs.112.41- Rs.32 crores) is distributed among the assessment years i.e., AYs 2016-17 to 2020-21 on pro-rata basis as a percentage of cash receipts in the hands of the successor company viz, Skill Promoters Private Limited. Accordingly, the profit on the cash receipts is worked out for all the years of the appellant firm and its successor company viz. Skill Promoters Pvt Ltd as per the table below:

A.Y	Name of the entity	Cash receipts in crores	Pro rata % of cash	Income on cash received (Bx80.41 crores)	Profit on cash receipts @ 30% of Rs.80.41 crores (B &C)	Additional income offered in ITA u/s 153A (Rs. crores)	Net taxable income on on-money receipts (C -D)
		A	B	C	D	E	F
2008-09 to 2013-14	Skill Promoters (Partnership Firm)	14.74	-	-	-	-	-
2014-15		13.61					
2015-16		10.81					
2016-17		5.08					
2016-17	Skill Promoters Pvt Ltd	8.29	21.16%	9.78	2.93	1	1.93
2017-18		9.02	13.23%	10.64	3.19	1	2.19
2018-19		27.51	40.36%	32.45	9.73	2	7.73
2019-20		12.42	18.22%	14,65	4.40	2	2.40
2020-21		10.93	16.03%	12.89	3.87	-	3.87
Total		112.41	100%	80.41	24.12	6	18.12

It is clarified that the above computation of estimated profits of Rs.24.12 crores excludes the income assessed after survey of Rs.13.32 crores. Also, as already stated in earlier paras, no set off of book-profits can be availed by the appellant against the estimated profit on on-money receipts. Since the profit on on-money receipts of Rs.32 crores were already offered during survey in the hands of the appellant firm viz, Skill Promoters and assessed in AY 2015-16 & 2016-17, no additional profit

on account of on money receipts remained to be taxable in the current year in the hands of the firm. Hence the Assessing Officer is directed to delete the addition of Rs.13.61 crores on this issue. Accordingly, the grounds of appeal related to this issue are PARTLY ALLOWED".

12. So far as the addition u/s 40A(3) is concerned, the learned CIT (A) directed the Assessing Officer to delete the same by observing as under:

"8.5. I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR, as well as the comments of the Assessing Officer thereon. Briefly the facts are, seized material indicating cash expenses totaling to Rs.39,29,58,926/- was found during search. The AO disallowed an amount of Rs.26,93,878/- u/s.40A(3) of the Act pertaining to the current year out of the same. The AR contended that the disallowance u/s.40A(3) has to be made only when expenses are reflected in the books of account and debited to Profit & loss account. As per the AR, since the cash expenses were not debited to the profit and loss account, the disallowance u/s.40A(3) does not apply to the same. It was also contended that the AO merely disallowed payment u/s.40A(3) without possessing any substantive evidence of a single payment to a single party exceeding the stipulated limit of Rs.20,000/- Therefore, the AR requested for deletion of the said addition.

8.5.1 I have considered the contentions of the AR and the assessment order of the A0. Disallowance of expenditure u/s.40A(3) of the Act is made when the assessee incurs any expenditure in a day in cash exceeding the specified amount (Rs.20,000/ prior to AY 2018-19 and Rs.10,000/- after that). For ready reference Section 40A(3) of the Act is reproduced below:

"Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to o person in a day, otherwise than by an account payee cheque drawn on a bonk or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure".

In other words, there needs to be evidence on record to show that the cash expenditure was incurred on a particular day in excess of the specified amount in order to invoke Section 40A(3) of the Act. It is seen that there is no evidence brought on record by the AO that expenses in cash were incurred above the specified amount as a single payment or aggregate of payments to a single party on a specific date or several dates. No cash book extract or loose paper evidence was cited by the AO in support of the same. Hence, prima facie, the disallowance u/s.40A(3) of the Act made by the A0 is not correct.

8.5.2 Coming to the legal issues, the AR has taken a plea that disallowance u/s.40A(3) does not apply when the cash expenditure is not debited to the Profit & loss account. There are divergent views on this Ganesh Kumar issue. The High court of Madras in K R vs ACIT (383 ITR

165) (Madras) [2017] held that though Section 40A(3) applies to the block assessments in general but would apply only where expenditure in question has been incurred and claimed in the computation of income. For ready reference, the operative portion of the said ratio is reproduced below:

"7. We are called upon to decide whether the invocation of the provisions of s.40A(3) in the aforesaid facts and circumstances of the present case is justified in law. There is no dispute that the provisions of s.40A(3) apply to block assessments in general. The provision, however, would apply only where expenditure in question has been incurred and claimed in the computation of income. The Supreme Court, in the case of Attar Singh Gurmukh Singh Vs. Income Tax Officer, Ludhiana (191 ITR 667), reiterates this position as well. In the present case, the Tribunal confirms as a finding of fact at para 17 of its order that no expenditure has been incurred except the investment in gold The consideration paid towards the investment has been duly brought to tax as unexplained income, such income not having been claimed as expenditure in the computation of income The objection of the Revenue is that the valuation of the gold per gram is not RS. 500 but more as revealed by to her disallowances made in the order of assessment and if the higher rate was taken into consideration, one could assume that certain expenditure has been incurred and claimed. We are not persuaded to accept this submission in so far as there is no necessity to consider any other valuation except that relating to the subject disallowance, being Rs.500 per gram adopted by the Assessing officer after due consideration and application of mind. We are thus of the view that the provisions of 40 A(3) are wholly inapplicable to the facts and circumstances of this case. The substantial question of law is answered in favour of the assessee and against the Revenue. No costs".

However, the High court of Andhra Pradesh in S.Venkata Subba Rao [173 ITR 340] (Andhra Pradesh) (1988) held that Section 40A(3) applies to a business carried on illegally. It was held that once the Act applies to illegal income, the taxable income has to be determined in accordance with the provisions of the Act that includes Section 40A(3). It was further held that unless the assessee's claim falls within one or the other clauses of Rule 6DD, he has to necessarily comply with the requirements of Section 40A(3). For ready reference, the operative portion of the ratio is reproduced below:

"6. There is no doubt about the proposition that profits and gains derived from an illegal business can also be taxed. The reasons for doing So are discussed and set out in some detail in the decision of this Court in CIT v. Maddi Venkataratnam Co. (P.) Ltd. (1983/ 144 ITR 373 to which one of us (Jeevan Reddy, J.) was a party. Indeed, it is not disputed by the assessee herein that the profits and gains derived by him from the illegal business carried on by him are liable to be taxed. If so, the income can be taxed only under, and in accordance with, the provisions of the Act. Once the Act applies and the taxable income has to be determined in accordance with the provisions thereof, it is not possible to hold that some of the provisions of the Act do not apply to the assessment of taxable income in the case of

an illegal business, while some others do. In other words, we do not find it possible to draw a distinction between the several provisions of the Act, one set applying to the assessment of income arising from illegal business and the other set of provisions not applying thereto May be that in an illegal business, like smuggling, it may not be practicable to comply with the ought requirements not of sub section (3) of section 40A, but that only means that such illegal business to be carried on. It is a business prohibited by law. By taxing its income, it is not legalized or validated. We are, therefore, unable to agree with Mr Ratnakar that sub-section (3) of section 40A cannot apply to a business carried on illegally.

7. We are also of the opinion that the only circumstances in which compliance with the requirements contained in section 4OA(3) can be dispensed with are those stated in rule 600 of the income-tax Rules Unless a person falls within one or the other clauses of rule 600, he has necessarily to comply with the requirements of section 40A(3) Further, if an assessee says that he is entitled to take advantage of a particular clause in rule 6DD, he must satisfy the requirements of that clause, which means that, in this case, the assessee who is seeking to claim the benefit of clause () in rule 6DD, has not only to satisfy that having regard to the nature of the business there was a genuine difficulty in complying with the requirements of section 40A(3) he must also establish the genuineness of the payment and the identity of the payee. Unless he does that, he cannot take advantage of clause (j). It is not open to the assessee to say that he will only partly satisfy the requirements of clause (j) and would still be entitled to the benefit of the said clause. We may make it clear that the satisfaction that is relevant in such cases is the satisfaction of the ITO".

In view of the binding decision of the jurisdictional High court of Andhra Pradesh in the above cited case, it is held that the provisions of Section 40A(3) would apply even when the expenses are not routed through the profit and loss account. Hence this argument of the AR is rejected.

8.5.3 Further, as held in the earlier paras, the profit on cash on-money receipts were estimated @30% of the on-money received during the year. The question now is whether the provisions of Section 40A(3) would apply when the income is estimated after rejecting the books of account? The jurisdictional High court of Andhra Pradesh in M/s.Indwell Corporation vs CIT [1998] (232 ITR 776) (AP) held that no disallowance u/s.40A(3) can be made when the books of account are rejected and the net profit rate is estimated. The rationale for this is that when books are rejected, one cannot talk back on the same books to make specific addition or disallowance by applying a different section of the Act. The relevant extract of the decision of the AP High Court is reproduced below:

"The pattern of assessment under the Income-tax Act is given by Section 29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in Sections 30 to 43D. Section 40 provides for certain disallowances in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under Section 29 is to be made under section 145 on the basis of the books regularly maintained by the assessee. If

those books are not correct or complete, the Income-tax Officer may reject those books and estimate the income to the best of his judgment. When such an estimate is made it is in substitution of the income that is to be computed under Section 29. In other words, all the deductions which are referred to under Section 29 are deemed to have been taken into account while making such an estimate. This will also mean that the embargo placed in section 40 is also to be taken into account.

No doubt there is a big difference between the profit earned with own capital and profit earned with borrowed capital and such a difference could have been taken into account by the Income-tax Officer while making an estimate. If the Commissioner had set aside the estimate on the ground that the vital fact that the business was carried on with own capital and not with borrowed capital has been ignored by the income-tox officer, there may not have been any difficulty in upholding that order. But, when he proposes to add back an exact item in the profit and loss account, he was relying on the rejected books which he could not do as held by the Bench of this court in Maddi Sudarsanam Oil Mills Co. v. CIT (1959] 37 ITR 369. There is also further difficulty if Section 40, as argued by learned counsel, is to be taken into account even after making an estimate. When there are certain other deductions which are to be disallowed such as wealth-tax payment in section 40, can it be said that after making an estimate, the wealth tax charged in the P&L A/c should again be added back to the profit. This example illustrates how the contention of the Revenue, that Section 40[(b) makes a difference in the situation, is untenable. In our considered opinion, the answer to the question has to be in the negative and in favour of the assessee "

Similar view was advocated by various judicial fora in the following decisions:

(i) CIT VS Smt.Santosh Jain [2007] 159 Taxmann 392 CIT VS Gobind Ram (Punjab & Haryana)
(ii) CIT vs. Gobind Ram (2014) 48 taxmann.com 14/(2015) 229 (Punjab & Haryana)
(iii) CIT vs. Banwari Lal Banshidhar (1998) 229 ITR 229 (All)
(iv) CIT VS Bahubali Neminath Muttin [2016] 73 taxmann.com 100/242 Taxman 279 (Kar)

Respectfully, following the decision of the jurisdictional High Court in Corporation Indwell (cited supra), since the net profit of the appellant was estimated after rejecting the books of accounts, it is held that no further u/s.40A(3) of the Act. In view of disallowance can be made the above arguments, the addition of Rs.26,93,878/ u/s. 40A(3) is directed to be deleted. Accordingly, Ground No4 of the appellant is ALLOWED".

13. Aggrieved with such order of the CIT (A), the assessee as well as the Revenue are in appeal before the Tribunal by raising the following grounds:

13.1 **Assessee – ITA No.628/Hyd/2022 – A.Y 2014-15**

"1. The order of the Ld. CIT(A) is erroneous both on facts and in law to the extent it is prejudicial to the interest of the appellant.

2. The Ld. CIT(A) ought to have fully allowed the appeal instead of allowing in part.

3. Ld. CIT(A) though deleted both the additions made in the assessment, erred in dismissing technical ground nos. 1, 2 to 2.2,3 and 3.1 taken before him.

4. The Ld. CIT(A) ought to have appreciated the fact that the information in the impugned Pen drive, a digital device, is un-authenticated, unsigned and un-reliable and it cannot be co-related to the actual sale the appellant proceeds of that have been duly recorded in its books of account.

5. The Ld.CIT(A), while allowing the grounds taken on the 13,61,00,000/- on merits, addition of Rs. has grossly erred in not adjudicating the same legality with regard to the so-called seized material.

6. Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the statement of Sri Mohammad Yousuf , Sales and marketing manager and Managing Director, Shri Syed Mohd. Aslam have no evidentiary value since they have been retracted subsequently.

7. The appellant may, may, add or alter or delete amend or and/ or rescind all or any of the grounds of appeal at any time or modify or substitute or before or at the time of hearing of the appeal."

13.2 **Revenue – ITA No.686/Hyd/2022 – A.Y 2014-15**

"1. The Ld. CIT(A) erred both in law and on facts of the case in granting relief to the assessee.

2. The Ld. CIT(A) erred on facts and in law in rejecting the books of accounts and holding that the addition made by the AO on account of undisclosed sale Consideration received in cash is not correct as the assessee has failed to demonstrate its eligibility for telescoping and resultant rejection of books of accounts.

3. Ld. CIT(A) erred on facts and in law by deleting disallowance u/s 40A(3) in view of the fact that the rejection of books of account by the CIT(A) is not accepted.

4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.

13.3 The Revenue has filed the following additional grounds:

> *"1. The learned CIT (A) erred in rejecting the books of account on one side and accepting the books results on the other side.*
>
> *2. Without prejudice to the above, the learned CIT (A) erred in estimating the income @30% on the on-money receipts only by rejecting the books of account and accepting the book results of the assessee, where the percentage of profit offered by the assessee is 8% only."*

13.4 After hearing both the sides and considering the fact that all material facts necessary for adjudication of the additional grounds are already available on record and no new facts are required to be investigated, therefore, following the decisions of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 and Jute Corporation of India Ltd reported in 187 ITR 688 the additional grounds raised by the Revenue are admitted for adjudication.

13.5 We have heard the rival arguments made by both the sides and perused the record. We have also considered the various decisions cited by both sides. Grounds of appeal No.1 & 4 by the Revenue being general in nature are dismissed.

13.6 In Ground of appeal No.2, the Revenue has challenged the order of the learned CIT (A) in rejecting the books of account and thereby holding that the addition made by the Assessing Officer on account of undisclosed sale consideration received in cash is not correct. So far as the additional ground is concerned, the Revenue has challenged the order of the CIT (A) in estimating the income @30% on the on-money receipt. The assessee in its grounds apart from challenging the validity of assessment u/s 153A in absence of incriminating material, has challenged the

distribution of such on-money to various years and estimation of the same @30% by the CIT (A).

13.7 The learned DR, while arguing the appeal filed by the Revenue, strongly challenged the order of the learned CIT (A) in deleting the addition of Rs.13,61,00,000/- made by the Assessing Officer on account of undisclosed income with respect to cash receipt on sale of property and deletion of Rs.26,93,878/- made by the Assessing Officer u/s 40A(3). So far as the deletion of both the additions, he submitted the following written submission:

> *"It is respectfully submitted to the Hon'ble Bench the brief facts of the case are as under:*
>
> *The assessee filed original return of income u/s 139(1) of the Act on 25.09.2014 declaring total income of Rs. 3,37,12,080/-. A search & seizure action was conducted on the assessee on 22.10.2019. Accordingly, a notice u/s 153A of the Act was issued and served on the assessee. In response to the notice u/s. 153A, the assessee filed return of income on 26.02.2021 declaring total income of Rs. 3,37,12,080/-. Assessment u/s. 153A was completed on 27.09.2021 after making the following additions / disallowances:*
>
> *1 Addition towards undisclosed income w.r.t. cash receipts on sale of property) 13,61,00,000/-*
>
> *2 Disallowance u/s 40A(3) 26,93,878/-*
>
> *2. Aggrieved by the above additions / disallowances, the assessee filed an appeal before CIT(A)-12, Hyderabad. The decision of the ld. CIT(A) is analyzed issue-wise under:*
>
> *2.1. Addition towards undisclosed income w.r.t. cash receipts on sale of property Rs. 13,61.00,000/-.*
>
> *2.1.1. It was found from the seized material that the assessee has received cash over and above the registered value of the property, which was not accounted for in the books of account. It was verified from the books of accounts maintained in Tally by the assessee that it is recognizing sale consideration only to the extent of amount received through banking channel. Hence, an amount of Rs. 13,61,00,000/ - was treated as undisclosed income w.r.t. cash receipts (on money receipts) and added back to the total income of the assessee.*
>
> *2.1.2. The Id.CIT(A) held that the audited books of account are defective and cannot be relied upon as they do not give a correct picture of the*

profits earned. The Id.CIT(A) has therefore rejected the books of accounts u/s. 145 of the Act and estimated the income on on-money receipts at the rate of 30% following the percentage adopted in assessee's case of survey assessment for the year.

2.1.3. Accordingly, the ld.CIT(A) concluded that since the profit on on-money receipts of Rs.32 crores were already offered during survey in the hands of the assessee and assessed in Asst. Year 2015-16 & 20 16-17. no additional profit on account of on money receipts remained to be taxable in the current year in the hands of the assessee. Hence, the CIT(A) has directed to delete the addition of Rs. 13.61 crores.

2.1.4. The decision of the Id.CIT(A) in estimating the income by rejecting the books of accounts u/s. l45 is not acceptable in view of the following reasons:

(i) The CIT(A) has called for a remand report during the course of appeal proceedings and asked to examine the information/ evidences filed by the assessee. Accordingly, remand report was submitted stating that the assessee has not submitted any material to prove that the material impounded during the survey and the material seized during search are referring to the same transaction. The assessee failed to disprove the possibility that the transaction present in impounded material in survey, are different payments or part payments to the transactions found during search. However, the CIT(A) has not considered the submissions made in the remand report and taken a different view by rejecting the books of account u/s. 145 of the Act and estimating the income of the assessee.

(ii) The reasons mainly for rejecting the books of accounts by the CIT(A) is that the assessee has not recorded the entire sale receipts (cash and cheque) in the books of account nor has recorded the cash expenses. It is a fact that the assessee has not recorded the entire sale receipts in the books of accounts. But that does not mean that there is discrepancies in books of accounts as held by CIT (A. There is no specific discrepancy brought out by the CIT(A) in rejecting books of accounts except stating that the assessee has not recorded the entire sale receipts in the books of account. The Id CIT(A) should have appreciated the fact that there is a clear-cut evidence found during the search that the assessee is not recording the sale consideration which was received by it in cash over and above the registered sale deed and accounting only the receipts received through banking channels. Hence, the non- entry of the sale consideration received by the assessee in cash cannot be the basis for rejecting the books of accounts. Further, in respect of the books of account maintained by the assessee, where it accounting is only the receipts routed through banking channel, there were no discrepancies noticed. Generally, books of accounts would be rejected if any discrepancies have been found. In the assessee's case, assessments have been completed u/s. 143(3) and 147 and the Assessing Officer has not found any discrepancies so as to

reject the books of accounts. The addition on account of undisclosed income with reference to cash receipts (on money receipts) on sale of property was made on the basis of incriminating material found during the course of search, which was out of the books of account. Hence, there is no point of rejecting the books of account by the learned CIT(A) and estimating the income of the assessee, as the addition made relates to the unaccounted income found during the search action. Further, there is a clearcut evidence and bifurcation of amounts received by the assessee in cash and through banking channels as mentioned below:

A.Y	Name of the entity	Cash receipts in crores	Pro rata % of cash	Income on cash received (Bx80.41 crores)	Profit on cash receipts @ 30% of Rs.80.41 crores (B &C)	Additional income offered in ITA u/s 153A (Rs. crores)	Net taxable income on on-money receipts (C -D)
		A	B	C	D	E	F
2008-09 to 2013-14	Skill Promoters (Partnership Firm)	14.74	-	-	-	-	-
2014-15		13.61					
2015-16		10.81					
2016-17		5.08					
2016-17	Skill Promoters Pvt Ltd	8.29	21.16%	9.78	2.93	1	1.93
2017-18		9.02	13.23%	10.64	3.19	1	2.19
2018-19		27.51	40.36%	32.45	9.73	2	7.73
2019-20		12.42	18.22%	14,65	4.40	2	2.40
2020-21		10.93	16.03%	12.89	3.87	-	3.87
Total		112.41	100%	80.41	24.12	6	18.12

The decision of the Ld. CIT(A) is not acceptable and the entire amount of addition made by the Assessing Officer of Rs.31.61 crores has to be brought to tax.

2.2 Addition toward disallowance u/s 40A(3) of the Act – Rs.26,93,878/-.

2.2.1. It was found from the seized material that the assessee has incurred expenditure in cash towards payments to labour, purchase of material such as sand, cement, steel and miscellaneous expenditure relating to construction activity, which amounts to Rs.26,93,878/- by violating the provisions of section 40A(3) of the Act. Hence, the Assessing Officer has disallowed the same u/s.40A(3) of the Act.

2.2.2. The learned CIT(A) held that since the profit was estimated @ 30% by rejecting the books of account, there cannot be further additions on account of cash expenses reflected in cash book.

2.2.3. The decision of CIT(A) is not acceptable in view of the fact that the rejection of books of account by the CIT(A) is not being accepted. Hence, when the rejection of books of account was not being accepted, the

decision relied upon by the CIT(A) in the case of M/s. Indwell Corporation vs. CIT [1998] [232 ITR 776 (AP)] will not be applicable.

In view of the above submission, it is humbly requested that the Hon'ble Bench to consider the above and pass necessary orders in favour of the Department.

13.8 The learned Counsel for the assessee, on the other hand, while partially supporting the order of the learned CIT (A) to the extent of rejection of book results submitted that estimation of profit at 30% in the hands of the assessee is on the higher side. He filed the following written submission stating that while the rejection of books of account of the assessee and the estimation of income of the unrecorded receipts by the CIT (A) is justifiable, however, such estimation at abnormal rate of profit is not justified for the following reasons:

i) <u>Registration charges:-</u> The alleged-on money receipts found to have been recorded in the so-called Seized material includes registration charges relating to the buyer. They were received from the respective buyers and were paid to the registrar as registration charges and stamp duties on behalf of the clients. Though they are not part of the sale consideration, for the sake of convenience registration charges were received from the buyers and paid back towards statutory payment.

ii) <u>Cost of additional services;</u> The above said on money also comprised of receipts towards the additional services provided on specifications by the buyer. On request by the buyers some specific works, modifications have been carried out over and above the original specifications as extra services for cost. Thus, the so called on money receipts consist of these payments which were incurred as additional expenditure for providing specified additional features. There is no additional gain for assessee, but it is a part of service for reputation of company.

(iii<u>) Repetition of entries;</u> It is further submitted that in the so-called seized documents, there are repetition of entries causing huge swelling of receipts causing wrongful estimation of income. As the details found in u authenticated documents are not foolproof, not checked by anyone.

13.9 The learned Counsel for the assessee drew the attention of the Bench to the copy of the seized documents and submitted that it clearly shows receipt of registration charges, additional specifications and repetition/duplication of entries.

13.10 He submitted that the Assessing Officer at para 4 of the assessment order in the 9th line has observed interalia that the impugned cash transactions were not accounted for in the books of account of the assessee company. This according to him clearly shows that the Assessing Officer has rejected the entries in the books of account which is nothing but rejection of books of account though not specifically spelt out in the assessment order. He submitted that neither the cash income received nor the cash expenses incurred have been incorporated in the books. The learned CIT (A) in his order has specifically mentioned that by applying the wednesbari principle, i.e, the principle of reasonableness is applied only to on money receipts and not to book results.

13.11 So far as the additional ground raised by the Revenue and all appeals for A.Ys 2016-17 to 2020-21 are concerned, the learned Counsel for the assessee referring to Para No.8.5.8 of the order of learned CIT (A) submitted that the learned CIT (A) has incorrectly distributed the on-money receipts among the A.Ys 2016-17 to 2020-21 on prorata basis as a percentage of cash receipts in the hands of the company i.e. Skill Promoters (P) Ltd. He submitted that the survey was also conducted on the same project and income was offered and assessed by the Assessing Officer after the survey. Thus, the income offered on the same project during the survey cannot again be added in search proceedings as it would

amount to double taxation. He submitted that since the assessee has disclosed income of Rs.13.00 crores on cash receipts during the survey, the ld CIT (A) has rightly excluded these turnover from the on-money receipts of Rs.112.41 crores. However, he should have also excluded the on-money receipts of Rs.14.74 crores relating to A.Y 2008-09 to 2013-14 since these A.Ys are not covered under the search assessment. The learned Counsel for the assessee accordingly requested to exclude an amount of Rs.44.24 crores i.e. Rs.29.50 crores (AYs 2014-15 to 2016-17) + Rs.14.74 crores (i.e. A.Y 2008-09 to 2013-14) from the turnover of Rs.112.41 crores since the assessee has offered Rs.13.00 crores net income on the receipts. He accordingly submitted that the on-money receipts of Rs.14.74 crores should also have been excluded and only Rs.68.17 crores should have been distributed among the AYs 2016-17 to 2020-21 in the hands of the company which is as under:

A.Y	Cash Receipts (Cr.) (A)	Additional Income offered (B)
2016-17	8.29	1
2017-18	9.02	1
2018-19	27.51	2
2019-20	12.42	2
2020-21	10.93	-
TOTAL	68.17	6

13.12 So far as the estimation of income is concerned, he submittd that the learned CIT (A) has estimated the same @ 30% as against 8% declared by the assessee and accepted by the Assessing Officer in the scrutiny proceedings.

13.13 Relying on various decisions, he submitted the Coordinate Benches of the Tribunal under identical circumstances have estimated such profit at 10% to 12%. Since the assessee in the instant case is regularly showing 8% profit which has been accepted in the past in the scrutiny assessment,

therefore, considering the totality of the facts of the case, profit estimated by the CIT (A) at 30% be reduced to 8%. For the above proposition, he relied on the following decisions:

i) Sampada Homes vs. ACIT (ITA No.95-97/Hyd/2018) & 236 to 238/Hyd/2018 ACIT vs. Sampada Homes.
ii) Sri Sri Estates vs. ACIT (ITA No.2242-2245/Hyd/2017)
iii) Damodar Reddy Kaiti vs. ACIT (ITA No.1630-1631/Hyd/2018)

13.14 The learned DR in his rejoinder submitted that the learned CIT (A) on his own adopted a method of 30% estimated profit which is not at all justified under the facts and circumstances of the case. He submitted that the entire on-money, evidences of which were found during the course of search, should be added to the total income of the assessee as done by the Assessing Officer. He submitted that the order of the learned CIT (A) be reversed and that of the Assessing Officer be restored.

14. We have heard the rival arguments made by both the sides, perused the orders of the authorities below and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.13,61,00,000/- with respect to cash receipt on sale of property and Rs.26,93,878/- u/s 40A(3). We find the learned CIT (A) deleted the additions, the reasons of which are already reproduced in the preceding paragraph. So far as the addition of unaccounted cash receipt is concerned, it is an admitted fact that the assessee has not recorded the entire sale receipts (i.e. cash and cheque) in the books of account nor has it recorded the cash expenses. Further, the Assessing Officer in the

assessment order himself has mentioned that the assessee has incurred expenses to the extent of Rs.39.29 crores which were found during the course of search and which were not recorded in the books of account. We find the Assessing Officer after going through the entries in the seized documents, which were not recorded in the books of account, made disallowance u/s 40A(3) of the Act on account of cash expenses exceeding the specified limit to the tune of Rs.39.29 crores. Since there cannot be a selective use of the seized material that only favours the Revenue ignoring the other evidences found during the course of search showing incurring of expenditure, the learned CIT (A), in our opinion, is justified in rejecting the books of account and estimating the profit.

14.1 As per the provisions of section 292C of the Act where any books of account, other documents etc., are found in the possession or control of any person in the course of a search u/s 132 or survey u/s 133A of the Act, it is presumed that such books of account, other documents etc., belong to such person and that the contents of such books of account and other documents are true. Since in the instant case admittedly unaccounted cash receipts as well as unaccounted cash expenditure were found during the course of search and the Assessing Officer himself has made addition/disallowance u/s 40A(3) of the cash expenditure, therefore, in view of the above discussion and in view of the detailed reasonings given by the learned CIT (A) on this issue, we do not find any infirmity in his order in rejecting the books of account. The ground raised by the Revenue on this issue is accordingly dismissed.

14.1.1 So far as the deletion of Rs.13.61 crores for the A.Y 2014-15 is concerned, we find the assessee during the survey has already offered the income from such on-money which has been taxed by the Assessing Officer. Therefore, we concur with the findings of the learned CIT (A) holding that no additional profit on account of on-money receipt is required to be taxed in the hands of the firm for the current year. Following similar reasonings, we hold that the additions for the A.Ys 2015-16 and 2016-17 in the hands of the firm are rightly deleted by the learned CIT (A). The grounds raised by the Revenue on this issue are also dismissed.

14.2. So far as the arguments of the learned Counsel for the assessee on the issue of distribution of on-money receipts among various AYs and the estimation of income on the same is concerned, we find it is an admitted fact that survey was also done on the same project and the income was offered and assessed by the Assessing Officer after survey. We therefore, find merit in the arguments of the learned Counsel for the assessee that the income offered on the same project during the survey cannot again be added in search proceedings as it would result in double taxation. Since the assessee has disclosed income of Rs.13.00 crores on the unaccounted receipts during the survey, the learned CIT (A) has rightly excluded the cash receipts of Rs.29.50 crores from on-money receipts of Rs.112.41 crores. However, he failed to exclude the cash receipt of Rs.14.74 crores relating to A.Y 2008-09 to 2013-14, since these AYs are not covered under the search assessment. Therefore, we find merit in the arguments of the learned Counsel for the assessee that the total on-money receipts that has to be distributed among the A.Ys 2016-17 to 2020-21 is only Rs.68.17 crores i.e. Rs.112.41 crores – Rs.44.24 crores (29.54 crore for A.Y 2014-15 to 2016-17 +

Rs.14.74 crores for A.Y 2008-09 to 2013-14). We accordingly direct the Assessing Officer to distribute the cash receipts of Rs.68.17 crores among the A.Y 2016-17 to A.Y 2020-21.

14.3 Now coming to the question of estimation of income on such cash receipts is concerned, we find while the Assessing Officer taxed the entire cash receipts as income, the learned CIT (A) restricted the same to 30% of the cash receipts. It is the contention of the learned Counsel for the assessee that estimation @ 30% on such receipts is very high especially when such cash receipts are on account of registration charges received from customers, cost of additional services rendered by the assessee at the request of the customers and repetition of entries. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the seized documents containing the on-money receipts shows that it includes registration charges received from the buyers as per bill, cost of additional services provided as per specification by the buyers etc. Further, there are also certain repetition of entries in the seized documents. The learned DR also fairly conceded that the seized documents contain registration charges and certain expenses.

14.4. We find the Coordinate Bench of the Tribunal in the case of Damodar Reddy Kaiti (Supra) while deciding somewhat similar issue has directed the Assessing Officer to adopt profit rate of 15% against 45% applied by the CIT (A) on suppressed turnover of the assessee shown in the return of income u/s 153A by observing as under:

> *8.3. In our view, the turnover pertains to for A.Ys. 2013-14 and 2014-15 as per AO in remand report was 1,94,36,250/- and suppressed turnover was Rs.1,11,76,750/- . In our view, though the assessee has declared the business*

income u/s 44AD @ 8%, for the year 2013-14 however, in our view, the finding of the ld.CIT(A) was not correct whereby he had directed to compute the income of the assessee by applying the rate of 40% on the entire turnover. Moreover, the ld.CIT(A) in para 9.5 had categorically recorded as under :

"During the course of appellate proceedings, the contention of the assessee's AR is that the assessee has shown the profits and capital gains from the sale of the said 11 independent houses and 7 plots in the respective AYs from AY 2011-12 to AY 2015-16, in the Returns filed u/s,153A. The detailed statement showing the year wise sales with regard to the 11 independent houses and 7 plots, AY wise, was furnished, along with supporting evidences, which were forwarded to the Assessing Officer, for examination and report thereon. The Assessing Officer, vide his Remand Report dated 22-03-2018, which is reproduced in para 9.3 above, has verified the statement and the evidences furnished by the appellant, and has confirmed that the total consideration of Rs.2.45 crores has been reflected in the Returns filed u/s.153A for the respective AYs"

8.4. In our view, once it was agreed by the Assessing Officer based on the evidence that the entire sale consideration pertaining to 11 independent houses and 7 plots in the respective AYs from A.Y 2011-12 to A.Y. 2015-16 were duly shown by the assessee then the correct course would be to tax the turnover for these two years which pertain to AYs.2013-14 and 2014-15 only. At this stage, it is useful to mention that the co-ordinate Bench of the Tribunal in the case of Sampada Homes had revised the rate of 40% on the total turnover and had reduced it to 10%. However, the said decision was contested by the learned DR for Revenue showing that it pertains to Villas issues hence cannot be relied upon. Nonetheless, it is an undisputed fact that the assessee received its share in the project which has duly been mentioned by the Assessing Officer in para 6 of his order, wherein it was mentioned that M/s. Sri Nilaya Constructions developed a venture at Badangapet in an area of 24 acres and in the return of income on pages 62, 66, the assessee had duly mentioned the profit from Sampada homes which was calculated by the assessee based on estimating the profit at 8% of the turnover.

9. In our view, though the co-ordinate Bench of the Tribunal had applied the rate of 10% as against 40% applied by CIT(A) on the suppressed turnover, however considering the totality of the peculiar facts of the present case, when the assessee had Admitted the total turnover in the return of income filled under section 153A and had shown profit at the rate of 8%, whereas Assessing Officer held total turnover as income of the assessee and CIT(A), we are of the opinion that rate of 15% is required to be applied as against 40% as applied by CIT(A) on the suppressed turnover of the assessee shown in the return of incomes filed under section 153A of the

Act for estimating the profit of assessee for both the years. ***In light of the above, grounds 6 to 9 are partly allowed. "***

14.5 We find the Coordinate Bench of the Tribunal in the case of Sampada Homes, Hyderabad and Vice-Versa (Supra) has also adjudicated an identical issue wherein profit rate of 10% as against 40% adopted by the CIT (A) on suppressed income was held to be reasonable. The relevant observation of the Tribunal vide para 7.1 and 7.2 read as under:

7.1 With regard to estimation of income in this line of business, we notice that AO has treated the whole suppressed turnover as supressed income of the assessee, whereas, ld. CIT(A) has estimated the suppressed income @ 40%. We notice that assessee has declared the income @ 5.12% whereas ld. CIT(A) has estimated the income @ 40%. W e are in agreement with the CIT(A) that only income should be estimated and not the whole supressed turnover as income. However, the income estimation should be realistic and based on the trend in the industry. In the case of Sri Narendar Reddy Maddi Vs. ITO in ITA No. 871/Hyd/2016 for AY 2011-12, on similar issue, the coordinate bench has held as under:

"6. We have considered the rival contentions and perused the statements placed on record and the case law relied upon. As seen from the order of the AO, the order was an ex-parte order, therefore assessee was not in a position to explain the nature of receipt. Before the Ld.CIT(A), necessary explanation was given. CIT(A) in his order has partly accepted the turnovers to the extent they are accounted for and the balance was treated as unexplained cash credit. Since the nature of receipts are pertaining to the contract works, it is not correct on the part of the authorities to bring to tax the entire receipt as income. As seen from the nature of deposits in the bank accounts, there were corresponding withdrawals also and these seems to be petty cash receipts in the small contract works undertaken by assessee. Hon'ble Gujarat High Court in the case of CIT Vs. President Industries [258 ITR 654] (Gujarat- HC) has held that it cannot be matter of an argument that the amount of sales by itself cannot represent the income of assessee, who has not disclosed the sales. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Similar view was taken in the case of CIT Vs. Gurubachhan Singh J. Juneja [215 CTR 509] (Gujarat-High Court) and CIT Vs. Sharda Real Estate (P.) Ltd., [99 DTR 100] (MP-HC). In the case of Jyotichand Bhaichand Saraf & Sons (P.) Ltd., Vs. DCIT [139 ITD 10] the Co-ordinate Bench at Pune has confirmed that the addition could only be made only to an extent of gross profit earned on an unaccounted/ suppressed sales and not on the entire sales itself. Similar view was also taken in the case of ACIT, Cir1 Vs. M/s. Archana Trading Co in ITA No. 351 & 352/Coch/2011, dt. 28-02-2013 and also ACIT Vs. Pahal Food in ITSSA No. 42/Hyd/2005, dt. 30-09-2009, ITAT, Hyderabad.

6.1. Respectfully following the principles laid down by various High Courts and Co-ordinate Bench decisions, we are of the opinion that the entire turnover cannot be brought to tax as such and there can be reasonable

profit estimation on the above amount. Generally income is estimated at 12.5% in the case of big contracts and since assessee has already offered @ 10% profit on the accounted turnover, we are of the opinion that income can be determined on the balance of the turnover at 12.5% of the turnover. AO is directed to do so. Accordingly, assessee's ground are partly allowed."

7.2 In the above case, we notice that assessee has already declared profit @10% on the accounted turn over, whereas, in the given case, assessee has declared 5.12%. In our considered view, the income has to be realistic and appropriate to the kind of business of assessee. As noted, assessee has declared only 5.12% of the declared turnover as profit. The coordinate bench has opined that in the general scenario income is estimated at 12.5% in the case of big contracts. In the interest of justice and fairness to both the parties, in our considered view, 10% is reasonable and in line with the Villa Projects in the real estate industry. Accordingly, we direct the AO to estimate income @ 10% of the undisclosed turnover. Accordingly, ground raised by the assessee is partly allowed."

14.6. Considering the totality of the facts of the case and considering the fact that the assessee has already offered the additional income to the tune of Rs.6.00 crores in the return of income filed for A.Y 2016-17 to 2019-20, we modify the order of the learned CIT (A) and direct the Assessing Officer to adopt the profit rate of 15% on the unaccounted receipts of Rs.68.17 crores for the A.Y 2016-17 to 2020-21, the details of which are already given at Para No.13.11. The grounds raised by the Revenue on this issue are accordingly dismissed and the grounds raised by the assessee are partly allowed.

15. Ground of appeal No.3 by the Revenue relates to the order of the learned CIT (A) in deleting the disallowance made u/s 40A(3).

16. After hearing both sides, we do not find any infirmity in the order of the learned CIT (A) on this issue. It is an admitted fact that during the course of search, seized material indicating cash expenses totalling to Rs.39,29,58,926/- were found out of which the Assessing Officer disallowed an amount of Rs.26,93,878/- u/s 40A(3) relevant for the current year on the

ground that the unaccounted expenditure reflected the violation of provisions of section 40A(3). We find before the learned CIT (A) the assessee argued that the expenses were not debited in the books of account maintained during regular course but outside the regular books and the disallowance u/s 40A(3) was made without pointing out any substantive evidence to a single payment or to a single period exceeding the stipulated limit. We find the learned CIT (A) while deleting the addition held that the provisions of section 40A(3) do not apply when the income is estimated. While doing so he relied on the decision of the Hon'ble jurisdictional High Court in the case of M/s Indwell Constructions (1998) reported in 232 ITR 776 (A.P) where it has been held that no disallowance u/s 40A(3) can be made when the books of account are rejected and the net profit rate is estimated. Since in the instant case also the profit of the assessee has been estimated, therefore, the decision of the Hon'ble jurisdictional High Court relied on by the learned CIT (A) is squarely applicable to the facts of the case of the assessee and therefore, we do not find any infirmity in the order of the CIT (A) in deleting the addition u/s 40A(3) of the Act. Thus, the ground raised by the Revenue on this issue is also dismissed.

17. So far as the appeals filed by the assessee for the A.Ys 2014-15 to 2016-17 are concerned, the same relate to the validity of assessment u/s 153A in absence of any incriminating material. The learned Counsel for the assessee submitted that the initiation of proceedings u/s 153A is not in accordance with law since there was no incriminating material identified by the Department for the above years during the course of search operation. He submitted that the AO has not brought on record any independent

corroborative evidence to make the addition i.e. no incriminating material was found during the course of search.

17.1 He submitted that during the course of survey operation u/s 133A which was conducted on assessee firm on 9.9.2015, the assessee has offered income on the same project during the survey and assessments were completed by the AO after the survey. However, in the instant case, no incriminating material, whatsoever, was found during the course of search. Therefore, no addition can be made in 153A assessment. For the above proposition, the learned Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P) Ltd reported in (2023) 149 Taxmann.com 399.

17.2 The learned DR, on the other hand, strongly supported the order of the learned CIT (A) in upholding the validity of proceedings u/s 153A. Referring to Para 1.1.1.5 of the order of the learned CIT (A), the learned DR drew the attention of the Bench to the findings given by learned CIT (A) where he had given exhaustive details while upholding the validity of the assessment u/s 153A. He submitted that apart from the statements from various persons, independent customers and their payments received in cash was found during the course of search. It has been admitted that the cash details were not disclosed in the regular books of accounts maintained. Therefore, the arguments advanced by the assessee that no incriminating material was found during the course of search is incorrect.

17.3 We have heard the rival arguments made by both sides, perused the orders of the AO and the CIT (A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. The assessee in the grounds of appeal

Nos. 2, 3, & 4 for the above 3 A.Ys has basically challenged the validity of assessment u/s 153A in absence of any incriminating material found during the course of search. It is the argument of the learned Counsel for the assessee that no addition can be made in absence of any incriminating material found during the course of search. However, the arguments so advanced by the learned Counsel for the assessee cannot be accepted. It is an admitted fact that various payments details and name of individual customers were found during the course of search which contain receipts in cash as well as through Bank. When these documents were confronted to the Directors of the Company, they have admitted that these were cash payments received from customers which were reflected in the consolidated statement found during the course of search. Therefore, it cannot be said that no incriminating material was found during the course of search. The learned CIT (A) at Para 5.1.1.5 of his order has thoroughly discussed this issue while upholding the addition made in the return filed in response to notice u/s 153A. Under these circumstances, we do not find any infirmity in the order of the learned CIT (A) on this issue and the grounds raised by the assessee are dismissed.

18. So far as the ground of appeal No.4 by the Revenue for the A.Y 2016-17 is concerned, the same relates to deletion of Rs.5,53,56,091/- by the learned CIT (A) which was added by the Assessing Officer on account of excess expenditure. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee company has claimed cash expenditure of Rs.18.68 crores found during the course of survey proceedings on 10.12.2015 in the case of the assessee company against the cash receipt of Rs.112.26 crores found during the search and seizure on 22.10.2019. The

Assessing Officer examined the same by calling for the impounded material and noted that the actual cash expenditure available in cash book maintained from 23.08.2018 to 9.10.2015 was only Rs.9,83,81,122/- as against the claim of the assessee at Rs.18.68 crores. The Assessing Officer confronted the same to the M.D of the assessee company to which the M.D replied as under which has been extracted by the Assessing Officer which reads as under:

> *"Q.15: As per your earlier submissions and during the PO proceedings in the case of M/s. Skill Promoters Pvt Ltd, you have claimed the cash expenditure of Rs. 18.68 crores against the cash receipt of Rs. 32 crores found out during survey proceedings. However, upon verification of impounded material found during the survey operations conducted by DCIT, Circle 14(1), it is noticed that the cash expenditure found in impounded material is only at Rs. 9,83, 81, 222/-. Please explain the discrepancy and submit from where the expenditure of Rs. 18.68 cr was arrived at by your concern and also show-cause why the difference of Rs. 8,84,18,778/- claimed as excess expenditure by your firm should not be brought to tax as additional income on account of cash received over and above the registered value of commercial space sold by your company.*
>
> *Ans: 1 submit that, we have claimed expenditure of Rs.18.68 crores on account of expenditure incurred in cash between April, 2008 to December 2015. However, as we have not maintained proper books of account with regards to cash expenditure and we have not maintained record of expenditure incurred in cash for various miscellaneous expenses and for meeting various obligations. Hence, we request for allowing such miscellaneous expenses incurred during the beginning of our projects. Part of this unrecorded expenditure was incurred on purchasing of jewellery worth 3.3 crores given to our landlords, Sri Sarath Gopal and Family as goodwill amount for entering into Joint Development Agreement during 2009".*

18.1. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.5,53,56,091/- by observing as under:

> *"5.2. However, the claim of assessee on account of miscellaneous and obligatory expenditure is not acceptable without any evidence as the assessee company does not have any evidence of all such cash expenses, except the expenditure claimed on account of Jewellery worth Rs. 3,30,62,687/- given to members given to Sri Sarath Gopal and family on account of which Sri Sarath & family members have admitted the additional undisclosed income of Rs.3,30,62,687/- based on certain loose papers and bills found and seized bearing Page Nos20 to 24 of Annexure-*

A/BSG/RES/03 received by them from Sri Syed Mohd Aslam during the search and seizure proceedings. Accordingly, difference of Rs. 5,53,56,091/- (8,84,18,778 – 3,30,62,687/-) is brought to tax as additional income on account of Rs. 112.26 crores cash receipts received by assessee company over and above cheque receipts reflected in the books of accounts for the assessment year 2016-17 relevant to financial year 2015-16 in which such expenditure was claimed against the cash receipts of Rs. 112.26 crores found during the search and seizure proceedings."

18.2 In appeal, the learned CIT (A) deleted the addition by observing as under:

"7.5 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, as well as the comments of the Assessing Officer thereon. Briefly the facts are during the course of survey in FY 2015-16 the appellant has claimed to have received on-money of RS.32 crores and claimed cash expenses of Rs.18.68 resulting in taxable income of Rs.13.32 crores. The assessments for AY 2015-16 and AY 2016-17 have been completed by the then AO wherein a total sum of Rs.13.32 crores was offered by the assessee to tax as income on the on-money receipts. However, after search, the assessee was asked once again to provide evidences in support of the cash expenditure of Rs.18.68 crores found during the survey proceedings. The impounded material during survey was called for and examined again. Upon verification of the said impounded material, it was noticed by the Assessing Officer that the actual expenditure available in cash books was only Rs.9,83,81,222/- as against the claim of the assessee at Rs.18.68 crores. On being questioned, the Managing Director Shri Syed Mohd Aslam stated that the claim of expenditure of Rs.18.68 crores on cash receipts of Rs.32 crores during survey was accepted by the A0 and assessments were completed. However, as no proper books being maintained with regard to cash expenditure, they have not maintained record of expenditure incurred for various miscellaneous expenses and for meeting various obligations. It was also stated that the part of this cash expenditure was utilized for purchasing jewellery worth Rs.3.30 crores given to the landlord Shri Sarath Gopal and family as a good will amount. The AO after reducing the jewellery worth of Rs.3.30 crores added an amount of Rs.5,53,56,091/- as unverified expenditure during survey. The appellant is aggrieved and is in appeal.

7.5.1 The AR vehemently contested the said addition during appellate proceedings stating that the issue has already been considered by the AO during earlier survey proceedings in the year 2015 for the AYs 2015-16 and 2016-17 u/s.143(3) of Act. It was contended that the same issue which has been dealt with and examined u/s.143(3) cannot be re-examined in the proceedings u/s.153A of the Act. It was stated that the issue has already been examined in scrutiny proceedings on an earlier occasion cannot again be subject to the proceedings u/s.153A without fresh evidences. It was pointed out that the provisions u/s.153A do not

permit the income Tax authority to conduct roving enquiries without there being any incriminating material found during search. In view of the same, the AR requested for deletion of the said addition.

7.5.2 The contentions of the A0 and the AR were perused. It is not in dispute that during the survey proceedings the then A0 i.e, DCIT, Circle-14(1) has passed an assessment order assessing income of Rs.13.32 crores against cash/on-money receipt of Rs.32 crores for AYs 2015-16 & 2016-17. This implies that cash expenditure of Rs.18.68 crores (Rs.32 crores - Rs.13.32 crores) has been allowed during survey proceedings. During the proceedings u/s.153A, the A0 called for the material impounded during survey available with the DCIT, Circle-14(1) and on verification of the impounded material he has noticed that the cash expenditure of Rs.9,83,81,222/- was found in the books as against Rs.18.68 crores that was allowed during the survey assessment. From the above it is evident that the Assessing Officer sought to re-examine the impounded survey material and arrived at a different conclusion on the same facts that were used to assess income during survey. In other words, it is a change of opinion by the A0 in interpreting the material impounded during survey during the current 153A proceedings. It is settled law that the AO is not allowed to review his own decision directly or indirectly unless there is material evidence to show that the earlier decision arrived at was incorrect or new facts were discovered during search. This principle was elucidated by the Hon'ble Supreme Court in the case of CIT vs Sun Engineering Works Pvt. Ltd., (1992) 198 ITR 297. The ratio of the Hon'ble Supreme Court is directly applicable to the facts of the present case. It is evident from the impugned assessment order that the AO sought to re-examine the impounded material during survey to arrive at a different conclusion which is nothing but reviewing one's own decision which is impermissible in law. Therefore, the addition made on account of unsubstantiated cash expenditure of Rs.5,53,56,091/- does not sustain.

7.5.3 Even otherwise, the income on account of on-money receipts/ cash receipts was estimated @30% on the gross receipts while adjudicating the appeal on this issue by rejecting the books of account. It was held by the jurisdictional High court of Andhra Pradesh in M/s. Indwell Corporation vs CIT (1998] (232 ITR 776) (AP) that once the books are rejected and the income is estimated, no new disallowance can be made on the same set of books. In this case when the income was estimated at 30% of the gross cash receipts, it is deemed that the assessee has incurred the remaining 70% as its expenses. The above disallowance of cash expenses gets subsumed in the same. Therefore, no new disallowance can be made on this issue. In view of the same, the addition of income on account of unsubstantiated cash expenditure of Rs.5,53,56,091/ is directed to be deleted. Accordingly, the ground related to this issue is ALLOWED."

18.3 We have heard the rival arguments made by both sides, perused the orders of the Assessing Officer and the learned CIT (A) and the paper book filed on behalf of the assessee. We

have also considered the various decisions relied on by both sides. We find the Assessing Officer in the instant case made addition of Rs.5,53,56,091/- being excess expenditure on the basis of cash expenditure incurred between April, 2008 to December, 2015 as per survey proceedings and actual cash expenditure as per books of account. We find the learned CIT (A) deleted the addition, the reasons of which are already reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. It is an admitted fact that during the survey proceedings the then A0 i.e, DCIT, Circle-14(1) has passed an assessment order assessing income of Rs.13.32 crores against cash/on-money receipt of Rs.32 crores for AYs 2015-16 & 2016-17. We find the Assessing Officer during the proceedings u/s 153A, called for the material impounded during survey available with the DCIT, Circle-14(1) and on verification of the impounded material noticed that the cash expenditure of Rs.9,83,81,222/- was found in the books as against Rs.18.68 crores that was allowed during the survey assessment. From the impounded survey material, he arrived at a different conclusion on the same facts that were used to assess income during survey. This in our opinion, is a change of opinion by the A0 in interpreting the material impounded during survey during the current 153A proceedings. We find the learned CIT (A) relying the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works (P) Ltd reported in 198 ITR 297 (S.C) observed that the Assessing Officer is not allowed to review his own decision directly or indirectly unless there is material evidence to show that the earlier decision arrived at was incorrect or new facts were discovered during search. However, we find from the impugned assessment order that the AO sought to re-examine the impounded material during survey to arrive at a

different conclusion which is nothing but reviewing one's own decision which is impermissible in law. Therefore, we concur with the finding of the learned CIT (A) that the addition made on account of unsubstantiated cash expenditure of Rs.5,53,56,091/- cannot be sustained.

18.4 We further find the income on account of on-money receipts/cash receipts was estimated @15% on the gross receipts while adjudicating the appeal on this issue by rejecting the books of account the details of which are given in the preceding paragraphs. It has been held by the Hon'ble jurisdictional High court in the case of M/s. Indwell Corporation vs CIT (1998] (232 ITR 776) (AP) that once the books are rejected and the income is estimated, no new disallowance can be made on the same set of books. Since in the instant case the income has been estimated @15% of the gross cash receipts, therefore, it is deemed that the assessee has incurred the remaining 85% as its expenses. The above disallowance of cash expenses gets subsumed in the same. Therefore, in our opinion, no new disallowance can be made on this issue. In view of the above discussion, the order of the learned CIT (A) deleting the addition of income on account of unsubstantiated cash expenditure of Rs.5,53,56,091/ is upheld and the ground raised by the Revenue on this issue is dismissed.

19. There is one more issue which is common for A.Y 2017-18 to 2020-21 in ITA Nos.623/Hyd/2022 to ITA No.626/Hyd/2022 is regarding non granting of TDS credit in the assessment order.

19.1 The learned Counsel for the assessee submitted that while passing the assessment order u/s 143(3) r.w.s. 153A on 26.09.2021, the AO failed to give credit of the TDS of the following amounts:

A.Y	Amount (Rs.)
2017-18	Rs.14,64,255
2018-19	7,87,230
2019-20	2,96,286
2020-21	2,33,353

19.2 He submitted that the customers have deducted the above TDS in the name of M/s. Skill Promoters (firm) which was subsequently dissolved and changed to M/s. Skill Promoters (P) Ltd. He submitted that since the firm has been succeeded by the impugned company, therefore, the assessee is entitled to get credit for the TDS deducted in the firm's name. He further submitted that the TDS so deducted by the customers is supported by Form 26AS. Referring to the decision of the Coordinate Bench of the Tribunal in the case of CES Ltd vs. DCIT vide ITA No.2088/Hyd/2018 he submitted that under identical circumstances, the Tribunal has restored the issue to the file of the AO with a direction to verify the claim of TDS credit and advance tax paid by the amalgamating company and allow the same. He accordingly submitted that this matter may be restored to the file of the AO with a direction to verify the same and give necessary credit of the tax so deducted by the customers.

19.3. The learned DR, on the other hand, submitted that since the tax has not been deducted in the name of the Company, therefore, the assessee is not entitled to get any credit of the same. He, however, submitted that he has no objection if the matter is restored to the file of the AO for giving due credit of the TDS as per law.

19.4. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that this issue

was neither raised before the AO nor before the CIT (A) and therefore, there was no occasion for either of the authorities to adjudicate the issue. However, since it is the case of the assessee that the TDS has been deducted by the customers in the name of M/s Skill Promoters (Firm) which was subsequently changed to M/s. Skill Promoters (P) Ltd and such TDS is supported by Form 26AS, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to verify the claim of such TDS credited and decide the issue as per law after giving due opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

20. The next issue which is common for A.Y 2017-18 to A.Y 2020-21 relate to the order of the CIT (A) in deleting the disallowance of personal expenditure made by the Assessing Officer at Rs.50,000/-, Rs.46,50,000/-,1,53,10,000/- and Rs.18,00,000/- for A.Y 2016-17 to 2019-20 respectively.

20.1 Facts of the case, in brief, are that as per the seized material, the Assessing Officer noted that the total cash expenditure found as per Annexure – A/SPPL/SMA/05 to A/SPPL/SMA/38 was at Rs.36,06,09,309/- from 09.01.2017 to 21.10.2019. Out of the said expenditure the Assessing Officer noted that the expenditure amounting to Rs.2,24,60,000/- is relating to Shri Syed Aslam. He therefore, confronted the same to the assessee in reply to which it was submitted that whatever expenditure entries made in the cash book maintained at the construction site are genuinely related to the construction expenses and the same should be allowed as business expenditure. However, the Assessing Officer noted that the expenditure, the details of

which are given at Para 5.1 of his order relates to personal in nature and cannot be allowed as business expenditure. He accordingly held that the expenditure incurred on cash which is personal in nature has to be brought to tax considering the same as income in the hands of the assessee company. He accordingly made addition of Rs.2,34,60,000/- in various years the details of which are as under:

S.No	F.Y	A.Y	Personal expenditure
1	2016-17	2017-18	5,00,000
2	2017-18	2018-19	46,50,000
3	2018-19	2019-20	1,55,10,000
4	2019-20	2020-21	18,00,000
TOTAL			2,24,60,000

20.2 Before the learned CIT (A), the assessee filed certain evidences and made elaborate arguments based on which the learned CIT (A) called for a remand report from the Assessing Officer. The Assessing Officer in his remand report submitted that the assessee has not submitted any material or evidence with respect to the claim so made during the remand proceedings except merely submitting a note. The learned CIT (A) confronted the same to the assessee and after considering the remand report of the Assessing Officer and the comments of the assessee to such remand report deleted the addition by observing as under:

7.5 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR, as well as the comments of the Assessing Officer thereon. Briefly the facts are on verification of the seized material and the cash book, it was seen that there were several entries made in the cash book that are personal in nature and cannot be allowed as business expenditure u/s.37(1) of the Act. In view of the same, the appellant was asked as to why the expenditure which is personal in nature should not be disallowed and brought to tax in the hands of the company. In reply, the appellant submitted that the entries made in the cash book maintained at the construction site are genuinely related to the construction expenses and the same should be allowed as business expenditure. It was further stated by the appellant that the cash expenditure entries made in the name of the director are directly for the purposes of business expenses and do not have personal element. However, the AO did not agree with the assessee's explanation and brought to tax the entire expenses that are considered to be personal in nature of Rs.2,24,60,000/-. Out of the total expenses, the amount relevant for the current year of Rs.5 lakhs was disallowed during the year. The appellant is aggrieved and is in appeal.

7.5.1 During the appellate proceedings, the AR contended that the cash book pertains to the business / site expenditure of the appellant and merely because it was in the name of the director Shri Syed Mohd Aslam, it cannot be considered as personal expenditure. It was also stated that Shri Syed Mohd Aslam in his statement u/s.132(4) has clearly mentioned that the expenses in the cash book were incurred in the regular course of business and are not personal in nature. Hence, the AR requested for deletion of the said addition.

7.5.2 I have considered the submissions of the AR and the order of the AO. It is not in dispute that the cash book maintained at the construction site of the appellant contains certain entries that are in the name of the director Shri Syed Mohd Aslam & Others. These expenses vary over several years and were collated by the AO which totalled to Rs.2,24,60,000/-. The year wise amounts were mentioned in the assessment order. The question now is whether the alleged personal expenditure is allowable as a business expense u/s.37 of the Act? In the earlier paras of this order, the profit on on-money or cash receipt was estimated at 30% implying that 70% of the cash receipts were deemed as cash expenditure. Since, the profit was estimated @30% by rejecting the books of account there cannot be further additions on account of cash expenses reflected in the cash book of the appellant. This was so held by the **jurisdictional High court of Andhra Pradesh** in the case of **M/s.Indwell Corporation vs CIT [1998] (232 ITR**

776) (AP). In this case, it was held that once the books were rejected and the profit was estimated, no further disallowance can be made on the same rejected books as the expenses gets subsumed in the estimation of profit. For ready reference, the relevant extract of the decision is reproduced below:

> *"The pattern of assessment under the Income-tax Act is given by Section 29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in Sections 30 to 43D. Section 40 provides for certain disallowances in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under Section 29 is to be made under section 145 on the basis of the books regularly maintained by the asses-see. If those books are not correct or complete, the Income-tax Officer may reject those books and estimate the income to the best of his judgment. When such an estimate is made it is in substitution of the income that is to be computed under Section 29. In other words, all the deductions which are referred to under Section 29 are deemed to have been taken into account while making such an estimate. This will also mean that the embargo placed in Section 40 is also taken into account.*
>
> *No doubt there is a big difference between profit earned with own capital and profit earned with borrowed capital and such a difference could have been taken into account by the Income-tax Officer while making an estimate. If the Commissioner had set aside the estimate on the ground that the vital fact that the business was carried on with own capital and not with borrowed capital has been ignored by the Income-tax Officer, there may not have been any difficulty in upholding that order. But, when he proposes to add back an exact item in the profit and loss account, he was relying on the rejected books which he could not do as held by the Bench of this court in Maddi Sudarsanam Oil Mills Co. v. CIT [1959] 37 ITR 369. There is also a further difficulty if Section 40, as argued by learned counsel, is to be taken into account even after making an estimate. When there are certain other deductions which are to be disallowed such as wealth-tax payment in Section 40, can it be said that after making an estimate, the wealth-tax charged in the profit and loss account should again be added back to the profit. This example illustrates how the contention of the Revenue, that Section 40(b) makes a difference in the situation, is untenable. In our considered opinion, the answer to the question has to be in the negative and in favour of the assesses".*

In view of the binding decision of the Hon'ble jurisdictional High court of Andhra Pradesh cited above, the addition of Rs.5 lakhs made on account of personal expenditure is directed to be deleted. Accordingly, the grounds pertaining to this issue are **ALLOWED**.

20.3. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

20.4 We have heard the rival arguments made by both sides, perused the orders of the Assessing Officer and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case on the basis of the seized documents containing cash expenditure found as per Annexure A/SPPL/SMA/05 to A/SPPL/SMA/38 noted that the total

expenditure of Rs.36.06 crores so found contains expenditure amounting to Rs.2,24,60,000/- relating to Shri Syed Aslam which according to him is personal in nature and cannot be allowed as a business expenditure. The amount of Rs.5,00,000/- out of the total amount of Rs.2,24,60,000/- pertains to this year. We find the learned CIT (A) deleted the additions, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the CIT (A) on this issue. Admittedly, the so-called expenditure which according to the Assessing Officer is personal in nature was found from the seized documents which contain both income as well as expenditure. The income from such unrecorded sales has already been estimated in the preceding paragraphs. It has been held by the Hon'ble jurisdictional High Court in the case of M/s. Indwell Corporation vs. CIT (1998) 232 ITR 776 (A.P). Once the books were rejected and the profit was estimated no further disallowance can be made on the same rejecting the books as the expenses gets subsumed in the estimation of profit. Since the learned CIT (A) while deleting the addition has followed the decision of the Hon'ble jurisdictional High Court, therefore, in absence of any contrary material brought to our notice by the learned DR, the order of the learned CIT (A) on this issue is upheld and the grounds raised by the Revenue is dismissed. Similar grounds have been raised by the Revenue for the AYs 2017-18 to 2019-20. Following similar reasonings the grounds raised by the Revenue on this issue for the A.Ys 2017-18 to 2019-20 are dismissed.

21. In A.Y 2019-20, the Revenue as per Ground of Appeal No.5 has challenged the order of the learned CIT (A) in not considering the applicability of section 28(vi)(a) as the asset was treated as a capital asset.

21.1 Facts of the case in brief, are that the assessee company has received total commercial space of 14,42,896 sft in Block-A as consideration for developing the entire project. Out of 14,42,896 sft, the assessee has sold 6,69,150 sft and leased out 5,32,376 sft in different floors. During the assessment proceedings, the A0 observed that the amended provisions of section 28(via) of the Act are applicable to the facts of the present case and the unsold inventory of 5,32,376 sft, that was converted into fixed asset or treated as fixed asset should be brought to tax as business income of the assessee. For calculating the business income on conversion to capital asset, the Assessing Officer took the fair market value of the area sold i.e. Rs.5620.71 per sft as the value for calculating the fair market value for the stock in trade that was treated as fixed asset. The AO also calculated the expenditure incurred per sq.ft at Rs.4150.92/- by estimating the additional expenses on the project at Rs.80 crores. Thus, the AO worked out the fair market value of the stock in trade at Rs.299,23,31,106/- (5,32,376* Rs.5620.71) and total expenditure at Rs.220,98,50,185/- (5,32,376*Rs.4150.91). Accordingly, the A0 calculated business income as the difference between the two at Rs.78,24,80,92 1/- (Rs.299,23,31,106/- less Rs.220,98,50,185/-) on account of stock-in trade being treated as fixed asset u/s.28(via) of the Act and added this to the total income of the assessee.

21.2 Before the learned CIT (A), it was argued that the amended provisions of sec.28(via) are applicable from AY 2020-21 i.e. from 01.04.2019 and not for the current A.Y. It was submitted that additional expenditure to be incurred on the project is Rs.297,00,00,000/- and not Rs.80 crores as taken by the AO.

Accordingly, the cost per sq.ft was worked out by the assessee at Rs.5659.72. It was accordingly argued that there would not be any difference between the sale receipts of Rs.5620.71/- sq.ft and the estimated cost of Rs.5659.72/- sq.ft. It was further, submitted that there is no conversion of stock in trade into capital asset in the current year. The assessee company has only leased the property as a builder as a business model to attract the customers so that the property can be easily sold out which does not amount to conversion to capital asset. It was pointed out that nowhere in the provisions of sec 28(via) it is mentioned that leasing out the property leads to conversion of stock in trade to capital asset. Also it was argued that there is no commercial exploitation of the property by the assessee company. It was accordingly argued to delete the addition of Rs.78,24,80.921/-.

21.3 Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, the learned CIT (A) deleted the addition by observing as under:

(ii) clause (24) of section 2 so as to include such fair market value in the definition of income; (iii) section 49 so as to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;
(iv) clause (42A) of section 2 so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.
These amendments will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years".

9.5.4 From the above Explanatory notes it can be discerned that, Section 28(via) was introduced to provide a counter to Section 45 of the Act which provides for taxation of capital gains arising from conversion of capital asset into stock-in-trade. In order to cover a situation where stock-in-trade is converted into a capital asset and to discourage the practice of deferring the tax liability, Section 28(via) of the Act was inserted. Coming back to the question whether the appellant's inventory was converted into capital asset, there is no dispute that the appellant company has entered into a development agreement with landowners under JDA in the year 2009 and has treated its share of the built up area as stock-in-trade. There is no quarrel that the built up area received in pursuance of the JDA would be a business asset and is to be treated as stock-in-trade. On examining the books of account of the appellant, it is seen that the entire expenses towards the development project was shown as "work-in-progress" since inception and continues be shown as such even in the current assessment year. The fixed assets as on 31-03-2019 in the balance sheet is Rs.4.18 crores where as the inventories are shown at Rs.348.76 crores. The appellant company has not claimed any depreciation on the inventory. If the inventory was converted into "Capital Asset" then the appellant would be entitled to claim depreciation on the capital asset and the sale of such capital asset would be treated as capital gains and not income from business or profession. The appellant has offered the sale of built up area as income from business and not as capital gains. Besides, the nature of built-up area that was received by the appellant being developer, in lieu of developing the land is stock-in-trade and this nature would continue to be so unless specifically converted into a capital asset. The appellant denies

that it has converted the unsold inventory into capital asset and in the balance sheet it is reflected as inventory. The fact that some of the built up area was leased out for earning rental income does not alter the nature of the asset. It would tantamount to exploitation of the unsold inventory to earn income. The appellant's argument that thre is a higher chance of sale of unsold inventory of pre-leased property cannot be brushed aside. Hence, it is held that the stock-in-trade continues to be treated as inventory in the appellant's books and the appellant has not converted it into capital asset in the current year for Section 28(via) to apply. Therefore, it is held that Section 28(via) does not apply to the facts of the appellant.

9.5.5 The AR has taken a without prejudice contention that the working of fair market value as on the date of conversion was incorrectly computed by the AO. It was stated that under Rule 11UAB(1)(i) of the IT Rules, the fair market value of the inventory being immovable property shall be the stamp duty as on the date of conversion and not the average sale price adopted by the AO. Secondly, it was stated that the AO erroneously estimated additional expenditure for completion of the project at Rs.80 crores, whereas, as per the AR, the estimated additional expenditure is to the tune of Rs.297 crores. If re-computed with the revised expenditure estimate the cost per sq.ft would work out to Rs.5659.72 which is less than the sale value per sq.ft of Rs.5620.71/-. Hence, the AR contended that there is no positive value u/s.28(via), even if it is assumed that there was a conversion of inventory to capital asset. The AO in the remand report has submitted that the assessee has not submitted any evidence in support of the revised cost estimate. After considering both the contentions, since I have held that there is no conversion of the unsold inventory to capital asset in earlier para, the method of computation of fair market value as on the date of conversion to capital asset has now become academic. Hence, this issue raised by the AR is not adjudicated. In the result, the AO is directed to delete the addition of Rs.78,24,80,921/- made u/s.28(via) of the Act. Accordingly, the grounds related to this issue are **ALLOWED**.

9.5.6 The AR's contention that amended Section 28(via) of the Act applies from AY 2020-21 is not correct as the amendment was carried out through Finance Act 2018 w.e.f. 01-04-2019 implying that it is effective from AY 2019-20. This is also mentioned in the Explanatory memorandum reproduced at para 9.5.1 above. Hence Ground Nos.9.1 to 9.2 of the appellant are **DISMISSED**.

21.4 Aggrieved with such order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

22. The learned DR heavily relied on the order of the Assessing Officer.

23. The learned Counsel for the assessee, on the other hand, while supporting the order of the learned CIT (A) submitted that there is basically no conversion of stock-in-trade to capital asset by the assessee during the year. He submitted that the inventory in issue is same constructed area during the financial year 2018-19 on which further considerable amount of expenditure has been spent in financial year 2019-20 and continues to be treated as inventory in books of account as on 31.03.2019 and there is no conversion of stock-in-trade into capital asset during the financial year 2018-19. He submitted that the assessee is a going concern itself in the activity of real estate. It has not completed the construction of the stock-in-trade and has not converted the stock-in-trade as fixed asset. Therefore, absolutely there is no reason for treating the stock-in-trade and bringing the same to tax u/s 28 of the I.T. Act.

23.1 Referring to the extracts of the balance sheet, he submitted that the assessee has shown work-in-progress of Rs.3,465,702.166.78 and finished goods of Rs.2.19 crores. The learned Counsel for the assessee further submitted that the assessee has additionally incurred cost of Rs.297.00 crores after 31.03.2019 which has been incorrectly estimated by the Assessing Officer at Rs.80.00 crores as further expenditure required for completion of pending work. He submitted that the computation of rate per sft by the Assessing Officer by considering the further expenditure at Rs.80.00 crores is absolutely wrong. He submitted

that if the additional expenditure as incurred totaling to Rs.297.00 crores is considered, then the cost per sft would be Rs.5659.72. He submitted that since the assessee has received Rs.5620.71 per sft on account of sale as computed by the Assessing Officer, even then the cost per sft which is computed by the assessee at Rs.5659.72 is more than the sale value. Therefore, the expenditure of the total project is as equal to the estimated sale value. Therefore, no profit as such is going to arise in the proejct. The learned Counsel for the assessee further submitted that the assessee has not yet received the occupancy certificate during the year under consideration. Therefore, the Assessing Officer is not justified in bringing to tax the fair market value of space area to the semi constructed area. Referring to the provisions of section 28(vi)(a) and Rule 11UAB, he submitted that the method adopted by the Assessing Officer is totally wrong and based on incorrect appreciation of facts. He submitted that after appreciating the facts properly, the learned CIT (A) has given relief which is in accordance with law and therefore, the same should be upheld and the grounds raised by the Revenue should be dismissed.

24. We have heard the rival arguments made by both sides, perused the orders of the AO and the CIT (A) and the Paper Book filed on behalf of the assessee. We find the assessee in the instant case has received total commercial space of 14,42,896 sft in Block A as consideration for developing the entire project. Out of the above, the assessee sold 669150 sft and leased out 532376 sft in different floors. We find the Assessing Officer applying the provisions of section 28(vi)(a) held that the assessee has converted the unsold inventory of 532376 sft into fixed asset and therefore, brought the same to tax as business income. While doing so, the Assessing Officer took the fair market value of the area sold at

Rs.5620.71 per sft and accordingly made addition of Rs.78,24,80,921/- to the total income of the assessee details of which are given at Para 21.1 of this order. We find in appeal, the learned CIT (A) after obtaining a remand report from the Assessing Officer and rejoinder of the assessee to such remand report deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the learned CIT (A) in deleting the above addition. It is an admitted fact that the assessee company has entered into the development agreement with land owners under JDA in the year 2009 and has treated its share of the built-up area as stock-in-trade. The built-up area received in pursuance of the JDA would be a business asset and has been continuously treated as stock-in-trade. From the balance sheet filed by the assessee, we find that the entire expenses towards development of the project area shown as "work in progress" since inception and continues to be shown as such even for the impugned A.Y. The fixed asset as on 31.3.2019 in the balance sheet is Rs.4.18 cores whereas the inventory is shown at Rs.348.76 crores. We further find the assessee has not claimed any depreciation on the inventory. Further, the assessee has offered the sale of built-up area as income from business and not as a capital gain and the Assessing Officer has accepted the same. We are of the considered opinion that the nature of the built-up area that was received by the assessee being a Developer in lieu of development of the land is stock-in-trade and this nature would continue to be so unless specifically converted into a capital asset. We concur with the findings of the learned CIT (A) that merely because some of the built-up area was leased out for earning rental income does not alter the nature of the asset and it would tantamount to exploitation of the unsold inventory to earn income. In view of the above discussion and in view of the detailed

reasoning given by the learned CIT (A) on this issue, we do not find any infirmity in his order holding that provisions of section 28(vi)(a) do not apply to the facts of the case for the impugned A.Y. We therefore, uphold the order of the learned CIT (A) on this issue and the grounds raised by the Revenue are dismissed.

25. In the result, all the appeals filed by the Revenue are dismissed and the appeals filed by the assessee are partly allowed.

Order pronounced in the Open Court on 31st October, 2023.

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(R.K. PANDA)** **VICE-PRESIDENT**

Hyderabad, dated 31st October, 2023.
Vinodan/sps

Copy to:

S.No	Addresses
1	Skill Promoters 8-2-592, Road No.1 Banjara Hills,Hyderabad
2	Skill Promoters (P) Ltd, 8-2-592, Road No.1 Banjara Hills,Hyderabad Hyderabad
3.	ACIT, Central Circle 2(3) Room No.613, 6th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
5	Pr. CIT- Central, Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order