

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos.248 to 250/Ahd/2023  
(Assessment Years: 2014-15, 2016-17 & 2019-20)

Sai Krupa Developers, 418, Gala Empire, Opp. Doordarshan Tower, Drive in Road, Ahmedabad-380054	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(2), Ahmedabad
[PAN No.ACBFS7858R]		
(Appellant)	..	(Respondent)

I.T.A. Nos.325 & 326/Ahd/2023  
(Assessment Years: 2016-17 & 2019-20)

Assistant Commissioner of Income Tax, Central Circle-1(2), Ahmedabad	Vs.	Sai Krupa Developers, 418, Gala Empire, Opp. Doordarshan Tower, Drive in Road, Ahmedabad-380054
[PAN No.ACBFS7858R]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Divya Agrawal & Shri S.V. Agrawal, A.Rs.
<b>Respondent by:</b>	Shri Ashok Kumar Suthar, Sr. DR

<b>Date of Hearing</b>	07.08.2024
<b>Date of Pronouncement</b>	23.08.2024

ORDER

**PER BENCH:**

These are cross appeals filed by the Assessee and the Department against the order passed by the Ld. Commissioner of Income Tax-11, (in short “Ld. CIT(A)”), Ahmedabad vide orders dated 27.02.2023 for Assessment Years 2014-15, 2016-17 & 2019-20. Since the issue for consideration for all the years under consideration are similar, all the present appeals are being disposed of by way of a common order.

**We shall first discuss A.Y. 2014-15 (Assessee's Appeal) and our observations would apply to the other years as well, wherever applicable.**

**Assessment Year 2014-15 (Assessee's Appeal in ITA No. 248/Ahd/2023)**

2. The assessee has taken the following grounds of appeal:

“1. Learned CIT(A) has erred in dismissing the Ground of Appeal of assessee that case of assessee is transferred from Jurisdictional A.O. to Central Circle without obtaining the consent of the assessee U/s. 127 of the Act. Therefore, the order of A.O. is without Jurisdiction.

2. Learned CIT(A) has erred in confirming the proceedings of A.O. in re-opening the assessment U/s. 147. Though the assessment is based on incriminating material found during Search at Robin Goenka. Therefore, the assessment proceedings were required to be completed U/s. 153C in place of 147 r.w.s. 143(3), the assessment as well proceedings are illegal.

3. Learned CIT(A) has erred in confirming that no satisfaction was required to be recorded by A.O. of Searched Party, since the present assessment is re-open assessment. In as much as, the assessment is based on incriminating material found during Search whereby A.O. was required to record satisfaction and issue Notice U/s. 153C.

4. Learned CIT(A) has erred in confirming income at 15% in respect of On Money received of Rs. 21,37,140 which comes to Rs. 3,20,571 (Rs. 21,37,140 \* 15/100) against claim of the assessee of 8% of On Money as provided U/s. 44AD of the Act

5. Learned CIT(A) has erred in rejecting Ground of Appeal of Charging Interest U/s. 234B whereas he has allowed Grounds of Appeal and in respect of that this Ground of Appeal is required to be adjudicated.”

3. The assessee is engaged in the business of development of industrial plots i.e. purchase of land, development of such land, industrial plotting followed by sale of such land. The assessee filed return of income under Section 139(1) of the Act for the impugned assessment year on 13.10.2014 declaring total income at Rs. NIL after set off of brought forward losses of Rs. 34,194/- for A.Y. 2014-15. A survey action under Section 133A was carried

out on 30.10.2018 at the business premises of the assessee at 418, Gala Empire, Ahmedabad in connection with the development of industrial plots done by the assessee for Sankalp Group. Further, a search action was also done at the corporate office of Shri Robin Goenka, who is having 25% profit sharing ratio, as a partner in the assessee firm the search was carried out at Sankalp House Bodakdev, Ahmedabad. Shri Robin Goenka, besides being 25% partner in the assessee firm was also working in the capacity of Directors of Sankalp Organizers Pvt. Ltd., for whom the assessee firm had developed the industrial plots under consideration. Therefore, the background of the case is that a survey action was carried out at the premises of the assessee firm and search at the main office premises / corporate office of Shri Robin Goenka who is a 25% partner in the assessee firm and the assessee firm, for the impugned years under consideration, had developed and sold certain plots of land for the Sankalp Group. During the course of search action under Section 132 of the Act at the corporate office premises of Shri Robin Goenka, at Sankalp House, Bodakdev, Ahmedabad, evidence relating to Sankalp Industrial Estate project situated at Village Chiyada, Ahmedabad was found and seized. The assessee, M/s. Saikrupa Developers had developed the land and plotted the land in various plots admeasuring 125350 sq. mtr. On verification of evidence found and seized from the main office premises of Robin Goenka, the Income Tax Department observed that the assessee firm had meticulously maintained the booking status of plots alongwith other vital details such as name of the buyers written against each Plot Number, area of plots, selling price and more importantly details of on-money receipt with respect to sale of each of the plots. Accordingly, the Department initiated proceedings under Section 148 of the Act by issuance of notice dated 27.03.2021 on the assessee. The

Department was of the view that the documents found during the course of search at the main office premises of Shri Robin Goenka were self-explanatory in nature and the details were also duly corroborated / supported by the sale deeds executed by the purchasers of plots of industrial scheme viz. Sankalp Industrial Estate Developed by M/s. Saikrupa Developers. The Assessing Officer was of the view that on corroboration of the data found from the office premises of the partner of assessee firm, Shri Robin Goenka at Sankalp House, with the sale deed called by the Department from the office of SRO, it is found that the figures reflecting in the seized material is true. After taking the reply of the assessee on record, the Assessing Officer observed that firstly, the assessee has categorically admitted that the assessee had developed the land and plotted the industrial plots in the name of Sankalp Industrial Estate at Bavla Ahmedabad. Secondly, the evidence related to charging of on-money on sale of plots was found and seized during the course of search from corporate office of Robin Goenka. Thirdly, the assessee has never denied the fact of accepting on-money receipts on sale of plots of land of Sankalp Industrial Estate from the purchasers whose name has been found in the seized as evidence and Fourthly, the details found from the seized documents have been duly corroborated with the books of accounts of the assessee firm, registered sale deeds and the selling price as mentioned in the seized documents. Accordingly, the Assessing Officer made addition of Rs. 24,04,282/- in the hands of the assessee for the impugned year under consideration.

4. In appeal, the Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

*“5.3 Further, with regard to appellant's claim regarding correct jurisdiction of the case, it is significant to mention here that on perusal of relevant facts on record,*

*it is observed that original jurisdiction of the appellant was with ITO, Ward-2(3), Ahmedabad and pursuant to search, the case was centralised with Central Circle - 1(2), Ahmedabad. It is observed that the appellant has challenged the validity of order passed by AO on the ground that it has not received any notice (under Section 127 of the Act for transferring its case to Central Circle at Ahmedabad or not provided any opportunity before transferring the case. It is observed that the appellant had not raised similar objections on receipt of notice under Section 148 of the Act from DCIT, Central Circle-1(2), Ahmedabad. The appellant has also complied with such notice, filed return of income in response to notice u/s.148 of the Act and submissions in reassessment proceedings, which clearly suggest that the appellant had participated in assessment proceedings. Considering such fact, plea taken by the appellant cannot be accepted.*

5.4 *It is further observed that for the administrative purpose, jurisdiction of all the cases of the Sankalp Group and its related case like the assessee firm M/s. Sai Krupa Developers (Shri Robin Goenka, one of the key persons of Sankalp group was having 25% profit sharing ratio as a partner in the assessee firm M/s. Sai Krupa Developers), which were covered by search proceedings as well survey proceedings are with Central Circle - 1(2), Ahmedabad. This administrative decision is uniform for all the assessees of Sankalp Group & its related person/entity and there is no discrimination against any of the assessee. Considering this fact, case of the appellant was appropriately centralised before present Assessing Officer. The case laws relied upon by the appellant are not directly connected with search cases as is the case of the appellant hence same cannot be applied to present case. In view of these facts, it is clearly found that the AO i.e. DCIT, Central Circle-1 (2), Ahmedabad had passed valid assessment order u/s.143(3) r.w.s. 147 of the Act as per his correct jurisdiction.*

5.5 *In view of these facts, I find no infirmity in the action of the AO in issuing notice u/s.148 of the Act. Therefore, reopening the assessment proceedings of the appellant is upheld. Thus, **grounds of appeal no. 1 and 2 are dismissed.***

**6. The grounds of appeal no. 3, 4, 5 & 6 are interlinked, hence dealt together, are against the action of the AO in making addition of Rs.24,04,282/- on account of on-money receipts.**

6.1 *I have carefully considered the assessment order and submission filed by the appellant. The brief facts of the case are that the assessee firm had filed its original return of income u/s.139(1) of the Act on 13.10.2014 declaring total income at Rs. Nil after set off of brought forward loss of Rs.34,194/-. The same was processed u/s. 143(1) of the Act. The assessee was engaged in the business of development of industrial plots i.e. purchase of land, its development, industrial plotting and sale of the same. Further, a survey proceedings u/s.133A of the IT. Act was carried out on 30.10.2018 at business premises of the assessee at 418, Gala Empire, Drive-in-road, Ahmedabad in connection with Sankalp Group as Shri Robin Goenka, one of the key persons of Sankalp group was having 25% profit sharing ratio as a partner in the assessee firm M/s. Sai Krupa Developers. During the course of search action u/s.*

132 of the Act in the case of Sankalp Organisers Pvt. Ltd. at Sankalp House, Bodakdev, Ahmedabad, various incriminating documents was found and seized, inventorised as A/1 to A/14. During the course of assessment proceedings, on analysis of seized documents particularly of page no. 8 of Annexure - A/1, the AO had noticed that the appellant had received on-money on sale of industrial plots at scheme of plotting at Bavla-Kerala GIDC, Bavla, Ahmedabad. In view of these facts, the AO had issued show cause notice dated 12.01.2022 to the appellant as to why on-money received of Rs.24,04,282/- against the sales of office/residential should not be added to the total income for the year under consideration i.e. A.Y.2014-15, During the course of assessment proceedings, the appellant had filed its reply of the show cause notice, in which the appellant had requested to the AO for not making any addition in respect of on-money for the reason as discussed in its reply. The AO had reproduced the reply of the appellant in the assessment order and given the issue wise rebuttal of the claim of the appellant. Therefore, while passing the assessment order, the AO had made addition on account of on-money receipt in cash amounting to Rs.24,04,282/- to the total income of the appellant.

**6.2** During the course of appellate proceedings, the appellant has filed written submission. On perusal of the written submission, it is seen that the appellant has taken the similar pleas which was taken before the AO during the course of assessment proceedings and the same were rebutted by the AO in the brief discussion. However, without prejudice, the same has been discussed in the following paras.

**6.3** With regards to satisfaction not recorded by the searched AO, it is stated that satisfaction of searched AO as well as assessee's AO Is required for issuance of notice u/s.153C of the Act. However, in the instant case, the case was reopened by the AO after recording reason for reopening and taken prior approval from the competent authority. Therefore, the claim of the appellant is not correct, hence rejected.

**6.4** Further, with regards to incriminating documents was not found from premises of the appellant firm, not prepared by the firm and unsigned, it is observed that the appellant firm is partnership firm in which Shri Robin R. Goenka is one of the key partners with 25% profit sharing ratio. The evidence related to charging on-money on sale of industrial plots was found and seized during the course of search action at corporate office of Shri Robin R. Goenka. Therefore, the plea of the appellant firm is not found to acceptable since both the premises of the appellant firm and office premises of main partner of the appellant firm were covered by survey proceedings u/s.133A and Search action u/s.132 of the Act respectively.

**6.4.1** Moreover, on perusal of the said seized incriminating documents, the following important points emerge, which are as under:-

(i) Name mentioned on incriminating documents (page 8 of Annexure A/1) seized from office premises of Shri Robin R. Goenka and Name mentioned in copy of sale deed furnished by the appellant firm were same.

(ii) *Nomenclature of plot no. used while recording in seized evidence and plot no. mentioned in sale deed furnished by the appellant firm in its submission were same.*

(iii) *Further, for demonstrative purposed date of dastavej mentioned in seized evidence against the name of Niieshbhai Canpac at Sr. No. 10 & also in the name of Jasmitsingh at Sr. No. 12 and date mentioned in sale deed in the case of Niieshbhai and Jasmitsingh were same.*

(iv) *Further, area of the plot recorded in Sq. yard in seized documents is also same with the area of plot mentioned in Sq. Mtrs in sale deed.*

6.4.2 *In view of the above, it can be concluded that the transaction mentioned in the incriminating documents are the real transaction as per the sale deed. Thus, all the claim of the appellant are rejected.”*

5. Further, the assessee took another argument before Ld. CIT(A) that the profits of the assessee firm should be computed @ 8% of the suppressed sales and the Ld. Assessing Officer erred in bringing the entire amount to tax in the hands of the assessee. The assessee submitted before Ld. CIT(A) that it is a settled law that tax is required to be paid on the net receipts after deducting expenses therefrom and only the element of income involved in on-money receipts can be subject to tax.

6. The Ld. CIT(A) partly accepted the argument of the assessee and on analysis of various judicial precedents on the subject, estimated the net profit @ 15% on undisclosed receipt of A.Y. 2014-15.

7. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) partly allowing the appeal of the assessee.

**Ground No.1:- CIT(A) erred in dismissing the ground of assessee that case of the assessee is transferred from jurisdictional Assessing Officer to**

**Central Circle without obtaining consent of the assessee under Section 127 of the Act.**

8. With respect to this ground of appeal, the Counsel for the assessee relied on the case of Dharamshibhai H. Patel vs. ITO in IT(SS)A No. 199/Ahd/2014, wherein the proceedings under Section 158BC of the Act were set-aside on the ground that while transferring the case of the assessee from one jurisdiction to another within the same city notice under Section 127 was not issued to the assessee. Accordingly, the Counsel for the assessee submitted that the facts of the case cited by the assessee are similar to the assessee's set of facts. In the assessee's case, the original jurisdiction of the assessee was with ITO, Ward-2(3), Ahmedabad and pursuant to search, the case was centralized with Central Circle-1(2), Ahmedabad. The assessee's contention before us is that the order passed by the Assessing Officer is bad in law on the ground that the assessee did not receive any notice under Section 127 of the Act for transferring its case to Central Circle at Ahmedabad and the assessee was never provided any opportunity, before transferring the case. The assessee has also relied upon order passed by ITAT Ahmedabad in the abovementioned case, with respect to this contention and submitted that the facts of the case relied upon by the assessee are similar to assessee's set of facts, wherein the case of the assessee is that the case law cited by the Counsel for the assessee involved transfer of jurisdiction of the assessee within the State of Ahmedabad itself.

9. On going through the facts of the assessee's case, we are unable to accept the contention of the Counsel for the assessee for the simple reason that Section 127(3) of the Act specifically provides that no opportunity is required

to be given to the assessee in a situation where the case of the assessee is transferred from one Assessing Officer to another Assessing Officer **within the same city**. It would be useful to reproduce the relevant extracts of the Statutory Provisions, for ready reference:

*“127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

*(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*

*(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*

*(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.*

**(3) Nothing in sub-Section (1) or sub-Section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.”**

10. Therefore, on perusal of the plain language of Section 127(3), in our view, the case of the assessee is squarely covered by these provisions and there is no statutory requirement of giving any opportunity of hearing to the assessee in terms of Section 127(3) of the Act, when the case of the assessee is transferred from ITO, Ward-2(3), Ahmedabad to Central Circle-1(2), Ahmedabad i.e. within the same city itself.

11. Further, we are also not able to place reliance on the judicial precedent cited by the Counsel for the assessee for two reasons. Firstly, the ITAT in the decision cited by the assessee did not have any opportunity of analyzing the language of Section 127(3) of the Act to the assessee's set of facts. Secondly, in our considered view in view of the specific language of Section 127(3) of the Act, in the event of assessee's case being transferred from one officer to another Assessing Officer, within the same city, there is no requirement of giving any opportunity of hearing to the assessee. Accordingly, this ground of the assessee's appeal is dismissed.

**Ground No.2:- CIT(A) erred in holding that the assessment proceedings are valid, ignoring the fact that in case of search on the basis of material found from premises of a third person, assessment proceedings were required to be completed under Section 153C of the Act in place of Section 147 of the Act.**

12. The assessee's contention vide this ground of appeal is that the present assessment proceedings were initiated pursuant to search conducted at the premises of a third party viz. Sankalp Group. Therefore, in this case, the correct course of action should have been to initiate proceedings under Section

153C of the Act, which is a specific Section pertaining to assessment of income in cases of “search” at third party premises and the Assessing Office could not have assessed the income under Section 147 of the Act. The Counsel for the assessee relied on several judicial precedents in support of the contention that in such cases assessment should have been completed under Section 153C of the Act and not under Section 148 of the Act and hence the assessment proceedings are liable to be quashed.

13. Before deciding on this issue certain facts have to be brought on record. Firstly, on perusal of the assessment order, the Assessing Officer has specifically observed that while the survey was done at the premises of the assessee firm, a search action was taken at the corporate officer / main office of one of the partners of the assessee firm, at Sankalp House. Therefore, the case of the Revenue is that effectively, the search was not done at a premises of a “third party” but at the corporate office / main office of one of the key partners of the assessee firm itself and on the basis of search at the premises of the key partner of the assessee firm, the incriminating documents were unearthed. Therefore, the search was not at the premises of a third party as alleged but in the assessment order, Ld. Assessing Officer has specifically noted that search was at the main office / corporate office as key partner of assessee firm itself. Secondly, with respect to this ground of appeal, the counsel for the assessee has raised a legal contention before us that in case certain incriminating material found from the premises of third party then the Department has no option but to proceed only under Section 153C of the Act, after recording the satisfaction and thereafter proceed in terms of Section 153A of the Act in respect of the assessee. The argument of the counsel for the assessee is that once there is a specific Section/provision dealing with cases relating to

incriminating material found during the course of search conducted at third-party premises, then it is not open to the Department to proceed against the assessee under Section 148 of the Act. This is further embellished by the fact that Section 153C starts with *non obstante clause*, which effectively ousts the invocation of provisions of Section 148 of the Act.

14. Before analyzing this issue, it would be useful to reproduce the relevant extracts of Section 153C of the Act, for ready reference:

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

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

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

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

15. We shall first deal with the contention raised by the Ld. D.R. which is to the effect that the search was conducted at the corporate office / main office on one of the partners holding 25% interest of the partnership firm and not at third party premises. However, we are unable to agree with the above argument of the Department for the simple reason that firstly a partnership firm is a separate assessable “person” under the Income Tax Act and hence a search at the premises of a partner would not, in our considered, the tantamount to search on

the partnership firm itself. In the case of **Hotel Center Point vs. ITO Guwahati Bench (Special Bench) 160 taxmann.com 604 (Guwahati – Tribunal)**, the ITAT held that a partnership firm being a separate assessable “person” under the Income Tax Act, would not be entitled to same exemption under Section 10(26) of the Act as any or all of individual partners would be in their individual capacity. The Larger Bench of the Tribunal made the following observations in this regard:

*“Under section 2(23) of the Income-tax Act, 1961, the firm and partnership have the meaning as assigned to them in Indian Partnership Act, 1932, but also includes in them limited Liability partnership as defined under Limited Liability Partnership Act, 2008. Section (2(d) of Limited liability Partnership Act, 2008 defines 'body corporate' as a company as defined under Companies Act, and includes a LLP. Section 3 of Limited Liability Partnership Act, 2008 specifically states that an LLP under the said Act of 2008 will be a body corporate and a legal entity separate from its partners. Though, section 4 of the Limited Liability Partnership Act, 2008 specifically bars the applicability of the Indian Partnership Act, 1932 to a limited liability Partnership, however, the special provisions of the Income-tax Act do not differentiate between a Partnership Firm as defined under the Indian Partnership Act, 1932 and Limited Liability Partnership firm ( LLP) as defined under Limited Liability Partnership Act, 2008 (6 of 2009). The inclusion of the Limited Liability partnership into the definition of firm makes it clear that a firm is separate assessable legal entity and it does not distinguish between a body corporate or not.[Para 17]*

*Under the Income-tax Act, a partnership firm is a separate and distinct 'person' assessable to Income-tax. There are separate provisions relating to the rate of Income-tax, deduction and allowances etc. in relation to a firm as compared to an individual. The benefits in the shape of deductions or exemptions available to an individual are not transferable or inter changeable to the firm nor the vice versa. The firm in general law may not be treated as a separate juristic person, however, under the Income-tax Act, it is assessable as a separate and distinct juristic person. The Income-tax Act is a special legislation, therefore, the interpretation given in general law cannot be imported when the special law defines the 'firm' as a separate person assessable to Income-tax.[Para 18]*

*When the provisions of the Partnership Act, 1932 are read together with the relevant provisions of the Income-tax Act and The Code of Civil procedure, it leaves no doubt that for the purpose of Income-tax Act, a partnership firm is a separate assessable legal entity which can sue or be sued in its own name, can hold properties, and is subjected to certain restrictions for want of non-registration. Merely because the liability of the partners is unlimited or to say that the rights against the firm can be*

*enforced against the individual partners also, that, is not enough to hold that partnership is not a distinct entity from its individual members under the Income-tax Act, especially when in the definition of person under the income-tax Act, corporate and non-corporate, juridical and non-juridical persons, as mentioned therein, have been included as separate assessable entities. Moreover, as discussed, there are many rights and obligations and restrictions of the partners to and against the firm which have been prescribed, which distinguishes a firm from its partners as separate entity. Therefore, the contention that section 2(23) gives meaning to firm, partner and partnership as defined in the Indian Partnership Act, 1932, does not, in any way, effect, take-away or exclude the 'firm' from the definition of 'person' as defined under section 2(31). Under the relevant provisions of the Indian Partnership Act, 1932, the 'partnership firm' has been defined as a relationship between the persons who have agreed to share the profits of the business carried on by all or any of them acting for all and the persons who have entered into partnership with one another is called individually partners and collectively a firm. The contention of the assessee is that the partnership is a relation between 'persons' and that partnership is not a person in itself. The aforesaid contention of the assessee in the light of the specific definition given of the word 'person' under section 2(31) and in view of the discussion made above is misconceived and not tenable.[Para 19]"*

16. Therefore, in our considered view, the argument of the Ld. D.R. that the search at the office of the partner would tantamount to a search at the partnership firm itself cannot be sustained. Secondly, it is observed that the search was conducted at the premises of the Sankalp Group, which is a separate entity in which the concerned partner Shri Robin Goenka was also working in the capacity as a Director of Sankalp Organisers Pvt. Ltd. Therefore, the search was clearly at third party premises i.e. on Sankalp Group and not at the premises of the assessee firm.

17. Secondly, regarding the argument of the Counsel for the assessee that when there is a specific section / provision dealing with cases relating to material found during the course of search conducted at third party premises i.e. Section 153C r.w.s. 153A, then it is not open to the Department to proceed against the assessee under Section 148 of the Act. We observe that the law on this proposition is unanimous wherein all the Courts / Tribunals have taken a

unilateral view that in case of search conducted at third party premises, the correct course of action for the Assessing Officer would be to proceed under Section 153C of the Act, being the specific section / provisions introduced to deal with search conducted at third party premises and in such circumstances, the Department would be precluded from proceeding under Section 148 of the Act. In the instant case, the additions have been made only on the basis of documents / incriminating material found at Sankalp Group and no further addition has been made in the hands of the assessee. Therefore, since the entire additions have been made only on the basis of documents unearthed during the course of search at third party premises, the correct course for the Department should have been to proceed under Section 153C of the Act, by following the due process laid down under such section and not under Section 148 of the Act.

18. In the case of **Sri Dinakara Suvarna 143 [taxmann.com](#) 362 (Karnataka)**, during search conducted at premises of 'A', a diary was seized which contained details of payment made by 'A' to assessee. Later on, survey was conducted in assessee's premises and he agreed to offer additional receipts as income but did not file his revised return. Thereafter, Assessing Officer initiated proceedings under section 147. The High Court held that since no proceedings were initiated under section 153C against assessee, there was patent non-application of mind and the re-assessment proceedings were directed to be set aside. The SLP filed by the Department was dismissed by Hon'ble Supreme Court in **DCIT v. Dinakara Suvarna 151 [taxmann.com](#) 489 (SC)**. In the case of **G. Koteswara Rao 64 [taxmann.com](#) 159 (Visakhapatnam - Trib.)**, the ITAT held that in case of assessment made on assessee consequent to search in another case, Assessing Officer is bound to

issue notice under section 153C and thereafter proceed to assess income under section 153A and if Assessing Officer had proceeded with reassessment under section 147/148 and passed assessment order under section 143(3), same would be illegal, arbitrary and without any jurisdiction. In the case of **Smt. Samanthapudi Lavanya 127 [taxmann.com](http://taxmann.com) 188 (Visakhapatnam - Trib.)**, the ITAT held that where no fresh information was collected by Assessing Officer or no information had come to notice of Assessing Officer in normal course other than information collected during course of search from another person, all search assessments were required to be made in case of assessee under sections 153A or 153C, but not under section 147. In the case of **Rajat Saurabh Chatterji vs. ACIT (ITAT Delhi) in ITA 2430/Del/2015 dated 20.05.2016**, the Tribunal observed that where the AO detects incriminating material in search, he has to be processed only u/s 153C and not u/s 147. A notice u/s.148 to assess such undisclosed income is void ab initio. In the case of **Shri Kalyan Buildmart Pvt. Ltd., Jaipur. ITA No. 152 & 153/JP/2018**, ITAT held that the reopening under section 147/148 of the Act is not valid when the proper course of action was only to initiate the proceedings under section 153C/153A of the Act in case addition is sought to be made on the basis of material found during course of search at premises of a third party. In the case of **Arun Kumar Kapoor 16 [taxmann.com](http://taxmann.com) 373 (Amritsar)**, a search was conducted under section 132 in case of 'T' Ltd., and during course of which certain incriminating documents were allegedly seized. The Deputy Commissioner intimated Assessing Officer of assessee about seizure of certain documents pertaining to assessee during search and enclosed copy of those documents requesting him to take appropriate action under section 153C/issued notice u/s 148 of the Act. of the Act. Thereupon, Assessing Officer having

initiated reassessment proceedings under section 148, passed an assessment order. The assessee took an additional ground of appeal to effect that reassessment proceedings initiated by Assessing Officer under section 148 were illegal and void ab initio. The Commissioner (Appeals) held that Assessing Officer should have issued notice under section 153C and should have framed assessment under section 153C, read with section 153A. Ld. CIT(Appeals) further held that since Assessing Officer had not followed procedure laid down under section 153C, notice issued under section 148 and reassessment proceedings became illegal and void ab initio. In appeal ITAT held that on facts, Commissioner (Appeals) was justified in setting aside reassessment proceedings. In the case of **Radheshyam B. Agrawal 61 [taxmann.com](http://taxmann.com) 50 (Pune - Trib.)**, the ITAT held that once an assessment has been framed under section 158BA in relation to undisclosed income for block period as a result of search, Assessing Officer cannot issue notice under section 148 for reopening of such assessment; reopening of assessee's assessment was bad in law. Accordingly, looking into the instant facts, where the Ld. Assessing Officer proceeded to make additions in the hands on account of undisclosed investments on the basis of documents found during the course of search at third party premises, in our view, the correct course should have been to initiate proceedings under section 153C after handing over the relevant material to the Ld. Assessing Officer of the assessee rather than directly initiating proceedings u/s 147 of the Act. In the case of **Jagjeet Singh 164 [taxmann.com](http://taxmann.com) 324 (Amritsar - Trib.)**, the ITAT held that where assessee's case was framed based on ledger account seized during search of another company which showed entries of unsecured loans, course of action was required to be taken under section 153C and not under section 148, and

thus, subsequent revisionary proceedings invoked on ground that Assessing Officer failed to make necessary enquiries in reassessment proceedings with respect to ledger account seized were based on invalid order and were without jurisdiction. Reference is also drawn to the judgment/decision of Hon'ble Supreme Court in the case of ITO vs. Vikram Sujitkumar Bhatia, Civil Appeal No. 911 of 2022 (SLP) (C) No. 29096 of 2019 and oths. order dated 06.04.2023 and PCIT vs. Abhishar Buildwell (P.) Ltd., reported in [2023] 149 taxmann.com 399 (SC).

19. In view of the above discussion and in view of the judicial precedents reproduced above, the ground of the assessee challenging the validity of re-assessment proceedings under Section 147 is allowed.

20. Since we have upheld the assessee's challenged to jurisdiction of the Assessing Officer in proceedings under Section 147 of the Act, the other grounds of the assessee's appeal have not been adjudicated by us.

21. In the result, Ground No. 2 of the assessee's appeal is allowed.

22. In the result, the appeal of the assessee in ITA No. 248/Ahd/2023 for A.Y. 2014-15 is partly allowed.

**Assessment Year 2016-17 (Assessee's appeal in ITA No. 249/Ahd/2023)**

23. The assessee has taken the following grounds of appeal:-

*"1. Learned CIT(A) has erred in dismissing the Ground of Appeal of assessee that case of assessee is transferred from Jurisdictional A.O. to Central Circle without obtaining the consent of the assessee U/s. 127 of the Act. Therefore, the order of A.O. is without Jurisdiction.*

2. *Learned CIT(A) has erred in confirming the proceedings of A.O. in re-opening the assessment U/s. 147. Though the assessment is based on incriminating material found during Search at Robin Goenka. Therefore, the assessment proceedings were required to be completed U/s. 153C in place of 147 r.w.s. 143(3), the assessment as well proceedings are illegal.*

3. *Learned CIT(A) has erred in confirming that no satisfaction was required to be recorded by A.O. of Searched Party, since the present assessment is re-open assessment. In as much as, the assessment is based on incriminating material found during Search whereby A.O. was required to record satisfaction and issue Notice U/s. 153C.*

4. *Learned CIT(A) has erred in confirming income at 15% in respect of On Money received of Rs. 2,55,55,900 which comes to Rs. 38,33,385 (Rs. 2,55,55,900 \* 15/100) against claim of the assessee of 8% of On Money as provided U/s. 44AD of the Act.*

5. *Learned CIT(A) has erred in rejecting Ground of Appeal of Charging Interest U/s. 234B and 234D whereas he has allowed Grounds of Appeal and in respect of that this Ground of Appeal is required to be adjudicated.”*

24. We observe that the issues for consideration and the grounds of appeal are similar to assessee's appeal for A.Y. 2014-15. In light of our observations for A.Y. 2014-15 the assessee's appeal is partly allowed for A.Y. 2016-17 as well in the same manner wherein legal challenge to invocation of proceedings under Section 147 of the Act were held by us to be bad in law.

25. In the result, the appeal of the assessee is partly allowed in ITA No. 249/Ahd/2023 for A.Y. 2016-17.

**Assessment Year 2016-17 (Department's Appeal) (ITA No. 325/Ahd/2023)**

26. The Department has taken the following grounds of appeal:

“1. *In the facts and on the circumstances of the case, the Ld. CIT(A) has erred in estimating the net profit @ 15% of total on money receipts and restricting the addition of on-money receipts to Rs.38,33,385/- and thereby deleting the addition of Rs.2,35,76,035/- without appreciating the fact that no expenses are allowable on the on-money receipts received over and above the document price, and the related expenses were already covered in the document price.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*

3. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.”*

27. In light of our observations in the preceding part of the order, the appeal of the Department is dismissed.

**Assessment Year 2019-20 (Assessee’s Appeal)(ITA No. 250/Ahd/2023)**

28. The assessee has taken the following grounds of appeal:

“1. *Learned CIT(A) has erred in dismissing the Ground of Appeal of assessee that case of assessee is transferred from Jurisdictional A.O. p Central Circle without obtaining the consent of the assessee U/s. 127 of the Act. Therefore, the order of A.O. is without Jurisdiction.*

2. *Learned CIT(A) has erred in confirming that no satisfaction was required to be recorded by A.O. of Searched Party, since the present assessment is re-open assessment. In as much as, the assessment is based on incriminating material found during Search whereby A.O. was required to record satisfaction and issue Notice U/s. 153C.*

3. *Learned CIT(A) has erred in confirming and directing A.O. to tax income at 15% in respect of On Money received of Rs. 19,28,300 for A.Y. 2020-21 (Sale Deed Registered in A.Y. 2020-21) which comes to Rs. 2,89,245 (Rs. 19,28,300 15/100) against claim of the assessee of 8% of On Money as provided U/s. 44AD of the Act.*

4. *Learned CIT(A) has erred in rejecting Ground of Appeal of Charging Interest U/s. 234A and 234B whereas he has allowed Grounds of Appeal and in respect of that this Ground of Appeal is required to be adjudicated.”*

29. We observe that the issues for consideration and the grounds of appeal are similar to assessee’s appeal for A.Y. 2014-15 in respect of Ground No. 1. In light of our observations for A.Y. 2014-15 the assessee’s appeal is dismissed for Ground No. 1.

30. So far as Ground No. 1 is concerned we have already adjudicated and dismiss the Ground No. 1 raised by the assessee in the appeal for A.Y. 2014-15 vide this common order. Thus, the Ground No. 1 stand dismissed.

31. So far as Ground No. 2 & 3 is concerned we have observed that this year under consideration is a year in which search and survey operation was carried out by Department this is to be adjudicated in the light of the above facts by Ld. CIT(A), and these are restored back to the file of CIT(A) for fresh adjudication.

32. Ground No. 4 is consequential in nature and hence not adjudicated separately.

33. In the result, the appeal of the assessee is partly allowed for statistical purpose in ITA No. 250/Ahd/2023 for A.Y. 2019-20.

**Assessment Year 2019-20 (Department’s Appeal) (ITA No. 326/Ahd/2023)**

34. The assessee has taken the following ground of appeal:

*“1. In the facts and on the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,51,68,785/- in AY 2019-20 and confirmed the income of Rs.2,89,245/-in A.Y. 2020-21.*

*2. In the facts and on the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made in the AY 2019-20 holding that the 04 plots with ho. 15,16,18,29 has not been sold till now, without appreciating the fact that the assessee failed to provide the details of the cancellation of the booking of the above mentioned plots, and the acceptance of on-money has been duly recorded in the seized documents.*

*3. In the facts and on the circumstances of the case, in respect of plot No.23, Ld. CIT(A) erred in estimating the net profit @ 15% of total on money receipts and restricting the addition of on-money receipts to Rs.2,89,245/- out of total addition of Rs.25,16,800/- in A.Y. 2020-21, without appreciating the fact that no expenses are*

allowable on the on-money receipts over and above the document price, and the related expenses were already covered in the document price.

4. In the facts and on the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.”

**Ground No. 1-4: CIT(A) erred in deleting addition with respect to four plots which have not been sold by the assessee.**

35. The brief facts in relation to this ground of appeal are that during the course of appellate proceedings CIT(A) observed that sale of four plots of land has been cancelled and the booking amount received by the assessee by cheque has also been returned / refunded in full by account payee cheques. The Ld. CIT(A) also took note of the dates of refund of cheques to those persons who had booked the aforesaid plots of land. In light of these facts, the Ld. CIT(A) held that since the flats had not been sold by the assessee, then the on-money receipts with respect to sale of such flats (the booking of which had been cancelled) was also not liable to be added in the hands of the assessee. While passing the order the Ld. CIT(A) made the following observations:

“(i) Out of the total alleged 5 plots of land, booking of 4 plots of land no. 15,16,18 & 29 in Sankalp Industrial Estate Scheme developed by the appellant firm. The appellant has further stated the parties of these 4 plots had cancelled their booking and booking amount received from them by cheque had been refunded in full by account payee cheques. The details of which as under:-

Plot No.	Plot Holder	Booking amount received by cheques	Booking amount refunded by cheques	Date of refund
18	Muljibhai Solankee	1,50,000	1,50,000	25/01/2018
16	Yogendrabhai	3,00,000	3,00,000	27/02/2021

15	Ghanshyambhai	1,00,000	1,00,000	27/02/2021
29	Iqbal Khan	3,93,954	3,93,954	31/08/2019

The appellant has furnished the copy of ledger account and copy of bank statement in which the relevant transaction was reflected.

....

6.6 Regarding first arguments of the appellant, it is observed that the booking of plot no. 15, 16, 18 & 29 in Sankalp Industrial Estate scheme of appellant firm has been cancelled as per the details (supra). The appellant has also furnished the copy of ledger account and bank statement related to the said transactions, **Further, it is also observed that the said four plots has not been sold till now. Therefore, the AO is directed to delete the addition made on account of on-money receipt on sale of said 4 plot of land.**

36. The Department is in appeal before us against the aforesaid order passed by the Ld. CIT(A).

37. On going through the contents of the order passed by Ld. CIT(A), we observe that the Ld. CIT(A) has considering the facts of the instant case and has held that when the booking of such flats had been cancelled, the booking amount had also been refunded by the assessee by way of account payee cheques and no sale of such plots of land had been affected by the assessee, then there is no question of taxing any unaccounted on-money receipts in the hands of the assessee. However, Ld. D.R. submitted that the assessee has filed certain additional evidences before Ld. CIT(A) in respect of which relief was afforded to the assessee without calling for Remand Report from the concerned Assessing Officer. Further, assessee has now filed additional evidences before ITAT which also require verification, by the Authorities below. Accordingly, looking into the instant facts, in the interest of justice, this issue is being restored to the file of Ld. CIT(A) for de-novo consideration.

38. In the result, this ground of appeal 1 to 4 of the Department is allowed for statistical purposes.

39. Ground No. 5 is general in nature and does not require separate adjudication.

40. In the result, the appeal filed by the Department in ITA No. 326/Ahd/2023 is allowed for statistical purposes.

41. In the combined result, for A.Y. 2014-15 & 2016-17 of the assessee's appeal is partly allowed for A.Y. 2019-20 the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Department is allowed for statistical purposes.

**These orders are pronounced on 23.08.2024 at Ahmedabad in accordance with Rule 34(4) of Income Tax Appellate Tribunal Rules, 1963.**

**Sd/-**

**(RAMIT KOCHAR)**

**ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/08/2024

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**Sd/-**

**(SIDDHARTHA NAUTIYAL)**

**JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad