

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1906/Hyd/2018	2012-13	M/s. Varsha Viswanath Properties Private Limited, Hyderabad [PAN: AAACV7381A]	Assistant Commissioner of Income Tax, Central Circle-2(3), Hyderabad
1907/Hyd/2018	2013-14		
1908/Hyd/2018	2014-15		
1909/Hyd/2018	2015-16		
1910/Hyd/2018	2016-17		
2046/Hyd/2018	2012-13	Deputy Commissioner of Income Tax, Central Circle-2(3), Hyderabad	M/s. Varsha Viswanath Properties Private Limited, Hyderabad [PAN: AAACV7381A]
2047/Hyd/2018	2013-14		
2048/Hyd/2018	2014-15		
2049/Hyd/2018	2015-16		
2050/Hyd/2018	2016-17		

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Ms. TH. Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 26/10/2023
घोषणा की तारीख/Pronouncement on: 09/01/2024

आदेश / ORDER

PER BENCH:

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("learned CIT(A)"), in the cases of Varsha Viswanath Properties Private Limited ("the assessee") for the

assessment years 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17, both the Assessee and Revenue preferred these appeals. For the sake of convenience, these appeals are decided by this common order, taking the appeals for the assessment year 2014-15 as lead appeals.

ITA Nos. 1908/Hyd/2018 (Assessee) & ITA 2048/Hyd/2018 (Revenue) for
the A.Y. 2014-15:

2. Facts in brief are that the assessee is a company engaged in the business of real estate. It is involved in purchasing land, developing the land and forming layouts. The developed layouts are sold as plots/sites. These ventures are done in and around Tirupati. M/s. Bhuvanesh Constructions and Developers (BCD) is a partnership firm doing civil contract works for M/s. Varsha Viswanath Properties Pvt. Ltd. The assessee company has entered into a Memorandum of Understanding (MoU) with the firm BCD for constructing flats at a fixed contract rate in Sri Harinilayam Project. Further, the company has also entered into an agreement with the firm to market its developed plots in the two ventures Haritavanam and Nandanavanam which collects the sale receipts and hands it over to the assessee company.

3. Assessee filed its original return of income on 29/11/2014 declaring total income of Rs.66,28,650/-. A search and seizure operation under section 132 of the Income Tax Act, 1961 ('the Act') was carried out in the case of the assessee company and its group on 14/03/2016 during which certain incriminating material was found and seized. Accordingly, notice under section 153A of the Act dated 17/07/2017 was issued and served on the assessee in response to which the assessee filed the return of income on 09/10/2017 declaring the same income.

4. During the course of assessment proceedings, learned Assessing Officer noted that M/s Varsha Viswanath Properties Pvt. Ltd., purchased 52 acres of land at Merlapaka Village of Yerpedu Mandal, about 20 km away from Tirupati in Financial Year 2012-13. It formed a residential layout in about 41.88 acres consisting of 459 plots of around 66 ankanams each. The company obtained the TUDA's approval on 18/02/2013. As per the approval, the saleable plot area is 125936 sq.yds i.e. 31,484 ankanams (1 ankanam = 4sq yds or 36 sq ft). M/s Bhuvanesh Constructions and Developers was involved in marketing of the housing plots at "Haritavanam project". In such process, M/s Bhuvanesh Constructions and Developers collected the total receipts from sale of plots and transferred the same to the assessee company. The sale receipts admitted in the return of income by the assessee company in respect of Haritavanam Project for various years are as under:

	AY. 2014-15	AY. 2015-16
Total area sold in ankanams	600	13809.52
Sale receipts admitted in Return of income	Rs. 9,60,000/-	Rs. 2,21,47,000/-
Average sale price per ankanam	Rs. 1,600/-	Rs. 1,604/-

5. Learned Assessing Officer noted that during the course of survey action under section 133A of the Act conducted on 14/03/2016 in the office premises of M/s Bhuvanesh Constructions and Developers, certain incriminating materials were impounded, according to which the plots in the project were sold to some customers in the range of Rs. 9500/- to Rs. 11,500 per ankanams, the details of which are as under:

- i. AVK Pavan for Plot Nos. 240 & 241 – 50 ankanams each @ 15050/- per ankanam.
- ii. A Rupa Sundari Plot No. 182 & 207 – 66.6 ankanams @ Rs.16350/-
- iii. M. Guruprasat, Plots 149 & 150 – 66.6 ankanams @ 15500/- per ankanam

6. Learned Assessing Officer, therefore, was of the opinion that the plots have been sold to customers at a higher price than admitted in the return of income filed for the respective years. He noted that the Annexure A/BCD/OP/21, page number 119 - 129 contains details of Haritavanam project, mentioning the date of registration of the plot, name of the customer, plot number, total area of the plot, rate per ankanam etc. He noted that from 15/12/2014 to 07/09/2015, 292 plots of area 18,302.5 ankanams were sold for Rs. 19,21,94,225/-. He further noted that the land in "Haritavanam Project" was sold at the rates ranging from Rs. 9,500/- to Rs. 11,500/- per ankanam. Payments were made to "Babu Sir" which is corroborated by impounded notebook A/BCD/OP/35 and which bears signature of Babu Sir. M/s Bhuvanesh Constructions & Developers have admitted to have made payments to Varsha Viswanath Properties Pvt Ltd through Babu Sir i.e., R. Subhashchandra Bose of Varsha Viswanath Properties Pvt Ltd.

7. Learned Assessing Officer referred to the statement of Mr V. Mallikharjun, Managing Partner of the firm M/s Bhuvanesh Constructions & Developers, recorded during the course of survey action who in his statement had submitted that Annexures ABCD/OP/34 relating to details of advance received for "Sri Hari Nilayam Project" and the Annexure A/BCD/OP/35 contains details of amounts paid to Sri Babu Sir and others

pertain to " Haritavanam project". Learned Assessing Officer further noted that Shri V. Mallikharjun collected an amount of Rs. 20,00,95,400/- being the sale proceeds from the development project.

8. Learned Assessing Officer further noted that the assessee before the ADIT had admitted additional income of Rs. 9,73,00,780/- for the assessment year 2014-15 to 2016-17 in respect of Haritavanam project after claiming cash expenditure of Rs.8,00,99,035/- the details of which are as under:

Particulars	F.Y. 2013-14	F.Y. 2014-15	F.Y. 2015-16
Total sales as considered based on registration (the details are enclosed as Annexure-1)	71,80,540	14,00,48,710	6,39,43,565
Sales receipts admitted in the return of income filed	9,60,000	2,21,47,000	1,06,66,000
Additional receipts	62,20,540	11,79,01,710	5,32,77,565
Cash expenditure on developing the project	--	3,92,95,771	4,08,03,264
Additional income relating to the respective year	62,20,540	7,86,05,939	1,24,74,301

Assessee, however, did not declare any additional income in the return in respect of the Haritavanam Project.

9. During the course of assessment proceedings, the learned Assessing Officer asked the assessee to substantiate the cash expenditure of Rs. 8,00,99,035/-. He further noted that the assessee has retracted from the initial disclosure of undisclosed income made on 04/07/2016 through an affidavit. He noted that in the affidavit, it was stated that the company collected the amounts separately for the development of plots which was collected in cash. It was submitted that the company has entrusted the development work to Mr. K. Viswanath Naidu and he was allowed to keep

the amount. It was stated that Shri Naidu started the development and collected Rs.17,73,99,815/- i.e. 62,20,540/- in financial year 2013-14, Rs.11,79,01,710/- for financial year 2014-15, Rs.5,32,77,565/- in financial year 2015-16 and out of this, he spent Rs.6,92,90,010/- and the balance amount of Rs.10,81,09,805/- remained with him for completing the work.

10. Learned Assessing Officer, however, did not accept the explanation given by the assessee. The explanation of the assessee that it had not considered the work to be done and the amount to be spent on such work which were not taken into account was rejected by the learned Assessing Officer. Further explanation of the assessee that the expenses do not represent the expenditure incurred by the assessee, but incurred on behalf of the plot owners and that the provisions of section 40A(3) of the Act have no application, was also rejected by the learned Assessing Officer. Rejecting various explanations offered by the assessee and relying on various decisions, the learned Assessing Officer made addition of Rs.62,20,540/- to the total income of the assessee for the impugned assessment year by recording that,-

“The undisclosed income of Rs. 9,73,00,780/- arrived at by Sri K. Viswanatha Naidu was after claiming cash expenditure of Rs. 8,00,99,035/- i.e. Rs. 3,92,95,771/- for AY 2015-16 & Rs. 4,08,03,264/- for AY 2016-17. The assessee was required vide letter dated 7-12-2017 to produce the evidences in support of the cash expenditure of Rs. 8,00,99,035/- i.e. Rs. 3,92,95,771/- for AY 2015-16 and Rs. 4,08,03,264/- for AY 2016-17. The assessee however failed to produce any evidences for the same. Hence the total expenditure of Rs. 8,00,99,035/- sought to be claimed is disallowed. The undisclosed income of the assessee in respect of “Haritavanam Project” is therefore worked out as under:

AY	Total Receipts	Receipts declared in Return of Income	Balance undisclosed income
2014-15	71,80,540	9,60,000	62,20,540
2015-16	14,00,48,710	2,21,47,000	11,79,01,710
2016-17	6,39,43,565	1,06,66,000	5,32,77,565
Total	21,11,72,815	3,37,73,000	17,73,99,815

Accordingly, the undisclosed income of Rs. 62,20,540/- in respect of Haritavanam Project for AY 2014-15 is brought to tax. Penalty proceedings under section 271(1)(c) of the I.T.Act 1961 are initiated for concealment of income.

(Addition: Rs.62,20,540/-)

11. So far as the Nandanavanam Project (R.K. Site) is concerned, learned Assessing Officer noted that the assessee admitted the sale receipts in the return of income in respect of Nandanavanam Project for the assessment year 2012-13 to 2014-15 as under:

	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15	Total
Total area sold in ankanams	3080.98	3549.905	1941.484	8572.369
Sale receipts admitted in Return of income	Rs. 36975000	42438000	29965000	109378000
Average sale price per ankanam	12,001	11,955	15,434	

12. From the impounded documents, he noted that the plots were sold to different persons at higher price which are as under:

- i. D Venkata Ramana Reddy – 2 plots @ 27,700 per ankanam
- ii. D. Chandra Sekhar Reddy - 2 plots @ 27700.

13. He further noted that Annexure A/BCD/OP/32 page No. 9 is in respect of Sri M V Ramanuchari wherein actual sale consideration for site A09, Nandanavanam Project was mentioned at Rs. 38,79,725/- whereas the assessee had recognised only Rs. 6,94,000/- in its books. Sri M V Ramanuchari also confirmed vide his letter dated 12/07/2016 that the cost of the site was Rs. 15,45,725/- and the construction cost was

Rs. 23,34,000/-. Thus, the actual sale consideration was Rs. 38,79,725/- and that the rate per ankanam was Rs. 30,300/-. Annexure A/BCD/OP/32 page No. 12 is in respect of Sri A.V. Mohankumar wherein actual sale consideration for A12, Nandanavanam Project was mentioned at Rs. 31,00,000/- whereas the assessee had recognized only Rs.6,40,000/- in its books. Sri AV Mohankumar confirmed vide his letter dated 12/07/2016 that the cost of the site was Rs.12,17,500/- and the construction cost was Rs. 19,32,500/-. Thus, the actual sale consideration was Rs.31,50,000/- and that the rate per ankanam for the site was Rs. 30,400/-.

14. Learned Assessing Officer noted that the assessee was asked by the ADIT on 17/06/2016 to explain as to why the sale consideration of plots per ankanam should not be adopted at Rs. 35,000/- i.e., the maximum price at which the plots were sold. The assessee in response to the same admitted undisclosed income of Rs. 6,20,44,380/- in respect of Nandanavanam Project, the details of which are as follows:

Particulars	F.Y. 2011-12	F.Y. 2012-13	F.Y. 2013-14
Total sales as considered based on registration (the details are enclosed as Annexure-2)	6,16,19,600	7,09,98,100	3,88,04,680
Sales receipts admitted in the return of income filed	3,69,75,000	4,24,38,000	2,99,65,000
Additional income relating to the respective year	2,46,44,600	2,85,60,100	88,39,680

15. The assessee had also submitted the details of disclosure which are as follows:

A.Y.	Total area sold in ankanams	Rate per ankanam	Total sale receipts (Rs)
2012-13	3080.98	Rs. 20,000/-	6,16,19,600/-
2013-14	3549.905	Rs. 20,000/-	7,09,98,100/-
2014-15	1940.234	Rs. 20,000/-	3,88,04,680/-
Total	8571		17,14,22,380/-

16. From the above, learned Assessing Officer noted that the assessee adopted the cost of land uniformly at Rs.20,000/- per ankanam, thereby arriving at the total receipt of Rs.17,14,22,380/-. After considering the total receipt shown at Rs.10,93,78,000/-, the difference of this transaction at Rs.6,20,44,380/- was admitted as additional undisclosed income. He noted that as per the deleted files retrieved from the hard disk in the office premises of M/s. Bhuvanesh Constructions and Developers, the total receipts from the Nandanavanam Project collected by Shri V. Mallikarjun by way of cash and cheques, were transferred to the assessee company at Rs.18,97,57,595/-. Since the assessee company accepted the same only to the extent of Rs.17,14,22,380/- and, that too, at uniform rate of Rs.20,000/- per ankanam, the learned Assessing Officer asked the assessee to explain as to why the undisclosed income of Rs.14,25,10,382/- should not be adopted in respect of the same project.

17. The assessee, in response to the same, reiterated that the disclosure of Rs.6,20,44,380/- was wrongly given, considering rate per ankanam @ Rs.20,000/- for Nandanavanam project and an affidavit explaining in detail was filed on 03/10/2017 with regard to retraction in this regard. It was further stated that the entries referred to were stray entries and should

not be relied upon to draw conclusion. Since the assessee failed to produce any evidence in support of cash expenditure to his satisfaction, the learned Assessing Officer computed the undisclosed income in respect of Nandanavanam Project at Rs.14,25,10,382/- for the three assessment years, the details of which are:

A.Y.	Total ankanams sold	Rate per ankanam	Sale Value (Rs)	Sale value recognised in books (Rs)	Difference being additional income admitted (Rs)
2012-13	3080.980	27,700	8,53,43,146	3,69,75,000	4,83,68,146
2013-14	3549.905	30,300	10,75,62,122	4,24,38,000	6,51,24,122
2014-15	1940.234	30,400	5,89,83,114	2,99,65,000	2,90,18,114
Total	8571		25,18,88,382	10,93,78,000	14,25,10,382

18. He accordingly made addition of Rs.2,90,18,114/- for the impugned assessment year. The learned Assessing Officer also made addition of Rs.16,04,000/- under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("the Rules") addition of Rs.2,06,150/- debited under 'deferred revenue expenditure' and addition of Rs.14,71,4315/- being estimated disallowance out of site expenditure. However, these issues are not in appeal, and therefore, we are not dealing with the same. Thus, the learned Assessing Officer determined the total income of the assessee at Rs.4,51,48,870/-. In appeal, the learned CIT(A) gave part relief to the assessee.

19. So far as the addition in respect of Haritavanam Project amounting to Rs.62,20,540/- is concerned, the learned CIT(A) sustained the addition made by the learned Assessing Officer and rejected the ground raised by the assessee by observing as under:

“5.3 I have carefully considered the submissions of the appellant’s AR, the order of the Assessing Officer, the statements recorded, the Affidavits filed and the assessment record.

5.3.1 The issue pertains to the addition of Rs.62,20,540/- made by the AO on account of retraction of disclosure made during the search. The circumstances which led to the said admission of undisclosed income have been discussed in detail in the. Assessment Order, which is reproduced in para 5.1 above. The manner in which the undisclosed income and the modus-operandi followed by the appellant and its group concerns was detected, the way in which all the evidences found were confronted to the assessee, and the admission of undisclosed income by filing a letter on 04-07-2016 (which was requested to be considered as part of the statement recorded u/s.132(4) by Sri K.Vishwanath Naidu, Managing Director of M/s.Varsha Vishwanath Properties Pvt.Ltd., — all these are ample evidences that the disclosure was made by the appellant, after duly considering and evaluating all the evidences gathered during search, and after he was left with no explanations and excuses to offer. The disclosure has been made on 04-07-2016, by filing a letter, which has been requested to be considered as part of the statement recorded u/s.132(4). The relevant part of the letter/statement is reproduced herewith.

“12.16 In para 3 of the show cause notice it is mentioned that, the company has collected cash while selling the plots through Bhuvanesh Constructions & Developers. To substantiate the charges levied, photo copies of impounded material, impounded from the premises of Bhuvanesh Constructions & Developers are made as a part of show cause notice, at the end of the issue, the unaccounted receipts has been quantified in page no. 29 of the show cause notice, accordingly, the unaccounted receipts is arrived at Rs. 17,69,88,300. The unaccounted receipts arrived at are not true to the actual facts. The actual receipts are arrived based on the ate of registration and also material impounded from Bhuvanesh Constructions & Developers. The sales receipts as arrived in page no 29 of the show cause notice is an amount of Rs 20,00,95,400/- (F.Y. 2013-14 Rs 1,78,65,500 + F.Y. 2014-15 Rs 12,13,39,100 + F.Y. 2015-16 Rs 6,08,90,800). Whereas, the total sales receipts as arrived based on date of registration is an amount of Rs 21,11,72,815 (F.Y. 2013-14 Rs

71,80,540 + F.Y. 2014-15 Rs.14,00,48,710 + F.Y. 2015-16 Rs 6,39,43,565).

12.17 considering the income and expenditure as explained above, the additional income arrived in the respective financial years are as follows:

<i>Particulars</i>	<i>FY 2013-14</i>	<i>FY 2014-15</i>	<i>FY 2015-16</i>
<i>Total sales as considered based on registration (the details are enclosed as Annexure-1)</i>	<i>71,80,540</i>	<i>14,00,48,710</i>	<i>6,39,43,565</i>
<i>Sales receipts admitted in the return of income filed</i>	<i>9,60,000</i>	<i>2,21,47,000</i>	<i>1,06,66,000</i>
<i>Additional receipts</i>	<i>62,20,540</i>	<i>11,79,01,710</i>	<i>5,32,77,565</i>
<i>Cash expenditure on developing the project</i>		<i>3,92,95,771</i>	<i>4,08,03,264</i>
<i>Additional income relating to the respective year</i>	<i>62,20,540</i>	<i>7,86,05,939</i>	<i>1,24,74,301</i>

This statement/letter of admission itself makes it clear that the issue of unrecorded sales was brought to the notice of the assessee during search action on 14/03/2016, and Shri K.Vishwanath Naidu has confirmed this in his statement. He goes on to explain how the total sale receipts as based on date of registration are Rs.21,11,72,815/-, how cash expenditure on developing the project is Rs.8,00,99,035/-, and how he has calculated the undisclosed amount of Rs.9,73,00,780/- which he is now offering for taxation. The said letter/statement was filed on 04/07/2016, giving all the details of what were the discrepancies noted, how the appellant was unable to explain some of them, how the surrender amount of Rs.9,73,00,780/- has been calculated, and is voluntarily offered for taxation. A detailed Annexure, mentioning name of purchases, area, total sale value, sale recognized in books, and the difference of Rs.17,73,99,815/-, was filed, as part of the admission letter dated 04/07/2016, duly signed by the appellant, and is a part of the Assessment Order (Annexure-A).

5.3.2 After filing this Admission letter/Statement, there was no communication “on the subject from the assessee, but while filing the Return of Income, the disclosed income was not offered for taxation. An Affidavit dated 03/10/2017 was filed, in course of which, the assessee retracted from the disclosure made earlier, stating that at the time of search operations, the admission letter was filed, without consulting the auditor, and all the expenses to be incurred were not taken into account.

5.33 During appellate proceedings also, the contention of the assessee’s AR is firstly, that the assessee made the disclosure under pressure, and secondly, that no material was found during the course of search on the basis of which addition could be made. Both the contentions are incorrect. The very sequence of events narrated in the preceding paras is enough to prove this. The search took place on 14.03.2016 when the evidences were gathered and confronted to the appellant. The declaration was” made by him on 04.07.2016. He, therefore, had enough time of 3 % months to analyze and explain the discrepancies found and confronted to him. The retraction is made on 03.10.2017, after a gap of 15 months. If there was some ‘undue pressure’, as alleged, what prevented the appellant from filing the retraction earlier? The retraction is, therefore, clearly an after-thought. As held by the P&H High Court in the case of Charanjit Kumar Vs. CIT (2006) 201 CTR 37.

“Retraction should be at the earliest opportunity or atleast within reasonable time”.

The assessee in this case retracted from its statement after 45 months and the- manner of filing of return of income excluding the surrendered income clearly depicts that the said retraction was an afterthought. In the case of Bachittar Singh Vs. CIT (2010) 236 CTR 587 (P&H;) the Hon'ble Punjab & Haryana High court held that the statement recorded during the Survey is valid. The retraction of additional income on the ground that the statement was the result of duress was not accepted.

Similar view was taken in the case of Dr.S.C.Gupta Vs. CIT(2001) 248 ITR 782, where the Hon'ble Allahabad High Court has held that the additions made on the basis of statement given by the assessee during the survey was an extremely important piece of evidence. Therefore, a statement made voluntarily by the assessee could form the basis of addition.

In the case of S.S. Ratanchand Bholanath Vs. CIT 210 ITR 682, the Hon'ble M.P.High Court has held that when assessee admitted that a particular income is liable to be included in its total income, assessment made in such admission was valid.

The Hon'ble Himachal Pradesh High Court in the case of Hirasingh Co. Vs. CIT 330 ITR 791 has held that where addition was made on the basis of admission made by the assessee, it was held that the addition was justified.

5.3.4 As regards the contention that no evidence was found by the Department, this contention also does not hold water, since it was only after the evidence was found and confronted, and when the appellant had no explanation to offer, that the declaration was filed, As rightly observed by the Assessing Officer on Page9 of the Assessment Order,

“The retraction of the assessee can't be accepted on this stage. Reliance is placed in the case of Asst. CIT Vs. Expresso Investment, 2006, Tax Publication (DT) 1299 (Mumbai) Tribunal, in which, the Hon'ble Tribunal has held that retractions sought to be made by the assessee after several months of declaration and admission u/s. 132(4) is a only a well-thought out devise to shut the department from collecting the evidence to honour unaccounted income, therefore, entire set of submission relating to retraction deserved to be rejected.”

The AR has also tried to argue that the statements relied upon, recorded u/s.132(4), do not have evidentiary value. In this regard, it is pertinent to refer to a recent judgement of the Delhi High Court in the case of Smt.Dayawanti Vs. CIT(390 ITR 496)(Delhi), wherein similar issue has been decided by the High court, after considering all previous decisions on the matter. The Head-Note of the said judgement is reproduced herewith:

“IT: Statements recorded during search operations could be relied upon to make addition to assessee's income.

IT: Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

Section 132, read with section 153A, of the Income-tax Act, 1961 - Search and seizure – General (Statement made during search) - Search and seizure operations were carried out on assessee firm - Various materials, documents, agreements, invoices and statements in from of accounts and calculations were seized - Assessee along with her family members surrendered a sum of Rs.3.5 crores as additional income in respect of business carried on outside books of account -Assessing Officer rejected books of account and made additions by estimating sales and gross profit rates, inter alia on ground that in course of search a statement was recorded by assessee's son on behalf of assessee and other family members — Assessee submitted that statements were not recorded during search but later and that they could not be considered of any value - Whether probative value of statements recorded during search operations was undeniable occasion for making them arose because of search and seizure that occurred and seizure of various documents, etc. that pointed to undeclared income - Held, yes - Whether under these circumstances, assessee's argument that they could not be acted upon or given any weight was insubstantial and meritless - Held, yes - Whether thus addition to assessee's income could be based on these statements - Held, yes [Paras 18 & 20] [In favour of revenue]"

The evidentiary value of the statements relied upon is, therefore, undeniable.

5.3.5 The Hon'ble Supreme Court in the case of Pullangode Rubber Products Co. Ltd. Vs. State of Kerala: (1973) 91 ITR 18 SC held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It was contended that it was open to the person who made the statement to show that it was incorrect. There cannot be any doubt about this position in law, but, in the present case the appellant/assessee has not produced any material to show that the admissions made were incorrect. The statements recorded under section 132(4) of the said Act are clearly relevant and admissible and they can be used as evidence. In fact, once there is a clear admission, voluntarily made, on the part of assessee, that would constitute a good piece of evidence in the hands of the Revenue.

In Asstt.CIT Vs. Ramesh Chandra R. Patel [2004] 89 ITD 203 (Ahd.) (TM), it was accepted that the assessee had a right to retract but that has to be based on-evidence' brought on record to the contrary and there must be justifiable reason and material accepting

retraction i.e., cogent and sufficient material have to be placed on record for "acceptance or retraction.

In Dy.CIT Vs. Bhogilal Mool Chand [2005] 3 SOT 211 (Ahd.), the Tribunal stated:

"It is settled law that admission by a person is a good piece of evidence though not conclusive and the same can be used against the person who makes it. The reason behind this is, a person making a statement stops the opposite party from making further investigation."

It would also be useful to refer to the decision of the Madras Bench of the Income-tax Appellate Tribunal in the case of T.S. Kumarasamy Vs. Asstt.CIT [1998] 65 ITD 188 where, taking note of the fact that ITOs are not Police Officers and, as such, they do not use or resort to, unfair means in recording oath statements during the search operations or during the course of any proceedings before them, it was held that such statements, admissions and confessions are binding and cannot be retracted, unless and until it is proved by legally acceptable evidence that such admission, confession or oath statement was involuntary or was tendered under coercion or duress. Drawing support from the decision of the Supreme Court in the case of Surjeet Singh Chhabra Vs. Union of India [1997] 1 SCC 508 the Tribunal disallowed plea of retraction of the assessee on the ground that neither the ground of coercion or duress nor the ground of involuntary statement was proved to have existed at the time of recording of the statement. This decision of the Tribunal goes to indicate that admissions or confessions made in the statements recorded during search or survey, without there being any other evidence to support such admissions, can successfully be made use of to assess the income, unless they are proved to be involuntary or are proved to have been taken under duress, coercion, misconception, etc.

In another similar case in Sri Kantilal C. Shah Vs. ACIT {IT (55) A No.21/AHD/2009} ITAT, Ahemdabad ruled as under:

"10.3. The question of evidentiary value of a statement recorded u/s.132(4) of the Act is no more res integra. When an assessee had made a statement of facts, he can have no grievance if he is taxed in accordance with that statement. The reasonableness of the AO's approach, as appreciated by us, is that he had not made any enhancement or substitution in the amounts as offered/ disclosed in the said statement. It

was a statement pertaining to certain facts which were in the exclusive knowledge of the assessee. Those facts were disclosed to the Revenue Deptt. Thereupon those were accepted by the Revenue Department. Those facts were of such nature that there was no scope of existence of any other evidence. Affirmation of facts at best can only be done by the assessee in his own volition. If the assessee wanted to correct the said statement, then it was open for him to show the evidences to retract those facts. But no such evidence was furnished though an another chance was granted by this Tribunal while restoring the entire issues back to the assessment stage which means that the assessee had no evidence at all in his possession. We may like to clarify that the statute prescribes the power to the Revenue Authorities for recording a statement on the day of search operation. In this context, Id. AR has cited few decisions wherein there was a discussion of retraction of a statement or the legal sanctity of statement in the eyes of Income-tax Laws .

.....
.....
In this context Section 132(4) of the Act enables an authorised officer to examine a person on oath. Such a sworn statement made u/s.132(4) of the Act, thus can be used as an evidence under the Act.

..... 10.4. In this regard, from the side of the Revenue an important decision of Honourable High Court of Chhattisgarh in the case of ACIT Vs. Hukumchand Jain reported at 191 Taxman has been wherein and it was held that if an allegation of duress or coercion was made almost after two years, then such allegation has to be overruled.

10.5. In the light of the above detailed deliberations, we hereby draw a conclusion that in view of the confessional statement which was recorded on the date of search had evidentiary value, therefore, the existence of the on-money ought not to be ruled out. The confessional statement being recorded u/s. 132(4) of the I.T.Act and also being corroborated by the physical presence of flats, therefore, rightly relied upon by the Revenue authorities and correctly made the basis for the impugned addition of on-money. The retraction being general and vague, therefore, deserves to be

ignored. We hereby confirm the addition and this ground is dismissed.”

5.3.6 In view of these plethora of judgements of various Courts and Tribunals, it is held that the retraction by the appellant, made after almost 15 months, being general and vague, and being unsupported by any evidence, is merely an afterthought, and was rightly rejected by the Assessing Officer.

All the grounds related to this issue are therefore DISMISSED.

5.3.7 Another ground related to this issue raised by the appellant, during appellate Proceedings, is that the Assessing Officer made an addition of Rs.17,73,99,815/- (Rs.62,20,540 for AY 2014-15, Rs.11,79,01,710 for AY 2015-16 and Rs.5,32,77,565 for AY206-17). whereas the amount disclosed u/s.132(4) was Rs.9,73,00,780/- (Rs.62,20,540/- for Ay 2014-15, Rs.7,86,05,939/- for AY 2015-16 and Rs.1,24,74,301/- for AY 2016-17). This difference is on account of cash expenditure claimed of Rs. 8,00,99,035/- (RS.3,92,95,771/- for AY 2015-16 & Rs.4,08,03,264/- for AY 2016-17), which was deducted while working out the disclosure u/s.132(4), and which has been disallowed by the Assessing Officer on the grounds that the appellant did not produce any evidences for the same. While the Assessing Officer has treated the entire Suppressed turnover as the suppressed income of appellant, the appellant's plea is that only profit element on the alleged suppressed turnover can be brought to tax. In support of this contention, the appellant's AR has placed reliance on a number of case laws. The said decisions have been perused. It can be seen that while all Courts have unanimously held that only profit element out of the suppressed turnover should be taxed, the estimation of that profit element would depend on the facts of the particular case. In the case of the appellant at hand, it is seen that the expenses related to the project were already calculated and accounted for, while making the declaration of Rs.9,73,00,780/- as under:

AY	Total Receipts	Receipts declared in Return of Income	Balance	Cash Expenditure claimed	Undisclosed income
2014-15	71,80,540	9,60,000	62,20,540		62,20,540
2015-16	14,00,48,710	2,21,47,000	11,79,01,710	3,92,95,771	7,86,05,939
2016-17	6,39,43,565	1,06,66,000	5,32,77,565	4,08,03,264	1,24,74,301
Total	21,11,72,815	3,37,73,000	17,73,99,815	8,00,99,035	9,73,00,780

The AO is therefore directed to restrict the addition made on this issue to Rs.9,73,00,780/-, as per the declaration filed during search

proceedings (Rs.62,20,540 for AY 2014-15, Rs.7,86,05,939/- for AY 2015-16 and Rs.1,24,74,301/- for AY 2016-17). During the year under consideration, since no expenses were claimed in the declaration made, the appellant would not be entitled to any relief.

5.3.8 The grounds related to this issue are therefore DISMISSED.”

20. So far as the addition of Rs.2,90,18,114/- made by the learned Assessing Officer in respect of Nandanavanam Project is concerned, the learned CIT(A) partly allowed the same by observing as under:

“6.3 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The addition made on this issue is made on the same grounds, as the addition made in respect of Haritavanam project. In this case also, disclosure of Rs.6,20,44,380/- was made for three AYs as under, vide Admission letter dated 04/07/2016:

AY	Total Receipts	Receipts declared in Return of Income	Undisclosed Income
2012-13	6,16,19,600	3,69,75,000	2,46,44,600
2013-14	7,09,98,100	4,24,38,000	2,85,60,100
2014-15	3,88,04,680	2,99,65,000	88,39,680
Total	17,14,22,380	10,93,78,000	6,20,44,380

This was later retracted by filing an Affidavit on 03/10/2017. The Assessing Officer made an addition of Rs.14,25,10,382/- (Rs. 4,83,68,146 for AY 2012-13, Rs.6,51,24,122/- for AY 2013-14, Rs.2,90,18,114/- for AY 2014-15), since the appellant was unable to produce any evidences for cash expenditure incurred.

6.3.1 The grounds on which the retraction was made, and the arguments and contentions of the appellant’s AR on this issue, are also the same, which have been discussed in great details in Paras 5.3.1 to 5.3.8 of this order.

6.3.2 For the same reasons, and on same facts, the Assessing Officer is directed to restrict the addition made on this issue to Rs.6,20,44,380/- as per the declaration filed during search Proceedings (Rs.2,46,44,600 for AY 2012- 13, Rs.2,85,60,100/- for AY2013-14 and Rs.88,39,680/- for AY 2014-15), The assessee would therefore get relief to that extent.

6.3.3 The grounds related to this issue are therefore PARTLY ALLOWED.”

21. Aggrieved by such part relief granted by the learned CIT(A), the assessee as well as the Revenue are in appeals before the Tribunal by raising the following grounds:

ITA No. 1908/Hyd/2018 (assessee's appeal)

1. *The order of the learned Commissioner of Income-tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*
2. *The learned Commissioner of Income Tax (Appeals) erred in holding that the additions in the assessment are to be made based on the declaration made at the time of search and seizure operations.*
3. *The Commissioner of Income Tax (Appeals) ought to have considered the letter of retraction filed by the appellant before deciding the appeal.*
4. *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.62,20,540/- made by the Assessing Officer as the additional amount received towards development charges in respect of Harithavanam Project.*
5. *The learned Commissioner of Income Tax (Appeals) ought to have held that the amounts were collected by the Managing Director for the purpose of development and that the same should have been considered in the assessment of the Managing Director.*
6. *The learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.6,20,44,380/- for the assessment years 2012-13, 2013-14 and 2014-15; out of which Rs.88,39,680/- relates to the assessment year under consideration.*
7. *The learned Commissioner of Income Tax (Appeals) ought to have held that the development charges in respect of Nandanavanam project are received by the Managing Director and that no part of the income is taxable in the assessment of the appellant.*
8. *Any other ground or grounds that may be urged at the time of hearing”.*

ITA No.2048/Hyd/2018 (Revenue's appeal):

1. *The learned CIT(A) erred in allowing relief to the assessee in respect of Haritavanam Project while ignoring the fact that the assessee never proved expenditure claimed to have been incurred in cash.*
2. *In respect of Haritavanam project the Learned CITA) erred in ignoring the fact that no evidence of incurring of cash expenditure over and above the expenditure recorded in the regular books of accounts was found during the Search Operation and therefore the claim of such expenditure had no basis.*
3. *In respect of Haritavanam project the Learned CITA) ought to have appreciated that even if the assessee adduces proof of incurring of expenditure in cash over and above the amounts recorded in regular books of accounts, such expenditure is not allowable U/s. 40A(3) of IT Act.*
4. *In respect of Haritavanam project the Learned CITA) erred in holding that income should be restricted to disclosure made during search operation even though the assessee has failed to produce any evidence showing that expenditure was incurred in cash, out of the Suppressed sale proceeds received in cash.*
5. *In respect of Nandanavanam Project the Ld.CITA) erred in allowing relief to the assessee by adopting the rate per ankanam of plotted area at Rs. 20, 000/ ignoring Lne Tact that the rate per ankanam adopted in the assessment order at Rs.30,400/-was on the basis of the rate of Rs. 30400/- mentioned in the Agreement of Sale entered into by the assessee with the customer Shri. AV Mohan Kumar which was seized in search operation.*
6. *In respect of Nandanavanam Project the LdCITA) ought to have appreciated that estimation of suppressed turnover for the year under consideration is on the basis of seized material in the form of Agreement of Sale, wherein rate per ankanam is mentioned at 30,400/- and hence a lower rate cannot be adopted in the absence of cogent evidences justifying such lower rate.*
7. *In respect of Nandanavanam Project the Learned CITA) ought to have upheld the addition made towards suppressed turnover/undisclosed income in the light of Hon'ble' SC decision in the case of CST Vs HM Esufali HM Abdulali 1973-90 /TR 271(SC) as the sad addition was made on the basis of rate per*

ankanam/sale consideration mentioned in the seized agreement of sale.

8. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary”.

22. Grounds 1 and 8 by the assessee being general in nature are dismissed.

23. Grounds of appeal 2 to 5 by the assessee’s appeal relate to the order of the learned CIT(A) in confirming the addition of Rs.62,20,540/- in respect of additional amount received towards development charges in respect of Haritavanam Project. Grounds of appeal No.1 to 4 by the Revenue relates to the order of the learned CIT(A) in holding that the income should be restricted to the income disclosed by the assessee during search proceedings without considering the fact that the assessee could not prove the cash expenditure which are otherwise not allowable under section 40A(3) of the Act.

24. Learned AR submitted that the assessee acquired agricultural land admeasuring 52 acres of land at Merlapaka Village of Yerpedu Mandal, about 20 kms away from Tirupati which was subsequently developed into plots and allotted after providing amenities. The total area acquired is 52 acres out of which approval was obtained from TUDA for only 42 acres. He submitted that the assessee entrusted the marketing of plots to Bhuvanesh Construction and Developers which is a partnership firm and the assessee company has no relationship with the said firm except in the business dealings. He submitted that it is an admitted fact that the Managing Director of the company during the course of search and seizure operation, filed written submission admitting undisclosed income of

Rs.9,73,00,780/- in respect of Haritavanam Project for the assessment years 2014-15 to 2016-17. Similarly, he admitted Rs.6,20,44,380/- in respect of Nandanavanam Project for the assessment years 2012-13 to 2014-15 respectively. Thus, an aggregate amount of Rs.16 crores was admitted for both the projects including Rs.6,44,840/- to cover up other deficiencies, if any. He also submitted that the said statement was filed before the ADIT without considering the cost to be incurred for discharge of the obligations which were deposed in the affidavit filed before the learned Assessing Officer. He further submitted that since all the expenses incurred were to be incurred to discharge obligations, were not claimed in the declaration filed before the ADIT, the assessee filed an affidavit providing various details. The only difference is that the assessee demonstrated that the receipts are towards specific expenses which are to be incurred against the amount collected. Referring to the copy of the affidavit filed before the learned Assessing Officer dated 03/10/2017, he submitted that the following contentions were made for not admitting the additional income:

“i) At the time of search and filing of written submissions before the Asst. Director of Income-Tax, the appellant did not have the benefit of the Chartered Accountant who prepared the accounts and filed the returns of income as the said Chartered Accountant during the relevant period was out of country i.e. in USA.

ii) It was submitted that the data with regard to the expenditure could not be gathered during the course of the search and, therefore, the appellant was not in a position to furnish the details.

iii) The appellant accepted that there are amounts collected towards development charges amounting to Rs.16,00,00,000/- and the expenditure on developmental works to the extent only of Rs.6,92,90,010/- was considered.

iv) The following items of expenditure were not considered while filing the letter before the DDIT.

<i>Particulars</i>	<i>Amount in Rs.</i>
<i>Curb Stone Foot Path</i>	<i>47,22,900</i>
<i>Horticulture</i>	<i>53,87,090</i>
<i>RCC OH Tank and Two Borewells</i>	<i>65,00,000</i>
<i>Underground Drainage System</i>	<i>47,00,000</i>
<i>Recreation Zone-Sports Complex</i>	<i>3,50,00,000</i>
<i>Restaurant with Seven cottages</i>	<i>1,50,00,000</i>
<i>Naturopathy with Ayurvedic Hospital</i>	<i>5,00,000</i>
<i>Total</i>	<i>12,13,09,990</i>
<i>Contingencies</i>	<i>36,24,995</i>
<i>Grand Total</i>	<i>12,49,34,985</i>

v) During the course of the development of the project, the Government of Andhra Pradesh earmarked a portion of the project land for digging an earthen canal, and the entire development work was disrupted.

vi) The Government acquired Ac 6 and 10 guntas of land for digging the canal along with roadside which resulted in a reduction of Acres 6 and 10 guntas of land between the main road and the project site including the buffer zone according to TUDA Regulations. Thus the number of saleable ankanams lost was 5600. Taking the value per ankanam as adopted by the Assessing Officer at Rs.20,000/- the land worth Rs.11.20 crores (Rupees eleven crores and twenty lakhs only) was lost during the above acquisition.

vii) The appellant had to acquire land to the said extent to compensate the plot owners or re-adjust the boundaries of the existing area among the plot purchasers as the Panchayat is demanding to acquire balance of land.

viii) There was no approach road initially and the land required for the approach road was to be acquired and the appellant had to incur expenditure for such acquisition of land.

ix) The appellant has to construct a bridge and also provide mandatory open space of Acres 4.61 guntas which also involved additional cost. A copy of the letter received from Merlapaka Panchayat dated 20.7.2017 (along with English translation) is annexed.

x) The Government of Andhra Pradesh demolished the compound wall of 353 meters in length and the same has to be rebuilt by the assessee. The expenditure to be incurred thereon was not considered at the time of filing the written submissions before the Asst. Director of Income-Tax."

25. Learned AR further submitted that the assessee has also got the valuation done by Chartered Engineer according to whom, the total cost to be incurred for the above items of work on both the projects were at Rs.12,49,34,985/- apart from the expenditure already incurred of Rs.6,92,90,010/-. He submitted that the cost of land to be replaced or the sale price of the land lost has yet to be considered. The aggregate of the said two items works out to Rs.19,42,24,995/- which is more than the amount collected for which the assessee did not admit any additional income. He further submitted that an amount of Rs.11,20,00,000/- as reduced by the sales admitted, has to be excluded from the receipts.

26. Referring to the decision of the Co-ordinate Bench of the Delhi Tribunal in the case of KK Khullar vs. DCIT reported in 116 ITD 301, he submitted that when there is a liability to be discharged by the assessee, the income in its entirety cannot be taxed. He submitted that it has been held that in accordance with provisions of section 4 and 5 of the Act, the amount collected in advance for specific purpose cannot be considered as income, unless the assessee performs the function for which the amount was collected. Basing on the decisions reported in CIT Vs Dinesh Kumar Goel reported in 331 ITR 10 (Delhi), R.S.Suriya Vs ACIT reported in 41 ITR(T) 282 (Chennai Trib.) and Dr. Aman Khera Vs Deputy Commissioner of Income-Tax reported in 138 ITD 443 (Delhi), he submitted that since the assessee did not perform all the obligations as agreed to, the entire

amount cannot be treated as income, but only estimated income can be adopted.

27. While placing reliance on the decisions reported in the cases of Sri Narendar Reddy maddi in ITA No.871/Hyd/2016, Sri P. Venkata Ramana in IT(ss)A No.8/Hyd/2010, Hotel Ganesh Bhavan, Tirupati in ITA No.756/Hyd/2000 and R.S. Silks, Tirupati (ITA No.86 to 88/Hyd/1995), he submitted that only income element out of the receipts found can be assessed.

28. He further submitted that the learned Assessing Officer treated the affidavit dated 03/10/2017 as a retraction by the assessee, but as a matter of fact, it is not a retraction. According to him, it is only the submissions made before the learned Assessing Officer, after considering the expenditure involved therein. He accordingly, submitted that the addition made by the learned Assessing Officer and sustained by the learned CIT (A) should be upheld.

29. Learned AR submitted that the learned Assessing Officer did not understand the factual as well as the legal position in its proper perspective and went on stating that the assessee retracted the surrender statement which is not permissible and resorted to addition. He submitted that when the assessee did not at all make any statement under section 132(4) of the Act, there could not be any retraction of any such non-existing statement. He submitted that the affidavit filed by the assessee during the course of assessment proceedings was nothing but submission made explaining and clarifying the contents of the statement filed under section 132(4) of the Act. He further submitted that the amount so

collected by Bhuvanesh Construction and Developers would include commission payable to the marketing agency and the expenditure on development. He submitted that out of the said amount, the actual amount relating to the land has already been credited to the P&L Account and the amount relatable to the expenses towards developments have been incurred, but certain expenditure is yet to be incurred for which a liability exists. Since the said amount was not recorded as the same was relating to the development undertaken by the assessee on behalf of the purchasers and since the amount so collected includes commission, therefore, the entire amount cannot be brought to tax as sales consideration. He further submitted that the learned Assessing Officer should not have adopted a uniform rate based on three agreements. Further, the Revenue authorities also examined some of the purchasers, who stated that the amount include the charges for construction. Under these circumstances, the rate per ankanam should not be based on the said three agreements.

30. Per contra, learned DR heavily relied on the order of the learned Assessing Officer and drew the attention of the Bench to the observations of the learned Assessing Officer at page 8 of his order, to the effect that,-

“The assessee company vide its reply dated 18-12-2017 stated that the assessee had not considered the work to be done and the amounts to be spent on such works were not taken into account. Further the assessee stated that the expenses do not represent the expenditure incurred by the assessee but incurred on behalf of the plot owners and that the provisions of section 40A(3) have no applicability to the facts of the case and that the amount spent is not more than Rs 20,000/- at a time to any person. The contention of the assessee is not acceptable. It is stated in the affidavit that written submission before the ADIT(Inv) was filed on 4-7-2016 without consulting his regular Auditor. This is not acceptable because the

search took place on 14-3-2016 and Sri K Viswanatha Naidu had ample time for giving proper explanation. Sri K Viswanatha Naidu filed his explanation cum admission of undisclosed income of the company, on 4-7-2016 i.e after more than three and half months had elapsed after the search action. The explanation cum admission of undisclosed income of the company, submitted by Sri K Viswanatha Naidu before the ADIT on 4-7-2016 was a detailed submission running into 30 pages in addition to annexures of 24 pages. The well thought, para-wise explanation cum admission of undisclosed income of the company was clearly drafted in a professional manner, thus indicating that Sri K Viswanatha Naidu was ably assisted and advised by a qualified professional. As per the Affidavit, it is stated that the facts relating to receipts and expenditure were not correctly mentioned in the submissions. This is unacceptable as Sri K. Viswanatha Naidu is the Managing Director of M/s Varsha Viswanath Properties P Ltd who is well versed with the business issues of the Company. So all the facts were very much known to him during the search action as well as at the time he submitted his detailed explanation admitting undisclosed income in the hands of M/s Varsha Viswanath Properties P Ltd. Sri K Viswanatha Naidu while admitting undisclosed income of Rs.16,00,00,000/- in the hands of the company has quantified additional income in respect of Project Harithavanam & Project Nandanavanam in a detailed manner as under:

Particulars	Ays	Additional income
Harithavanam	2014-15	Rs.62,20,540/-
	2015-16	Rs.7,86,05,939/-
	2016-17	Rs.1,24,74,301/-
Nandavanam	2012-13	Rs.2,46,44,600/-
	2013-14	Rs.2,85,60,100/-
	2014-15	Rs.88,39,680/-
Oher deficiency	2016-17	Rs.6,54,840
Total		Rs. 16,00,00,000/-

That the company collected the cost of development in cash and the incurring of development expenditure through its Managing Director is an afterthought. Stating that there is no element of profit in the Development charges collected and therefore no suppression of income, is also an afterthought, to dodge the process of law for evading taxes admitted in a detailed and concise manner before the Authorities. The MOU between the company and Shri K. Viswanatha Naidu now sought to be introduced is an internal document which cannot be relied upon.

The chronological sequence of events are given as under:

Search Action 14-03-2016

Admission of undisclosed income 4-07-2016

Filing of affidavit retracting disclosure: 3-10-2017

It is evident from the above that Sri K Viswanatha Naidu, Managing Director had ample time of more than three and half months to think clearly and thereafter give disclosure if any, which he eventually did on 4-7-2016. Thereafter, after a time lag of more than fourteen months after he gave the detailed disclosure of Rs 16 crores in the hands of the company, Sri K Vishwanatha Naidu has filed Affidavit dated 3-10-2017 retracting the said disclosure. The inordinate delay and substantial time lag as detailed above gives credence to the fact that the affidavit is an afterthought, unreliable document and hence not admissible in view of the above.

The retraction is made on 3-10-2017 after a gap of more than 14 months. If there was some 'undue pressure', what prevented the appellant from filing the retraction earlier? The retraction is, therefore, clearly an after-thought. As held by the P&H High Court in the case of Charanjit Kumar Vs. CIT(2006) "Retraction should be at the earliest opportunity or at least within reasonable time".

He accordingly submitted that the order of the learned Assessing Officer be upheld.

31. We have gone through the record in the light of the submissions made on either side. We have also considered the various decisions cited before us by both sides. We find that the learned Assessing Officer, in the instant case, on the basis of seized documents found as well as the statement of the Managing Partner of M/s. Bhuvanesh Construction and Developers, made addition of Rs.62,20,540/- being undisclosed income on the ground that the assessee filed a detailed submission before the ADIT (Inv.), giving the name of the purchaser, area in akanam, the sale value which is recognized in the books of account and the difference in the sale

price which amounted to Rs.17,73,99,815/-. The assessee, however, did not make disclosure of Rs.9,73,00,780/- only in respect of Haritavanam Project after adjusting the cash expenditure of Rs.8,00,99,035/-. In absence of any evidence towards the cash expenditure made addition of Rs.62,20,540/- to the total income of the assessee for the impugned assessment year, since the assessee could not explain the cash expenditure of Rs.8,00,99,035/- and admitted undisclosed income of Rs.9,73,00,780/- for various years while restricting the same subsequently and learned Assessing Officer rejected the explanation given by the assessee.

32. It is an admitted fact that for the impugned assessment years, the assessee did not show any cash expenditure for which no addition was made by the learned Assessing Officer. It could be seen that the learned CIT(A) observed that the learned Assessing Officer, in the assessment years 2014-15 to 2016-17 made addition of Rs.17,73,99,815/-, whereas the assessee admitted undisclosed income of Rs.9,73,00,780/- for the assessment years 2014-15 to 2016-17 in the statement recorded under section 132(4) of the Act. According to the learned CIT(A), while the learned Assessing Officer treated the difference as the suppressed income of the assessee, however, it is the plea of the assessee that only profit element on the alleged suppressed turnover can be brought to tax.

33. According to the learned CIT(A), the courts have unanimously held that only profit element out of the suppressed turnover should be taxed and the estimation of the profit element would depend on the facts of the particular case. Since, according to him, the expenses relating to the projects were already calculated and accounted for while declaring the

income of Rs.9,73,00,780/- for the three assessment years, he directed the learned Assessing Officer to restrict the addition made on the amount of Rs.9,73,00,780/- as per the declaration filed during the search proceedings out of which an amount of Rs.62,20,540/- relates to the assessment year 2014-15. Since no expenses were claimed in the return of income for the impugned assessment year, he held that the assessee would not be entitled to any relief.

34. It is the submission of learned AR that in view of the detailed affidavit filed by the assessee stating that certain expenses were due to be incurred on account of the development works for which the plots were sold and that the assessee acquired the land to the extent it has been acquired by the Government by incurring expenditure and that it has to construct a bridge and 4.36 acres also involved in the additional cost therefore, the entire amount cannot be brought to tax which was admitted under mistaken belief.

35. It has been held in various decisions that admission is an extremely important piece of evidence, but it cannot be said that it is conclusive. It is open to the person who made the statement to show that it was incorrect. In the case of Ajaz Farooqi vs. DCIT, the Co-ordinate Bench of the Tribunal held that,-

"8.5. During the course of search and seizure operation, assessee filed an affidavit admitting additional income of Rs.26 crores without filing any details of head of income/assessment year or whose hands the additional income is admitted. However, in the return filed in response to notice issued under section 153A for AY 2017-18, the assessee had admitted the same as income from other sources in his individual return of income. Since the assessee did not file any

information regarding the additional income admitted, when asked by the AO, the assessee added the same to the returned income.

8.6. We observe that the AO himself has written in the order that declaration made has not mentioned anything about assessment year, assessee name and head of income declared. In those circumstances, in accordance with the CBDT circular in F.No.286/2/2003-IT(INV), Dated 10.03.2003 and F.No.286/98/2013-IT (Inv.1) dated 18th December, 2014, no addition is warranted.

8.7. Further, since the assessee has admitted in ROI, the AO made addition of Rs.26 crores while finalizing the assessment which is erroneous. The admission made by assessee is not a conclusive evidence to make addition. Mere statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. The High Court of Telangana and Andhra Pradesh in the case of Gajjam Chinna Yellappa in 59 taxmann. com 69 held as under:

13... we find that the appellate authority and the Tribunal did not apply the correct parameters, while adjudicating the appeals filed before them. On the undisputed facts of the case, there was absolutely no basis for the Assessing Officer to fasten the liability upon the appellants. Our conclusion find support from the Circular dated March 10, 2003, issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of retracted statements.

8.8. The High Court of Andhra Pradesh in case of Naresh Kumar Agarwal Naresh Kumar Agarwal in 53 taxmann.com 306 held as under:

"24... Therefore, the statement of the managing director of the assessee, recorded patently under Section 132(4) of the Act, does not have any evidentiary value. This provision embedded in sub section (4) is obviously based on the well-established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made such statement. The finding of the Tribunal was based on the above well settled principle."

The Hon'ble Supreme Court of India in case of Pullangode Rubber Produce Co Ltd in [1973] 91 ITR 18 (SC), wherein it has held that "An

admission is an extremely important piece of evidence but it cannot be said that it is conclusive.

8.10. The High Court of Jharkhand in case of Shree Ganesh Trading Co in [2013] 30 taxmann.com 170 (Jharkhand), wherein it has held that Statement on oath of an assessee under section 132(4) is a piece of evidence and when there is incriminating admission against himself, then it is required to be examined with due care and caution.

8.11. In the case of CIT Vs Khader Khan Son [2012] 25 taxmann. com 413 (SC), wherein Supreme Court held as under:

"Section 133A of the Income Tax Act, 1961 - Survey – Whether Section 133A does not empower any ITO to examine any person on oath; so statement recorded under section 133A has no evidentiary value and any admission made during such statement cannot be made basis of addition - Held, yes [In favour of assessee"]

8.12. We are of the view that only real income should be brought to tax. Once the income has not accrued to the assessee, no tax can be charged on the notional income. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court of India in case of Lok Housing Construction Ltd In [2016] 70 taxmann.com 2 (SC), wherein the Apex Court held as under:

"Where assessee-company filed revised return claiming that income declared in original return in respect of sale of land/FSI stood withdrawn due to cancellation of sale agreements and High Court by impugned order held that no hypothetical income of assessee in respect of said sale could have been brought to tax, SLP filed was to be granted."

8.13. The Hon'ble Hyderabad ITAT in case of BS Limited in ITA No.2187/Hyd/2017, held as under:

"18.2. By considering the facts on record, we notice that this addition of Rs. 60 crores by AO is not real income or additional income. Assessee withdrew the additional income declared by it during search proceedings. Since assessee has increased the turnover in order to declare the additional income and the same was withdrawn. Subsequently. Assessee should have modified the turnover and filed the return of income, but assessee chose to keep the turnover intact as per P&L and tried to reduce the profit by showing this additional In our considered view, it is not turnover as other deduction. In our considered view, it is not additional

or real income and also not a deduction in real sense. Hence, the same is deleted. Accordingly, ground raised by the assessee is allowed"

8.14. The Id. AR of the assessee submitted before us that under immense pressure the assessee has agreed the admission of income of Rs.26 crores by way of affidavit. Subsequently, assessee has also submitted the revised Computation of income declaring the correct income of the assessee at Rs.31,62,080/-, copy of which is enclosed in Page 21-24 of Paper Book. In Support of this claim, the appellant relies on the following case laws:

High Court of Bombay in case of Pruthvi Brokers & Shareholders in 23 taxmann.com 23.

Decision of Madras High Court in the case of CIT V. Indian Express (Madurai) Pvt [1983] 140 ITR 705 (Mad).

8.15. Following the ratios laid down by the Hon'ble Courts, we are of the view that there is no basis for addition of Rs. 26 crores as there was no separate declaration in detail i. e., year-wise, head-wise, group concern wise and quantities, etc during the course of search and seizure operation. From the statements of the assessee as quoted above, there is no real income accrued in the hands of the assessee which forms the basis for making addition. Therefore, we set aside the order of the CIT(A) and allow the grounds raised by the assessee on this issue."

36. Since the assessee in the instant case has categorically stated before the learned Assessing Officer that certain expenses were to be incurred towards the development charges and that certain items of expenses were not considered while giving the declaration before the ADIT etc., 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 learned Assessing Officer with a direction to give one final opportunity to the assessee to substantiate with evidence to his satisfaction, regarding the additional expenditure that was yet to be incurred as per the specification given to the customers. Learned Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being

heard to the assessee. The grounds raised by the assessee as well as the Revenue on this issue are accordingly treated as allowed for statistical purposes.

37. Identical grounds have been raised by the assessee in assessment years 2015-16 and 2016-17. Following our above reasoning, the grounds raised by the assessee as well as the Revenue for the assessment year 2015-16 and 2016-17 in respect of Haritavanam Project are also restored to the file of the learned Assessing Officer for fresh adjudication.

38. Grounds of appeal No.6 & 7 by the assessee and grounds of appeal No.5 to 7 by the Revenue relate to the part relief granted by the learned CIT(A) in respect of Nandanavanam Project.

39. After hearing both sides, we find the assessee admitted the sale receipts in respect of Nandanavanam Project for the assessment year 2012-13 to 2014-15, the details of which are given in Para 9 of this order. Since during the course of search in the office premises of Bhuvanesh Construction and Developers, the documents so seized reflected higher amount of payments made by the buyer and considering the fact that the assessee, in response to the show cause notice dated 17/06/2016 admitted before the ADIT, Tirupati an additional income of Rs.6,20,44,380/- for various years, the details of which are given at Para 11 of this order, the learned Assessing Officer while rejecting the explanation given by the assessee and extrapolating the sale, made addition of Rs.2,90,18,114/- being the additional undisclosed income relating to this year.

40. Learned CIT(A) restricted the disallowance made by the learned Assessing Officer to the admission made by the assessee and deleted the balance amount for which the assessee as well as the Revenue are in appeal before the Tribunal. It is the submission of learned AR that merely on the basis of 2 or 3 sale instances, the entire sales cannot be extrapolated and thereby making huge addition. Further, the commission that has to be paid to the marketing agency i.e. Bhuvanesh Construction and Developers was not at all considered. It is the submission of learned AR that the affidavit filed before the learned Assessing Officer, is not a retraction by the assessee, but it was a submission made before the learned Assessing Officer explaining that the admission letter filed before the ADIT was not based on incriminating material or evidence, but on the basis of mere estimation only.

41. Since the issues involved in the above grounds are identical to the grounds of appeal raised by the assessee as well as the Revenue in respect of Haritavanam Project, considering the totality of the facts of the case and following our reasoning given therein, we restore these grounds also to the file of the learned Assessing Officer for fresh adjudication in the line of our direction therein. The grounds raised by the assessee as well as the Revenue on this issue are also accordingly treated as allowed for statistical purposes.

42. Identical grounds have been raised by the assessee and the Revenue for the assessment year 2012-13 and 2013-14. Following similar reasoning, these grounds are also restored to the file of the learned Assessing Officer for fresh adjudication.

ITA No.1910/Hyd/2018 – A.Y 2016-17 (Assessee):

43. There is one more issue in the appeal filed by the assessee for the assessment year 2016-17 in ITA No.1910/Hyd/2018, wherein the assessee challenged the order of the learned CIT(A) in confirming the addition of Rs.8,93,23,000/- made by the learned Assessing Officer on account of investment in the land for Venkatadri Hotels (P) Ltd as unexplained investment under section 69A of the Act.

44. Facts of the case, in brief, are that during the course of search at the office premises of M/s. Varsha Viswanath Properties Pvt Ltd, certain incriminating material was found regarding purchase of land from Venkatadri Hotels (P) Ltd, Chennai. As per the seized documents, an MoU was found according to which the company purchased an immovable property/land from M/s Venkatadri Hotels (P) Ltd for a consideration of Rs.11,40,00,000/- with cash payment of Rs.3,02,00,000/- and cheque payment of Rs.1 crore. Thus, the total advance paid was Rs.4,02,00,000/-. However, on verification of the bank account, it was noticed that the company transferred only Rs.1 crore to the sellers i.e. M/s. Venkatadri Hotels (P) Ltd which was paid through cheque No.236308 on 04/05/2015. Shri K Viswanath Naidu stated that the company has purchased property for Rs.2,46,77,000/- only and the documents found were only a draft MoU/agreement which did not materialize.

45. Learned Assessing Officer further noted that a show cause notice was issued by the ADIT, Tirupati asking the assessee to explain as to why the entire investment of Rs.11,40,00,000/- should not be taken as the full consideration and also the difference of Rs.8,93,23,000/- should not be

treated as 'unexplained investment' in the said property. The assessee vide letter dated 04/07/2016 stated that it was only a proposal sent by the lawyer as a draft and after consulting with the landlord, the property was purchased for Rs.2,46,77,000/- which is accounted in the books. It was further submitted that the draft MoU was not filled in all respects and unsigned and, therefore, no additional consideration is needed to be considered.

46. During the assessment proceedings, the learned Assessing Officer again confronted the same to the assessee. Assessee, however, reiterated the same arguments stating that the documents in question were unsigned and that the company never paid any excess amount other than Rs.2,46,77,000/- for the purchase of the land.

47. Learned Assessing Officer, however, rejected the explanation given by the assessee and made an addition of Rs.8,93,23,000/- by recording that,-

"The contention of the assessee is not acceptable. It is pertinent to note the sequence of events that took place before the property was transferred. As result of the talks to transfer the property, the Board of Directors of M/s Venkatadri Hotels Pvt Ltd was convened on 30-4-2015 and the directors agreed to sell the property to M/s Varsha Viswanath Properties Pvt Ltd. The copy of the minutes of the meeting is available at page no 42 & 43 of Annexure A/VVPPL/Office/01 (Annexure "D" attached herewith). Thereafter a draft sale deed was sent to the assessee from Chennai through a middleman/advocate Sathya Prasad Associates in the month of May 2015 as per page 29- of Annexure A/VVPPL/Office/O2 (Annexure "E" attached herewith). Consequent to the talks, the assessee company made cash payment of Rs.1,00,00,000/- on 13-5-2015 and cheque payment of %1,00,00,000/- through cheque No 643107 dated 4-5-2015 drawn on UBI.

The assessee stated that the copy of the agreement was forwarded as draft format for sale deed and further stated that in case of cut & paste format, normally it happens that, old formats adopted for cut and paste may not be changed totally. This stand of the assessee is unacceptable as the MOU dated 31-7-2015 is totally different in structure from the agreement of sale of May 2015 and yet confirms the total sale consideration of Rs.11,40,00,000/- and the cash component for the same land transaction. It is not a case of cut & paste at all. The MOU dated 31-7-2015 mentioned at page No 27-28 of A/VVPPL/Office/02 confirms execution of agreement of sale dated 20-05-2015.

Cash amounting to Rs.1,00,00,000/- is paid on 13-5-2015 as per page No 20-26 of A/VVPPL/Office/02. In the subsequent MOU dated 31-7-2015, it is even more clear that cash of Rs.3,02,00,000/- had already been paid by the assessee company till 31-7-2015. For the balance cash component, the MOU clearly provided at para 3 for three promissory notes as security for payment of cash.

Even though Cheque No 643107 dated 4-5-2017 drawn on United Bank of India, Tirupati was not encashed, another cheque bearing No 236308 of the same date and drawn on the same bank 'i.e. United Bank of India was encashed. This cheque was encashed for the same land at Survey No233, Thumninaidupalem panchayat, Tirupati which was transferred vide sale deeds dated 10-8-2015 and executed by the same parties. Since the transaction, irrespective of the change in cheque number, has gone through and the property stood transferred to the assessee Company, the actual total consideration of Rs.11,40,00,000/- stands confirmed.

The assessee in its reply dated 4-7-2016 at para 16.1 in response to show cause notice issued by the ADIT(Inv), Tirupati had requested for grant of telescopic for the respective assessment year from the income admitted from the other projects. This itself confirms the fact that undisclosed money in respect of the above transaction had indeed changed hands. In view of the above, the cash component of Rs. 8,93,23,000/- (i.e 11,40,00,000- 2,46,77,000) is brought to tax. Penalty proceedings under section 271AAB are initiated as per the provisions of the Act.

(Addition: Rs. 8,93,23,000)

48. In appeal, the learned CIT(A) dismissed the ground raised by the assessee by observing that,-

"I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. During the course of search at the office premises at the appellant company, certain incriminating material was seized as per Annexure A/VVPPL/Office/01 to A/VVPPL/Office/05. Pages numbering 1 to 54 of "Seized Annexure A/VVPPL/Office 01 were regarding purchase of land from M/s.Venkatadri Hotels Pvt Ltd, Chennai. The Assessing Officer, during the course of Scrutiny proceedings, examined the said seized documents, and observed that as per the Agreement of Sale dated May'2015, and MOU dated 31/07/2015, the said property had been purchased by the assessee for a consideration of Rs.11,40,00,000/-, whereas the assessee company had shown the consideration paid at Rs.2,46,77,000/- only. After questioning the assessee as to why the differential amount of Rs.8,93,23,000/- should not be treated as unexplained investment, the Assessing Officer added the said amount to the assessee's total income. The argument of the assessee's AR, during appellate proceedings, is mainly that the Agreement of Sale and MOU are both dumb documents,- since they are without any signature of any party, and therefore cannot be relied upon. The documents found during the course of search have been examined, and it is seen that even though the said documents are not signed, it cannot be concluded that they are irrelevant or dumb documents, as alleged by the appellant's AR. The sequence of events before the transfer of the property in question proves so. It is seen that a meeting of the Board of Directors of M/s.Venkatadri Hotels Private Limited was convened on 30/04/2015, in the course of which, the Directors agreed to sale the property in question to the assessee/appellant. The Minutes of the said meeting are apart of the assessment order as 'Annexure-D'. Thereafter, a draft sale deed was sent to the assessee through e-mail in the month of May'2015. The said e-mail is also a part of the assessment order as 'Annexure-E'. It is this Agreement of Sale dated May'2015, which has been found in the course of the search, and forms a part of the assessment order as 'Annexure-B'. This Agreement clearly mentions the total consideration for the said property as Rs.11,40,00,000/-, and further mentions that as an advance, Rs.1 crore was paid in cash on 30/05/2015, and an amount of Rs.1 crore was paid by way of cheque dated 04/05/2015 drawn on United Bank of India (UBI). One of the arguments of the

appellant's AR is that the cheque no. mentioned in the said Agreement of Sale is wrong, and that this proves that the agreement was just a draft, which never materialized. However, the Assessing Officer has examined and found during scrutiny Proceedings that the amount of Rs.1 crore was infact transferred to the sellers i.e., M/s.Venkatadri Hotels Private Limited on 04/05/2015, through the same bank i.e., UBI, and that only the cheque no. was different: This proves that the transaction in fact materialized, and this fact is further confirmed in the MOU dated 31/07/2015 (Annexure-C), which states that:

"C. Pursuant to discussions held in regard thereto, the Parties have executed an Agreement of Sale dated 20/05/2015 for a total sale consideration of Rs. 11,40,00,000/- (Rupees Eleven Crores Forty Lakhs Only):

The MOU further confirms that the total consideration of the said property is Rs.11,40,00,000/-, as under:

"1. The First Party acknowledges and confirms that the Second Party has made the Payments out of the total Sale Consideration of Rs.11,40,00,000/- (Rupees Eleven Crores Forty Lakhs Only):

- (a) Rs. 1,02,00,000/- (Rupees One Crore Two Lakhs Only) was paid by cash;*
- (b) Rs. 1,00,00,000/- (Rupees One Crore Only) by way of cheque bearing number 643107 drawn on United Bank of India Bank dated 04-05-2015;*
- (c) Rs. 2,00,00,000/- (Rupees Two Crores Only) was paid by cash."*

Thus, by 31/07/2045, it is clear that not only cheque payment of Rs.1,00,00,000/- has been made vide cheque dated 04/05/2015 drawn on UBI, but also that cash Payment of Rs.3,20,00,000/- has already been made. It is further seen that the said cheque has been encashed, which Proves that the transaction, irrespective of the change 'in cheque number, has gone through, and that the Property has been transferred to the assessee company for the actual total consideration of Rs.11,40,00,000/-, These documents and evidences seized during the course of search are therefore not 'dumb documents' as alleged, but are infact clinching evidences of the unexplained investment made by the appellant in the said property. I therefore find no infirmity in the addition made by the Assessing

*Officer on this ground, and all the grounds related to this issue are
DISMISSED."*

Aggrieved by the same, assessee is in appeal before us.

49. Learned AR referring to the copies of the agreement of sale placed at page 38 to 56 of the Paper Book, submitted that it is not signed by any person and the signature was on 15/03/2016 i.e. date of search and seizure operation. The MoU does not bear the signature of either the vendor or the vendee or that of any witness. Therefore, it is a dumb document and has no evidentiary value. He submitted that the payments recorded in the agreement are nowhere recorded in the sale document. Neither the learned Assessing Officer nor the authorities conducting the search, examined the concerned person of M/s. Venkatadri Hotels (P) Ltd. He submitted that the genuineness of the transaction was not examined either by the search party or by the learned Assessing Officer. He also submitted that the assessee never admitted, at any point of time, that such additional payment was paid to M/s. Venkatadri Hotels (P) Ltd. Further, there is no other material with the Revenue authorities that the assessee paid any extra money over and above what is mentioned in the registered sale deed. He further submitted that even as per the MoU, an amount of Rs.5.88 crores was kept pending. Without prejudice to the above, learned AR submitted that even if some amounts were to be considered as paid in excess, the assessee admitted Rs.16 crores, which can be telescoped as the said amount required to be spent. Therefore, no addition is called for on this score.

50. In support of his contentions, he relied on the decisions reported in CIT Vs Vatika Landbase (P) Ltd. reported in 383 ITR 320 - 67 taxmann.com

372 (Delhi), Syed Anwar Vs DCIT reported in 146 taxmann.com 247 (Karnataka), CIT Vs Akme Projects Ltd. reported in 42 taxmann.com379 (Delhi), Kalpesh Mafatlal Patel Vs DCIT, Central Circle-4, Surat in ITA No.48 & 49/SRT/2017 vide order dated 19.12.2022 and Anil Bala Goyal & others Vs DCIT & Ors. In ITA No. 1533/Del/2021 etc. vide order dated 19.01.2023.

51. Learned DR, on the other hand, heavily relied on the order of the learned Assessing Officer and the learned CIT(A). He submitted that when a document seized from the premises of the assessee shows that the consideration for the property purchased was at Rs.11.40 crores and the assessee is stated to have paid only an amount of Rs.2,46,77,000/- therefore, the learned CIT(A) was fully justified in sustaining the addition of Rs.8,93,23,000/-.

52. We have gone through the record in the light of the submissions made on either side and various decisions cited before us. We find that the learned Assessing Officer, on the basis of the MoU found during the course of search, noted that the assessee has purchased the property from M/s. Venkatadri Hotels (P) Ltd for a consideration of Rs.11.40 crores, whereas the assessee shown the consideration paid at Rs. .2,46,77,000/-. Since the assessee could not substantiate with evidence to his satisfaction regarding the difference of Rs. 8,93,23,000/-, the learned Assessing Officer made the addition as 'unexplained investment' which has been sustained by the learned CIT(A) and the reasons of which have already been reproduced in the preceding paragraphs.

53. It is the submission of learned AR that the MoU seized from the premises of the assessee company does not bear the signature either of

the vendor or the vendee and there is no witness to the said MoU. Further, during the course of search or post search inquiries, the concerned person of M/s. Venkatadri Hotels (P) Ltd was never examined and therefore, the genuineness of the unsigned, undated and unattested document remains unverified. It is his argument that no other material was found during the course of search and therefore, on the basis of an unsigned, undated and unattested document, in the nature of a dumb document, cannot be the basis for addition. It is also his alternate argument that since the assessee declared additional income of Rs.16.00 crores, telescoping benefit should be given to the assessee.

54. We find that in the instant case although an MoU/agreement to sale document was found during the course of search at the business premises of the assessee which indicates the consideration of Rs.11.40 crores, however, the said document does not bear the signature of the vendor or vendee and there is no witness to the same. The search party or the learned Assessing Officer never examined the authorized person of M/s. Venkatadri Hotels (P) Ltd., from whom the property has been purchased; nor did the assessee ever ask for examination of the said party nor produced the said party for examination of the learned Assessing Officer. We find although the said document mentions the figure of Rs.11.40 crores, however, the date-wise payment of the issue is not mentioned therein. Further, the alternate submission of learned AR that telescoping benefit should have been given to the assessee, was rejected by the learned CIT(A) on the ground that the assessee could not produce any satisfactory evidence to the fact that the amount received towards development charges was available for making the said payment.

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 learned Assessing Officer with a direction to grant an opportunity to the assessee to substantiate its case by producing the Authorized Person of the Venkatadri Hotels (P) Ltd and any other document or evidence that the assessee relied upon. Learned Assessing Officer shall also consider the alternate claim of the assessee that telescoping benefit should be given to the assessee out of the additional income that has been declared by the assessee which according to the assessee is available with him for meeting the payment of additional amount over and above that has been shown in the registered sale deed. Learned Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the assessee is accordingly treated as allowed for statistical purposes.

55. In the result, all the appeals filed by the assessee as well as the Revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 9th day of January, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 09/01/2024

Vinodan & TNMM

Copy forwarded to:

1. Varsha Viswanath Properties Private Limited, 11-13-570, Flat No. 107,
Parimala Nivas Apartments, Road No. 02, Haripuri Colony, Saroornagar,
Hyderabad.
2. Deputy Commissioner of Income Tax, Central Circle-2(3), Hyderabad.
3. Asst. Commissioner of Income Tax, Central Circle-2(3), Hyderabad.
4. Pr.CIT(Central)-Hyderabad
5. DR, ITAT, Hyderabad.
6. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD