

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

BEFORE: SHRI SANDEEP GOSAIN, JM & DR DIPAK P. RIPOTE, AM

आयकर अपील सं./ITA No. 587/JP/2024
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Srishti Associates Central Square, Gumanpura Kota – 324 007	cuke Vs.	The ACIT Central Circle- Kota Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACXFS 7134 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal, CA &
Shri Gulshan, Agarwal, CA

राजस्व की ओर से / Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 04/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 16/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee against the order of Commissioner of Income tax (Appeals)-2, Udaipur [hereinafter referred to as 'CIT(A)'] dated 23.03.2024 for A.Y. 2018-19 passed under section 250 of IT Act which in turn arise from the order dated 27.12.2019 passed u/s. 143(3) r.w.s. 153B(1)(b) of the Act by the ACIT, Central Circle-Kota.

2. Brief facts of the case are that the assessee is a partnership firm. The business of the assessee is construction of building and real estate. The Appellant firm has three partners named as Shri Om Prakash Sharma, Shri Ajay Khatri, and Shri Sanjay Khatri. The assessee filed its return of income of Rs. 6,27,310/- on 30.10.2018 u/s 139(1) of IT Act. The Appellant entered into a joint development agreement with M/s URS Gehna through its partner Shri Upendra Soni, for construction of building project named 'Royal Imperia'. As per this development agreement, M/s URS Gehna is landowner and Appellant is builder who would construct the project at its own cost on the basis of sharing of the units in the constructed building. The sharing of the units in the constructed building in between the assessee and M/s URS Gehna has been specified in development agreement, which is at PB page 268-272 and 283-292. For the year under consideration, there was no sale of flats and only advance money was received by the Appellant against the booking of the flats in the project Royal Imperia. Appellant booked its sales of Rs. 1,45,13,735/- by adopting percentage of completion method. The books of account of the appellant firm were audited by Chartered Accountant u/s 44AB of IT Act. The copy of the audit report and audited financial statements were filed by the assessee in Paper Book at page no 54-72. The department carried out search at the premises of

Resonance Group, Kota and Shri Upendra Kumar Soni u/s 132 of the Act on 07.09.2017, where certain documents were seized. According to the AO documents seized vide Annexure AS Exhibit 5 page 1 to 83 from the possession of Shri Upendra Kumar Soni pertain to booking of Royal Imperia Project. The AO found the page no. 83 of Exhibit 5 of Annexure “AS” as incriminating document and the copy of only this seized page was provided to the assessee for confrontation, which contains details of total booking amount of flat received amounting Rs. 12,78,33,328/- out of which Rs. 8,19,19,000/- was received in cash and Rs. 4,59,14,328/- was received in cheque. On the basis of this seized document, notice u/s 153C of the Act issued on the assessee on 28.03.2019 from AY 2012-13 to AY 2017-18 and notice u/s 143(2) issued of the year under consideration after recording the satisfaction note. The A.O., on the basis of document found from the possession of Shri Upendra Kumar Soni, took adverse inference against the assessee and assessed the total income of assessee at Rs. 4,02,56,560/- with addition of Rs. 3,96,05,000/- on account of assessee’s share in cash received as on-money in booking of flats/units belonging to the assessee made by Shri Upendra Kumar Soni. In the assessment order, AO held that the assessee has share amounting to Rs. 3,96,05,000 in the total cash receipt of Rs. 8,19,19,000/- received by the Upendra Kumar Soni. AO while

making this addition relied on the statements of Upendra Kumar Soni recorded u/s 132(4) of the Act. The AO made the addition of Rs. 3,96,05,000/- on following footings: -

1. Upendra Kumar Soni could not produce any documents in post search proceedings to substantiate his claim that the cash was returned to the purchasers.
2. Out of total cash received of Rs. 8,19,19,000/- share of URS Gehna and of the assessee M/s Srishti Associates was Rs. 4,23,14,000/- and Rs. 3,96,05,000/- respectively.
3. Further, the property on which the assessee firm is building flats is owned by Shri Upendra Kumar Soni. This fact also establishes that the assessee firm might have given some authorization to Shri Upendra Kumar Soni to sell flats and receive the money on behalf of the assessee firm.

2.1 Aggrieved by the order of the AO, the assessee filed an appeal u/s 246A before the Commissioner of Income Tax, Appeals-2, Udaipur. The assessee has challenged the legality of assessment order and factual findings of the AO on various grounds. The appeal filed by the assessee was dismissed by Ld. CIT(A) on following footings: -

- i) Rejected the ground of invalidity of assessment on for the reason of non-mentioning of DIN in the assessment order dated 27.12.2019 for the reason that the DIN issued for demand notice was communicated to

appellant on 28.12.2019 and also replying the judgement of Hon'ble Supreme Court. (para 4.8 of the order of ld. CIT (A) at page 8 to 10 of the order).

ii) Rejected the ground of non-obtaining the approval as required u/s 153D by holding that the same was validly obtained. (para 4.8 of the order of ld.CIT (A) at page 10 of the order).

iii) Rejected the ground of no satisfaction note of search person on the ground that where the AO of searched person and other person are same, then requirement of two satisfaction note are not necessary and one satisfaction note is sufficient. (para 5.6 (i) of the order of ld.CIT (A) at page 18 to 23 of the order).

iv) holding that the satisfaction note recorded by the AO of the assessee is reasonable and nexus of the documents found is established with the appellant. (para 5.6 (ii) of the order of ld.CIT (A) at page 23 to 24 of the order).

v) holding that the procedure of section 153C was properly followed. (para 5.6 (iii) of the order of ld. CIT (A) at page 24 to 25 of the order)

vi) The addition of Rs. 3,96,00,000/- was confirmed by rejecting the submission/argument raised by the assessee.

3. Aggrieved from the order of ld. CIT(A), the assessee has filed this appeal before Tribunal. The grounds raised by the assessee are as under: -

1. *On the facts, in the circumstances of the case and in law, the initiation of proceeding u/s 153C of the Act and subsequent all the proceedings including the assessment order is bad in law, void-ab-initio, and deserves to be annulled for various reasons including for the reason that approval of assessment order as well as passing of assessment order is without DIN. The order passed by the ld. Assessing Officer is arbitrary, whimsical, capricious, perverse, against the law and principal of natural justice. The Ld. CIT (A) erred in not annulling the assessment proceeding and confirming the action Ld. A.O. as valid.*
 2. *On the facts and in the circumstances of the case, the order CIT (A) erred in confirming the addition of Rs. 3,96,05,000/- to the total income of appellant by alleging that the appellant has received unaccounted money on sales of flats at Royal Imperia Apartment. The addition was confirmed without appreciating the fact that the same was made without having any corroborative evidences and totally based on surmises, conjectures, suspicion, irrelevant material or no material.*
 3. *The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.*
4. Ground No. 1 of the appeal is regarding the validity of the assessment order.
- 4.1 Before us, the Ld. A/R of the assessee has argued the case and filed the elaborate written submission. The brief of the arguments raised by Ld. A/R are as under: -
- 4.1.1 AO has passed the impugned assessment order u/s 143(3) r.w.s 153B(1)(b) of the Act dated 27.12.2019 for the year under consideration is

without bearing DIN (document identification number) on the said impugned order and the same is in gross violation to the CBDT Circular no. 19/2019 [F.No. 225/95/2019-ITA.II] DATED 14.08.2019. It was also argued that as per this circular any communication which is not in conformity with Para-2 and Para- 3 above circular, shall be treated as invalid and shall be deemed to have never been issued. It is also submitted that it has not been mentioned in the assessment order that the assessment order has been issued manually in exceptional circumstances and approval of the Chief Commissioner/Director General of the Income tax was obtained before issue of manual communication. It was also argued that though the A.O. issued an intimation letter dated 19.02.2021 for the year under consideration, to inform about the DIN of order passed u/s 143(3) of the Act wherein the date of order is mentioned as 31.12.2019, however, there is no order passed by the department on 31.12.2019 for AY 2018-19 u/s 143(3) in the case of assessee but it was passed on 27-12-2019. Therefore, the said intimation letter issued by the Ld. AO is beyond time limit of 15 working days specified by CBDT Circular and also not with reference to impugned assessment order dated 27.12.2019 passed without DIN. It was also submitted that in the remand report the reference of communication letter dated 28.12.2019 has been given but this

communication is with reference to demand notice u/s 156 of IT Act. The Ld. AR submitted that separate DIN is required for each communication so the same cannot be considered as issued for assessment order passed u/s 143(3) dated 27-12-2019 as the requirement of the CBDT Circular is each communication should be made under separate DIN. The Ld. A/R also relied on several judgements in this regard.

4.1.2 The Ld. A/R of the assessee also argued that the AO in the case of assessee has obtained common approval from Additional Commissioner of Income Tax u/s 153D of the Income Tax Act, 1961, for various assessment years vide letter no 1518 dated 26/12/2019 while the approval for each assessment was required to be taken separately. It was further submitted that the approval was granted in mechanical manner without application of mind and without examining the vital disputed facts of the case and opportunity of hearing was not given to the Appellant. The Ld. A/R referred the Manual of Office Procedure issued in February 2003 by CBDT in exercise of the powers under Section 109 of the Act. Para 9 of Chapter 3 of Volume-II (Technical) of the Manual which prescribes the opportunity of hearing to the assessee should be given before approval of draft assessment order by higher authority. The requirement of prior approval under Section 153D of the Act is comparable with a similar requirement under Section

158BG of the Act. The Ld. A/R submitted that in a series of judgements it has been held that the instruments u/s 119 of the Act are certainly binding on the Department. He relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Customs vs Indian Oil Corporation Ltd. 2004 (165) E.L.T. 257 (SC) and in the case of CIT vs Hero Cycles [1997] 228 ITR 463 (SC). The ld. AR submitted that Hon'ble Orissa High Court had quashed the Assessment Order in the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. ITA No 39, 40, 41, 42, 43, 44 & 45 of 2022 vide order dated 15-03-2023 on ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. He submitted that Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the SLP Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble Orissa High Court in the above case. He further argued that on the approval granted by Additional Commissioner of Income Tax DIN was not generated and mentioned on the approval letter of Addl CIT.

4.1.3 The Ld. AR of the assessee also argued in detail as regard issue of Satisfaction note recorded by the A.O. for initiating the proceedings u/s

153C of the Act against the assessee, issue of addition on surmises and conjectures and violation of principle of natural justice by not providing the opportunity of cross examination of Shri Upendra Kumar Soni.

4.2 On the other hand the Ld. D/R vehemently relied on the finding of Ld CIT (A) and argued that the AO has issued communication under DIN vide letter dated 28-12-2019 and communication issued for demand Notice u/s 156 is in reference to the assessment order passed by the AO 27-12-2019. Ld. D/R further argued that, the approval by the Additional Commissioner given u/s 153D of IT Act was after due application of mind and the fact of giving approval is duly mention in the body of assessment order itself, therefore there is nothing on record to presume that the approval is given in mechanical manner. It was also argued that before initiation of assessment proceeding, the due satisfaction was recorded by A.O. and the addition is based on the document found & seized during search from the premises of Shri Upendra Soni, which clearly establish that the on-money in cash was taken against sales of the flats, part of which attributable to the assessee.

4.3 We have considered the rival contention and perused the orders of the authorities, the material available on record, arguments advanced by both the parties and also gone through the judicial decision relied upon by the parties.

4.3.1 As regard issue of DIN, it is noted that the assessment order does not contain the DIN but as evident from the remand report, which submitted by AO to Id. CIT (A), the DIN was duly generated and intimated to the assessee vide letter dated 28.12.2019 and duly been delivered to the registered email of the assessee. Hon'ble Supreme Court of India in the case of CIT V/s Brandix Mauritius Holdings Ltd [2024] 158 taxmann.com 247 (SC) has granted stay on this issue, therefore the argument of the assessee regarding the validity of assessment order, without mentioning of DIN in the body of assessment, though the same was duly generated and separately intimated to the assessee, is not found to be acceptable and hence the same is rejected.

4.3.2 Another contention of the assessee regarding the approval of draft assessment order u/s 153D of IT Act, we find that the fact of giving approval is duly mentioned in the body of assessment order itself, therefore there is nothing on record to presume that the approval was given in

mechanical manner. Regarding non generating and mentioning the DIN on the approval granted by Additional Commissioner of Income Tax we have given the elaborated finding on the issue of DIN in para above and the same is mutatis mutandis applied here also.

4.3.3 The other arguments raised by the assessee is regarding satisfaction note being not proper, assessment based on surmises conjecture and cross examination etc. and also the principal of natural justice, are interlink & interconnected to the addition made by AO, which is challenged in ground No. 2 of appeal, therefore the same are being dealt with while adjudicating the ground No. 2 of the appeal and for the sake of brevity the same are not being adjudicating here.

5. In Ground No. 2 of the appeal is regarding the addition of Rs. 3,96,05,000/- made by AO and confirmed by ld. CIT (A) on the ground of receiving the unaccounted money by the assessee on sales of flats at Royal Imperia Apartment.

5.1 Before us, the Ld. A/R of the assessee has argued the case and filed the elaborate written submission. The brief of the arguments raised by Ld. A/R are as under: -

5.1.1 At the outset, the A/R of the assessee relied on the decision of decision of ITAT Jaipur Bench in the case of M/s Moti Developers (ITA No. 102 to 104/JP/2017 order dated 03.07.2017 and contended that on the identical facts, the similar issue has already been decided by Hon'ble ITAT, Jaipur Bench in the aforementioned case. The findings of Hon'ble ITAT in this case are in Para 3.5 of the order. The Ld. A/R submitted that the fact of the case of the assessee's are identical to facts of above referred case and also submitted the comparison of facts of the case of the assessee *viz a viz* cash of Moti Developers, which are as under: -

S. No.	Facts of case of Moti developers	Facts of case of Appellant
1.	The Appellant (Moti developers) having a land at Janta Colony and entered into a development agreement with Ashirwad Buildtech Private Limited for construction of flats.	The Appellant (Shrishti Associate) entered into a development agreement with the land owner M/s URS Gehna.
2.	The assessment proceeding u/s 153C was initiated on the basis of documents found from third party naming Shri Virendra Ghuwalewala of	The assessment u/s 153C was made in pursuance to the document found from third party naming Shri Upendra Kumar Soni.

	Ashirwad Buildtech Private Limited.	
3.	The sale proceeds of the flats was to be divided in between land owner and developer in the ratio of 40:60.	Selling right in 50% constructed flats received to Appellant and 50% to the land owner.
4.	During the course of search a paper was found from the premises of Shri Virendra Ghuwalewala and as per such seized paper he received the cash against sales of flats.	During the course of search over Shri Upendra Kumar Soni a paper was found and as per such seized paper some cash was appears to be received by him.
5.	During the search Shri Virendra Ghuwalewala never claimed that the cash component was passed on to M/s Moti Developers.	During the course of search Shri Upendra Soni never claimed that any cash towards the sales of flats was either received to Appellant or pass on to Appellant by him.
6.	During the course of search on Shri Virendra Ghuwalewala, no evidence of whatsoever nature was found which may prove that M/s Moti Developer had received cash.	During the course of search on Shri Upendra Kumar Soni, no evidence of whatsoever nature was found which may prove that Appellant had received any cash.
7.	In the statement, recorded during search, Shri Virendra	In the statement, recorded during search, Shri Upendra Soni stated that

	Ghuwalewala admitted the cash receipt as his own income.	whatever cash received by him had been refunded back to the flat buyers.
8.	M/s Moti Developers sought cross examination of Shri Virendra Ghuwalewala, and at the direction of Id. CIT(A) AO fixed the date of cross examination and on that date, Virendra Ghuwalewala present but the assessee did not present. However, statement of Shri Virendra Ghuwalewala recorded by AO in absence of the assessee wherein he said that he has 60% share in on money sales.	At the direction of Id CIT(A) AO fixed the date of cross examination and on that date neither assessee nor Shri Upendra Kumar Soni present.
9.	The Ld. A.O. made the addition of 40% of cash receipts in the hands of M/s Moti Developers.	The Ld. A.O. made the addition of part of the cash receipts in the hands of Appellant.

5.1.2 It was also contended that, no nexus of the document with appellant is established. It was also contended that certain documents were found from the possession and control of Shri Upendra Kumar Soni and seized as

per Annexure AS page 1 to 83 of Exhibit 5. The AO found the page 83 of the impugned Annexure as incrimination and he provided the copy of this page only to the assessee for confrontation. On this page in column No 1 description of floor is mentioned. In column no 2 Total amount against each floor in totality is mentioned. In column No 3 cash amounts against each floor in totality is mentioned. In column No 4 cheque amounts against each floor in totality is mentioned. In column No 5 & 6 Total Received and balance against each floor in totality is mentioned respectively. The Ld. AR submitted that the name of the assessee is not mentioned over the impugned seized paper page 83. There is division of flats/units in between the assessee and URS Gehna in the constructed building as per the development agreement and details of the flats/units belonging to the assessee is not mentioned over this seized paper. Further the dates of the receipts of the amount by cheque as well as Cash is also not mentioned, therefore year of the receipt of the amount cheque as well as cash cannot be determined on the basis of this paper. No any nexus of this seized paper with the figure of addition of Rs. 3,96,05,000/- can be ascertained.

5.1.3 It was further submitted by Ld. AR of the assessee that the A.O., at

page 7 to 11 of the satisfaction note, reproduced certain pages of excel sheet, which pretended in relation to the booking of the flats/unit pertaining to the Appellant and URS Gehna. However, from the satisfaction note as well as from the assessment order or from the remand report as well as from order of Ld. CIT(A), the source of availability of these pages of excel sheet with the A.O. was not disclosed. There is no reference of seized Annexure Number, exhibit Number and page number on these pages of the excel sheets. From bare perusal of this sheet, it does not appear to be seized during the course of search, as it does not have any page number as well as the signature of searched person Shri Upendra Kumar Soni, signature of witness and signature of authorized officer, which is there on seized page no. 83 of Exhibit-5. This clearly shows that these pages of excel sheet were not seized during the course of search over Shri Upendra Kumar Soni. There is no reference regarding the source from where the AO got these papers of Excel Sheet i.e. whether provided by Shri Upendra Kumar Soni, prepared by DDIT, prepared by A.O. himself or provided by someone else. From the copy of relevant pages of statement of Shri Upendra Kumar Soni recorded u/s 132(4), as provided to the assessee by Ld. A.O., there is no reference of these papers of Excel Sheet in the questions answers in the statement of Shri Upendra Kumar Soni. Besides this, the Ld. A/R of the

assessee also pointed out following discrepancies in the data in the said papers of Excel Sheet and argued that this itself proves that the sheet is not reliable and correct and thus no cognizance can be taken on the basis of these sheets.

i) Amount under the column “Total received” mention wrong: -

S. No. of Sheet	Total amount as per sheet	Cash received as per sheet	Cheque received as per sheet	Total received as mentioned in sheet	Balance as per sheet	Remarks
17	33,26,400	14,00,000	0.00	0.00	33,26,400	In column Cash received, amount of Rs.14,00,000 is shown, whereas in column of Total figure 0 is mentioned, Accordingly, the balance is also wrongly worked out.
18	22,51,200	2,00,000	0.00	14,00,000	8,51,200	In column Cash received, amount of Rs.2,00,000

						is shown and in column of cheque 0 is shown, whereas in column of Total figure 14,00,000/- is mentioned, Accordingly, the balance is also wrongly worked out.
19	23,24,750	7,50,000	5,00,000	7,00,000	16,24,750	In column Cash received, amount of Rs.7,50,000 is shown and in cheque received amount of Rs. 5,00,000/- is mentioned. The sum of both the receipts comes Rs. 12,50,000/-, whereas in column of Total figure Rs. 7,00,000/- is mentioned, Accordingly,

						the balance is also wrongly worked out.
20	23,24,750	0.00	0.00	7,50,000	15,74,750	In column Cash and cheque received, amount 0 is shown. The sum of both the receipts comes 0, whereas in column of Total figure Rs. 7,50,000/- is mentioned. Accordingly, the balance is also wrongly worked out.

ii) In some of the cases the Actual sales consideration is more than to consideration mentioned in the sheet

S. No. of Sheet	Total consideration as mention in the sheet	Consideration as per sales deed
9	22,51,200	25,12,386
11	43,79,450	49,50,550
13	22,51,200	27,89,760
57	43,79,450	49,50,550

- iii) In the following cases, the difference in sales consideration as per books of accounts and as per sheet is less than to cash receipt as mentioned in this sheet, therefore the caption cash could not be received to the Appellant**

S. No. of Sheet	Total consideration as mention in the sheet	Consideration as per sales deed	Difference	Cash receipt as per Sheet
8	22,51,200	20,00,000	2,51,200	22,20,000
13	22,51,200	27,89,760	-5,38,560	7,50,000
17	33,26,400	33,00,000	26,400	14,00,000
18	22,51,200	21,00,000	1,51,200	2,00,000
43	33,26,400	25,00,000	8,26,400	10,00,000
49	23,52,100	18,10,750	5,41,350	7,00,000
52	39,98,400	25,00,000	14,98,400	15,00,000
53	28,00,000	15,25,000	12,75,000	28,00,000
55	22,97,400	19,61,500	3,35,900	7,30,000

- iv) In several cases actually no sales were made to the parties, as mentioned in the sheet**

S. No. of Sheet	Flat No.	Name as per sheet provided by department	Name of party to whom actual sales made
2	GF-14	Titu Choudhary	Smita Khatri
3	GF-12	Naresh Lalwani	Sanjay Khatri
4	GF-13	Naresh Lalwani	Om Prakash Sharma
5	LG-05	Titu Choudhary	Smita Khatri
9	1105-D	Sapna Gupta	Sudhir Pahwa
12	1004-C	Gyanesh Gupta	Giriraj Prasad Vijay
21	801-A	T. Sakawat	Mujjamil
24	701-A	Vinod Kumar Sharma	Mohd Saddam Qureshi
25	703-B	Manoj Kumar Bilochi	Om Prakash Sharma
26	704-C	Tikam Chand Shringi	Prabha Shringi
27	705-D	Rajendra Kumar Jain	Deepali Jain
30	708-F	Manish Jain	Rajneesh Vajpayee
32	608-F	Meenu Jain	Jahir Ali
33	609-G	Nirbhay Singh	Mohd Saleem
36	506-E	Anjali Bhoj, Yogita & Mohit, Madhurisa	Rohit Gupta
37	507-E	Anjali Bhoj, Yogita & Mohit, Madhurisa	Sapna Gupta

40	406-E	Kultaran Singh	Priti Kachawa
47	201-A	Vikas Katariya	Sanjay Khatri
52	209-G	Manoj Kumar Bilochi	Alok Sharma
54	101-A	Vinod Kumar Garg	Harjeet Singh Chawla
55	107-E	Palak Agarwal	Abhilash Thakur

The Ld. AR has drawn our attention towards entry at S. No 17 of the sheets prepared in name Srishti Associates for Flat No 904C, (APB page 80) Total amount stated at Rs. 33,26,400/- cash received stated Rs. 14,00,000/- Cheque Received shown at Rs. 0.00 and Total of these two Cash and cheque shown at Rs. 0.00 and outstanding Balance is shown at Rs. 33,26,400/-. Had the cash of Rs. 14,00,000/- is correctly mentioned then the figure in total amount would be 14,00,000/- and figure in Balance should be 19,26,400/- as against Rs. 33,26,400/- shown in the sheet. Similarly, entry at S. No. 18, for Flat No 905D, (APB page 80) Total amount stated at Rs. 22,51,200/- cash received stated Rs. 2,00,000/- Cheque Received shown at Rs. 0.00 and Total of these two Cash and cheque shown at Rs. 14,00,000 and outstanding Balance is shown at Rs. 8,51,200/-. Had the cash of Rs. 2,00,000/- is correctly mentioned then the figure in total amount would be 2,00,000/- and figure in Balance should be

20,51,200/- as against Rs. 8,51,200/- shown in the sheet. Similarly, entry at S. No. 19, for Flat No 906E, (APB page 80) Total amount stated at Rs. 23,24,750/- cash received stated Rs. 7,50,000/- Cheque Received shown at Rs. 5,00,000/- and Total of these two Cash and cheque shown at Rs. 7,00,000 and outstanding Balance is shown at Rs. 16,24,750/-. Had the cash of Rs. 7,50,000/- is correctly mentioned then the figure in total amount would be 12,50,000/- as against 7,00,000/- mentioned in the sheet and figure in Balance should be 10,74,750/- as against Rs. 16,24,750/- shown in the sheet. Similarly, entry at S. No. 20, for Flat No 906E, (APB page 80) Total amount stated at Rs. 23,24,750/- cash received stated Rs. 0/- Cheque Received shown at Rs. 0/- and Total of these two Cash and cheque shown at Rs. 7,50,000/- and outstanding Balance is shown at Rs. 15,74,750/-. Had the cash and cheque received at 0/- then total amount would also be 0/- as against 7,50,000/- mentioned in the sheet and figure in Balance should be 23,74,750/- as against Rs. 15,74,750/- shown in the sheet. The Ld. AR further submitted that against the entry at S. No. 13 for flat No 1005D, the total amount stated 22,51,200/- and cash amount stated 7,50,000/-. The appellant executed the sale deed for this flat at total consideration of Rs. 27,89,760/- more than the total amount stated in the excel sheet then there was no reason to receive the cash amount of Rs.

7,50,000/- as disclosed in the sheet. The Ld. AR drawn our attention towards entries at S. No. 8,13,17,18, 43,49, 52, 53 and 55 where the difference in the amount of sale consideration disclosed by the assessee in the registered sale deed and total consideration mentioned in the sheet is much less than the cash amount stated to have received as per the sheet. For example, against entry at Sr. No. 8 against flat No 1204D, (APB page 79) total amount stated in the sheet is Rs. 22,51,200/- and the appellant executed the sale deed against this flat showing total consideration of Rs. 20,00,000/-. The difference is only for Rs. 2,00,000/- therefore there was no reason to have received cash of Rs. 22,20,000/- as stated in the sheet. The assessee stated that in many cases sales were not actually made to the persons whose name is mentioned in the excel sheet. He drawn our attention to several such entries. The Ld AR submitted, the sanctity & authenticity of these sheets are not reliable and the same cannot be used against the assessee as evidence.

5.1.4 It was also contended that AO while making this adverse inference against the Appellant relied on the extracts of statements of Upendra Kumar Soni recorded u/s 132(4) of the Act whereas bare reading of the extract of statement of Mr. Upendra Soni suggest that he received an amount of Rs. 72.07 lakh from the purchasers as booking advance on

account of URS Gehna. As regard cash amount he stated that he already returned to the purchaser. Shri Upendra Kumar Soni has nowhere stated that he has passed over part of the cash or on money to the assessee or part of the cash amount belongs to the Appellant. The attention was drawn by Ld. AR towards the following relevant questions and answers of the statements of Upendra Kumar Soni recorded u/s 132(4) of the Act as under: -

Answer to Q. No	PB Page	What has been stated
68	86	Pg 80-83 relates to booking of Royal Imperia; some of flats cancelled as detailed at page 67. (copy not given to assessee)
72	39	Booking rights are with the appellant M/s Sirsthi Associates
74	89-90	Total on money received Rs. 72.07 lacs pertain to M/s URS Gehna
78	92	Total cash received 8,19,19,000/- and Shri Upendra Kumar Soni stated that he will provide the list of refund made.

5.1.5 It is contended that addition was made without any corroborative documentary evidence on record. It was submitted that in the impugned statement, Shri Upendra Kumar Soni has nowhere mentioned the alleged fact and finding of the A.O. that Appellant is also having share in alleged cash money claimed to be received by him whereas as per the answer of Q.

No. 78, Shri Upendra Kumar Soni has said that he returned back the advance money on account of cancellation and on-money of Rs. 72.07 lacs belong to M/e URS Gehna. The law of natural justice and fair play demands that due consideration should be given to surrounding facts and circumstances of the case and relevant documentary evidences placed on record to arrive at the truth. Thus, when the assessee substantiated/countered/refuted the impugned addition made by filing all the necessary evidences and responding to the queries of the Ld. A.O., the Ld. AO has erred in law and facts by interpreting the figures mentioned in page no. 83 of Exhibit-5 without proper application of mind and wrongly interpreting the statement of Shri Upendra Kumar Soni for the purpose of making huge addition to the total income of the Appellant. It was also submitted that Shri Upendra Kumar Soni has nowhere mentioned the name of the Appellant in its statement recorded u/s 132(4) of the Act. The ld. AO has not made any inquiry from the buyers of the flats to establish the correctness of the seized document from the possession of Shri Upendra Soni. The Hon'ble Gujrat High court in the case of ITO V Bharat A. Mehta 60 taxmann.com 31 had an occasion to consider a case of Builder in which the builder stated during search that 60% consideration was received by cheque and 40% consideration received by cash. On money of 1.5 crore

was disclosed. Action was taken against the purchaser. It is true that admission by builder was binding on him but there was no evidence that the purchaser has paid cash. The addition was rightly held as deleted by tribunal as per decision of high court.

5.1.6 It is also contended that addition cannot be made on the basis of loose paper seized from the possession of another person. It was submitted that the seized documents are loose sheet and nowhere shows the passing of any cash to the Appellant. Name of the appellant is not mentioned over the impugned seized paper. No date and year of alleged cash receipt has been mentioned. No any nexus of cash receipt of Rs. 8,19,19,000/- shown in this seized paper with the alleged-on money received by the assessee Rs. 3,96,05,000/- can be ascertained from this seized paper. This is not acceptable evidence which can be used against the Appellant. It is highly possible that such sheets might have been prepared by Shri Upendra Soni for his own purpose, which is best known to him. Shri Upendra Soni never said to have passed over any cash to the Appellant. No documents were found to show that any cash was passed over to the appellant. Regarding the applicability of section 34 of the Evidence Act and fastening of the liability to third parties on the basis of entries made in the books of

account, documents, etc. of the third parties the reliance was placed on the decision of Hon'ble Supreme Court of India in the case of CBI v. V. C. Shukla & Ors. –AIR 998 SC 1406 /JT 1998 (2) SC 172) (popularly referred to as Jain Hawala case) and decision in the case of Common Cause (a registered society) and others v/s UOI 2017-TIOL-27-SC Misc (popularly referred as Sahara Diary case). It was also submitted that assessment proceedings before A.O. are quasi-judicial in nature, therefore, the A.O. has to act independently and not merely to rely on some non-corroborative evidence or reference made by some other authority and on this issue the reliance was placed on the decision of (i) C.D. Singh V ITO 77 TTJ (All) 282 and (ii) Kirti Lal Kalidas & Co. Vs DCTT 67 ITD 573 , in which reliance has been placed on 48 ITR 34 (SC) 70 ITR 772 (AP) and 77 ITR 6 (SC). It was also argued that document found from the possession of Shri Upendra Soni cannot be considered as found from the possession of Appellant and thus cannot be considered as evidence in the hands of the Appellant. It is trite law that the presumption of section 132(4A) and section 292C of the Act is applicable in the case of person from whose possession books of accounts, documents were found & seized. Such presumption cannot be extended to other person. Reliance was placed on judgements of (i) CIT v. K.K. Abdul Kareem [1996] 88 Taxman 323

(Kerala) (ii) Chandanalal Kalyanmal Vs ACIT 21 Taxworld 125 ITAT Jaipur Bench in ITA No. 385/JP/ 1992 order dated 3/2/1998. (iii) Mahendra Kumar Agarwal Vs ACIT 21 Taxworld 445 ITAT Jaipur Bench (iv) CIT vs SMS Investment Corporation Private Limited 207 ITR 364 Hon'ble Rajasthan High Court (v) Shardha Construction Vs ACIT 76 ITD 85 ITAT Pune bench (vi) Jayantilal Patel Vs. ACIT and others/ Dr Balbir Singh Tomar Vs ACIT & others (Rajasthan High Court) 233 ITR 588. / 244 ITR 500 (Departmental appeal in DB)/ 142 CTR 571/20 Tax World 546/ Hon'ble Rajasthan High Court.

5.1.7 The Ld AR of the assessee further submitted that the satisfaction Note prepared to initiate the assessment proceedings of appellant is not reasonable and the same is based on generalization. As per provisions of the Act only seized material can be made basis for formation of satisfaction for the initiation of proceedings against another person. The AO provided to the assessee the copy of satisfaction notes running in page 1 to 12 (copy of which placed at APB page 73-84). The AO reproduced the copy of pages of Excel Sheet at page no 3 to 11 of his satisfaction note. These pages of Excel Sheets does not appear to be seized during the course of search, which apparent from the facts that it does not contains signature of

authorized officer, signature of searched person and signature of witnesses and Annexure Number, Exhibit No and Page Number is also not mentioned over these pages of Excel Sheet. The AO has no seized material to hold that the Rs. 3,96,05,000/- was assessee's share and the same was passed on to the assessee. He derived this figure only from these impugned pages of Excel Sheet which are not part of the seized material and also have no evidentiary value. It is trite law that the satisfaction note itself must display the reasons or basis for the conclusion that the AO is satisfied that the seized documents belong to a person other than searched person. The AO must reach a clear conclusion that good ground exists for the AO of the third person to initiate proceedings as material before him belongs/pertains to third person. In the present case, on the bare perusal of the said satisfaction note, the AO has failed to establish the nexus of the said figure of Rs. 3,96,05,000/- with the only seized incrimination document page 83 of AS-5. There is no clarity in the said satisfaction note about the date or year to which alleged cash receipts belong. In the satisfaction note at page 12 of the Satisfaction Note (APB page 84) in para 3 held the alleged receipts are pertaining to A.Y. 2017-18 and addition is required to be made in the hands of assessee for AY 2017-18, while in the assessment order for no reason and without having any corroborative evidence the same added

in the assessment for the A.Y. 2018-19 and not in AY 2017-18. The AO made a general satisfaction note which is not enough to initiate the proceedings u/s 153C of the Act. The said satisfaction note is not speaking. In support of his contention the Ld. AR placed reliance on judgement of Hon'ble High Court of Bombay in the case of Singhad Technical Educational Society v/s. CIT [2015] 63 taxmann.com 14 (Bombay), which was confirmed by Hon'le Supreme Court in [2017] 397 ITR 344, (2018) 11 SCC 490.

5.1.8 The Ld. A/R of the assessee submitted that the statement of Shri Upendra Kumar Soni, recorded u/s 132(4) of the Act, cannot be taken as incriminating material and further no addition can be made on the basis of such standalone statement, which recorded behind the back of the Appellant. Though, in such statement he said that he returned back the cash and no where he admitted that any cash was given to Appellant or passed over to the Appellant or belongs to appellant. Still, for posing the allegation of cash received by the Appellant, the reliance was placed on the statement of Shri Upendra Soni, wherein he admitted to receive the cash at his own. Further the statements of Shri Upendra Kumar Soni cannot be taken as evidence against the Appellant unless either opportunity of cross

examination is granted or facts narrated by AO are supported by some other conclusive evidence found during the search. In this regard the Ld AR of the assessee placed the reliance on the judgements of (i) Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd v/s State of Kerala & Anothers (1973) 91 ITR 18 (SC) (ii) Hon'ble Rajasthan High Court in the case of CIT v/s Ashok Kumar Soni 291 ITR 172 (Raj.). (iii) Hon'ble Rajasthan High Court in the case of Mantri Share Brokers PL (96 taxmann.com 279). (iv) Best Infrastructure (India) P. Ltd. v. PCIT [2017] 84 taxmann.com 287 (Delhi) (v) Harjeev Aggarwal v. CIT [2016] 70 taxmann.com 95 (Delhi) (vi) Hon'ble Gujarat High Court, vide its order dated 14.07.2016, in the case of CHETNABEN J SHAH LEGAL HEIR OF JAGDISHCHANDRA K. SHAH, in TAX APPEAL NO. 1437 of 2007, (vii) Narendra Garg & Ashok Garg (AOP) [2016] 72 taxmann.com 355 (Gujarat), (viii) CIT v/s G.Krishnan (1994) 210 ITR 707 Mad. (ix) Jodhpur ITAT Bench in Maheshwari Industries v. Asstt. CIT [2005] 148 Taxman 74 (Jodh) (Mag.), (x) Rajesh Jain Vs. DCIT 100 TTJ 929 (ITAT, Delhi 'A' Bench), (xi) KRISHNA TERINE (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, AHMEDABAD 'D' BENCH 56 DTR, ITAT 395, (xii) Hon'ble ITAT Jaipur Bench in the case of Shri Pawan Lashkary ITA No 808/JP/2011 dated 06.01.2012 (xiii)

Hon'ble ITAT Jaipur Bench in the case of Ashok Kumar Lakhyani vs DCIT ITA No 30/JP/2018 order dated 24/07/2018 and Hon'ble ITAT Jaipur Bench in the case of DCIT Vs Ashok Kumar Agarwal in ITA No 847/JP/ 2015 order dated 3/10/2016. It was also argued that the statement recorded u/s 132(4) of the Act are binding only on the person who makes it not to third person. The Ld. A/R also submitted that the addition was made without allowing the assessee cross examination of Shri Upendra Kumar Soni. The AO did not establish the nexus of the statement recorded in the case of Upendra Kumar Soni with Appellant. Secondly, it is also to be appreciated that it is trite law that no addition/adverse inference against the Appellant can be drawn on the basis of statement of any third party unless an opportunity of cross examination has been granted to him. The Id. CIT(A) held that in the remand report proceeding neither the Appellant assessee nor Shri Upendra Kumar Soni attended the office of the AO on the date specified in the communication sent to assessee for cross examination. The Id. CIT(A) failed to appreciate that the AO has not provided to the appellant the copy of complete statements of Shri Upendra Kumar Soni recorded by Investigation Wing and copy of seized documents page 1 to 83 of Exhibit 5 of AS to enable the appellant to make effective cross examine of Shri Upendra Kumar Soni. Further, Shri Upendra Kumar Soni has not

come to department for cross examination, and in such case, how it was possible to conduct cross examination of Shri Upendra Kumar Soni. Further, the AO has not used statutory power to enforce the attendance of Shri Upendra Kumar Soni, for cross examination. The Ld. AR submitted before us the copy of letter issued by AO to Shri Upendra Kumar Soni, copy of which forwarded to the assessee also. This is a simple request letter of the AO to Shri Upendra Kumar Soni to attend his office for cross examination. No any summon u/s 131 was issued by the AO to Shri Upendra Kumar Soni to enforce the attendance of Shri Upendra Kumar Soni for cross examination. Further, even, in absence of the appellant, the AO could have examined Shri Upendra Kumar Soni on oath on the disputed issues. As regarding the issue of cross examination, the reliance was placed on decisions of (i) ANDAMAN TIMBER INDUSTRIES V/S COMMISSIONER OF CENTRAL EXCISE, KOLKATA-II 2016 (15) SCC 785 (SC), (ii) KISHINCHAND CHELLARAM V. CIT [1980] 125 ITR 713 (SC), (iii) COMMISSIONER OF INCOME-TAX, CENTRAL, JAIPUR V. SUPERTECH DIAMOND TOOLS (P.) LTD. [2014] 44 TAXMANN.COM 460 (RAJASTHAN-HC), (iv) Hon'ble jurisdictional High Court in D.B. Income Tax Appeal No. 197/2012, Commissioner of Income Tax, Central V. Sunita Dhadha, passed on 31.07.2017. The SLP

against the said judgment has been dismissed by Hon'ble Supreme Court of India on 28.03.2018 in SLP (Civil) Diary No(s). 9432/2018, Commissioner of Income Tax – Central V. Sunita Dhadda. (v) Decision of Hon'ble ITAT Jaipur Bench in the case of Shri Prateek Kothari in appeal No. 159/JP/16 order dated 16/12/16. The Ld AR submitted that the AO should provide all the material to the assessee to enable the assessee to make cross examination of other party. The cross examination is not mere formality but it is demand of principle of natural justice and the AO should make effective efforts to enable the assessee opportunity of effective cross examination. The Ld. AR relied upon the decision of Hon'ble Raj. High Court in the case of Ronak Distributors (P) Ltd vs CTD 2015-TIOL-1422-HC-Raj-VAT wherein Hon'ble Rajasthan High Court has held that now allowing the petitioner-assessee to have access to the alleged incriminating material i.e. the statement of witnesses, who have deposed against it, and further not permitting it to cross examine the witnesses is a clear case of violation of principles of natural justice. The ld. AR further relied upon the decision of Hon'ble Supreme Court in the case of Kerala V.K.T. Shaduli Grocery Dealer (1977) 2 SCC 777 in this regard.

5.1.9 The Ld. AR submitted that the assessment is based on surmises and conjectures, without having any material or on irrelevant material and thus arbitrary, whimsical, capricious and perverse. The department has carried out intensive search operations over Shri Upendra Soni and during the course of such search no evidence or material was found to show that the alleged unaccounted cash was passed over to the appellant or belongs to Appellant. Rather from the statement of Shri Upendra Kumar Soni it reveals that he received some cash which was later on refunded back by him. He never, said that the cash was passed on the Appellant and no evidence of whatsoever nature was found in this regard. The Ld. A/R submitted that pursuant to search action, statement of Upendra Kumar Soni was recorded u/s 132(4) of I.T. Act where he stated that he received cash of Rs. 72.07 lakh on account of URS Gehna, which were not recorded in his books of accounts and he further mentioned in the Q. NO. 78 that he returned back money to the purchasers due to cancellation. Shri Upendra Kumar Soni no-where stated that the appellant has received on money or cash amount which he received was passed over to the appellant. He stated that the cash was returned back to the purchasers on cancellation. The AO without appreciating the fact that all money received from customers was advance for booking of flats which he later on returned. The AO has drawn

adverse inference from the said statement against the Appellant and with his own assumption and pre-determined mindset. The onus was on the department to prove that any cash was received or to be received by the Appellant and the said onus was not discharged and the department has no positive material and concluding evidence to prove its allegation. On this aspect it is also submitted that without prejudice to fact that no on-money was received by the Appellant and just for the sake of argument, it is submitted that the taxing event of an income arose either in the year of receipt of money or in the year of its accrual. In the instant case the date of receipt as well as sales is not apparent from the impugned seized document and A.O. not made any exercise to find out the same. Therefore, in absence of these vital details, the addition cannot be made in the hands of the assessee.

5.1.10 The A/R of the assessee brought to our notice that the Goods & Service Tax department raised the demand on the Appellant on account of short payment of GST on the such alleged cash receipts. Against the demand so raised the Appellant filed appeal, which was decided vide order dated 04.08.2023, (APB page 136-186). The findings of the Addl Commissioner of GST (Appeals) is in para 7 of the order (APB 174-184). The concluding findings are in para 7.3.6 (APB page 184), wherein it has

been held that investigation of the case was not made in proper manner and core issues i.e. actual receipt of cash, actual number of units against which cash was claimed to be received etc. were not addressed properly and he rejected the demand of short payment of GST and this issue was decided in favor of Appellant.

5.1.11 The Ld. AR in alternate, without prejudice to his core submission that the appellant has not received any cash as booking advance, submitted that booking advance is not an income at all, in any case, if the said booking advance is sourced from real estate business, then also only reasonable profit element on the said booking advance/receipts can be attributed as additional income in the hands of the Appellant. It is also submitted, that if the entire cash receipt is considered as income of the Appellant, then the resulted Net Profit would be 74% of sales which could not be possible in the trade of the Appellant. In support of this argument The ld A/R placed reliance on various decisions including the decisions of Jaipur ITAT in the case of (i) Kedia Real Estate LLP ITA No. 127/JP/2019 order dated 03.06.2019, (ii) Deputy Commissioner of Income Tax Vs Pahar Ganj Grih Nirman Sahakari Samiti Ltd & Others 005 (10) TMI 237 ITAT Jaipur Other Citation TTJ 099, 549 order dated Oct 21, 2005 (iii) Kayakalp Herbal Private Limited ITA No. 633/JP/2016 order dated

25.04.2017 and (iv) Jadau Jewellers & Manufacturing Private Limited ITA No. 446/JP/2016 order dated 28.02.2017.

5.2 On the other hand the Ld. D/R relied on the finding of CIT (A) and argued that the addition was backed with the documents found and seized during search at Shri Upendra Kumar Soni and thus the addition is duly warranted in the case of assessee and hence the addition made by AO should be sustained

5.3 We have considered the rival contention and perused the orders of the authorities, material available on record arguments advanced by both the parties and also gone through the judicial decision relied upon by both the parties to drive home to their contentions.

5.3.1 From the perusal of the assessment order and material placed on record, it is apparent that during the course of search at Shri Upendra Kumar Soni a document was found & seized as per Annexure AS Exhibit 5 page 1 to 83. The AO found the page 83 of this Annexure as incriminating and instead of providing the complete set of AS 5 page 1-83, he provided copy of only one page i.e. page no 83 of this Annexure for confrontation. On the said seized paper the name of the assessee is not mentioned and also the date or year is also not mentioned. No details of the flats/units

belonging to the assessee is mentioned. On this paper description of floor, Total amount against each floor in totality, cash amount against each floor in totality, cheque amount against each floor in totality, and total Received and balance against each floor in totality is mentioned. However, it cannot be ascertained from this paper that what amount was received against which shop/flat. Unit wise bifurcation of cheque amount as well as Cash Amount is not mentioned over the said seized paper so from this seized paper it cannot be determined which amount was received by URS Gehna and what amount by the Appellant M/s Srishti Associates. As there is unit wise division of constructed area in between the assessee and URS Gehna, as clearly mentioned in Development Agreement, therefore without having the unit wise bifurcation no conclusion can be drawn. Further the dates of the receipts are also not mentioned therefore, year of the receipt of the amount by Cheque as well as Cash cannot be ascertained. On the basis of this seized paper Annexure AS Exhibit 5 page 83 (APB page 85) the amount added by the AO in total income of the assessee cannot be ascertained. Admittedly, this paper was found and seized from the possession of Shri Upendra Kumar Soni, so primary onus is on Shri Upendra Kumar Soni to explain the entries of this seized paper with corroborative evidence. The AO has not brought to notice any other seized

paper showing the cash receipts of Rs. 3,96,05,000/- by the appellant on account of on money in sale of flats/units in “Royal Imperia” project. No any inquiry, if any conducted, from the assessee by the Investigation Wing was brought on records by the AO. No any statement of the assessee, if any, recorded by the Investigation Wing or by the AO was brought on record by the AO. The search team recorded the statement of Shri Upendra Kumar Soni u/s 132(4) of the Act. The AO has not provided copy of complete set of the statement of Shri Upendra Kumar Soni to the assessee, which was specifically demanded by the Appellant (Copy at APB page 133-135), however, the AO provided the extract of statement of Shri Upendra Kumar Soni containing question and answer to question no 68-79 copy placed at APB page 86-92. In the statement brought on record by the AO, Shri Upendra Kumar Soni has no where stated that part of the cash receipt shown in above said seized page 83 was passed over to the Appellant or belongs to the Appellant. Rather he said that he has returned back the cash amount to the purchasers of the unit on cancellation of booking. In answer to question no 68, Shri Upendra Kumar Soni stated that seized Pg 80-83 relates to booking of Royal Imperia, some of flats cancelled as detailed at page 67. The AO is complete silent on the entries over the seized page 67. In answer to question no 72, he stated that the

booking rights were with the appellant M/s Sristhi Associates, then how can Shri Upendra Kumar Soni receive the cash on account of units belonging to the appellant. In answer to question no 74, he stated that on money in total was received Rs. 72.07 lacs which pertains to M/s URS Gehna and in answer to question no 78 he stated that as per page 83 of Exhibit 5, total cash shown at Rs. 8,19,19,000/- and he will provide the sheet and list of refund made and chart of current status of the flats booking. Shri Upendra Kumar Soni has nowhere said that he passed over part of the cash money to the appellant or part of the cash receipts belongs to Appellant. The AO has not brought on record any other statement of Shri Upendra Kumar Soni to support the contention of AO. So, on the basis of these statements the appellant cannot be fasten with the tax liability and no addition can be made in the hands of the assessee of Rs. 3,96,05,000/-. The AO has reproduced the pages of Excel Sheet at Page 3-11 of Satisfaction Note prepared u/s 153C of IT Act. (Copy at APB page 75-83). In these pages of Excel Sheet Flat No, Customer Name, Total Amount, Cash, Cheque, Total Received, Balance and Name of seller are mentioned. At page 3-7 of Satisfaction Note (APB page 75-79) name of seller is mentioned URS Gehna with total of cash amount Rs. 4,23,14,000/- and at page 7-11 of Satisfaction Note (APB page 79-83) name of seller is

mentioned Srishti Associates with total of Cash Amount Rs. 3,96,05,000/-.

How this bifurcation in between these was made is not clear. These papers of Excel Sheet do not contain signature of authorized officer of search party, signature of searched person, signature of witnesses, which are basic requirements to put on seized documents and which is there on page no. 83 of Exhibit-5. Further, the AO as well as Id. CIT(A) has not brought on record from where these papers of Excel Sheet were seized and what is their Annexure No, Exhibit Number and page number of the documents seized by the department. What was the source of receipt of these pages of excel sheet with the AO has not been disclosed by lower authorities. Further, the search team has not put any question to Shri Upendra Kumar Soni on these pages of excel sheet as appears from the copy of Extracts of statement provided by the AO to the appellant. Further the basis of bifurcation of cheque receipts as well as cash receipts in these papers of excel sheet in between the units owned by GRS Gehna and Appellant has not been disclosed or correlated with other material which if any, the AO had.

5.3.2 Otherwise also, these papers of the excel sheet is not reliable and cannot be used as evidence against the assessee as during the course of hearing the Ld. A.R pointed out the several serious discrepancies and inconsistencies in these pages of excel sheet, which proves that these sheets are not correct and does not have the actual picture of transactions. We have examined these papers of excel sheet with reference to the mistakes in figures pointed out by ld AR and found the mistakes in these papers of excel sheet there. We concur with the argument of ld AR in this regard. On being specifically asked by the Bench the Ld. AR filed copy of some registered sale deed which supports the contention of ld AR that in many cases the actual sale was not to those persons whose names are written in these papers of excel sheet. For Flat No GF 14, (Sr No 2) the name of buyer Tinu Choudhary is mentioned in the sheet but as per the registered sale deed filed by the AR, the same flat was sold to Smita Khatri. Similarly, for Flat No 708F (Sr. No 30), the name of buyer Manish Jain is mentioned in the sheet but as per the registered sale deed, the same flat was sold to Rajneesh Vajpayee. Similarly, for Flat No 507E (Sr. No 37), the name of buyer Anjali Bhoj, Yogita, & Mohit Madhuri is mentioned in the sheet but as per the registered sale deed filed by the AR, the same flat was sold to Sapna Gupta. Similarly, for Flat No 609G (Sr. No 33), the name of

buyer Nirbhay Singh is mentioned in the sheet but as per the registered sale deed, the same flat was sold to Mohd Saleem. On verification of the sheet, in the light of discrepancies pointed by Ld. A/R we find substance in the contention of Ld. AR that these papers of excel sheet contain the serious discrepancies, mistakes and inconsistencies therefore we concur with the argument of Ld. A/R that the sanctity & authenticity of these sheets are not reliable and these sheets are not correctly prepared and the same cannot be used against the assessee as evidence and no addition can be made in the hands of the assessee by relying on these incorrect sheets and no cognizance can be taken on the basis of these incorrect sheets.

5.3.3 Further, during the course of hearing of the case the Ld. A/R drew our attention towards the finding given by AO in the satisfaction note at page 12 in para 3, wherein the alleged receipts are held to be pertaining to A.Y. 2017-18, while in the assessment order for no reason and without having any corroborative evidence the same were added in A.Y. 2018-19. Further, the Ld. AR submitted that the pages of Excel sheet reproduced at page 3-11 of satisfaction note are not appears to be seized documents so these papers cannot be used for formation of satisfaction for the purpose of initiating the assessment proceeding against the assessee. Besides these excel sheet the AO has no material to bifurcate the cash amount in between

the URS Gehna and Appellant and no any basis to determine the addition amount of Rs. 3,96,05,000/-. During the course of hearing the ld Sr. D/R could not explain the discrepancy in the satisfaction note, source of the relied upon excel sheet and also could not satisfactorily explained to the discrepancies as pointed out by Ld. A/R in these excel sheet. This, proves that the AO made a general satisfaction note which is not reasonable and not enough to initiate the proceedings against the assessee. The said satisfaction note is not speaking, not backed with corroborative material and also not for the year under consideration.

5.3.4 We find that the in support of the addition so made the A.O. relied on the document found from the possession of Shri Upendra Kumar Soni and also on some extracted statement, though in such statement he nowhere admitted to pass on/receiving any cash amount by the appellant. However, we found that there is a noting of cash amounting to Rs. 8,19,19,000/- over the seized page 83 seized from the possession of Shri Upendra Kumar Soni and to this effect the AO neither examined to Shri Upendra Kumar Soni nor provided his cross examination to the assessee. The CIT (A), directed to Ld. A.O. to provide the cross examination of Shri Upendra Kumar Soni to the assessee, which is basic principle of natural justice and it is not a mere formality. The AO issued request letter dated

09-01-2024 to Shri Upendra Kumar Soni to appear in his office on 16-01-2024 at 11.30 AM. The copy of this letter was also forwarded to the assessee. However, before according the cross examination, the AO has not given copy of complete set of statements of Shri Upendra Kumar Soni recorded u/s 132(4) of the Act and also not provided the complete copy of seized documents which he relied upon for the addition made by him in assessment. However, on the given date neither Shri Upendra Kumar Soni nor the appellant appeared before the AO. The AO has not made any effective efforts to enforce the attendance of Shri Upendra Kumar Soni by issuing of summons u/s 131 of the Act. It was incumbent on the AO to enforce the attendance of shri Upendra Kumar Soni and to record his statement on the disputed issues. Therefore, without confrontation of fact of receiving of on money by the appellant from Shri Upendra Kumar Soni and without allowing the cross examination, the addition made by AO in absence of corroborative evidence is not sustainable in the eyes of law. The Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE (supra) while dealing with the issue of violation of principles of natural justice for not providing the opportunity of cross examination of the witnesses whose statements were relied on by the AO has held in para 6 to 9 as under :-

6. *“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them”.*

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers witnesses at the price which is mentioned in the price list itself could be the subject-matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject-matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came up before this court in CCE v. Andaman Timber Industries Ltd., order dated 17.3.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. *In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on*

the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.

9. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal. No costs.”

Further, Jaipur ITAT in the case of Kota Dal Mills order dated ITA No. 997 to 1002/JP/2018 & 1119/JP/2018, ITA No. 1057 to 1062/JP/2018 & 1210/JP/2018 order dated December 31, 2018 has held that: -

“Thus, when the assessee has specifically asked for cross examination of the witnesses whose statements were relied upon by the AO, then the denial of the opportunity to cross examine would certainly in violation of principles of natural justice and consequently renders the assessment order based on such statement as not sustainable in law. Hence in view of the facts and circumstances of the case where the assessee has repeatedly requested and demanded the cross examination of the witnesses whose statements were relied upon by the AO in the assessment order and further the report of the DDIT Investigation Kolkata is also based on the statement of such person then the denial of cross examination by the AO as well as Id. CIT (A) despite the fact that the assessee was ready to bear the cost of the cross examination of the witnesses is a gross violation of principles of natural justice.

Thus, the additions made by the AO on the basis of such statement without any tangible material is not sustainable in law and liable to be deleted. Accordingly, the addition made by the AO is also deleted on merits apart from the legal issue decided in favour of the assessee.”

5.3.5 Further, we have gone through the order of appellate authority under GST Act filed by the appellant. The findings of the Addl

Commissioner of GST (Appeals) is in para 7 of the order (APB 174-184). The concluding findings are in para 7.3.6 (APB page 184), wherein it has been held that investigation of the case was not made in proper manner and core issues i.e. actual receipt of cash, actual number of units against which cash was claimed to be received etc. were not addressed properly and he rejected the demand of short payment of GST and this issue was decided in favor of Appellant. This order of the GST authorities also supports the contention of the appellant that no addition should be made in the hands of the appellant.

5.3.6 Further, Jaipur Bench of ITAT has also decided the similar issue in the case of Moti Developers ITA Nos. 101, 102, 103 & 104 vide order dated 17-07-2017. ITAT Jaipur Bench deleted the similar addition so made by Ld. A.O. The Findings of Hon'ble ITAT Jaipur in para 3.5 is as under:

“3.5 We have heard the rival contentions and perused the materials available on record. The assessee is partnership firm and derives income carried out on 31-10-2012 at various premises of Motisons Group and the members of Motisons Group of "which the assessee is one of the members. In this case, the assessee filed its regular return u/s 139(1) for the various years under appeal as under:-

XXXXX

It is also noted that the assessee firm entered into a development agreement with Ashirwad Buildtech Pvt. Ltd (developer) (Copy of development agreement at PB Page 114 to 120) in respect of its plot No. A-28, Janta Colony, Jaipur and as per terms of agreement the land was contributed by assessee firm for construction of a residential multi storied building thereon and the developer constructed 14 flats on this land. The share of the land owner was 40% of the sales proceeds of flats and 60% of the developer. The Income Tax department carried out search over Shri Virendra Kumar Ghuwalewala one of director of M/s Aashirwad Buildtech Pvt. Ltd and found and seized number of documents. It is alleged on the basis of papers seized AS-8 pg 79 (Copy at PB Page 148) from the residence and business premises of Shri Virendra Kumar Ghuwalewala that amount of cash was received in respect of sales of flats. This seized paper gives details of receipt and expenses of various project carried out by Group of Shri Virendra Kumar Ghuwalewala. In this paper, nowhere the reference to the assessee is made. No document of any type has been found and seized which suggest that assessee had received any cash amount on the project collaborated with M/s Aashirwad Buildtech Pvt. Ltd. During search operation, a statement of Shri Virendra Kumar Ghuwalewala, Director of M/s

Aashirwad Buildtech Pvt. Ltd was also recorded u/s 132(4) of Income Tax Act. (Copy at PB Page 124 to 147). In this statement, Shri Virendra Kumar Ghuwalewala has admitted that the amount written on page 79 of AS-8 as his own income on account of cash received on sales by M/s Ashirwad Buildtech Pvt Ltd (Answer to question no 11, 12 & 28 PB pg 131-132, & 145). He had nowhere stated in his statement that any part of cash so received was passed over to the assessee. Further, the statement of Shri Sandeep Chhabra, partner of assessee firm was also recorded on 18-02-2013 (Relevant extracts are reproduced by AO in his Assessment Order at pg 4) wherein the partner Shri Sandeep Chhabra had categorically denied to have received any cash amount on account of sale of flats by M/s Ashirwad Buildtech Pvt Ltd. A pen drive seized from the possession of the partner of the assessee also did not contain any cash entry received from the collaboration with M/s Aashirwad Buildtech Pvt. Ltd. The copy of ledger account of M/s Ashirwad Buildtech Pvt Ltd in the seized books of Moti Developers has also been reproduced by AO at pg 5 of Assessment Order. Rs. 1,82,48,800/- has been recorded in the seized books of assessee which has been received by cheques only in project in collaboration of Ashirwad Buildtech Pvt Ltd. No document from any searched premises was seized which could show that assessee had

received any cash on the project in collaboration with M/s. Ashirwad Buildtech Pvt Ltd. The developer M/s Ashirwad Buildtech Pvt Ltd and its director Shri Virendra Kumar Ghuwalewala approached Hon'ble Settlement Commission by filing application u/s 245C of Income Tax Act on 28-02-2014 wherein 60% of cash received by him has been declared as income on account of sale of flats by Ashirwad Buildtech Pvt Ltd after adjusting the expenses from the unaccounted receipts. We have taken into consideration various case laws relied on by both the parties. It is pertinent to note that nowhere the name of the assessee is mentioned in the seized material and also in-the statement recorded u/s 132(4) of the Act during the search operation. The Director of the Ashirwad Buildtech surrendered the amount of Rs. 4.00 crores in various projects as cash sale proceeds received by him on the basis of seized material. No seized materials mentions assessee's name. It is also noted from the records that the Director of Ashirwad Buildtech (P) Ltd. has not mentioned anything about any cash received or handed over to the assessee. Shri Virendra Kumar Guhwalewala director of Ashirwad Buildtech (P) Ltd. Approached the Hon'ble Settlement Commission and in that proceedings he has made certain disclosures that he has received only 60% of the cash. The assessee had not got any opportunity before the Hon'ble ITSC to defend its case. The copy of

the Hon'ble Settlement Commission's order was also not provided to the assessee. The assessee was not provided to cross examine Shri Virendra Kumar Guhwalewala director of Ashirwad examine Shri Virendra Kumar Guhwalewala director of Ashirwad director of Ashirwad Buildtech (P) Ltd. was finalized by the Hon'ble Income Settlement Commission on 11-03-2014. The statement recorded thereafter of Shri Virendra Kumar Guhwalewala director of Ashirwad Buildtech (P) Ltd. cannot be treated as sacrosanct in view of the fact that he had already got his case settled from the Hon'ble Income Tax Settlement Commission, New Delhi on the terms and conditions offered by him therein. Under no circumstances, he was liable to speak against the terms and conditions offered before the Hon'ble Income Tax Settlement Commission. Therefore, any statement recorded after the Hon'ble Income Tax Settlement Commission's order (supra) cannot be taken at face value. It is pertinent to state that when person has not stated anything about the assessee in his statement recorded u/s 132(4) of the Act during search operation which has a evidentiary value in the eyes of law then any further statement recorded u/s 131 of the Act that too after Hon'ble ITSC order, it shall not be sufficient to make addition in the assessee's case. In view of the factual matrix, we hold that the Id. CIT(A) has erred in

confirming the addition in all the four years. In this view of the matter, the appeals of the assessee are allowed.”

5.3.6 In view of foregoing discussions, facts and circumstances of the case, case laws relied upon by the assessee and respectfully following the decision of ITAT, Jaipur Bench in the case of Moti Developers (supra), we set aside the order passed by Id. CIT(A)-2, Udaipur dated 23-03-2024 and direct the AO to delete the entire addition.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16 /07/2024

Sd/-

(Dr Dipak P. Ripote)
Accountant Member

Sd/-

(Sandeep Gosain)
Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 16 /07/2024

*Mishra

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

1. The Appellant- M/s. Srishsti Associates, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle- Kota
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 587/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar