

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.2855/Ahd/2016**  
**Assessment Year : 2013-14**

The DCIT, Cir.3(3) Ahmedabad.	Vs	M/s.Atri Developers 19, Ambalal House Mayur Park Society Satellite Road Ahmedabad. PAN : AATFA 1086 D
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri Mohit Balani, AR
Revenue by:	Shri Prateek Sharma, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 25/04/2024  
घोषणा की तारीख /**Date of Pronouncement**: 23/07/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Both the Revenue and assessee are in cross-appeal before the Tribunal against the order of the Id. Commissioner of Income-tax (Appeals)-3, Ahmedabad dated 29.8.2016 under section 250 of the

Income Tax Act, 1961 (“the Act” for short) for the assessment year 2013-14.

2. The brief facts of the case are that the assessee is a partnership firm carrying on business as a developer-cum-organizer for Shiv Sarjan Co-op Housing Society Ltd.” and had filed its return of income for the impugned year declaring total income of Rs.3,32,29,845/-

3. During the impugned year, a survey operation under section 133A of the Act was carried out at A-54, Amrapali Shopping Centre, S.P. Ring Road, Bopal, Ahmedabad. During the course of survey, statement of the partner of the assessee firm, Shri Chaturbhai A. Patel was recorded, in which he surrendered Rs. 9.05 crores as “on-money” i.e. additional income received. However, during assessment proceedings the AO noted that the assessee had disclosed additional income of only Rs.2.97 crores. Thus, he found the assessee to have retracted from the surrender made by Rs.6.08 crores. Further, he noted that the assessee had entered into an agreement with Shiv Sarjan Co-op Housing Society Ltd. on 19.12.2011, which was a society registered under the Gujarat Co-op. Housing Society Act, 1961. The agreement was for the development and construction, since the society was not having such kind of exposure and infrastructure to execute the work. The AO referred to various clauses of the development agreement, and held that the development agreement was not followed by the assessee in its true spirit. Referring to the clauses, 3, 11, 12, 15, 17 and 19 of the Development Agreement, the AO inferred that as per the agreement, the assessee was to incur all cost of development, but he found no expenses of development debited to its profit & loss account. On the contrary these expenses were found debited in the books of the Housing

society. He also noted that as per the terms of the agreement, the assessee was entitled to income at the rate of 20% of the development cost. Finding that the assessee had not complied with the terms of agreement, he held that the society was not functioning as a separate entity, but was only a *benami* run on behalf of the assessee. Accordingly, he rejected the books of accounts of the assessee and estimated the income of the assessee at Rs.10,10,63,732/-. This estimated income had two components viz.

- (i) Rs.4,10,63,732/- which was 20% of the expenditure booked in the accounts of the housing society, which amounted to Rs.19,58,16,680/- plus 20% of Rs.96,51,983/-, being the expenditure relating to the labour bills and other construction expenses found to be unaccounted revealed from documents found during survey.
- (ii) Rs 6 Crore on account of alleged on-money received on sale of 120 flats @ Rs.5.00 lakhs per unit sold

4. The AO further made addition of the alleged retraction of surrender made by the assessee amounting to Rs.6.08. Addition also was made on account of excess cash found during the survey amounting to Rs.5,41,431/- and unsubstantiated claim of rent paid by the assessee amounting to Rs.4,44,999/-. The AO considered the unaccounted expenditure incurred by the assessee basis the impounded material found during the survey, being Annexure-A-1/3 and Annexure A-1/4, amounting to Rs.95.00 lakhs and Rs.1,51,983/- respectively, amounting in all to Rs.96,51,983/-, but made no addition on account of the same, telescoping it in the disclosure made by the assessee.

5. The matter was carried in appeal before the Id.CIT(A), where the assessee challenged rejection of books of accounts, as also, various additions made and the Id.CIT(A) in his order passed, though confirmed the action of the AO, in rejecting the books of accounts, however, he restricted the addition made on account of estimation of income to Rs.4,10,63,732/- deleting the balance addition of Rs.6.00 crores. The addition made on account of alleged retraction of surrender of Rs.6.08 Crs was deleted by the Ld.CIT(A).The benefit of telescoping was given by the Id.CIT(A) for the addition made on account of excess cash found. The disallowance of rent expenses however, was confirmed by the Id.CIT(A). Accordingly the appeal of the assessee was partly allowed by the Ld.CIT(A).

6. Aggrieved by the same, both the assessee and the Revenue have come up in appeal before us raising the following grounds:

**Assessee's appeal: ITA No.2859/A/2016**

1. *The Id. CIT(A) has erred in law and on facts of the case in confirming the action of Id. AO in rejecting books of accounts of the Appellant.*
2. *The Id. CIT(A) has further erred in law and on facts of case in confirming the action of Id. AO in estimating income of the Appellant at Rs.4,10,63,732/-, being 20% of construction cost, as against the returned income of Rs.3,30,56,845/- declared by the Appellant.*
3. *Alternatively and without prejudice to above, while estimating the income of the Appellant at 20% of the construction cost, both the authorities have erred in law in estimating income on the construction cost of Rs.19,58,16,680/- for the entire project as against the construction cost of Rs.10,65,80,958/- for the year under consideration.*
4. *Alternatively and without prejudice to above, both the Id. Authorities have further erred in law and on facts of the case in not allowing other financial, administrative and depreciation expenditure out of the income estimated at 20% on the construction cost.*
5. *The Id. CIT(A) has accordingly erred in law and on facts of the case in confirming the action of Id. AO in making addition to the extent of*

Rs.80,06,887/- out of total addition of Rs.6,78,33,882/- made by the ld.AO.

6. *The Id. CIT(A) has erred in law and on facts of the case in confirming the action of Id. AO in disallowing rent expenditure of Rs.4,44,999/-*
7. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.*
8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C of the Act.*
9. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(l)(c) of the Act.”*

**Revenues’s appeal ITA No.2855/A/2016:**

“1. *The Ld. CIT(A) has erred in law and on facts in allowing the relief of Rs.5,98,26,995/- out of total addition of Rs.6,78,33,882/- made on account of undisclosed income.*

1.1 *The Ld. CIT(A) has erred in law and on facts in not appreciating that the AO has made estimation of income after rejecting the books of account for the reason that the assessee has not accounted for the expenditure of Rs.20,54,68,663/- as per agreement made with M/s. Shiv Sarjan Co. Op. Hsg. Ltd.*

2. *The Ld.CIT(A) has overlooked the fact that the on money receipt of Rs.9.05 Crore as well as the expenditure of Rs.20,54,68,663/- have not at all forming part of the P & L A/c. filed by the assessee for the year under consideration.*

3. *The Ld. CIT(A) has erred in law and on facts in deleting the addition on account of alternative addition on account of difference of undisclosed income admitted during the survey u/s 133A of Rs.6,08,00,000/- without appreciating the fact that the assessee has not retracted the same during the post survey proceedings.*

4. *Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,41,431/- made by AO on the basis of unexplained excess cash being undisclosed income*

5. *On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.”*

7. The Ld.AR has filed submissions in writing before us on the various grounds raised and has also relied on the order of the Ld.CIT(A) on additions deleted by him.

Ld.DR on the other hand has relied on the order of the AO and the Ld.CIT(A) on additions/issues confirmed.

8. We have heard both the parties and gone through the orders of the authorities below.

9. **The first issue for consideration is, whether the rejection of books of accounts of the assessee by the AO u/s 145(3) of the Act was rightly upheld by the Id. CIT(A).**

10. This issue is raised by the assessee in Ground No.1, which for the sake of brevity, we reiterate hereunder:

*1. The Id. CIT(A) has erred in law and on facts of the case in confirming the action of Id. AO in rejecting books of accounts of the Appellant.*

11. The Ld.CIT(A) has upheld the rejection of books of accounts by the AO as under:

*"4. Decision : I have gone through the assessment order and written submission and paper-book furnished by the Appellant and the CBDT circulars and decisions relied upon by the AR. Going through the assessment order, it is seen that the AO has rejected books of accounts of the Appellant and thereafter has estimated the income of the Appellant.*

*Now the first question which may arise before me to decide as to whether the action of the AO in rejecting books of accounts and estimating income is correct or not. The Appellant has entered into the Agreement with Shivosarjan Co. Op Society Ltd. on 19/12/2011 and the said society is registered under the Gujarat Co. Op Housing Society Act, 1961. It is seen that the society has entered into the agreement with the Appellant for the development and construction of the scheme since the society was not having such kind of an experience and infrastructure to execute the work.*

The AO has referred to clause no.3, 11, 12, 13, 17 and 29 of the Development Agreement to hold that the development agreement is not followed by the Appellant in its true spirit; the society is not functioning as a separate entity and is a benami society run on behalf of the Appellant firm and in spite of explicit mention in the development agreement that all the expenses shall be incurred by the Appellant firm, such expenses are debited to the co-operative society. After the rejection of books of accounts the AO has estimated income of the Appellant at Rs. 10,10,63,732/-, which has two components i.e (a) Rs.4,10,63,732/- and (b) Rs. 6,00,00,000/-.

4.1 In respect of component (a) Rs.4,10,63,732/-, the AO observed that the total expenditure of Rs. 19,58,16,680/- being material bills + labour bills and other construction expenses were debited into the books of society and further as per the impounded document Annexure A-1/3 and Annexure A-1/4 the unaccounted expenditure incurred was Rs.95,00,000/- and Rs. 1,51,983/-. It is seen that a survey proceedings were carried out in the case of the Appellant on 12/02/2013 and during the course of the survey a statement of partner Shri Chaturbhai Patel was recorded, wherein, he admitted to have received On-Money of Rs.9,05,00,000/-. However, later on while filing return of income, the Appellant firm disclosed an income of Rs.2,97,00,000/- this respect in the Profit & Loss account. It was further case of the AO that as per the Development Agreement expenditure relating to the construction was required to be borne by the Appellant, however, the same has been debited into the books of accounts of the Society. Therefore, the AO was of the view that correct profit from the books of accounts of the Appellant firm cannot be deduced and accordingly she rejected books of accounts and estimated profit @ 20% on construction cost of Rs.20,54,68,663/-i.e Rs.4,10,63,732/-.

I find substance in the action of the AO in rejecting books of accounts of the Appellant since the Appellant has disclosed unaccounted income to the tune of Rs.2,97,00,000/- in the Profit & Loss account on account of survey action and the expenditure were also not properly accounted for in the books of accounts of the Appellant as demonstrated by the AO that the true profits from such books of accounts of the Appellant cannot be deduced. In the rejected book results, the appellant has shown profit before tax at Rs.3,30,56,845/- (credit side = Rs.4,80,28,933/- debit side of Rs. 1,49,72,078/-). The estimation @ 20% of turnover has support from the clause of development agreement between society and the appellant. Therefore, the Ground No.1 as raised by the Appellant regarding rejection of books of accounts is hereby dismissed.

12. The Ld.AR in his submissions against the rejection of books stated as under:

*“In this connection, it is most respectfully submitted that the books of the appellant has been rejected by the provisions. First being that the society which as provided the land to the appellant in the development agreement is a benami society and all the expenses which has been debited in the books of the society is nothing else but and on the part of the appellant to avoid verification of genuineness of such expenses. The second reason which is an alternate to the first reason, the assessing officer has held that the development agreement has not been followed by the Appellant, which inter alia provided that all the expenses. Upon rejecting the books of the Appellant, the Assessing Officer estimated the income of the Appellant The said action has been upheld by Honourable CIT (appeal) without assigning any independent finding.*

*First Reason: Society is a benami Society*

*In this connection, the Appellant most respectfully submits both the authorities have not appreciated the following clinching evidences which inter alia proves the existence of the society, the details of such evidences is as under:-*

- *Registration Certificate (Pg. No. 69)*
- *Bye laws (Pg. No. 70-137)*
- *Details of members of the society (Pg. No. 75-76 of the P/b)*

*It is further pertinent to note that the society had maintained the books of accounts which is placed at page number 138 to 146 of the P/b.*

*Attention is further drawn towards the sanction letter at page number 151, wherein it can be seen that the details of primary security ie the land on which the Appellant has carried out development activity was owned by such society.*

*Moreover, the mortgaged deed at page number 156-180, has been signed by the office holders of such society to attend the court/office today. The prod*

*In such circumstances, there is nothing that has been brought on record which can suggest that such society was a benami society and was acting for and on behalf of the appellant. In fact, the registered development agreement placed at 45 to 54 suggest that the appellant was in fact was carrying out development activity for and on behalf of such society In such facts and circumstances of the case, it is most respectfully submitted that the first reason provided by the assessing officer for rejecting the books of the appellant is baseless and thus deserves to be ignored*

*Second Reason: Non Adherence of Development Agreement*

*In this connection, it is the allegation of the assessing officer that clause 3, 11, 12, 13, 17 and 29 suggests that the expenses towards the development was required to be incurred by the appellant and as such expenses were debited by the society the books of the appellant was required to be rejected Please refer show cause notice at 193-196 of the P/b*

*In this connection, it is most respectfully submitted that both the authorities have failed to understand the agreement the true sense*

- *Clause 3 reading of clause 3 of the development agreement at page number 45, it can be seen that all the direct or incidental were required to be arranged by the appellant*
- *Clause 11 reading of clause 11 at page number 48 it becomes amply clear that the agreement provided for all the necessary arrangements were required to be done by the society suggest signing of any document in order to assist the appellant to arrange materials required for development*
- *Clause 12 that the appellant was required to arrange the water for development*
- *Clause 13 the appellant was supposed to take care of all the materials on the site*
- *Clause 17 all the development rights were transferred by the society to the Appellant*
- *Clause 29 it is mentioned that the landowner will give the Appellant 20% as development charge*

*Reading of the above clauses, makes it amply clear that the expenses towards the development was required to be borne and incurred by the society, whereas the role of the appellant was only towards arranging such materials and using its expertise for the development of the project The appellant thus submits that both the authorities have misinterpreted the development agreement and thus the second reasoning for the rejection of the books deserves to be ignored.*

*The appellant thus submits that both the reasonings for rejecting the books of the appellant deserves to be ignored and estimation of income at the rate of 20% of such development cost deserves to be reversed."*

13. We have heard both the parties. On going through the order of the ld. CIT(A), we find that, noting the fact the assessee itself had surrendered unaccounted on-money receipts to the tune of Rs.2.97Cr. and also the fact that documents were found during search revealing unaccounted expenditure incurred in the project, the

ld. CIT(A) held that the true and correct profits of the assessee could surely not be deduced from the books of accounts of the assessee, and, therefore, the rejection of its book results was proper. The Assessing Officer had rejected the books of accounts of the assessee noting that the assessee had not followed the Development Agreement entered into with the Society. The ld. CIT(A) has not gone on the basis adopted by the AO but, on the contrary, we find that he has noted very pertinent facts, of the assessee himself admitting to have taken on-money which was not disclosed in its books of accounts, and documents being found during survey revealing unaccounted expenses incurred in the development project undertaken by the assessee. We are in complete agreement with the ld. CIT(A) that this was sufficient to establish that the books of accounts of the assessee were not properly maintained and did not reveal the true and correct profits of the assessee. In such circumstances, there is no doubt that the rejection of books of accounts was called for in terms of provisions of Section 145(3) of the Act.

14. Ld. Counsel for the assessee, in his synopsis filed before us, has only attempted to counter the basis adopted by the Assessing Officer to reject the books of accounts of the assessee by pointing out that the assessee had not deviated, in any manner, from the Development agreement. He, however, was unable to controvert the findings of the ld. CIT(A) which form the basis for rejecting the books of the assessee of admittedly earning unaccounted income by way of on-money and incurring expenses out of the books. In view of the same, the order of the ld. CIT(A) rejecting the books of the assessee is confirmed.

**Ground No.1 of Assessee's Appeal is dismissed**

**15. Taking up the next issue relating to addition made by the AO to the income of the assessee by estimating the same and also by rejecting the alleged retraction of surrender made by the assessee.**

**16. Ground No. 2-5 of assessee's appeal reads as under:**

2. *The Id. CIT(A) has further erred in law and on facts of case in confirming the action of Id. AO in estimating income of the Appellant at Rs.4,10,63,732/-, being 20% of construction cost, as against the returned income of Rs.3,30,56,845/- declared by the Appellant.*
3. *Alternatively and without prejudice to above, while estimating the income of the Appellant at 20% of the construction cost, both the authorities have erred in law in estimating income on the construction cost of Rs.19,58,16,680/- for the entire project as against the construction cost of Rs.10,65,80,958/- for the year under consideration.*
4. *Alternatively and without prejudice to above, both the Id. Authorities have further erred in law and on facts of the case in not allowing other financial, administrative and depreciation expenditure out of the income estimated at 20% on the construction cost.*
5. *The Id. CIT(A) has accordingly erred in law and on facts of the case in confirming the action of Id. AO in making addition to the extent of Rs.80,06,887/- out of total addition of Rs.6,78,33,882/- made by the Id.AO.*

**Ground No.1-3 of Revenues appeal reads as under:**

*"1. The Ld. CIT(A) has erred in law and on facts in allowing the relief of Rs.5,98,26,995/- out of total addition of Rs.6,78,33,882/- made on account of undisclosed income.*

*1.1 The Ld. CIT(A) has erred in law and on facts in not appreciating that the AO has made estimation of income after rejecting the books of account for the reason that the assessee has not accounted for the expenditure of Rs.20,54,68,663/- as per agreement made with M/s. Shiv Sarjan Co. Op. Hsg. Ltd.*

*2. The Ld.CIT(A) has overlooked the fact that the on money receipt of Rs.9.05 Crore as well as the expenditure of Rs.20,54,68,663/- have not at all forming part of the P & L A/c. filed by the assessee for the year under consideration.*

*3. The Ld. CIT(A) has erred in law and on facts in deleting the addition on account of alternative addition on account of difference of undisclosed income admitted during the survey u/s 133A of Rs.6,08,00,000/- without*

*appreciating the fact that the assessee has not retracted the same during the post survey proceedings.*

17. As stated above the AO had estimated the same at Rs.10,10,63,732/- which comprised of two components viz.

- (i) Rs.4,10,63,732/- which was 20% of the expenditure booked in the accounts of the housing society, which amounted to Rs.19,58,16,680/- plus 20% of Rs.96,51,983/-, being the expenditure relating to the labour bills and other construction expenses found to be unaccounted revealed from documents found during survey.
- (ii) Rs 6 Crore on account of alleged on-money received on sale of 120 flats @ Rs.5.00 lakhs per unit sold

Further the surrender made by the assessee during survey of Rs.9.05 Crs, which however was disclosed in the books to the extent of Rs. 2.97 Crs only, was also added to the income of the assessee to the extent short disclosed amounting to Rs. 6.08 Crs.

18. The Ld.CIT(A) confirmed the first component of income estimated by the AO of Rs. 4,10,63,732/-, while he deleted the other component of Rs. 6 Cr.

His findings in this regard are as under:

*4.2 Now the next question (ground No.2) which would arise to decide is as to what should be the income of the Appellant firm once the books of accounts are rejected by the AO. The AO has estimated income of Rs. 10,10,63,732/- which has two components, (a) Rs.4,10,63,732/- being 20% of Rs.20,54,68,663/- and (b) Rs.6,00,00,000/- being On-Money. The AO has noted that total expenditure of Rs. 19,58,16,680/- being material bills + labour bills and other construction expenditure were debited in to the books of society and further as per the impounded documents Annexure A-1/3 and Annexure-1/4 the unaccounted expenditure incurred was Rs.95,00,000/- and Rs. 1,51,983/-. Accordingly, the AO determined total expenditure on the project at*

Rs.20,54,68,663/-, Thereafter the AO applied 20% as profit ratio on the said project and determined profit at Rs. 4,10,63,732/- (Page No.8 of assessment order). The second component of estimation ie Rs.6,00,00,000/- being "On-Money" received. On going through the assessment order, it is seen that the AO has noted that based on impounded document A1, page no. 19, the "On Money" per flat is computed @ Rs.5 lacs for 120 flats being Rs.6,00,00,000/- The AQ has further noted that the Appellant has declared Rs.2.97 Crores only on 57 flats sold / booked till the date of survey. The AO was however of the opinion that since the Appellant has neither increased the documented price of the remaining flats nor has any disclosure made in the subsequent years, she assumed that the Appellant must have received "On Money" of Rs.5,00,000/- per flat. Accordingly she has determined total "On Money" of Rs.6,00,00,000/- on the basis of Rs.5,00,000/- per flat for all 120 flats.

The AR of the Appellant has drawn my attention to the impounded document A1. pg. no.19 which has been referred to by the AO in the assessment order to determine "On Money" receipt of Rs.5,00,000/- per flat for all 120 flats. I have seen that impounded document, which shows cash entry of Rs.5,00,000/- only, otherwise all entries are through account payee cheques. I have further observed that nowhere it has been mentioned that the Appellant firm has received Rs.5,00,000/- per flat for 120 flats. It is also seen that even there is no mentioning of "On-Money" on such referred impounded document but can be fairly construed. The evidence relating to two flats can at best be extrapolated for computation purposes for the flats booked or sold in the A.Y.2013-14 i.e. 57 flats.

My attention was rightly drawn to the facts that till the date of survey i.e. 12/02/2013 there were only 57 flats which were either booked / sold, the material fact has remained uncontroverted by the AO The Appellant further submitted that the Appellant has already offered Rs. 2,97,00,000/- on account of such 57 flats which were either booked / sold till the date of survey in its books of accounts. As already noted the appellant has shown profit before tax at Rs.3,30,56,845/- (credit side = Rs 4,80,28,933/- debit side of Rs. 1,49,72,078/-) and PBT includes the addition relating to "on money" +completely agree with the contention of the AR that till the date of survey ie 12/02/2013 only 57 flats were booked / sold. Therefore, taxing presumptive income for another 63 facts which are neither booked nor sold in this year is illogical. It is farfetched conclusion that the appellant would get "On Money" on its future sales of flats. There was no evidence to suggest the "On money" for all the flats. It goes without saying that the computation of additional income at Rs.2,97,00,000/- is also subject of certain inherent contradictions such as total turnover vis-à-vis findings of AO about the pecuniary relation between appellant and the society.

4.3 The Appellant has further relied upon following decisions to contend that only real income can be added and not notional income unless it is established by the revenue that the appellant has received the income outside the books of accounts. In the present case the AO has not brought on record any cogent material to establish that the Appellant has received On-Money of Rs.5,00,000/- per flat, except for impounded document Annexure A1, pg. no. 19, which shows only one cash entry of Rs.5,00,000/- The evidence is relating to only two flats was repeatedly argued by Shri Ankit Talsania, AR. The citations given by him are as under:

(a) C.I.T. Vs. Calcutta Discount Co. Ltd., 91 I.T.R. 8 (SC)

(b) C.I.T. v. A.Raman & Company, 67 ITR 11 (SC)

(c) C.I.T. Vs. Shivakami Co. (P) Ltd.. 159 ITR 71 (SC)

I have gone through the ratio laid down in above case laws and of the opinion that it is only presumption much less suspicious of the AO that the Appellant has received On-Money of Rs.5,00,000/- per flat. The Appellant has further relied upon the decision of the Apex Court in the case of Umacharan Shaw & Bros. 37 ITR 271 wherein it has been held that suspicious however strong cannot take place of evidence and adverse inference cannot be taken against the appellant merely on the basis of suspicious.

The Appellant has further contended that even in the case of alleged receipt of On-Money what can be taxed is only the net profit and not the entire amount of alleged receipts. For this proposition, the Appellant has further relied upon following decisions:

- (i) President Industries - 258 ITR 654 (Guj)
- (ii) CIT v. Balchand Ajit Kumar - 263 ITR 610 (MP)
- (iii) Man Mohan Sadani v. CIT-304 ITR 52 (MP)
- (iv) Kishor Mohanlal Telwala V. ACIT. 64 TTJ 543 (Ahd.)

I have gone through the above decision in reference to case before me. The Appellant has further relied upon following decisions of Ahmedabad Tribunal, wherein it has been held that where it is found that the appellant is charging "On-Money" receipts in respect of booking of flats, the entire receipts on account of On-Money would not be undisclosed income of the appellant, but only net profit rate could be applied on such unaccounted receipts on account of On-Money.

- (i) Abhi Developers vs. ITO 12 SOT 444 (Ahd.)
- (ii) Abhishek Corporation vs. DCIT 63 TTJ 651 (Ahd.)
- (iii) DCIT vs. Pramukh Builders 112 ITD 179 (Ahd.)(TM).

*In the present case before me, the Appellant has already offered amount of Rs.2,97,00,000/- in its Profit & Loss account for 57 flats already booked / sold till the date of survey for the year under appeal, and therefore, there is no scope of making addition to that extent atleast. Insofar as balance 63 flats are concerned, as observed by me in above para, the same were not booked / sold during the year under appeal and therefore there is no scope of presuming to have received any On-money in respect thereto Therefore, no addition on account of on-money for such 63 flats can be made in the present case. However, computation of Rs.2,97,00,000/- by appellant has also not been accepted*

*The AO has further relied upon the statement of Shri Chaturbhai Patel recorded during the course of survey proceedings to support her view that the Partner of the Appellant disclosed unaccounted to the tune of Rs.9.05 Crores, and therefore, income as determined by her was justified. The AO has made alternative addition of Rs.6,08,00,000/- vide para 6 on her assessment order pg. nos. 8-10, which has been challenged by the Appellant vide ground no.3 in the Grounds of Appeal separately, and therefore, I have also dealt it separately in my order. I have already considered the said issues and relying on the jurisdictional and case laws including ITAT decisions as well as CBDT circular, I have taken a view that (a) no addition can be made merely relying on the statement recorded u/s 132(4)/133(A)/131 of the Act, until and unless some corroborative evidence is found in support of such admission / disclosure, (b) disclosure made u/s 132(4) / 133(A) / 131 can be subject to variation and once the appellant had access to seized documents and he realized subsequently that there was no occasion to make this disclosure, he has an internet right to clarify the situation so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too, (c) In spite of such proceedings if no material/evidence is found to show that the appellant is having any other undisclosed assets which could be linked with this disclosure, no addition can be made merely relying on statement Therefore, such observation of the AO would not support her Justification in estimating and determining income of Rs 6,00,00,000/- as if statement of partner was a gospel truth which can't ever be disputed*

*In the present case before me, I have already confirmed the action of AO in rejecting books of accounts of the Appellant firm and estimating the income of the Appellant. It is settled law that once the books of accounts are rejected and income is estimated, no further disallowance or addition can be made on account of receipt of on- money. Such an observation has support from following case laws*

*(a) CIT vs. Banwarilal Bansidhar 229 ITR 229 (Raj.)*

- (b) *Abhi Developers vs. ITO 12 SOT 444 (Ahd.)*
- (c) *Abhishek Corporation vs. DCIT 63 TTJ 651 (Ahd.)*
- (d) *President Industries-258 ITR 654 (Guj)*
- (e) *CIT v. Balchand Ajit Kumar-263 ITR 610 (MP)*
- (f) *Man Mohan Sadani v. CIT-304 ITR 52 (MP)*
- (g) *Kishor Mohantal Telwala V. ACIT. 64 TTJ 543 (Ahd.)*

*I have gone through the ratio laid down in different case laws (supra) and am of the opinion that when the books of accounts are rejected and income (PBT) is estimated at Rs. 4,10,63,732/-, there is no scope of further making an addition on account of alleged receipts of On-Money. The profit before tax shown in computation of income by the appellant at Rs.3,30,56,845/- is to be replaced by the figure of Rs.4,10,63,732 This decision is upholding the decision of AD of rejection of books of account as well as taking into account the whole of turnover of the project in question This decision will also encompass the total turnover not leaving any leeway for postponement of tax liability to the next year as to whether booking/sale of flats is falling in A.Y.2013-14 or A.Y.2014-15. This decision has also been on the basis of clauses of development agreement.*

*In view of above discussion and in substance, I hold as under:*

- (a) *The action of AO in rejecting books of accounts of the Appellant is confirmed,*
- (b) *The estimation of income at the rate of 20% on the construction cost is confirmed, resulting into the net income / assessed income at Rs.4,10,63,732/- (PBT of Rs.3,30,56,845/- is to be replaced by the figure of Rs.4.10,63,732/- and no further deduction of any expenditure to be granted);*
- (c) *There were only 57 flats which were booked / sold and in respect of which the Appellant had already offered Rs.2,97,00,000/-, It goes without saying that such an offer has been rejected with the rejection of book results;*
- (d) *Since balance 63 flats were not booked / sold till the date of survey and the AO has not brought any cogent evidences to prove receipt of "On-money" in respect thereto, no presumption can be made and merely on the basis of suspicious no addition can be made on account of on-money" in respect of such additional 63 flats;*

- (e) *no addition can be made merely relying on the statement recorded u/s 132(4)/133(A)/131 of the Act, until and unless some corroborative evidence is found in support of such admission / disclosure and this is as per CBDT circulars,*
- (f) *disclosure made u/s 132(4)/133(A)/131 can be subject to variation and once the appellant had access to seized documents and he realized subsequently that there was no occasion to make this disclosure, he has an inherent right to clarify the situation (AO noted on page 9 of assessment order, "the assessee has retracted the statement made during the course of survey proceedings") so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise and no one can be forced to create evidence against himself, and*
- (g) *Inspite of such proceedings if no material / evidence is found to show that the appellant is having any other undisclosed assets which could be linked with this disclosure, no addition can be made merely relying on statement;*
- (h) *In any case the books of accounts of the Appellant are rejected and income (PBT) is estimated at Rs.4,10,63,732/- (as per AO's own admission at page No.8 of assessment order), there is no scope of further making an addition on account of alleged "On-money"*

*In view of above, I direct the assessing officer to compute the net income / PBT of the Appellant at Rs. 4,10,63,732/- as against the retuned income of Rs.3,30,56,845/-so far it relates to undisclosed incorme as per proceedings u/s. 132A Accordingly addition to the extent of Rs.80,06,887/- out of total addition of Rs.6,78,33,882/- is hereby confirmed and balance amount of addition is hereby deleted. Hence, the ground No.2 of appeal is partly allowed."*

19. We have heard both the parties.

**We take up first the aspect of estimating income @20% of construction cost confirmed by the Ld.CIT(A).**

20. As per the order of the Ld.CIT(A) as above on the aspect of estimation of income of the assessee at the rate of 20% of the cost of development incurred/found accounted for in the books of the society, it is a fact on record that as per the Development Agreement the assessee was entitled to income @ 20% of the project cost. No project expenses were found booked or accounted for in the books of the

assessee. All the project expenses were found and accounted for in the books of the society which amounted in all Rs.19,58,16,680/-. Besides, the fact that documents revealing unaccounted expenses pertaining to material, labour bill etc amounting to Rs.95,00,000/- and Rs. 1,51,983/- were also found during survey. The Assessing Officer/CIT(A) has added up all these costs and treated it as the total cost of project incurred during the year. The agreed rate of 20% accordingly was applied to the same and the income of the assessee estimated at Rs.4,10,63,732/-.

21. The Id. Counsel for the assessee was unable to point out any infirmity in the above findings of the Id. CIT(A). He was unable to controvert the fact derived from the agreement that the assessee was entitled to income being 20% of the project cost. He was unable to controvert the factual findings of the Revenue Authorities that the entire cost was booked in the books of the Society which amounted to Rs.19.58 crores and no expenses were booked in the books of the assessee. He was also unable to controvert the factual findings of the Revenue Authorities below that the documents revealing unaccounted project expenses amounting to Rs.96.51 lakhs were found during survey. In sum and substance, the Id. Counsel for the assessee was unable to controvert the factual findings of the authorities below of the total project expenses incurred during the year of Rs.20.54 crores and the estimation of income at the agreed rate of 20%, therefore, cannot be a matter of dispute. We, therefore, confirm the order of the Id. CIT(A) upholding the addition made to the income of the assessee by estimation amounting to Rs.4.10 crores.

**Ground of appeal No.2 & 5 raised by the assessee is dismissed**

22. Ground No. 3 & 4 of the assessee's appeal are with respect to the incorrect cost of construction taken for the purposes of estimating income of the assessee and expenses being allowed against the income estimated respectively.

23. Nothing was pointed out to us vis-a-vis incorrect cost of construction, raised in **ground no.3 of assessee's appeal and the same is therefore dismissed.**

24. As for allowances of financial, administrative and other expenses against the income estimated, raised in ground No.4 of the assessee's appeal, the claim of the assessee is tenable and the AO is directed to allow the same after due verification.

**Ground of appeal No.4 of assessee's appeal is allowed for statistical purposes.**

**Taking up the next aspect of Rs.6 Crores, which was added to the income estimated by the Assessing Officer and deleted by the Ld.CIT(A) raised in Revenues appeal**

25. The order of the Ld.CIT(A) reveals that admittedly, the basis of the same was an impounded document A-1 which the Assessing Officer adopted as a basis for arriving at his finding that the assessee had taken on-money at the rate Rs.5 lakhs per flat for 120 flats, resulting in the on-money earned by the assessee, as per Assessing Officer, to the tune of Rs.6 crores which was also added to the income of the assessee. The Ld. CIT(A) has found, as a matter of fact, that the assessee has not sold 120 flats during the year, but only 57 flats were either booked or sold till the date of survey, of which accordingly the assessee had offered Rs.2.97 crores to tax as on-money received. He

accordingly held that there was no case for making addition of Rs.6 crores to the income of the assessee since the assessee had already disclosed the on-money received on account of flats booked or sold during the year. The ld. CIT(A) has further gone through the document which form the basis for finding by the Assessing Officer that the assessee had received on-money @ Rs.5 lakhs per flat. In the said document A-1 at page 19, the ld. CIT(A) has noted that, in the document, there is a cash entry of Rs.5 lakhs and all other entries are through account payee cheques. He also noted that the documents nowhere mentioned that the assessee-firm had received Rs. 5 lakhs per flat for 120 flats, nor there is no mention of on-money in this document. He, therefore, held that the Assessing Officer's findings that the assessee had received on-money of Rs.5 lakhs per flat was only on presumption and suspicion, and therefore was not sustainable.

26. The ld. DR was unable to controvert the factual findings of the ld. CIT(A) that the documents which form the basis for holding that the assessee had received Rs.5 lakhs per flat as on-money did not indicate any such fact, nor was he able to controvert the factual findings of the ld. CIT(A) that while the Assessing Officer had applied the on-money rate of Rs.5 lakhs to 120 flats sold by the assessee, the assessee had actually sold only 57 lakhs during the year, and in relation to which the assessee had already disclosed an amount of Rs.2.97 crores in its books. In view of the above, we do not find any infirmity in the order of the ld. CIT(A) deleting the addition made of Rs.6 lakhs to the income of the assessee on account of on-money received from the sale of flats.

**27. Taking up the next aspect of deletion of addition made by the Assessing Officer on account of difference in the surrender made by the partner of the firm of Rs.9.05 crores and that disclosed in the books of the assessee of Rs.2.97 crores – the difference being Rs.6.08 crores, added to the income of the assessee,**

28. The findings of the Ld.CIT(A) are at para 5 & 5.1 of his order as under:

*“5. Decision: I have gone through the assessment order, written submission and paper-book furnished by the Appellant. It is seen that the AO has observed that Shri Chaturbhai Patel, partner of the firm in his statement recorded during the course of survey proceedings has made disclosure of Rs.9.05 Crores as On-Money, however, the Appellant has disclosed only Rs.2,97,00,000/- in the Profit & Loss account while filing return of income. The AO observed that the Appellant has retracted the statement made during the course of survey proceedings and accordingly she made addition of differential amount of Rs.6,08,00,000/- relying on the statement of Shri Chaturbhai Patel.*

*It is the argument of the Appellant that after the survey proceedings, the audit was carried out by the auditor and in the notes of audited accounts, it was clearly mentioned that the disclosure made by the partner of the firm was not correct and after verification of all documents, correct income was accounted for in the books of accounts of the Appellant. The Appellant further submitted that since 57 flats were booked / sold till the date of survey proceedings, the Appellant had offered an amount of Rs.2,97,00,000/- in the Profit & Loss account of the Appellant and therefore balance amount of Rs.6,08,00,000/- disclosure made by the partner of the firm was incorrect.*

*During the course of the Appellate proceedings, the A.R. has drawn my attention to two circulars issued by the CBDT vis-a-vis Circular No.F.No.286/2/203-IT (In) dated 10.03.2003 and Circular vide letter (F.No.286/98/2013-IT (INV.II)), dated 18.12.2014, which has direction that during the course of search and survey proceedings, the focus and concentration should be on collection of evidences and while recording statement during the course of such proceedings no attempt should be made to obtain confession as to the undisclosed income and to strictly avoid obtaining admission of undisclosed under coercion / undue influence.*

*The AR of the Appellant further relied upon the recent decisions of Gujarat High Court in the case of Chetnaben J Shah Legal Heir of Jagdishchandra K. Shah vs. the ITO, Ward 10(3) in Tax Appeal No. 1437 of 2007 and the CIT vs. Ramanbhai B Patel in Tax Appeal Nos. 207-210 of 2008 to contend that, (a) no addition can be made merely relying on the statement recorded u/s 132(4)/ 133(A)/ 131 of the Act, until and unless some corroborative evidence*

is found in support of such admission / disclosure, (b) disclosure made u/s 132(4)/133(A)/131 can be subject to variation and once the appellant had access to seized documents and he realized subsequently that there was no occasion to make this disclosure, he has an inherent right to clarify the situation so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too, (c) In spite of such proceedings if no material / evidence is found to show that the appellant is having any other undisclosed assets which could be linked with this disclosure, no addition can be made merely relying on statement. The AR further argued that time and again various authorities have taken a view that when the statements are recorded taking advantage of the law on the part of the appellant or the same is recorded by coercion, the same can be retracted. Insofar as the recording of statement by coercion is concerned, the Appellant has not brought on record to prove the same and therefore the said argument of the Appellant cannot be accepted. In fact, retraction is presumption in this case as there is neither an affidavit nor unequivocal letter filed either with AO or First appellate authority.

The AR of the Appellant has further argued that the addition of Rs.6,08,00,000/- is made by the AO merely relying on the statement of partner of the firm and without bringing on record any cogent evidence to prove the same, which is invalid. Insofar as such argument is concerned, it is observed that the AO has not brought on record any cogent material to establish that the Appellant has received On-Money of Rs.5,00,000/- per flat, except for impounded document Annexure A1, pg. no. 19, which shows only one cash entry of Rs.5,00,000/-, and in respect of 57 flats which were booked / sold till the date of survey proceedings. However, the Appellant has tried to cover discrepancy by offering Rs.2,97,00,000/- in its Profit & Loss account. The Appellant has also furnished of such members and respective receipts totaling to Rs.2,97,00,000/- on pg. 192 of P/B. However, the AO's computation in respect of balance amount of Rs.6,08,00,000/- lacks support of credible evidence.

I have gone through the CBDT Circulars (supra) and recent decisions of Gujarat High Court cited before me by the AR. The CBDT circulars are binding on the assessing authorities, wherein, it has been clearly provided that during the course of search and survey proceedings, focus and concentration should be on collection of evidences and while recording statement during the course of such proceedings no attempt should be made to obtain confession as to the undisclosed income and to strictly avoid obtaining admission of undisclosed income under coercion / undue influence. In the present case before me, the AO has not brought on record any single corroborative evidence which can support to such admission / disclosure in toto as made in the statement recorded during the course of survey proceedings. As already commented there is no angle of coercion of statement recorded under duress as material before me.

I have also gone through the recent decisions of Gujarat High Court in the case of Chetnaben J Shah Legal Heir of Jagdishchandra K. Shah vs. the ITO, Ward 10(3) in Tax Appeal No.1437 of 2007 dated 14/07/2016 and the CIT vs. Ramanbhai B Patel in Tax Appeal Nos.207-210 of 2008 dated 20/07/2016, wherein, it has been held that, (a) no addition can be made

merely relying on the statement recorded u/s 132(4)/ 133(A)/ 131 of the Act, until and unless some corroborative evidence is found in support of such admission / disclosure, (b) disclosure made u/s 132(4)/133(A)/ 131 can be subject to variation and once the assessee had access to seized documents and he realized subsequently that there was no occasion to make this disclosure, he has an inherent right to clarify the situation so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too, (c) In spite of such proceedings if no material / evidence is found to show that the assessee is having any other undisclosed assets which could be linked with this disclosure, no addition can be made merely relying on statement. The ratio of these judgements have definite support to the argument of appellant so far it relates to corroborative evidence. I further agree with the arguments of the Appellant that the AO does not have power to record the statement u/s 133A on oath and statement recorded does not have any evidentiary value and any admission made during such statement cannot be made basis of addition unless the same is supported by credible evidence on record as has been held in following case laws:

- (a) CIT vs. Khader Khan Son 25 taxmann.com 413 (SC);
- (b) Paul Mathews & Sons vs. CIT 263 ITR 101 (Ker);
- (c) M/s Premsons 130 TTJ 159;
- (d) Vinod Solanki 233 ELT 157 (SC).

The AO has referred to the decision of Ahmedabad Tribunal in the case of Manoharlal Kasturchand 57 TTJ 639 to contend that the admission made by the assessee is best evidence on a point in issue though not conclusive unless successfully withdrawn. I have gone through the said order, however, the same is not applicable in the present case. In that case the statement was recorded u/s 132(4) of the Act, whereas, in the present case the statement was recorded during the course of survey proceedings u/s 133A of the Act. The second decision as relied upon by the AO in the case of Pullangode 91 ITR 18 is in fact in favour of the Appellant as in that case it has been held that an admission cannot be said to be conclusive and it is open to the person who made it to show that it was incorrect. In the present case, the Appellant can be said to have duly demonstrated in the return of income that admission made by the partner of the firm was incorrect to the extent of Rs.6,08,00,000/-.

5.1 The book results have already been rejected and the argument of disclosure in the return of income has been covered while confirming the addition of Rs.80,06,887/- Therefore, in view of above made discussion, I hereby delete the alternative addition of Rs.6,08,00,000/- made by the AO as PBT of Rs.3,30,56,845/- has already been ordered to be replaced with Rs.4,10,63,732/-.

The Appellant has further made alternative submission that even if it is held that appellant has received on-money of Rs.9,05,00,000/-, then also, as per AO herself, of such on-money receipt i.e Rs.1,80,00,000/- can be treated as unaccounted income of the Appellant considering the nature of business of the Appellant and not the entire alleged on-money receipts of Rs.9,05,00,000/-. The Appellant further submitted that as against

*Rs.1,80,00,000/-, the Appellant has already offered an amount of Rs.2,97,00,000/- in the Profit & Loss account, and therefore also, no addition can be sustained. The Appellant further submitted that the AO herself has granted benefit of telescoping to the unaccounted expenditure of Rs.96,51,983/- against the disclosure made by the Appellant and therefore the disclosure of Rs.2,97,00,000/- would include the application of such unaccounted income to the payment for unaccounted expenditure of Rs.96,51,983/-.*

*Since, I have deleted alternative addition of Rs.6,08,00,000/- as noted hereinabove, there is no need to adjudicate alternative arguments made by the Appellant. In any case, computation of appellant's income (PBT) stand revised to Rs.4,10,63,732/- which is computed @20% of the turnover after rejecting books of account. Nevertheless the alternative addition of Rs.6,08,00,000/- is not sustainable. The ground No.3 is allowed.”*

29. The ld. CIT(A) has noted that the surrender made by the partner of the firm during survey of on money received of Rs.9.05 Crs was not substantiated or corroborated with evidence. It was merely the statement of the partner. He noted that the assessee had disclosed on-money of Rs. 2.97 Crs on account of flats actually sold by it during the year. That, therefore, the disclosure made by the assessee was backed with evidence while that made in a statement during survey was not duly corroborated. In effect, he found the assessee had substantiated the retraction of its surrender from Rs.9.05 crores to Rs.2.97 crores, disclosing on-money only with respect to the flats sold or booked during the year. The ld. CIT(A), therefore, held that there was no reason for making addition on account of the difference of Rs.6.08 crores to the income of the assessee. He further noted that since he had confirmed the action of the Assessing Officer in rejecting the books of accounts of the assessee and estimating its income there remained no case for making any further disallowance or addition on any account, and he has relied upon several case laws in support of the same.

30. The ld. DR, before us, though relied on the order of the Assessing Officer, was unable to controvert the factual findings of the ld. CIT(A).

31. We do not find any infirmity in the order of the Ld.CIT(A). Undoubtedly the surrender made by the partner during survey was of on money received on sale of flats. The assessee had surrendered Rs.9.05 Crs on account of the same. However as a matter of fact the assessee had sold only 57 flats and the document found during survey revealed on money @ 5lacs per flat, as per the AO. The surrender on account of on money to be made therefore came to Rs 2.85 lacs only which the assessee duly disclosed in his books. Since the facts as noted have remained uncontroverted before us, we see no merit in the plea of the Revenue that the assessee ought to have honored its surrender of Rs.9.07 Crs and addition of Rs.6.08 Crs by the AO therefore was corrected. On the contrary, we find, the Ld.CIT(A) has rightly appreciated the facts before him and found the assessee's retraction of surrender to be duly corroborated calling for no further addition to be made to the income of the assessee. The order of the Ld.CIT(A) therefore deleting the addition of Rs.6.08 Crs is upheld.

**Ground of appeal No.1-3 of Revenues appeal is dismissed**

32. **The next issue for consideration is the disallowance of rent expenses of Rs.4,44,999/- claimed by the assessee upheld by the Ld.CIT(A) and raised by the assessee in Ground No.6 of its appeal**

**Ground of appeal No.6 of assessee's appeal :**

33. The same was disallowed by the AO being un-substantiated and the disallowance confirmed by the Ld.CIT(A) holding at para 7- 7.2 of his order as under:

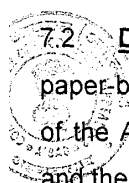
7. **Ground No. 5** is in respect of disallowing rent expenditure of Rs.4,44,999/-.

7.1 The AR of the Appellant vide written submission dated 27/04/2016 submitted as under :

7.1 "During the course of the assessment proceedings, the Id. AO observed that the Appellant has paid rent of Rs.10,00,000/- as office rent. It was further observation of the Id. AO that in the Tax Audit Report, it is shown that the payment of rent is made to four relatives of the Appellant firm aggregating to Rs.6,66,668/- and not Rs.10,00,000/-. Therefore, the Id. AO asked the Appellant to furnish copy of purchase deed of property taken on rent by the Appellant for the verification of ownership. In pursuant to such request, the Appellant vide letter dated 16/03/2016 furnished the same to the Id. AO.

7.2 The Id. AO, however, held that Ms. Bhumi H. Patel, wife of partner is not appearing in the Deed as Joint Purchaser and therefore office rent of Rs.1,66,667/- in her name is disallowed. The Id. AO further observed that name of Ms. Hinal C. Patel is also there as joint purchaser and even rent of Rs.1,66,666/- is also paid to her, and therefore, total rent comes to Rs.6,66,668/- and for balance rent of Rs.3,33,332/-, the Appellant failed to furnish any supporting documents. Accordingly, the Id. AO disallowed rent expenditure of Rs.4,44,999/- and added to the total income of the Appellant.

7.3 In this connection, it is most respectfully submitted that there are five joint owners of the property which is taken on rent by the Appellant firm to whom rent of Rs.1,66,666/- is paid to each person, total of which would come to Rs.8,33,330/-. **Pls. refer pg. nos. 210-227 of P/B.** It is therefore requested Your Honour to kindly give direction to the Id. AO to allow rent expenditure of Rs.8,33,330/-."



**7.2 Decision:** I have gone through the assessment order, written submission and paper-book furnished by the Appellant. However, I don't find any force in the arguments of the Appellant and therefore the disallowance made by the AO is hereby confirmed and the ground No.5 of Appeal is **dismissed**.

34. We are not in agreement with the Ld.CIT(A). The assessee's plea before the Ld.CIT(A) was to allow rent paid to five co-owners @1.66 lacs per owner amounting to Rs.8.33 lacs as opposed to 4 co-owners being recognised by the AO allowing rent of Rs. 6.66. The assessee in effect was seeking further allowance of Rs.1.33 lacs on account of rent paid to a co-owner and relied upon rent agreement in support. Ld.CIT(A) however has not given any finding on the fact pointed out by the assessee of there being 5 co-owners as opposed to 4 noted by the AO, while rejecting assessee's plea.

We, therefore, consider it fit to restore the matter back to the AO to verify the fact contended by the assessee as noted above and accordingly thereafter allow the claim of rent expenses.

**Ground of appeal No.6 of assesses appeal is allowed for statistical purposes.**

**35. The next issue is the deletion of addition made on account of excess cash found, which was raised in ground no.4 of the Revenue's appeal as under:**

*4. Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,41,431/- made by AO on the basis of unexplained excess cash being undisclosed income*

36. The same have been deleted by the Id. CIT(A) by giving the benefit of telescoping against on money surrendered of Rs.2.97 Crs. His findings in this regard at para 6.2 are as under:

*“6.2 Decision: I have gone through the assessment order, written submission and paper-book furnished by the Appellant. The Appellant in the present case could not make out any case in respect of source of Rs.5,41,431/- found during the course of survey proceedings. However, I agree with the argument of the Appellant that benefit of telescoping should be granted to it. The income has since been revised as per decision above, benefit of telescoping should be granted to it against the income of Rs.4,10,63,732/-.*

*Hence, the addition made by the AO is hereby deleted and the ground no.4 is hereby allowed.”*

37. We see no reason to interfere in the order of the Ld.CIT(A). Considering that the assessee has surrendered on money to the tune of Rs.2.97 Crs, no reason/logic has been given by the Ld.DR as to why the addition on account of excess cash of Rs.5.41 lacs be not telescoped against the same.

The order of the Ld.CIT(A) deleting the addition made on account of excess cash found of Rs. 5.41 lacs is accordingly upheld.

**Ground of appeal No.4 of Revenues appeal is dismissed.**

38. Thus, we adjudicate both the appeals as under:

- i) ITA No.2855/Ahd/2016 - Revenue's appeal is dismissed.
- ii) ITA No.2859/Ahd/2016 Assesses appeal- Ground Nos.1 to 3, 5 are dismissed, and ground nos.4 and 6 are allowed for statistical purpose. Resulting, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Court on 23<sup>rd</sup> July, 2024 at Ahmedabad.**

**Sd/-**

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 23/07/2024

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**