

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & Dr. MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 24/JP/2024
निर्धारण वर्ष / Assessment Year : 2020-21

M/s. G.S. Dream Home LLP First Floor, Opp. Petrol Pump Near Patel Stadium, Ajmer	बनाम Vs.	The DCIT Central Circle Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASFG 0379 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri Ajey Malik, CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/03/2024
उदघोषणा की तारीख / Date of Pronouncement: 10 /04/2024

आदेश / ORDER

PER: SANDEEP GOSAIN

This appeal filed by the assessee is directed against order of the ld. CIT(A), Jaipur-5 dated 07-12-2023 for the assessment year 2020-212 wherein the assessee has raised the following grounds of appeal.

1. Under the facts & circumstance of the case, the Ld. CIT(A) has erred on facts and in law in confirming the validity of the order passed by AO u/s 144 r.w.s. 153C of IT Act, 1961.
2. The Ld. CIT(A) has erred on facts and in law in confirming Rs.6,68,79,977/- the addition of Rs.8,57,43,560/- by holding that as per Pg 8 of Annexure AS-5 assessee sold 81 plots for Rs. 16,45,12,080/- of which Rs.7,87,68,520/- is recorded in regular books

of accounts and the balance of Rs.8,57,43,560/- shown as balance receivable in the seized documents is not disclosed by making various irrelevant and incorrect observations and by not appreciating the fact that (a) the balance receivable represent the amount receivable from customers against construction of house on certain plot 2. which was subsequently dropped and thus balance receivable cannot be taxed (b) assessee is following project completion method of accounting and therefore balance receivable cannot be assessed to tax in the year under consideration and by presuming that (c) the assessee earned on money on sale of plot since average sale rate of plot at Bhilwara is Rs.1950/- per sq. ft. whereas as per the seized paper such rate including the balance receivable amount works out at Rs.1773/- per sq. ft. whereas assessee has sold the plot ranging between Rs.600/- to Rs.1000/- per sq. ft.

3. The Ld. CIT(A) has erred on facts and in law in holding that the amount of Rs.8,57,43,560/- is unexplained money u/s 69A of the Act chargeable to tax u/s 115BBE of the Act ignoring that when assessee is not found to be the owner of any money and the nature & source of said amount is held to be on money, section 69A is not applicable and therefore the same is taxable at normal rate and not u/s 115BBE of the Act.

2.1 Apropos Ground No. 1 of the assessee, brief facts of the case are that the assessee was incorporated on 13.12.2017 to carry on the business of developer and colonizer. A search and seizure action was carried out on 13.02.2020 u/s 132 of the Act in case of Sh. Vijay Gupta and other persons. Sh. Vijay Gupta is one of the partner of assessee. No search was carried out on the assessee. In search certain documents pertaining to the assessee was found from the residence of Sh. Vijay Gupta. The AO on the basis of the documents so found recorded his satisfaction on

14.10.2021 (**PB 1-11**) for initiation of proceedings u/s 153C of the Act. The satisfaction recorded by him is reproduced as under:-

“A search & seizure action was carried out on 13.02.2020 in the group case of Saini-Jain-Gupta-Malpani-Somani group of Ajmer. During course of search proceedings, in case of Sh. Vijay Gupta and his other related concerns/persons, certain documents were found and seized which belongs to the assessee company, i.e. M/s G.S. Dream Home LLP, Ajmer. The detail of the documents is as per Annexure 1 & 2 enclosed herewith.

Since the above referred documents belongs to M/s G.S. Dream Home LLP, Ajmer, I am satisfied that provision of section 153C of the IT Act, 1961 are to be invoked in case of assessee from AY 2014-15 to 2019-20 and 2020-21 (search year).”

2.2 On the basis the above satisfaction note, AO issued notice u/s 153A and also u/s 153C dt. 14.10.2021 (**PB 12-13**). The assessee vide letter dt. 02.11.2021 (**PB 14**) requested to provide for the copy of satisfaction note but the AO vide letter dt. 10.11.2021 (**PB 15**) intimated that same shall be provided in due course after compliance of notice issued u/s 153C of the Act. The assessee objected to the issue of notice u/s 153C but the objections were rejected vide order dt. 01.02.2022. The assessee filed the return manually on 01.03.2022 (**PB 16-22**) for the reason that due to technical problem on the income tax portal, return could not filed online and also filed a grievance application and requested to provide copy of the satisfaction note. Thereafter the return was also filed online on 25.03.2022 (**PB 23**). On this date AO issued notice u/s 143(2) (**PB 24**) and also provided the copy of

satisfaction note and thereafter the assessment u/s 144 r.w.s. 153C was framed on 30.03.2022 for the reason that manual return of income filed by the assessee is not valid return.

2.3 Before the Ld. CIT(A), assessee challenged the validity of notice issued u/s 153C for AY 2014-15 to 2020-21 stating that it was incorporated only on 13.12.2017 and therefore the notices issued are not as per law. Further the AO has not recorded his own satisfaction as to whether the seized paper/document has a bearing on the determination of total income of assessee or not. This apart AO issued both the notices u/s 153A and also u/s 153C without dropping the notice issued u/s 153A and completed the assessment u/s 144 even when assessee has filed the return in response to notice issued u/s 153C. The Ld. CIT(A), however, without deciding the specific legal ground raised before him held at Para 4.2.7 of its order that AO has followed the procedure as per IT Act, 1961 and was justified to initiate the proceedings u/s 153C of the Act. The narration as made by the Ld.CIT(A) in his order is as under:-

“4.2.7 The AO in this case has followed the procedure as per I.T. Act, 1961 and was justified to initiate the proceedings u/s 153C of the I.T. Act, 1961 during the course of assessment proceedings, the AO had given various opportunities to the appellant to submit the reply. However, neither any reply was filed nor return of income was filed in time. The facts of the

case are different to case laws cited by the appellant. Hence, these grounds are decided on the merit of the case. On the basis of the above discussion, I uphold the action of the AO and grounds of appeal 1 & 2 are hereby dismissed.”

2.4 During the course of hearing the ld. AR of the assessee submitted that the order passed by the AO u/s 153C r.w.s. 144 of the Act is illegal and thus entire proceedings needs to be quashed and thus the submissions made by the ld.AR of the assessee alongwith case laws in this connection is mentioned as under:-

1. At the outset it is submitted that the prerequisite for issuance of notice u/s 153C is as under:-

- Assessing Officer issuing notice u/s 153C has to place his satisfaction.
- Such satisfaction should be expressive and a speaking one.
- Assessing Officer should demonstrate that the seized books of accounts/documents/assets have any impact on determination of total income of such other person.
- Satisfaction shall be given for each assessment year of such other person proposed u/s 153C

In the present case, AO recorded the satisfaction and issued notice u/s 153C for AY 2014-15 to 2020-21 ignoring the fact that assessee was incorporated on 13.12.2017. Therefore the notices issued are illegal & bad in law since section 153C r.w.s. 153A requires issuance of notice to furnish return in respect of each AY falling within 6 AYs but when a person is not in existence how notice can be issued for that AY. The Ld. CIT(A) has not decided this legal contention raised by the assessee.

Further the AO has nowhere recorded any satisfaction that the seized document has a bearing on determination of total income of assessee. Along with the satisfaction recorded **(PB 1)** he only attached the relevant portion of appraisal report as Annexure 1 **(PB 2-5)** and certain seized papers as Annexure 2 **(PB 6-11)**. Thus it is evident that he only attached the report of Investigation Wing without recording his own satisfaction as to whether the seized paper/document has a bearing on determination of total income of assessee or not. The satisfaction so recorded is neither expressive nor speaking one. Hence the notice issued u/s 153C is illegal & bad in law. Reliance in this connection is placed on the following cases where it was held that if the notice u/s 148 is issued after 4 years from the end of relevant

AY for which assessment was made u/s 143(3), the notice issued without specifying that there is failure on the part of assessee to disclose fully and truly all material facts necessary for assessment for that AY is illegal & bad in law:-

Durr India (P) Ltd. Vs. ACIT (2023) 231 DTR 416 (Madras) (HC)

To invoke the extended period of six years for reassessment, the reasons furnished for reassessment ought to contain a finding that the assessee had failed to disclose fully and truly all material facts necessary for assessment. In the present case, though admittedly the power to reassess has been exercised by invoking the extended period of limitation in terms of the proviso to sec. 147, there is no recording of the existence of the circumstances, viz., failure to disclose fully and truly all material particulars which would confer jurisdiction to initiate reassessment proceeding beyond four years and within six years. Failure to record the existence of the jurisdictional fact while invoking the extended period under the proviso to sec. 147 would vitiate the entire proceedings.

Bharti Cellular Ltd. Vs. DCIT (2021) 201 DTR 281 (Del.) (Trib.)

AO having nowhere stated in the reasons recorded by him for reopening the assessment that there was any omission or failure on the part of the assessee in disclosing fully and truly the material facts necessary for assessment at the time of assessment u/s 143(3), impugned notice issued u/s 148 after the expiry of four years from the end of the relevant assessment year on the basis of a subsequent judgment was not sustainable in law.

ACIT Vs. Bharti Axa Life Insurance Company Ltd. (2021) 189 ITD 450 (Mum.) (Trib.)

Where reasons communicated to assessee for reopening assessment were incomplete and nowhere in reasons recorded failure on part of assessee to furnish full and true information necessary for purpose of assessment was mentioned, entire reassessment proceedings being void ab initio were to be set aside.

The Ld. CIT(A) has not decided this legal contention raised by the assessee.

2. It is further submitted that the AO issued notice u/s 153A as also notice u/s 153C dt. 14.10.2021 (**PB 12-13**) on the date when he recorded the satisfaction. It is a settled law that on the same issue two parallel proceedings cannot be taken unless one proceeding is dropped. Reliance in this connection is placed on the following cases:-

CIT Vs. E.I.D. Parry Ltd. (1995) 216 ITR 489 (Mad.) (HC)

Reassessment under s. 147(b)—Vis-a-vis rectification under s. 154—The two jurisdictions are different as the existence of the information for the belief that income chargeable to tax has escaped assessment is the sine qua non for reopening the assessment under s. 147(b) and discovery of an error apparent on the record is the sine qua non for rectification under s. 154 and the ITO must have recourse to the appropriate provision having regard to the facts and circumstances of the case—However, in case where the jurisdiction under s. 147(b) and s. 154 seem to overlap, the ITO may choose one in preference to the other and once he has done so, he should not give it up at a later stage and have recourse to the other.

Berger Paints India Ltd. Vs. ACIT & Ors. (2010) 322 ITR 369 (Cal.) (HC)

Petitioner received a notice under sec. 154 dt. 24th Dec., 2002 whereby the AO proposed to rectify mistakes which had allegedly occurred in an intimation issued under sec. 143(1). AO after considering the submissions of the petitioner, in the reply to the show cause, was of the view that rectification of the assessment order was not called for. Notice under sec. 148 however issued by AO on the same grounds on which rectification was proposed. Reasons quoted for reopening assessment were practically the same as the reasons for the notice under sec. 154 for rectification of the alleged mistakes. Rectification notice had been dropped by the same AO. He cannot again start reassessment proceedings on the basis of the same reasons. Condition precedent for initiation of reassessment proceedings is in any case, the formation of the belief, based on new materials that any income had escaped assessment. A notice under sec. 148 may not be issued merely on change of opinion. Where the condition precedent for issuance of a notice is absent, the notice might be challenged by filing a writ petition under Art. 226. Reassessment notice issued by AO liable to be quashed.

Sterilite Industries (India) Ltd. Vs. ACIT & Anr. (2011) 79 CCH 453 (Mad.) (HC)

The Hon'ble High Court at Para 29 & 30 of the order held as under:-

“29. A reading of the notice under section 154 of the Act and the reassessment notice dated 11th May 2009 shows that there is absolutely no material difference on the issues sought to be considered under these notices, except the fact that while in the proceedings under section 154, the notice is based on the view that there was a mistake apparent on the face of the record warranting a rectification, the proceedings under section 147 alleged that by reason of the untrue and incorrect particulars given by the assessee, there had been an escapement of tax. Given the fact that the area of operation of both these provisions are on totally different fields, the simultaneous assumption of jurisdiction under sections 154 and 147 on the self same issue, plainly shows the contradiction in the reasoning of the second respondent and as without logic or reason.

30. As rightly pointed out by the learned senior counsel appearing for the petitioner placing reliance on the decision reported in [1994] 206 ITR 1 (Bom) (Commissioner of Income Tax v Premier Automobiles Ltd.), when once the assessment order has been the subject matter of rectification under section 154, the self same issue cannot be the subject matter of reassessment by taking recourse to section 147 of the Act. Thus, on the facts that are available today, as far as the assessment year 2003-2004 is concerned, there are two proceedings, one under section 154 and another under section 147 of the Act. The jurisdiction given under both the Sections thus operating on different fields, (as far as this assessment year is concerned), and with the doubt in the mind of the Officer as to which direction he has to go, I have no hesitation in holding that the notice lacks the very basis for assumption of jurisdiction under section 147 of the Act. For the reasons that there cannot be two parallel proceedings on the self same issue as one based on the view that there were materials available on record which warranted exercise of jurisdiction under section 154 and the other initiated under section 147 that there was escapement of income from tax on

account of the failure of the assessee from disclosing the full and correct particulars, I have no hesitation in quashing the notice on reassessment.”

Anil Gupta Vs. Assessing Officer (2005) 96 TTJ 798 (Del.) (Trib.)

AO having initiated proceedings under s. 154 proposing to tax a particular income and pending said proceedings, initiating proceedings under s. 147 for taxing the same income, proceedings under s. 147 suffered from change of opinion, hence bad in law and so also assessment in pursuance thereof.

Sushil Kumar Jain Vs. ACIT 2016 ITL 3825 (Del.) (Trib.)

The rectification proceedings u/s 154 were initiated in the year 2011, however, AO without dropping the proceedings or without passing any order u/s 154, initiated the reassessment proceedings on the same issue in the year 2013 and thereafter, completed the assessment by means of order u/s 143(3) read with section 147. On these facts it was held that during the continuation of the proceedings u/s 154, AO embarked upon the same issue by means of a separate re-assessment proceedings without concluding the earlier proceedings initiated u/s 154. It goes without saying that initiation of two parallel proceedings on a similar subject matter cannot sustain. If first proceedings have been validly initiated, then such proceedings must come to an end for making a way for the initiation of another proceeding on the same subject matter. Unless the earlier proceedings are buried, either by way of an order on merits or by dropping the same, no fresh subsequent proceedings on the same subject matter can be initiated. This manifests that the proceedings u/s 147 cannot stand during the continuation of proceedings u/s 154. Hence, the initiation of re-assessment by means of notice u/s 148 and the proceedings flowing therefrom are hereby set aside.

Mahinder Freight Carriers Vs. DCIT (2011) 56 DTR 247 (Mum.) (Trib.)

AO reopened the assessment for the reason that the rental income has been wrongly treated as business income and the assessee has claimed wrong deduction in respect of the remuneration paid to the partners under sec. 40(b)(v). Earlier, AO initiated proceeding under sec. 154 for the same reason which has not been given finality either by dropping the same or passing any order in the said proceeding. Besides, except the return and its enclosures, no other material or information was in the possession of the AO. Admittedly, the mandate of sec. 147 is not fulfilled for the reason that the AO himself was not sure whether the issue in controversy could be subject-matter of proceedings under sec. 154 or the same can be subject matter of proceedings under sec. 147. Therefore, AO was not justified in issuing notice under sec. 148 and the proceedings under sec. 147 are void ab initio.

In the present case also, AO issued notice u/s 153C as also u/s 153A and proceeded to complete the assessment u/s 153C without dropping the notice issued u/s 153A and therefore the principle laid down in above cases, which though are with reference to initiation of proceeding u/s 154 & u/s 147, is clearly applicable and hence the order so passed is illegal & bad in law. This legal contention has not been decided by the Ld. CIT(A).

3. The AO completed the assessment u/s 144 r.w.s. 153C. An assessment can be made u/s 144 if any person fails to make the return or fails to comply with the notice issued u/s 142(1) or fails to comply with the notice issued u/s 143(2). In the present case assessee has complied with all the terms of notice issued u/s 142(1). It has also filed the return in response to notice u/s 153C manually on 01.03.2022 and thereafter online on 25.03.2022. Therefore, framing the assessment u/s 144 is illegal & bad in law. This legal contention has also not been decided by the Ld. CIT(A).

In view of above, order passed by AO u/s 153C r.w.s. 144 is illegal & bad in law and therefore the entire proceedings be quashed.”

2.5 On the other hand, the ld. DR supported the order of the ld. CIT(A)

2.6 We have heard both the parties and perused the materials available on record including the assessment order, order passed by Ld. CIT(A), submission of the assessee and the paper book filed by the Ld. AR. We note that assessee has challenged the validity of the order passed u/s 144 read with Section 153C of the Act on three grounds, the first is simultaneous issue of notice u/s 153A & 153C, the second is not recording of the proper satisfaction and third is passing the order u/s 144 even when online return was filed on 25.03.2022. We find that notice u/s 153A & 153C placed at paper book Page 12 & 13 are of same date i.e. 14.10.2021. The Ld. DR has argued that both are system generated notice and since proceeding u/s 153C is in consequence to the proceeding u/s 153A in case of some other assessee and therefore system generated notice refers to section 153A also but no proceeding u/s 153A has in fact been initiated. We agree with this contention of the Ld. DR that AO has initiated the proceeding u/s 153C and assessment order is also

passed u/s 153C of the Act. The notice u/s 153A does not require the assessee to file the return whereas notice u/s 153C requires the assessee to file the return. The notice u/s 153A is reproduced as under:

Sir/ Madam/ M/s,
Subject: NOTICE U/S 153A OF THE IT ACT 1961

MANMOHAN
Central Circle, Ajmer

Thus from the above, we hold that AO has not issued any notice u/s 153A and, therefore, this contention of assessee is rejected. In respect of the contention of the assessee that AO has not recorded the satisfaction as required u/s 153C of the Act, it would be relevant to reproduce the satisfaction recorded by the AO (PB-1) as under:-

“A search & seizure action was carried out on 13.02.2020 in the group case of Saini-Jain-Gupta-Malpani-Somani group of Ajmer. During course of search proceedings, in case of Sh. Vijay Gupta and his other related concerns/persons, certain documents were found and seized which belongs to the assessee company, i.e. M/s G.S. Dream Home LLP, Ajmer. The detail of the documents is as per Annexure 1 & 2 enclosed herewith.

Since the above referred documents belongs to M/s G.S. Dream Home LLP, Ajmer, I am satisfied that provision of section 153C of the IT Act, 1961 are to be invoked in case of assessee from AY 2014-15 to 2019-20 and 2020-21 (search year).”

Encl: as above

Date: 14.10.2021

MANMOHAN KANDPAL
Asstt. Commissioner of Income Tax
Central Circle, Ajmer

The relevant section 153C of the Act is also reproduced for ready reference as

under:-

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :

From the plain reading of the section we note that what is required u/s 153C is that the assessing officer of other person has to record a satisfaction that books of accounts or documents or assets seized have a bearing on the determination of total income of such other person. We note that the AO of the assessee has not recorded any satisfaction that the documents which were found in search of Shri Vijay Gupta & others belonging to M/s G.S Dream Home LLP has a bearing on the determination of its total income. Further along with the satisfaction note the AO has enclosed relevant portion of the appraisal report which only require the AO to verify the transaction or to make addition in case of Vijay Gupta after due verification. The relevant portion of the appraisal report for which addition is made by the AO is reproduced as under:-

(4)

Exhibit - 5, Pages from 01 to 13 (available in Annexure-2) ASS

10.4.20. Page 02 & 08- These pages containing block wise summary sheet of Bhilwara Plotting in GS Dream Home LLP.

The assessee has replied that these papers relate to G. S DREAM HOME LLP. This concern was incorporated on 13th dec, 2017 with the main object of development of real estate project. In pursuance to this object, the assessee has started two projects one is "Dream Homz" project at Ajmer which is an affordable housing project and second is "G S Greens" project at Bhilwara which is a township development project.

The reply of the assessee has been considered but found not acceptable as it is not verifiable that whether the sale proceeds from sale of plots have been shown in the regular books of accounts or not, as the same is not fully verifiable at this juncture. The assessee has received total sale amount of Rs. 15,95,03,580/- from sale of residential plots and Rs. 64,39,500/- from commercial plots. The AO is requested to take total amount of Rs. 16,59,43,080/- for FY 2019-20 relevant to AY 2020-21, as undisclosed receipts in the hands of Vijay Gupta after due verification .

Undisclosed receipts of Rs.165943080/- (AY 2020-21)

10.4.21. Page 03 to 06 & 09 - These pages are Balance Sheet of GS Dream Home LLP as on 15.01.2019, 25.12.2019 & 07.02.2020 and current A/c & ledger of Vijay Gupta in GS Dream Home LLP / GS group from 01.04.2017 to 08.02.2020.

The assessee has replied that in "Dream Homz" project at Ajmer, land was purchased from M/S Geo Connect Ltd. on 22nd June, 2018 thereafter certain site development activities were carried out but the construction activity on this project started in the month of May 2020. "G S Greens" project at Bhilwara is a joint venture project with m/s fashion suiting pvt ltd. the joint venture agreement was registered with sub registrar, Bhilwara on 07th Aug, 2019 in this project 126 residential plots and 8 Commercial plots were to be developed including construction of villas on certain plots. Out of the total sale proceeds, 35% was to be retained by the assessee and 65% goes to the land owner.



(5)

The reply of the assessee has been considered. In the Balance Sheet as on 25.12.2019, total balance of Shri Vijay Gupta has been shown at Rs. 3,38,89,895/-. This amount of Rs. 3,38,89,895/- shown as balance in the name of Vijay Gupta cannot be verified. The AO is requested to take total amount of Rs. 3,38,89,895/- for FY 2019-20 relevant to AY 2020-21, as undisclosed investment u/s 69 in the hands of Vijay Gupta after due verification

Addition u/s 69 Rs. 33889895/- (AY 2020-21)



Thus we find that neither the appraisal report nor the AO has recorded any satisfaction that the document found in the name of the assessee in the search of Shri Vijay Gupta & others has any bearing on the determination of the total income of the assessee. Hence, the notice issued u/s 153C of the Act without recording the satisfaction as required by the law is illegal and bad in law and therefore this contention of the assessee is allowed and the assessment framed u/s 153C is quashed. In respect of the contention of the assessee that when assessee has filed online return on 25.03.2022 the order passed u/s 144 r.w.s. 153C of the Act is illegal and bad in law, we note that the AO framed the assessment u/s 144 by stating that assessee has not complied with notice u/s 142(1) dt.01.02.2022 nor return of income was filed and the return filed vide letter dt.01.03.2022 is a manual return which is not valid return. However we find that assessee has e-filed the return on 25.03.2022 and thereafter AO issued notice u/s 143(2)/142(1) on 25.03.2022 fixing the date of hearing on 28.03.2022 and the assessee has filed a detailed reply (**PB 36-39**) to the queries raised by the AO on 28.03.2022. Thus the order passed u/s 144 is not as per law and therefore also the order passed is illegal and bad in law. Hence, in this view of the matter, Ground No. 1 of the assessee is partly allowed.

3.1 Apropos Ground No. 2, it is noted from the assessment order that in search of Sh. Vijay Gupta certain papers having name of the assessee was found and seized as Annexure AS-5 (**PB 6-11**). These papers relates to the project in the name of 'G.S. Greens' at Bhilwara which is a township development project in joint venture with M/s Fashion Suitings Pvt. Ltd. The development agreement was registered on 15.07.2019 (**PB 56-81**). In this project 126 residential plots and 8 commercial plots were to be developed. Out of the total sale proceeds, 35% was to be retained by the assessee and 65% goes to the land owner. It is noted that Pg 2 of Annexure AS-5 (**PB 11&28**) contains the detail of amount received at Rs.6,84,50,470/- and balance receivable of Rs.8,41,16,945/- as on 15.01.2020 against 74 plots. Pg 3 of this Annexure is Balance Sheet as on 15.01.2020 (**PB 29**) where the amount of Rs.6,84,50,470/- is reflected as Bhilwara customers- Plot booking under the heading (A) & (B). Similarly at Pg 8 (**PB 31**) the details of amount received at Rs.7,87,68,520/- and balance receivable at Rs.8,57,43,560/- on 07.02.2020 against 81 plots and the same amount is also reflected at Pg 4 which is Balance Sheet as on 07.02.2020 (**PB 30**) under the description Bhilwara customers- Plot booking under the heading (A) & (B). The AO on the basis of Pg 8 of the Annexure (**PB 31**) observed that balance receivable of Rs.8,57,43,560/- can safely be assumed to be cash component received by the assessee from sale of plots which has not been accounted for in the regular books of accounts as it is

general practice in the real estate dealing that own money in cash is received over and above the declared amount in the sale deed and thus made addition of Rs.8,57,43,560/- u/s 69A of the Act.

3.2 In first appeal, the Ld. CIT(A) after considering the explanation of assessee and the website of Samriddhi Builders and G.S. Greens, at Para 5.2.17 upheld the addition made by AO by holding as under:-

- i. The assessee is claiming that Rs.7,87,68,520/- was the advance amount received against sale of 81 plots but only Rs.2,28,24,570/- was received through cheque/RTGS/NEFT and the remaining amount of Rs.5,59,43,950/- was received in cash. The facts were suspicious. The assessee failed to explain the details of advances from customers as shown of Rs.7,87,68,520/- in the Balance Sheet.
- ii. The total transaction amount for sold 81 plots was Rs.16,45,12,080/-. Out of the same the appellant has shown only the amount of Rs.7,87,68,520/- in its regular books of accounts and in the whole transaction, the component of cash amount was Rs.8,57,43,560/- which was neither shown by the assessee in the regular books of account for the F.Y 2019-20 nor till date of completion of the project.
- iii. Assessee has not offered any explanation for taxation on the component of cash amount of Rs.8,57,43,560/- in the whole transaction amount of Rs.16,45,12,080/- for sale of 81 plots. Hence, AO was justified to make addition of Rs.8,57,43,560/- during the A.Y. 2020-21 and the same was also reflecting in the balance sheet of G.S. Dreamhome LLP as on 07.02.2020.
- iv. It is noticed that the assessee has not disclosed the income of Rs.8,57,43,560/- in the regular return of income for the taxation even after completion of the project. Hence, the AO was justified to add this amount of Rs.8,57,43,560/- to the total income of the assessee as unexplained money u/s 69A of the Act, 1961 and taxed u/s 115BBE of the IT Act, 1961.

- v. As per the joint venture agreement, out of the total sales proceeds 35% was to be retained by the assessee and 65% goes to the land owner. The assessee has not offered any explanation regarding the distribution of undisclosed component of cash. Hence AO was justified to add the whole amount of Rs.8,57,43,560/- in the hands of the assessee.

3.3 During the course of hearing, the ld. AR of the assessee prayed for deletion addition sustained by the ld. CIT(A) for which he has filed the following written submission

1. At the outset it is submitted that as per Pg 8 of Annexure AS-5 (**PB 31**), the amount shown under the column received of Rs.7,87,68,520/- in respect of 81 plots has been reflected in the Balance Sheet as on 07.02.2020 under the heading Bhilwara customers- Plots booking under two column, one is A with Rs.2,28,24,570/- and another is B with Rs.5,59,43,950/-. The column A represent the amount 'Aa Gaya' and the column B represent the amount 'Baki'. Since these were confirmed booking the assessee has recorded this amount in the Balance Sheet as advance from customers- G.S. Greens (**PB 32**). As on 31.03.2020 out of this amount, the actual amount received is Rs.2,70,44,260/- and the balance was receivable. The assessee before the AO has submitted the customer wise and plot wise details of the amount recorded in the books of accounts (**PB 40-41**).
2. The amount of Rs.8,57,43,560/- shown under the column balance receivable (**PB 31**) represent the amount receivable in respect of construction to be carried out on some of these plots. It is submitted that some of the customers desired construction of villa on the plot booked. Accordingly from these customers a consent letter was taken mentioning the amount agreed for the construction (**sample consent letters are at PB 44-47**) and that amount was shown under the head balance receivable at Pg 8 of Annexure AS-5. The customer wise list of plot amount, security deposit amount and construction amount was submitted to AO (**PB 42-43**). However, since in March, 2020 the entire real estate activity got effected due to Covid and Shri Vijay Gupta, partner of the LLP and Shri Pavitra Kothari son of another partner Shri Daulat Raj Kothari suffered from covid (his son was actively engaged as he was paralised) and remained hospitalized for around one month and thereafter remained under close observation & supervision of the doctors for six months, therefore they dropped the plans for construction in this project. However a new project G.S. County was started adjoin to this scheme wherein the assessee has launched the villa and construction is going on. All these facts clearly proves that the amount of Rs.8,57,43,560/- represents the construction amount to be received on completing the construction activity which was abandoned. Hence the addition confirmed by lower

authorities by presuming that the amount reflected under the heading balance receivable is cash amount received is unjustified.

3. It is submitted that before the Ld. CIT(A) the assessee as required by him has furnished two statements. The first statement (**PB 48-51**) contains the details of plot booked, name of buyer, plot no., date of booking, area of plot, plot amount, construction amount and the position of such plot as on 31.03.2023 as to whether the booking was cancelled or sale deed was executed or not. The second statement (**PB 52-55**) contains the details of plot number, name of the person who booked the plot, amount for which plot was booked, amount received there against during the FY 2019-20 to FY 2022-23, the differential amount which was not received due to subsequent cancellation and the mode by which the amount is received. From these two statements it can be noted that no amount is received against the construction which is reflected at Pg 8 of Annexure AS-5 under the head balance receivable and even against the amount reflected under the head amount received which comprises of actual amount received and the amount receivable against the confirmed booking, some of the plots got cancelled and remained unsold till 31.03.2023. In any case since the lower authorities have accepted that the amount reflected under the heading amount received is duly accounted for in the books of accounts, the addition made in respect of amount reflected under the heading balance receivable of Rs.8,41,16,945/- is unjustified.

4. The Ld. CIT(A) at Pg 36-42 of its order has pointed out certain discrepancies in the statement submitted by the assessee and observed that the actual rate of plot was Rs.1773.44/- per sq. ft. as against Rs.600/- to Rs.1000/- per sq. ft. recorded in the books of account and the remaining amount was received in cash is factually incorrect as explained hereunder:-

a. The Ld. CIT(A) has observed that assessee has claimed that Plot No.1, Plot No.2 and Plot No.3 booked in the name of Vipin Asawa has been cancelled and remained unsold whereas from the Government site it is found that Plot No.1 and Plot No.2 have been sold to Tanish Asawa and thus assessee has produced the wrong facts. It is submitted that Plot No.1 and Plot No.2 was sold to Tanish Asawa on 05.04.2023 whereas assessee has provided the information about position of each of the plot as on 31.03.2023. Thus assessee has not furnished any incorrect fact.

b. It is observed that sale deed of Plot No.8 was executed on 07.01.2022 at Rs.600/- per sq. ft. whereas sale deed of Plot No.9 was executed on 06.07.2020 at Rs.1000/- per sq. ft. which shows that assessee has manipulated the rates according to its convenience. In holding so it is ignored that Plot No.8 was booked on 15.11.2019 whereas Plot No.9 was booked on 26.12.2019 though the sale deed of Plot No.9 was executed earlier to Plot No.8. In any case in the absence of any evidence that assessee has sold Plot No.8 also at the rate of Rs.1000/- per sq. ft., no adverse inference can be drawn merely on assumptions & presumptions.

- c. The Ld. CIT(A) has observed that in the official site of G.S. Greens, the rate of plots are starting from Rs.1950/- per sq. ft. For this purpose the scanned website of Samriddhi Builders and Post Property is reproduced at Pg 40 & 41 of the order. This has been compared with Pg 8 of Annexure AS-5 where including the balance receivable the average rate is worked out at Rs.1773.44/- per sq. ft. as against Rs.600/- to Rs.1000/- per sq. ft. recorded in the books of assessee. It is submitted that these websites are not of the assessee but is of Samriddhi Builders and Post Property who are the property brokers. Therefore from these websites it cannot be presumed that rate of plots sold by assessee is of Rs.1950/- per sq. ft. Further even as per Pg 8 of Annexure AS-5 the average rate including the amount receivable on account of construction is Rs.1773.44/- per sq. ft. and therefore it cannot be assumed that assessee has received cash amount on sale of plot which is not recorded in the books of accounts.

5. The Ld. CIT(A) at Pg 19 of its order has observed that as per the RERA website the project of assessee was only of plot and therefore how the assessee can construct villa on this plot without registration from RERA authorities for the same. It is submitted that for construction of villa on individual basis as a contractor, no registration from RERA authorities is required and therefore this observation of Ld. CIT(A) is of no relevance.

6. The Ld. CIT(A) at Pg 27 of its order with reference to the Balance Sheet as on 07.02.2020 has observed that against the name of Vardhman Buildcon, Rs.45 lacs is reflected in Column A and Rs.10 lacs in Column B whereas in the Balance Sheet as per books of accounts Rs.55 lacs is shown on 07.02.2020 but Rs.45 lacs as on 31.03.2020 which is also shown in the Balance Sheet as on 31.03.2021 to assume that figures shown in Column A shown in books of accounts and that shown in Column B are not recorded in books of accounts and the same were in cash. This observation of Ld. CIT(A) is incorrect in as much as assessee advanced Rs.55 lacs to Vardhman Buildcon in March 2018 for entering into a joint venture. However, the joint venture did not materialize and Rs.10 lacs was received back on 25.09.2018. Thereafter assessee accounted for the interest receivable on the outstanding balance at Rs.10 lacs on 24.12.2019 but since the matter was in litigation before the lower court, the auditor insisted to reverse the interest since when the recovery of principal amount is doubtful, interest cannot be recorded in books. Accordingly, the interest was reversed on 31.03.2020. It is for this reason that Rs.45 lacs is shown in Column A and Rs.10 lacs is shown in Column B in the Balance Sheet as on 07.02.2020 seized in search. Therefore, the presumption of Ld. CIT(A) that amount reflected in Column B is cash amount not recorded in books is incorrect.

7. The Ld. CIT(A) has observed that assessee has not offered any explanation regarding the distribution of undisclosed component of cash of Rs.8,57,43,560/- ignoring the fact that this amount is shown as balance receivable which is not received and therefore question of distribution do not arise for consideration.

8. Without prejudice to above, it is submitted that assessee is following project completion method of accounting for recognizing the revenue. Therefore, until the sale deed is executed revenue is not recognized. For this reason also the amount reflected as balance receivable cannot be brought to tax.

In view of above, addition of Rs.8,57,43,560/- confirmed by Ld. CIT(A) should be deleted.’’

3.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.5 We have gone through the assessment order, order passed by Ld. CIT(A), submission of the assessee and the paper book filed by the Ld. AR. We note that AO made addition of Rs.8,57,43,560/- on the basis of Page 8 of Annexure AS-5 seized from Shri Vijay Gupta who is one of the partner of the assessee. The title of this page is BhilwaraPloting- Block Wise Summary Sheet. In this sheet the sold value is shown at 16,45,12,080/-, amount received at Rs.7,87,68,520/- and balance receivable at Rs.8,57,43,560/-. The AO has verified the amount reflected at Rs.7,87,68,520/- which is also shown under the heading Advance from Customers in the balance sheet as on 07.07.2020 found at Page 4 of Annexure AS-5 from the books of accounts of the assessee. However, in respect of amount of Rs.8,57,43,560/- shown under the head Balance Receivable, AO has not accepted the contention of the assessee that such amount represent the amount receivable under the proposed construction as some of the plot buyers have given the consent

letter for carrying out construction on their plot by holding that consent letter is a self-serving document to cover up the story that it represents amount to be received against construction and due to fact that no construction was carried out in the next financial years also. The Ld. CIT(A) has confirmed the finding of the AO by making some further observation at Page 19, Page 27 & Page 36-40 of its order. After having gone through the orders of the lower authorities, we agree with the contention of the assessee that amount of Rs.8,57,43,560/- shown as balance receivable cannot be presumed as amount received. Assessee claimed that this amount was receivable against construction to be carried out on some plots as per the request of the customers who booked the plots but subsequently the plan for construction on some of the plots were dropped and therefore we agree with the contention of the assessee that this amount was never received. Further for construction of villa on individual basis as a contractor no registration from RERA authorities is required and therefore the observation of CIT(A) in Para 5.2.6 & 5.2.7 at Page 18-21 of its order is irrelevant. The Ld. CIT (A) at Page 26 & 27 of its order by referring to the balance sheet as on 7.2.2020 has observed that in the balance sheet figures are shown in Column A and Column B of which the figures noted in Column A are shown in books of accounts and that shown in Column B are not recorded in books of accounts and the same were in cash. In this connection he referred to the amount shown in name of Vardhman Buildcon. In this connection

we agree with the contention of the assessee that amount shown under Column A represent the amount “Aa Gaya” and in Coloum B represent the amount “Baaki” and all these amount are duly recorded in the books of accounts. Even the AO has not drawn any adverse inference with reference to amount shown in Column A and Column B. The Ld. AR has also explained and reconciled the amount shown in the balance sheet as on 07.02.2020 where in the name of VardhmanBuilcom Rs.45,00,000/- is reflected in Column A and Rs.10,00,000/- in Column B. We also note that at Page 36-42 of the order of the Ld. CIT (A) he has observed that the actual rate of plot was 1773.44 sq feet as against Rs.6000 to 1000 sq feet recorded in the books of the accounts and the remaining amount was received in cash. However the observation made therein is not correct as explained by the Ld. AR in his written submission reproduced supra. Thus we find that the amount of Rs.8,57,43,560/- shown under the column receivable cannot be considered as on money received on sale of plots and therefore the addition made by the AO and confirmed by the ld CIT (A) is directed to be deleted. Thus ground No. 2 is allowed.

4.1 Ground No.3 is regarding taxability of amount added by AO u/s 115BBE of the Act. Since we have deleted the addition made by the AO, this ground becomes infructuous and hence dismissed.

5.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open court on 10 /04/2024.

Sd/-

(डा० मीठा लाल मीना)

(Dr. Mitha Lal Meena)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/04/2024

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. G.S. Dream Home LLP, Ajmer
2. प्रत्यर्था / The Respondent- The DCIT, Central Circle, Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.24/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar