

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

**BEFORE**

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER  
AND  
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

<b>Sl. No</b>	<b>ITA No</b>	<b>A.Y.</b>	<b>Appellant / Assessee</b>	<b>Respondent</b>
1-3	56/Hyd/2024 57/Hyd/2024 and 64/Hyd/2024	2019-20 2020-21 & 2019-20	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Hyderabad.	Pioneer Builders, Hyderabad.  PAN : AACFP6794Q.
4-5	49/Hyd/2024 51/Hyd/2024	2019-20 2020-21	D S R Infrastructure Private Limited, Hyderabad.  PAN : AACCD6139Q	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Hyderabad.
6-8	50/Hyd/2024 53/Hyd/2024 54/Hyd/2024	2019-20 2019-20 2020-21	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Hyderabad.	D S R Infrastructure Private Limited, Hyderabad.  PAN : AACCD6139Q

Appellant by : Shri A.V. Raghuram, Advocate for  
assessee at Sl.Nos.1 to 3

Shri Ravi Bharadwai, C.A. for  
assessee at Sl.Nos.4 to 8

Respondent by : Shri Shakeer Ahamed, Sr.AR

Date of Hearing : 03.07.2024

Date of Pronouncement : 29.08.2024

## **ORDER**

### **PER BENCH :**

These captioned appeals filed by the Revenue as well as assessee including the Cross-Objections filed by the assessee are directed against common order of the Commissioner of Income Tax (Appeals) – 11, Hyderabad all dated 22.11.2023 each for the assessment years 2019-20 and 2020-21.

Since facts are identical and issues are common, for the sake of convenience, these appeals were being heard together and are being disposed of, by this consolidated order.

### **ITA Nos.56 and 57/Hyd/2024**

2. The Revenue has filed similar grounds in both ITA Nos.56 and 57/Hyd/2024, except for the figures involved, and therefore, for the sake of brevity, the grounds of appeal in ITA No.56/Hyd/2024 for A.Y. 2019-20 are reproduced as under :

*“1. The Ld. CIT(A) erred in allowing relief of Rs. 3,02,94,816/- to the assessee though the addition of unaccounted cash receipts is made by the assessing officer @50% of the amount (profit sharing ration between the landlord (the assessee) and the developer based on the terms and conditions of development agreement.*

*2. The Ld. CIT(A) erred in allowing relief of Rs. 3,02,94,816/- to the assessee though the addition is made as per impounded material evidence receipt of on-money which is not accounted for by the assessee in the books of account.”*

3. The brief facts of the case are that assessee is a firm engaged in the business of development, construction and sale of flats at various localities of Hyderabad and Bangalore. A search & seizure operation u/s 132 of the Act was conducted on 13.2.2020 in the case of M/s Lotus Farms. M/s. DSR Infrastructure Pvt Ltd was covered under survey u/s 133A being connected case to M/s Lotus Farms on the same day. During the course of survey proceedings, certain loose sheets/documents were impounded vide Annexure-DSR/01 containing the details of price structure for each flat, details of total cost of the flat, agreement price, receipts of amounts, etc. It is further seen from the analysis of the impounded material, the cash receipts were detected over and above the agreement value which are unaccounted. Further, as seen from the joint development agreement, M/s. DSR Infrastructure Pvt Ltd (Developer/DSR) and M/s Pioneer Builders (Land Owner/Pioneer) have an equal share in the revenues. Accordingly, the assessee was selected for scrutiny as per the compulsory scrutiny guidelines and statutory notice u/s.143(2) was issued on 30.09.2020 to the assessee through ITBA by the then AO.

3.1. Subsequently, the case was transferred to the DCIT Central Circle-1(4), Hyderabad vide Pr. CIT-1, Hyderabad's order u/s 127 of the Act in F.No.Pr.CIT-1,Hyd/Juris-Local/2020-21 dated 05.03.2021 as per jurisdiction. Thereafter, a notice u/s 142(1) was issued to the assessee on 05.04.2021 through ITBA calling for explanation with respect to the unaccounted cash receipts of Rs.3,02,94,816/-, for which assessee gave reply. Thereafter, Assessing Officer concluded

that the contentions of the assessee are not acceptable in view of the absence of any verifiable documentary evidences in support of the assessee's claim and hence, treated the unaccounted cash receipts of Rs.3,02,94,816/- as additional income in the hands of assessee for A.Y 2019-20. Finally, the Assessing Officer completed the assessment under Section 143(3) of the Act dt.17.04.2021 determining the total income at Rs.44,21,07,746/-.

3.2. The Assessing Officer had asked the assessee to furnish the explanation in respect of unaccounted cash receipts of Rs.3,02,94,816/- for the A.Y. 2019-20 and had further asked the similar explanation from the assessee with respect to the assessment year 2020-21 for an amount of Rs.11,94,95,017/-.

3.3 In response thereto, the assessee had submitted as under :

*"The Cash Receipts stated by your good self would have been the Cash Receipts in lieu of development/additional works undertaken by the developer at the request of the customers as per the customer specification. This aspect has nothing to do with our firm, i.e., Pioneer Builders. However, the cash receipts would have corresponding expenses also. Thereby treating entire cash receipts as income is not appropriate."*

3.4. The Assessing Officer had relied upon point no.22, 14 of the JDA along with terms of Schedule C and B, point No.16 and held as under :

*"As seen from the above terms of joint development agreement between M/s. DSR Infrastructure Pvt Ltd and M/s Pioneer Builders, it is clear that, the developed built-up area belonging to both the Land Owner and Developer are being sold jointly. The revenues received out*

*of sale of flats is deposited into the bank accounts exclusively opened for this purpose and the Escrow bank account is operated jointly and not individually by the land owner and developer. Therefore, the unaccounted cash receipts are apportioned in the 50:50 ratio in the hands of Land owner and Developer”*

3.5 After recording the above conclusion, the Assessing Officer had made the addition of Rs.3,02,94,816/- and Rs.11,94,95,017/- in the hands of the assessee Pioneer.

4. Aggrieved with such assessment orders, assessee preferred appeals before the Id.CIT(A). Before the Id.CIT(A), the contentions of the assessee were recorded from pages 12 to 28, the summary of the submissions of the assessee are recorded as under :

*“A Survey U/s 133A was carried out on the developer, M/ s DSR Infrastructure Pvt Ltd, wherein certain unaccounted cash receipts were detected in the form of loose sheets / documents. Based on the survey proceedings of DSR Infra, the assessee firm was selected for scrutiny for the Assessment Year 2019-20 and a Notice U/s 143(2) was issued on 30.09.2020 and subsequently, a Notice U/s 142(1) was issued on 05.04.2021.*

*· In response to the Notice U/s 142(1), the assessee firm submitted that the Cash Receipts stated in the Notice U/s 142(1) would have been the Cash Receipts in lieu of development / additional works undertaken by the developer at the request of the customers as per the customers specification and the. same has nothing to do with the assessee firm and requested to drop the proposed addition.*

*· It is submitted before your good office that the assessment was completed based on the loose sheets / documents found at the premises of Developer.*

*Cash receipts in the form of loose sheets found during the survey proceedings of a third party cannot be considered as an evidence against the assessee firm.*

- Further, 'during the assessment proceedings, the loose sheets were not provided to the assessee firm. The statement recorded from the back of the assessee firm cannot be used as an evidence against the assessee firm. Furthermore, the assessee firm was not provided with an opportunity to cross examine the developer. The assessment was completed U/ s 143(3) without the loose sheets / documents being tested by way of cross examination.

*The Hon'ble Supreme Court in the case of CIT Vs Odeon Builders Pvt. Ltd (2019) 110 Taxmann.com 64 (SC) has held that "no addition can be made on the basis of third-party information gathered by the Investigation Wing of the Department which has not been submitted to further verification by the Assessing Officer and he had not provided copy of such statement to the assessee and thus, denied the opportunity of cross examination"*

*Further, the Hon'ble Delhi High Court in the case of CIT Vs SMC Share Brokers Ltd, 288 ITR 345 (Del) enunciated that "the statement of a third party had evidentiary value but no weight should be given to it in proceedings against the assessee without it being tested under cross examinations".*

a. *For all intents and purposes, the assessment was completed ex-parte, since no material containing the notings, which is the basis of addition was made available to the appellant for rebutting the allegation raised by the AO nor any opportunity was afforded to cross-examine DSR.*

b. *A perusal of the assessment order would show that the alleged notings do not find place in the assessment order also. The same was also not supplied to appellant during assessment proceedings.*

c. *As it appears, the additions were made on the basis of some communication at post search investigation stage to the AO. It is submitted that mere information without the material has no evidentiary value to be utilized in assessment. Such information is neither a primary evidence nor a secondary evidence for being utilized in assessment for making addition.*

d. *Assuming that some information by way of loose slip notings were found, no presumption can be drawn against the appellant. Under Section 292C of the IncomeTax Act, 1961 presumption about the ownership, truthfulness about the contents of the loose slips can be raised against the party from whose premises*

such documents were found and seized / impounded. Hence if at all, any addition is required to be made on the basis of statutory presumption, the same cannot be made against the appellant as has been done.

e. It is surprising that the appellant was never questioned in course of post search investigation when the amount of alleged on -money was staggering.

f. It is also equally important to note that in spite of denial by the appellant in course of assessment proceeding that no on money by way of additional consideration was received by it, no enquiry was done before adding 50% of the alleged amount in the hands of the appellant. The general rule of burden of proof lies on the who asserts the affirmative of the issue. In such a situation, has the AO carried out any enquiry before making addition on the face of denial by the appellant P The addition has been made in a mechanical manner on the basis of information received from other authorities on suspicion and surmises. A perusal of the assessment order demonstrates that the AO had no material in his possession to advance enquiry to find out the truth.

g. Loose papers may be unsigned, undated and may lack sufficient description. Such papers cannot be construed to have evidentiary value. In such a case, no inference can be drawn on suspicion and surmises to make the assessment. The Assessing Officer has to establish specific nexus between the narration in the loose slips and other books of account. He has to examine the parties to whom the entries relate. When this is not done, the loose paper is a dumb document and no addition can be made on the basis of such a document. This was so held in DCIT v. C. Krishna Yadav [2011] 12 taxmann.com 4 (Hyderabad-T). On these facts, the Tribunal deleted the additions holding that they were made based on suspicion. In the case of Cyan Kumar Agarwal v. ACIT [2013], 30 tclxmann.com 114 (Hyderabad-T), it was held that no addition can be made merely on the basis of notings on a dumb document. The Assessing Officer should give a finding about the nexus between the notings and the assessee's business.

Another important issue relates to utilization of information found in the premises of a third party i.e., DSR. In the assessment proceedings involving AO and the assessee, DSR is a third party. Some relevant aspects on this issue are:-

a. Statements of third parties with regard to the notings on loose sheets seized in the course of search of their premises relating to transaction of on-money without their adverse statement being tested

*in cross-examination by the affected party and in the absence of any supporting evidence cannot be made the basis for addition of undisclosed income in the hands of the assessee. This was so held in the case of M/s Prarthana Construction (P.) Ltd. v. Dy. CIT 120011118 Taxman 112 (Ahmedabad-T).*

4. *Third party evidence without cross examination cannot form the basis of assessment. In this case the AO has utilized information against the appellant on the basis of some loose slip notings without supplying the said documents to appellant. The assessment order also does not mention about the nature of notings in the loose slips found in the premises of DSR. In such cases the assessment order is void as laid down by the Apex Court in the cases of KishinchandChellaram v. CIT [1980] 125 ITR 713 (SC), Sona Electric Co. v. CIT 119841 152 ITR 507 (Delhi), Nathu Ram Prem Chand v. Commissioner /1963] 49 ITR 561 [All], VasranjiGhela& Co. v. CST 119771 40 STC 549 (Born) and E.M.O (Works) (P.) Ltd. v. ITO [1963] 49 ITR 650 (All), Andaman Timber Industries v. CCE [2015] 62 tcycmann.com 3 (SC).*

1. *The assessment order has been pasSed on mere surmise and suspicion. It is a well settled proposition that suspicion however strong cannot take the place of proof and hence the addition is not sustainable. In this regard Hon'ble CIT(A) kind attention is invited to the judgment of the Apex Court in the case of M/ s Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 77, CIT v. Daulatram Rawatmull [1964] 53 ITR 574, Umacharan Shaw & Bros. V. CIT [1959] 37 ITR 271 (SC).*

2. *Hon'ble CIT (A)'s kind attention is invited to apportionment of alleged on-money and found noted in the loose slip impounded in the premises of DSR. It is submitted that when the receipt of on money is doubt and appellant denied the same in the course of assessment proceeding the question of apportionment does not arise unless with the help of cogent material and strong proof it can be demonstrated that appellant is a beneficiary.*

5. The Id.CIT(A) after recording the facts in his order at page 30 of his order, it was mentioned as under :

*During survey proceedings, a sworn statement f Sri D. Sudhakar Reddy, Managing Director of M/s. DSR, was recorded and hen he was confronted with the material impounded vide DSR/01, he had stated ted that the amounts were not entirely reflected in the books of account. The unaccounted receipts received over and above the sale*

deed value of the flats were worked out, analysing the impounded documents during the survey proceedings, to the extent of Rs. 18,55,56,234/-. The survey team during the course of survey tabulated the same as under:

s. NO	Flat No.	Name of the customer	Sale Deed 50% Developer	Sate Deed 50% Land Owner	Additional Works accounted	Total	As per loose Sheets	Difference
1	13-601	Manish Bhagirath L &Shefaili	5690000	5690000	5971299	17351299	18222250	870951
2	C-1203	DurgaLaxmi	6750000	6750000	0	13500000	24250625	10750625
3	5-803	d:R. RAMKRISHNA &SHALINI	5250000	5250000	525706	11025706	17090625	6064919
4	B-605	D. DURGA PRASAD	6765898	6765898	342991	13874787	19400750	5525963
5	5-1103	SAVITHA DETEMENON	5618825	5618825	325890	11563540	16300000	4 736460
6	13-1403	Dr. A. RAJESH	5250000	5250000	2469125	12969125	21412380	8443255
7	F-603	APARNA KAUSHIK RAGURAM	7030800	7030800	1381950	15^3550	18147875	2704325
8	5-1501	MALIN KUMAR SHAH	6316200	6316200	1531200	14163600	21724250	7560650
9	B-1204	U RAVI KUMAR VARA	5987850	5987850	0	11975700	18104875	6129175
10	5-701	K. MANJULA 6 'SRINIVAS	10387600	10387600	0	20775200	20897000	121800
11	C-103	DR. V. S REDDY	9365100	9365100	1400000	20130200	24 748750	4618550
12	C-102	B RATNAAAAU	4855000	4855000	0	9710000	15522500	5812500
13	2-305	RATHNAMALA & SASHREDDY	6480000	6480000	0	12960000	20102000	7142000
14	P-905	T SRIDHAR REDDY	10180000	10180000	221158	20581158	24650000	4068842
15	5-1201	ROHIT & MAUTHI RAAAACHANDRAN	5880000	5880000	1499925	13259925	20357750	70 <b>97825</b>
16	P-1502	AVRP MUNI SEKHAR a SHYMALA	5720000	5720000	795438	12235438	18477875	624243 7
17	E-H02	VEDANT MALAPANI	8208000	8208000	0	16416000	19119525	2703525
18	5-105	K LAKSHM MAALIKARJUN & UMA	7378000	7378000	0	14756000	19540000	4 784000
19	5-702	T.S REDDY	6250000	6250000	511800	13011800	21157000	8145200
20	13-305	SESI KUMARAN	6380000	6380000	900000	13660000	20118500	6458500
21	5-1104	M. RAHUL REDDY	6764800	6764800	790000	14319600	21805000	7485400
22	F-302	G PADMAJA	5730000	5730000	941000	12401000	17690000	5289000
23	13-501	S DIVYA REDDY BHARGAVA THUDI	5740000	5740000	0	11480000	17720000	6240000
2-4	5-304	RAJESH GUPTA	6666500	6666500	1012 750	1434 5750	21102500	6756 750
25	C-302	A RAVINDER	5310000	5310000	0	10620000	17493 750	6873 750
26	5-1403	B MURALIDHAR KALYAN	8049175	8049175	1395810	17494160	17168750	325410
27	C-702	VISHNU CHOKANI MANJARI AGARWAL	5560000	5560000	456000	11576000	17226500	5650500
28	5-802	SANTOSH RATHI SHOBHA RATHI	6733368	6733368	0	13466736	20972750	7506014
29	C-1101	A NAGAVENI	5202000	5202000	836404	11240404	17125000	5884596
30	C-1001	KRAMESH	5320000	5320000	0	10640000	17092500	6452500
31	B-1504	AANCHAL NARISHLAL	5729999	5729999	4 78145	11938143	19494125	7555982
32	5-503	V SWARUPA RANI	6028750	6028 750	0	12057500	16512500	4455000
33	5-301	D REKHA REDDY	7548175	7548 175	0	15096350	2084 7000	5750650
		<b>TOTAL</b>	<b>216126040</b>	<b>216126040</b>	<b>23786591</b>	<b>456038671</b>	<b>641594905</b>	<b>185556234</b>

When the same was confronted with the MD of M/s. DSR, he sought more time to give his response.

Thereafter, a sworn statement u/s. 131 was recorded of Sri D. Sudhakar Reddy, MD of M/s. DSR on 12.10.2020 and he was again confronted with the impounded material An.nexure DSR/1 to which, he had stated that all the loose sheets in the annexure pertain to flats in the Project and that entire amounts mentioned therein were not accounted entirely in the books of account. He stated that the additional amounts pertain to contract works or interior works in the flats and were managed by marketing staff. The MD has stated he had not received any excess amounts from customer, which are not recorded in the books.

The version of the MD of M/s. DSR was not found acceptable on the basis of analysis of the impounded material. The total discrepancy worked out the total unaccounted cash receipts to the tune of Rs.22,79,85,038/- based on the impounded material vide DSR/1. The total unaccounted receipts year wise as worked out by the investigation wing was as under :

A.Y.	Unaccounted receipts
A.Y. 2019-20	Rs.3,98,96,489/-
A.Y. 2020-21	Rs.18,80,88,549/-

Further, during the course of Survey, an excel sheet was found in a Tally server PC, in which certain cash receipts were recorded totaling to Rs.7,15,94,632/-. The excel sheet is brought out as under:

NOC Data Cp.xlsx								
S. No	Flat No	Flat owner Name	Total cost	Agreement Value	Received Cheques amount	cash	Date of Sale Deed	FY
1	E-1203	A.V.Balaram	16840625	9975000	4987500	6700000	12.06.2019	2019-20
2	F-404	Sat! Tulasi	18450500	11480000	5722326	6970500	16.05.2019	2019-20
3	F-704	Nikhil/Hltesh khathuria	18007000	11480000	5730750	7502500	22.11.2018	2018-19
4	F-402	M.Bala Ganghadhar Reddy	18119750	11460000	5730000	6984000	22.04.2019	2019-20
5	a-604	KSarada	17904875	11460000	5730000	7295000	17.12.2018	2018-19
6	F-504	Buchi reddy & Vinya kumar reddy	17863500	11480000	5740000	6291000	15.04.2019	2019-20
7	C-903	Harnima Mullapudi	25096875	15900000	7950000	8351775	19.04.2019	2019-20

8	C-202	R.Bhaskar a Rao	16562750	10620000	5310000	5895645	30.03.2019	2018-19
9	C-902	Sridhar	16828250	9292500	4646250	7604212	04.04.2019	2019-20
10	FG-5	Rangoli garg	21463250	13167000	6583500	8000000	22.04.2019	2019-20
				<b>4987500</b>		<b>71594632</b>		

*It is important to note that these flats do not figure out in the list tabulated above during the survey statement. The above excel sheet was also not confronted to the MD during the course of survey.*

*The MD, in his sworn statement on 12.10.2020, could not satisfactorily explain the nature of said cash receipts and the same were treated as unaccounted cash receipts on sale of flats and the addition in this regard was determined in .the assessment year in which sale deed was registered. The unaccounted cash receipts of Rs.7,15,94,632/- are determined AY wise as under :*

A.Y.	Unaccounted receipts
A.Y. 2019-20	Rs.2,06,93,145
A.Y. 2020-21	Rs.5,09,01,487

*The total of unaccounted receipts were distributed equally between the appellant firm and the builder, M/s. DSR based on the sharing ratio of 50:50 as per the JDA entered between them. Accordingly, total unaccounted income was quantified by the investigation wing as under:*

Assessee	AY	Unaccounted income estimated (in Rs.)
M/s. DSR Infrastructure Ltd.	2019-20	3,02,94,816
	2020-21	11,94,95,017
M/s. Pioneer Builders	2019-20	3,02,94,816
	2020-21	11,94,95,017

5.1. The Id.CIT(A) after mentioning the above noted facts, had examined the JDA entered between the parties and from pages 40 to

45, the 1d.CIT(A) after exhaustively relying upon the terms of JDA, more particularly, the following paragraphs :

"2. The Land Owners hereby grant and entrust to the Developer the development the schedule "A" property by way of construction of multistoried residential apartments as per the approval of Greater Hyderabad Municipal Corporation and other Concerned authorities to be obtained by the Developer and the Developer hereby agree to develop the schedule "A" properly in the manner and on the terms and conditions hereinafter mentioned."

5. The Developer agrees to develop the schedule " " property at their own cost and expense and with the resources at their command as per the permissions/ sanctions and approvals , by construction of multistoried residential apartments, common amenities and other required structures that that Developer agreed upon under the existing building rules.

"6. Subject to the other provisions of this Agreement all the professional cost and expenses involved in the obtaining of the requisite permissions, sanctions, Approvals etc from GHMC and other Concerned authorities shall be borne by and paid by the Developer."

The sale of the property was through the developer, which is brought out as sub para(i) and (g) of Para no. 14 as under:

"07. That the marketing expenses for sale of the Schedule B ensured through the developer part, the land owners shall pay the Sum of 1% of the sale value irrespective of the actual cost of marketing incurred by the developer. That incase the landowner sells any portion of the schedule- B properties by themselves the developer shall not be entitled for the marketing expenses for sale of the same.

(g) It is agreed between the Land owner and Developer that they shall jointly negotiate and fix the selling price of any and every portion of the Schedule -B and C properties from time to time."

15. The Land Owners shall not interfere with the developmental activities or construction work being carried by the Developer on the said site or cause any disturbance or interruption in the work or in the development of the Schedule property by the Developer. However, the Land owner shall be at liberty to make inspection of the construction at all reasonable times. If the Land owner points out any defects/ deficiencies found by them during such inspection, the same shall be

*rectified within a reasonable period by the Developer. That the Land. Owner are free to appoint any one person on their behalf to supervise constructions activities for which Developer shall have no objection."*

*"16. The Developer are at liberty to invite public in general to purchase the proposed multistoried residential apartments falling into the share of the Developer and Landowners by way of advertisements and such other modes however, the selling price shall be fixed jointly by both the Land Owners and Developer and not individually."*

*"19. This agreement shall not be construed as creating a partnership between the land owners and the Developer nor as Association of persons or Body of individuals Joined together for any common venture."*

5.2 Based on above terms of JDA, it was concluded by the Id.CIT(A) as under :

*In view of the above facts and circumstances of the case, the receipt which were unaccounted found with the marketing team of M/s DSR cannot be attributed as the unaccounted income of the appellant in view of no other evidence found and recorded after examination of various persons of M/s DSR and only imputing the same on the basis of a JDA which stated about joint negotiation of prices only and completely ignoring the fact that the marketing team was acting on behalf of M/s DSR on which the appellant had no control.*

5.3. Furthermore, the Id.CIT(A) had summarized the finding as under :

*"a Was there any enquiry conducted in the case of the appellant firm?"*

*No.*

*b. Was any representative or an employee of the appellant firm was present during the Survey operation in the case of M/s. DSR?"*

*No.*

*c. Was any sworn statement of the partners of any responsible person of the appellant firm was recorded?"*

*No.*

*d. Was any impounded material indicated the payment of unaccounted receipts to the appellant firm?"*

No

*e. Was any other evidence was brought out by the Assessing Officer evidencing that the payments of unaccounted receipts were made by M/ s. DSR to the appellatant firm over and above the document value?*

No.

*f. Was opportunity of cross examination of M/s. DSR provided to the appellatant during investigation or assessment proceedings?*

No.”

5.4. Further, the Id.CIT(A) had given reference to the statements of Mr D. Sudhakar Reddy recorded by the Revenue wherein it was not mentioned Mr D. Sudhakar Reddy that the additional work was to be carried out as per the customer requirement and further in the statement, it was not mentioned the Pioneer was known about the carrying out of additional work in that regard. Based on the above, the Id.CIT(A) had deleted the addition made by the Assessing Officer vide order dt.22.11.2023 in the hands of assessee Pioneer.

6. Aggrieved with the orders of Id.CIT(A), Revenue is now in appeal before us on the grounds reproduced hereinabove.

7. At the outset, Id. DR submitted that the finding recorded by CIT(A) contradicts the record. For that purpose, she drew our attention to the assessment order passed by the Assessing Officer. It was submitted that after the commencement of scrutiny proceedings, statutory notices were issued u/s 143(2) of the Act on 25.06.2021 and thereafter, notice u/s 142(1) of the Act was issued and a show cause notice was also issued on 28.02.2022. In response to the show cause notice, the assessee has filed a reply reproduced hereinabove.

8. The ld.DR further has drawn our attention to the provisions of Sections 142(1), 143(2) and 143(3) of the Act. It was submitted by the ld.DR that the Assessing Officer had passed the assessment orders u/s 143(3) based on the evidence/reply filed by the assessee and after taking into account the relevant material that the Assessing Officer had gathered. In fact, it was submitted by the DR that being the year of the survey, the order was passed based on the material available with the Assessing Officer, hence the order passed by Assessing Officer was in accordance with law.

8.1 The ld.DR has further drawn our attention to the finding recorded by the ld.CIT(A) in the case of DSR in ITA No.54/Hyd/2024 at page 17 to the following effect :

**Further during the course of appeal proceedings the appellant's AR filed submission in response to the Enhancement Notice for A.Ys 2019-20 and 2020-21 dated 03 November 2023 are extracted below:**

*"In relation to the above captioned notice issued by your good office, we humbly submit as follows for your favourable consideration:*

*Enhancement Notice dated 03 November 2023:*

*In the notice issued by your good office it is stated as under:*

*"It is seen that during the course of survey u/ s. 133A on your premises evidence of certain unaccounted cash receipts in the form of loose sheets and documents were found. The total of the unaccounted cash receipts for A.Y. 2019-20 was Rs. 6,05,89,632/ - and for A. Y.2020-21 was Rs. 23,89,90,034/ - respectively. The cumulative total stood at Rs. 29,95,79,866/ -. The Managing Director has stated that the same were collected by the marketing team and denied the knowledge of such transaction. However, the AO relying on other evidences made addition of Rs. 3,02,94,816/ - for A.Y. 2019-20 and*

*Rs. 11,94,95,017/ - for A.Y. 2020-21 being 50% of the unaccounted cash receipts by attributing the balance 50% to M/ s Pioneer Builders who was to receive 50% of the sales on account of the JDA so entered wherein M/s Pioneer Builders was the land owner and the appellant i.e M/s DSR Infrastructure Pvt. Ltd being the developer.*

*Considering that the evidence was found at the premises of the appellant and the factum that the statements recorded of certain flat buyers very clearly established that the funds being the alleged on money was received by the appellant/ or its employees, clearly establishes that the cumulative quantum for both the years were received by the appellant and therefore, the same has to be considered as income in toto of the appellant and not to the extent of 50% as considered by the AO. In view of the same, it is proposed to enhance the income of the appellant by a sum of Rs. 3,02,94,816/ - for A. Y. 2019-20 and Rs. 11,94,95,017/ - for A. Y. 2020-21."*

9. The ld.DR had further drew our attention to page 28 of the order passed in the case of DSR wherein it was noted down by the ld.CIT(A) as under :

*However, it is to be noted that the incriminating documents were found in the premises of M/s DSR Infrastructure Private Limited (appellant) and it was noticed that there was no evidence found with regard to M/s Pioneer Builders being in receipt of such quantum at any point of time and it was a mere presumption by the Assessing Officer that the unaccounted cash was equally received by the Developer and land owner based on the JDA.*

***In the adjudication of the appeal against the assessment order in the case of M/s. Pioneer Builders, vide Order dated 22.11.2023 in Appeal No.No.10358/2018-198 10455/2019-20, the said issue of unaccounted cash receipts was discussed in detail and it was concluded that in no manner the receipts which were unaccounted and found in the premises of M/s DSR Infrastructure Private Limited can be attributed to M/s Pioneer Builders and the addition on the said account was deleted in the case of M/s. Pioneer Builders accordingly.***

***However, as a consequence of the said deletion of addition in the case of M/s. Pioneer Builders, the notice of enhancement was given in the case of the appellant for taxing the whole quantum so received in cash for A.Y. 2019-20 of Rs. 6,05,89,632/- and Rs. 23,89,90,034/- for AY 2020-21 in the***

**hands of the appellant cumulating to a total of Rs. 29,95,79,666/-.**

10. It was submitted by the ld.DR that the finding recorded by the ld.CIT(A) is contradictory as the ld.CIT(A) without passing the order in the case of Pioneer had issued notice for enhancement dt.03.11.2023 in the case of DSR. In fact ld.CIT(A) passed the order in the case of Pioner on 22.11.2023. It was the contention of the ld.DR that the ld.CIT(A) would have issued the notice for enhancement to DSR only after the deletion of the addition in the hands of Pioneer.

11. The ld.DR further submitted that once the assessee in reply to the Assessing Officer had acknowledged the relationship with DSR and not requested for any cross-examination of the Managing Director of DSR namely, D. Sudhakar Reddy and further has not denied clause 16 of the JDA, whereby it was agreed between the assessee and DSR that the selling price of flats shall be fixed jointly by the owner and the developer. It was further submitted that the assessee did not believe that the DSR had individually sold and decided the price of the flat to the exclusion of the assessee. The case of the assessee before the Assessing Officer was that the assessee was not in receipt of any cash for the sale of flats, and further, it was submitted that no evidence was found for receipt of the above amount by the assessee. It was submitted by the ld.DR that once the proof of receipt of amount was found during the course of survey from the premises of DSR and the said evidence was duly confronted to the assessee and notice u/s 142(1) and 143(2) of the Act were issued. Then, it is for the assessee to prove that the evidence did not pertain

to either the sale of the flats (ON MONEY) OR on account of additional work to be undertaken in the flats.

12. Per contra, the ld. AR had relied upon the orders of lower authorities. He submitted that no evidence was found showing the receipt of ON MONEY by the assessee or no evidence was found showing that the money was received by the assessee on account of additional work undertaken in the flats. It was further submitted that no opportunity of cross-examination was granted to the assessee. It was further submitted that as per the JDA, all the duties as discussed by the ld.CIT(A) are required to be discharged by the Developer namely, DSR and the documents of expenses / ON MONEY / Additional work was found from the marketing office of the DSR and therefore, the assessee cannot be fastened with any liability on account of any act by the DSR / its Marketing Agencies.

13. We have heard the rival submissions and perused the material on record. In the present case, the Assessing Officer had issued the notice u/s 143(2) and 142(1) to the assessee calling upon the explanation from the assessee as to why the unexplained amount found during the course of survey at the premises of DSR being not added in the hands of the assessee on the basis of the JDA Agreement which provides the revenue share between the assessee and the DSR in the ratio of 50 : 50. The relevant clause of the JDA was reproduced by the Assessing Officer in the assessment order which reads as under :

“4.1.....

*b. The point no.14 of JDA contains the terms of sale of schedule B and C properties which are as follows:-*

*(i) That land owner and developer have agreed to share schedule B and C portions respectively, which are undivided as of now.*

*(ii) That both the Schedule B and C Properties along with common amenities shall be sold jointly by both the land owner and developer as per the **mutually agreed prices to the intending purchasers and share the revenue in equal proportions viz.50% each, irrespective of sale of apartments in Schedule B and C portions.***

*(iii) That the Land Owners and Developer shall open a separate Escrow Bank Account in the name of DSR Infrastructure Pvt. Ltd. – Pioneer Builders and all the monies and deposits on account of sale of flats in the project shall be deposited in the bank account exclusively opened for this purpose and the Escrow bank account shall be operated jointly and not individually the land owner and developers.*

*(c) As per point no.16 of the JDA, the Developers are at liberty to invite public in general to purchase the proposed multi-storied residential apartments falling into the share of the Developer and Landowner by the way of advertisements and such other modes. **However, the selling price shall be fixed jointly by both the land owners and Developer and not individually.***

*As seen from the above terms of joint development agreement between M/s. DSR Infrastructure Pvt Ltd and M/s Pioneer Builders, it is clear that, the developed built-up area belonging to both the Land Owner and Developer are being sold jointly. The revenues received out of sale of flats is deposited into the bank accounts exclusively opened for this purpose and the Escrow bank account is operated jointly and not individually by the land owner and developer. Therefore, the unaccounted cash receipts are apportioned in the 50:50 ratio in the hands of Land owner and Developer.”*

13.1. However, the Id.CIT(A) has deleted the addition on the premises that no evidence was produced by the Assessing Officer for making the additions in the hands of the assessee to the extent of 50%. Furthermore, the Id.CIT(A) has noted that no opportunity for a hearing was given. Furthermore, the Id.CIT(A) had relied upon some

other terms of the JDA to conclude that since money was received by the marketing office for the additional work and the additional work was required to be carried out by the developer and therefore, no revenue has been earned by the assessee.

13.2 We have considered the arguments of the Assessing Officer as well as the Id.CIT(A) and the counsel for the assessee. There is no quarrel that as per the JDA, the revenue share arrangement between owner and developer ( the assessee and the DSR ) was in the ratio of 50 : 50. When the amount was received by the developer, it was required to be deposited in the escrow account as per the JDA , and the developer was duty-bound to raise the construction as per the agreement between the developer and the owner with respect to the flats jointly developed. All the money received by the developer from the flat owners would not become the developer's or owner's income. To arrive at the income/revenue share of the respective parties, the expenditure incurred by the parties for the development, marketing and additional works carried out in or for flats are required to be excluded. Hence, it is necessary for the assessee before us to explain the 50% of the amount found during the course of the survey in the premises of DSR, as the assessee is the owner and equally responsible for fulfilling the various obligations as per the JDA.

13.3. The Id.CIT(A) have noted down and tabulated the date of sale deeds of various flats which was the subject matter of the present proceedings before us. From the perusal of the table, it is clear that the sale deeds were executed on various occasions and all

the sale proceeds were shared by both in the ratio mentioned by the Id.CIT(A). However, there is no denial on the part of the assessee that the sale consideration, as mentioned in the sale deeds, was not received by the assessee.

13.4. Furthermore, in many instances, captured by Id.CIT(A) based on search documents, the assessee and the DSR received the amounts by way of a cheque, which were over and above the sale consideration mentioned in the sale deeds. To fortify our conclusion, it would be relevant to reproduce the table of various heads reproduced by the Id.CIT(A) in his order, which is to the following effect :

<b>s. NO</b>	<b>Flat No.</b>	<b>Name of the customer</b>	<b>Sale Deed 50% Developer</b>	<b>Sate Deed 50% Land of Land Owner</b>	<b>Additional Works accounted</b>	<b>Total</b>	<b>As per loose Sheets</b>	<b>Difference</b>
1	13-601	Manish Bhagirath L &Shefaili	5690000	5690000	5971299	17351299	18222250	870951
2	C-1203	DurgaLaxmi	6750000	6750000	0	13500000	24250625	10750625
3	5-803	d.R. RAMKRISHNA &SHALINI	5250000	5250000	525706	11025706	17090625	6064919
4	B-605	D. DURGA PRASAD	6765898	6765898	342991	13874787	19400750	5525963
5	5-1103	SAVITHA DETEMENON	5618825	5618825	325890	11563540	16300000	4 736460
6	13-1403	Dr. A. RAJESH	5250000	5250000	2469125	12969125	21412380	8443255
7	F-603	APARNA KAUSHIK RAGURAM	7030800	7030800	1381950	15^3550	18147875	2704325
8	5-1501	MALIN KUMAR SHAH	6316200	6316200	1531200	14163600	21724250	7560650
9	B-1204	U RAVI KUMAR VARA	5987850	5987850	0	11975700	18104875	6129175
10	5-701	K. MANJULA 6 'SRINIVAS	10387600	10387600	0	20775200	20897000	121800
11	C-103	DR. V. S REDDY	9365100	9365100	1400000	20130200	24 748750	4618550
12	C-102	B RATNAAAAU	4855000	4855000	0	9710000	15522500	5812500
13	2-305	RATHNAMALA & SASHREDDY	6480000	6480000	0	12960000	20102000	7142000
14	P-905	T SRIDHAR REDDY	10180000	10180000	221158	20581158	24650000	4068842
15	5-1201	ROHIT & MAUTHI RAAAACHANDRAN	5880000	5880000	1499925	13259925	20357750	70 <b>97825</b>
16	P-1502	AVRP MUNI SEKHAR a SHYMALA	5720000	5720000	795438	12235438	18477875	624243 7
17	E-H02	VEDANT MALAPANI	8208000	8208000	0	16416000	19119525	2703525
18	5-105	K LAKSHM MAALLIKARJUN & UMA	7378000	7378000	0	14756000	19540000	4 784000
19	5-702	T.S REDDY	6250000	6250000	511800	13011800	21157000	8145200

20	13-305	SESI KUMARAN	6380000	6380000	900000	13660000	20118500	6458500
21	5-1104	M. RAHUL REDDY	6764800	6764800	790000	14319600	21805000	7485400
22	F-302	G PADMAJA	5730000	5730000	941000	12401000	17690000	5289000
23	13-501	S DIVYA REDDY BHARGAVA THUDI	5740000	5740000	0	11480000	17720000	6240000
2-4	5-304	RAJESH GUPTA	6666500	6666500	1012 750	1434 5750	21102500	6756 750
25	C-302	A RAVINDER	5310000	5310000	0	10620000	17493 750	6873 750
26	5-1403	B MURALIDHAR KALYAN	8049175	8049175	1395810	17494160	17168750	325410
27	C-702	VISHNU CHOKANI MANJARI AGARWAL	5560000	5560000	456000	11576000	17226500	5650500
28	5-802	SANTOSH RATHI SHOBHA RATHI	6733368	6733368	0	13466736	20972750	7506014
29	C-1101	A NAGAVENI	5202000	5202000	836404	11240404	17125000	5884596
30	C-1001	KRAMESH	5320000	5320000	0	10640000	17092500	6452500
31	B-1504	AANCHAL NARISHLAL	5729999	5729999	4 78145	11938143	19494125	7555982
32	5-503	V SWARUPA RANI	6028750	6028 750	0	12057500	16512500	4455000
33	5-301	D REKHA REDDY	7548175	7548 175	0	15096350	2084 7000	5750650
		<b>TOTAL</b>	<b>216126040</b>	<b>216126040</b>	<b>23786591</b>	<b>456038671</b>	<b>641594905</b>	<b>185556234</b>

13.5. From the perusal of the above table, it is clear that the amount referred to the additional work which was accounted for in the books of accounts of DSR was Rs.237,86,591/- and the difference of the amount which was not accounted for was Rs.18,55,56,234/-. The assessee before us has not disputed that the profit element embedded in the additional works as reflected in the books of accounts of the assessee, were not received by the assessee during the assessment proceedings. However, the assessee denied that no evidence was found from the premises of the assessee and he has not received any amount which was not accounted for and tabulated hereinabove. The above explanation on the face of it cannot be accepted as the assessee has received the amount referred in the sale agreement and the other amounts which were reflected in the books of account as noted above. In view of the above, we are of the considered opinion that the Id.CIT(A) erred in holding that the assessee was not liable to explain the 50% of the revenue found during the course of the survey.

13.6. The Id.CIT(A) had decided the issue in favour of the assessee on the pretext that no incriminating document was found from the premises of the assessee during the course of survey and in fact, it was recorded by the Id.CIT(A) quite rightly that no survey took place in the premises of the assessee. In our view, the Id.CIT(A) had lost sight of the glaring facts that the Assessing Officer has carried out scrutiny assessment for the years under consideration, and for that, enquiries were made by giving notice issued u/s 142(1) and 143(2) of the Act to the assessee. In our considered opinion, section 143(2) requires the Assessing Officer to consider the response and the evidence filed by the assessee, the evidence/material collected by the Assessing Officer or came to the possession of the Assessing Officer and on the basis of all these material, after affording opportunities of hearing to the assessee, the Assessing Officer was required to pass the assessment order. In the present case, undoubtedly, the Assessing Officer has followed the procedure as provided under the Scheme of the Act, more particularly under sections 142(1) and 143(2) and thereafter, has passed the assessment order. For the above said reason also, we do not find that the order passed by the Id.CIT(A) is in accordance with the law. The other objection of the Id.CIT(A) was that the assessee was not given the opportunity to cross examine the Managing Director of the DSR namely, D. Sudhakar Reddy. In our view, firstly, the assessee had not asked for cross-examination at the time of assessment proceedings, and Secondly, the assessee was an equal stakeholder in JDA with the DSR and was in control of affairs of JDA. Therefore, this argument of the assessee

needs to be more consistent as no one can cross-examine himself or his partner, namely the Managing Director of the DSR.

13.7. Further during the course of the survey, the Survey Team asked Q.No.10 based on the excel sheet found in the computer and the said excel sheet provides as under :

<b>NOC Data Cp.xlsx</b>								
<b>S. No</b>	<b>Flat No</b>	<b>Flat owner Name</b>	<b>Total cost</b>	<b>Agreement Value</b>	<b>Receivd Cheques amount</b>	<b>cash</b>	<b>Date of Sale Deed</b>	<b>FY</b>
1	E-1203	A.V.Balaram	16840625	9975000	4987500	6700000	12.06.2019	2019-20
2	F-404	Sat! Tulasi	18450500	11480000	5722326	6970500	16.05.2019	2019-20
3	F-704	Nikhil/Hltesh khathuria	18007000	11480000	5730750	7502500	22.11.2018	2018-19
4	F-402	M.Bala Ganghadhar Reddy	18119750	11460000	5730000	6984000	22.04.2019	2019-20
5	a-604	KSarada	17904875	11460000	5730000	7295000	17.12.2018	2018-19
6	F-504	Buchi reddy & Vinya kumar reddy	17863500	11480000	5740000	6291000	15.04.2019	2019-20
7	C-903	Harnima Mullapudi	25096875	15900000	7950000	8351775	19.04.2019	2019-20
8	C-202	R.Bhaskar a Rao	16562750	10620000	5310000	5895645	30.03.2019	2018-19
9	C-902	Sridhar	16828250	9292500	4646250	7604212	04.04.2019	2019-20
10	FG-5	Rangoli garg	21463250	13167000	6583500	8000000	22.04.2019	2019-20
				<b>4987500</b>		<b>71594632</b>		

14. The Managing Director of the DSR replied to the said question and submitted that he had no idea who entered the data and that the marketing person might have entered the date, to which the MD had no idea.

14.1. The Id.CIT(A), in his order, has categorically mentioned that the above Excel sheet was never put to the assessee (Pioneer) during the assessment proceedings, nor was it put to the assessee in the proceedings of DSR. Further, in the case of DSR, it was pointed

out by the learned counsel that there was no compliance of the provision of Section 65B of the Evidence Act by the survey team, and no certificate from the experts had been taken to prove that the contents of the said excel sheet was retrieved from the computer and was an admissible piece of evidence.

14.2. With regard to the admissibility of electronic evidence, once the above said Excel sheet had not been confronted to the assessee during the assessment proceedings and there was no compliance with the provision of section 65B of the Evidence Act, then the question arises whether the addition of Rs.7,15,94,632/- can be sustainable in the eyes of law. In our view, the answer to the above question has been given by the co-ordinate Bench of the Tribunal in the case of Shri Purushottam Naidu Lekkala, Hyderabad in ITA No.608/Hyd/2023 dt.11.06.2024 wherein the co-ordinate Bench of the Tribunal while dealing with the contention of assessee and revenue has held as under :

*6. We have heard the rival contentions made by both the parties and gone through the orders of the authorities below. There is no dispute on the fact that the Revenue authorities have not filed the certificate u/s 65B of the Indian Evidence Act. However as per the decision of the Hon'ble Madras High Court (Supra) as cited by the Ld. DR, the Hon'ble High Court held under Para No.77 (iii) of the order that, the Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available u/s 119 of the I.T. Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow orders, Instructions and directions issued by CBDT” .*

*The Hon'ble High Court also held that if the procedure as specified under the CBDT Manual have not been followed while relying on the electronic record, the said record must be supported by corroborative*

evidence. The relevant portions of the decision of the Hon'ble High Court are reproduced as under:

*“iii) The Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available under Section 119 of the IT Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, instructions and directions issued by CBDT. In the case of Commissioner of Customs (referred supra), the Hon'ble Apex Court had culled out the principles, which has to be followed while conducting search and seizure of evidences and the same has been extracted at paragraph No.50 of this order. Hence, it is mandatory for the <https://www.mhc.tn.gov.in/judis> W.P.Nos.9753, 9757, 9761 & 11176 of 2023 respondents to follow the Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.*

*iv) The electronic data have been collected in .txt files in violation of the provisions of Digital Evidence Investigation Manual.*

*v) Though the procedures have not been followed while collecting the electronic data in .txt files, the data collected by the respondents can be relied upon only if the said data are supported by the corroborative evidences.”*

*7. It is abundantly clear from the decision of the Hon'ble Madras High Court (Supra) that in the absence of such Ecertificate,(65 B Certificate) the electronic data must be supported by corroborative evidences. The sale deed on which the Ld. DR is relying as corroborative evidence does not confirm that whether any interest was to be payable or paid to the assessee. Further, there is no reference of paying of on money or cash amount or Page 6 of 6 interest by the assessee in the said sale deed. Hence, under such circumstances, the sale deed cannot be taken as corroborative evidence. Hence, in our considered opinion, the Revenue Authorities has made the addition without obtaining any Ecertificate and without any corroborative evidence with regard to the electronic data. Hence, we delete the addition made by the Revenue authorities, thereby allowing the appeal of the assessee.”*

14.3. Respectfully following the decision of the co-ordinate Bench of the Tribunal in the case of Shri Purushottam Naidu Lekkala (supra), we are of the considered opinion that the addition made in the assessment year 2019-20 for Rs.1,03,46,572/- (50% of Rs.2,06,93,145/-) and in A.Y. 2020-21 for Rs.2,54,50,744/- (50% of Rs.5,09,01,487/-) cannot be sustained and are required to be deleted. However, after deleting the above said additions, the remaining unexplained amount with the assessee for A.Y. 2019-20 and 2020-21 would be Rs.11,39,92,517/- for both the assessment years.

14.4 Since the assessee in both the assessment years has not given any explanation with respect to the amount of Rs.11,39,92,517/- and the AO in the case of DSR had restricted the disallowance of 20% of the unexplained investment and therefore, we remand back the matter to the file of Assessing Officer with a direction to the assessee to file necessary explanation with respect to the amount of Rs.11,39,92,517/- and explain as to why this amount should not be added to the account of the assessee and in case, the assessee files any explanation with respect to the above said amount, and come forward to place some plausible explanation with respect to the extra work done in the flats, then the same may be considered by the Id.CIT(A). In the present case, there is no cross appeal / objection by the assessee before us. Therefore, in the interests of justice, we left with no other option but to remand the issue to the file of Assessing Officer. In view of the above, the appeal of the Revenue in ITA Nos.56 and 57/Hyd/2024 are allowed for statistical purposes.

15. In the result, the appeal of Revenue in ITA Nos.56 and 57/Hyd/2024 are allowed for statistical purposes.

**ITA No.64/Hyd/2024**

16. The grounds raised by the Revenue in other appeal i.e., ITA No.64/Hyd/2024 read as under :

*“1. The Ld. CIT(A) erred in deleting the penalty levied u/s 271D of Rs. 3,02,94,816/- by treating the unaccounted cash receipts towards interior works without any cogent and bonafide evidence.*

*2. The Ld. CIT(A) erred in deleting the penalty levied u/s 271D of Rs. 3,02,94,816/- though the assessee is entitled to share of cash receipts @50% as land lord as per the terms and conditions of JDA.”*

16.1 The brief facts of the case are the Ld. CIT(A) has deleted the penalty imposed by the assessing officer for the assessment year AY 2019-20, for an amount of Rs.3,02,94,817/- was allegedly received in cash, which exceeded the threshold limit of Rs.20,000/- as per Sec. 269SS of the Act. The contention of the assessee before the ld.CIT(A) was that the Assessing Officer has failed to record his satisfaction as contemplated u/s 271D of the Act read in the light of the decision in the case of CIT vs. Jai Laxmi Rice Mills.

17. The ld.CIT(A) in his order had recorded as under :

*“6. Decision :*

*The issue in the present appeal is the levy of penalty u/ s. 271D of Rs. Rs.3,02,94,816/-.*

Brief facts of the case are that a Search operation u/s. 132 was carried out in the case of M/s Lotus Farms, Bangalore on 13.02.2020 and it was seen that it has entered into agreements with M/s DSR Infrastructure Private Limited (DSR for short). Therefore, in consequence of the said Search, a Survey operation u/s. 133A of the Act was conducted in the business premises of M/s. DSR Infrastructure Private Limited on 13.02.2020. It was seen that M/s. DSR has undertaken projects in Bangalore and Hyderabad by entering into Development agreements with land owners in these projects. In Hyderabad, M/s. DSR has completed the project in the name and style of "DSR Fortune Prime" located at Sy. No.19 to 25 and 42, GHMC Circle No.11, Madhapur, Hyderabad on a JDA with the land owners of this project were M/s. Pioneer Builders, i.e., the appellant firm.

During the course of the Survey, certain incriminating documents in the form of loose sheets and digital evidences with respect to unaccounted cash received over and above the sale deed value with respect to flats sold were found and impounded in the folder marked as Annexure-DSR/ 1, which material marked as Annexure-DSR/ 1 contained the details of price structure for each flat, hand written pages containing details of total cost of the flat, agreement price, receipts of amounts, taxes paid, etc. for each of the flat.

The unaccounted cash receipts were quantified and the assessments were completed making the additions in the cases of M/s. DSR Infrastructure Pvt. Ltd and the appellant, as under:

Assessee	AY	Unaccounted determined (in Rs.)
M/s. DSR Infrastructure Pvt. Ltd.	2019-20	Rs. 3,02,94,816
	2020-21	Rs. 11,94,95,017
M/s. Pioneer Builders (Appellant)	2019-20	Rs. 3,02,94,816
	2020-21	Rs. 11,94,95,017

In respect of the appellant, for AY under consideration, the cash receipts were determined at Rs. 3,02,94,816/- and penalty u/s. 271D was levied for violation of provisions of Section 269SS of the Income Tax Act.

In this regard, the relevant sections i.e., 269SS and 271D are brought out as under:

**271D Penalty for failure to comply with the provisions of section 269SS.**

"271D. (1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

**"269SS. No person shall take or accept from any other person** (herein referred to as the depositor), any loan or deposit or **any specified sum**, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed<sup>2</sup>, if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the

amount or the aggregate amount referred to in clause (b),

**is twenty thousand rupees or more:**

Explanation.—For the purposes of this section,—

(iv) "**specified sum**" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place."

It is to be noted that the addition made on account of unaccounted cash receipt was contested by the appellant in the appeal filed against the assessment order for AY 2019-20 and AY 2020-21. The said appeal for AY 2019-20 was allowed in favor of the appellant vide Order dated 22.11.2023 in appeal No. CIT(A)-11/10358/2018-19 wherein it was concluded in the said appeal that the appellant has not received the said impugned cash receipts of Rs. 3,02,94,816/- and the said cash was collected by the developer company M/ s. DSR Infrastructure Pvt. Ltd for interior works.

Therefore, as it has been held that the appellant has not received any amounts by way of cash, the provisions of Section 269SS are not even attracted, no penalty can be levied u/ s. 271D of the Income Tax Act, 1961.

*In view of the same, the penalty levied u/s. 271D of Rs. 3,02,94,816/-is hereby deleted. The appellant gets relief in ground no. 1 and 2 accordingly.*

18. The ld.DR had submitted that the order of ld.CIT(A) is not in accordance with law and the ld.DR relied upon the orders passed by lower authorities. It was further submitted that depending upon the outcome of the appeal on quantum, the issue may be decided in accordance with law.

19. Per contra, the ld.AR relied upon the decision of Co-ordinate Bench of the Tribunal in the case of Rajareddy Nalla in ITA No.520/Hyd/2022 wherein vide paras 12 to 14, the Tribunal had held as under :

*“12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case levied penalty of Rs.40.00 lakhs u/s 271D of the I.T. Act on the ground that the assessee has violated the provisions of section 269SS by accepting cash of Rs.40.00 lakhs being his share for sale of the immovable property. We find the learned CIT (A) confirmed the penalty levied by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. Before deciding the issue on merit as per grounds of appeal, we would first like to adjudicate the additional ground raised by the assessee challenging the validity of the levy of penalty u/s 271D in absence of recording of satisfaction in the body of the assessment order.*

*13. A perusal of the assessment order nowhere shows that the Assessing Officer has recorded his satisfaction for initiating penalty proceedings u/s 271D of the I.T. Act. We find an identical issue had come up before the Hon'ble jurisdictional High Court in the case of Srinivasa Reddy Reddeppagari vs. Jt. CIT vide writ petition No.44285 of 2022 dated 26.12.2022. In*

that case penalty proceedings were initiated by issue of a show-cause notice u/s 274 r.w.s. 271D on the ground that the assessee has violated the provisions of section 269SS of the I.T. Act which attracts levy of penalty u/s 271D of the I.T. Act. Before the Hon'ble High Court, the assessee, through the writ petition challenged the penalty levied u/s 271D on the ground that no satisfaction was recorded by the Assessing Officer in the assessment order as to imposition of penalty. It was argued that non-recording of satisfaction is fatal. The decision of the Hon'ble Supreme Court in the case of CIT vs. Jayalakshmi Rice Mills Ambalacity, reported in (2015) 64 Taxmann.com 75 (S.C), was relied upon. Accordingly, the Hon'ble jurisdictional High Court held that provisions of section 271D and 271E are pari materia to each other and the recording of satisfaction is a must. The relevant observation of the Hon'ble High Court reads as under:

“13. We have considered the rival submissions made at the bar.

14. Issue raised in the writ petition is whether without satisfaction being recorded in the assessment order, penalty Order dated 08.07.2015 passed by the Kerala High Court in ITA.Nos.83 & 86 of 2014 ::9::

can be levied by the Joint Commissioner under Section 271D of the Act ?

15. Insofar the present case is concerned, we find that in the assessment order dated 24.03.2022 passed under Section 153A of the Act, return of income filed by the petitioner was accepted by the assessing officer and accordingly, the total income was assessed. In the return of income, petitioner had admitted receiving total income of Rs.80,84,180.00 which was also accepted by the assessing officer.

16. Subsequently, respondent No.1 took the view that petitioner had sold immovable properties for a total sale consideration of Rs.92,13,000.00 out of which he had accepted cash to the tune of Rs.87,80,000.00 which was in violation of Section 269SS of the Act, attracting penalty under Section 271D of the Act.

17. Before we advert to the reply submitted by the petitioner, we may mention that under Section 269SS of the Act, no person shall take or accept from any other person (referred to as a depositor) any loan or deposit or any specified sum otherwise than by an account payee cheque or account payee bank draft or

*use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if the amount of such loan or deposit or specified sum is twenty thousand rupees or more. However, as per the first proviso, the rigor of Section 269SS is not applicable to the Government, banking company, post office savings bank or cooperative bank etc. As per the second proviso, this provision would also not be applicable where both the depositor and the receiver are having agricultural income and neither of them has any income chargeable to tax under the Act.*

*18. Section 271D of the Act deals with penalty for failure to comply with the provisions of Section 269SS of the Act. Section 271D of the Act being relevant is extracted hereunder:*

*Penalty for failure to comply with the provisions of section 269SS.*

*271D. (1) If a person takes or accepts any loan or deposit [or specified sum] in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit [or specified sum] so taken or accepted.] [(2) Any penalty imposable under sub- section (1) shall be imposed by the [Joint] Commissioner.]*

*19. Thus, what sub-section (1) of Section 271D provides for is that if a person takes or accepts any loan or deposit or specified amount in contravention of the provisions of Section 269SS, he shall be liable to pay by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.*

*20. It would be useful to refer to Section 271E of the Act also at this stage which deals with penalty for failure to comply with the provisions of Section 269T of the Act. Be it stated that Section 269T of the Act provides that no branch of a banking company or a cooperative bank and no other company or cooperative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who had made the loan or deposit or who had paid the specified advance or by use of electronic clearing system through a bank account or through*

such other electronic mode as may be prescribed, if such an amount is twenty thousand rupees or more. As in the case of Section 269SS, Section 269T of the Act also does not apply to the Government, banking company, post office savings bank etc. Section 271E of the Act reads as under:

Penalty for failure to comply with the provisions of section 269T.

271E. [(1)] If a person repays any [loan or] deposit [or specified advance] referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit [or specified advance] so repaid.] [(2) Any penalty imposable under sub-section (1) shall be imposed by the [Joint] Commissioner.]

21. Thus, sub-section (1) of Section 271E of the Act provides that if a person repays any loan or deposit or specified advance referred to in Section 269T of the Act otherwise than in accordance with the provisions of that section, he shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit or specified advance so repaid. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

22. From an analysis of Sections 271D and 271E of the Act, it is seen that both the provisions are *pari materia* to each other. While Section 271D of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of Section 269SS of the Act, penalty under Section 271E of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of Section 269T. Therefore, in a way, the two provisions are complimentary to each other.

23. In *Jai Laxmi Rice Mills Ambala City (supra)*, Supreme Court considered the question as to whether penalty proceedings under Section 271D of the Act is independent of the assessment proceeding ? In the facts of that case, it was found that the penalty order was issued following the assessment order. However, in appeal, Commissioner of Income Tax (Appeals) had set aside the original assessment order with a direction to frame assessment *de novo*. In the fresh assessment order, no satisfaction was recorded by the assessing officer regarding initiation of penalty proceedings under Section 271E of the Act.

*It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the Commissioner of Income Tax (Appeals). It was in that context that Supreme Court held as follows:*

*The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under Section 271E would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.*

*As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed.*

*24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the assessment order as to infraction of Section 269SS of the Act. Therefore, no penalty could be levied under Section 271D of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in *Jai Laxmi Rice Mills Ambala City* (1 supra) wherein it was clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.1 relying upon the Kerala High Court decision in *Grihalaxmi Vision* (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in *CIT V. Mac Data Ltd.*<sup>3</sup> wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No.1 imposed the penalty under Section 271D of the Act.*

25. We are afraid respondent No.1 had completely overlooked the decision of the Supreme Court in *Jai Laxmi Rice Mills Ambala City (1 supra)*. In the said decision as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under Section 271E of the Act. We have already discussed above that provisions of Section 271E and 271D of the Act are in *pari materia*. When there is a decision of the Supreme Court, it is the bounden (2013) 352 ITR 1.

*duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.*

26. Article 141 of the Constitution of India is clear that law declared by the Supreme Court shall be binding on all courts within the territory of India. This is further clarified in Article 144, which says that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. We are therefore, of the unhesitant view that respondent No.1 overlooked the relevant considerations while passing the impugned order dated.29.11.2022.

27. Further, issue in the present writ petition is not the competence of the Joint Commissioner in issuing the order of penalty. Therefore, reference to *Grihalaxmi Vision (2 supra)* was wholly unnecessary.

28. Consequently, we set aside the impugned order dated 29.11.2022 and remand the matter back to the file of respondent No.1 to pass a fresh order in accordance with law after giving a reasonable opportunity of hearing to the petitioner.

29. Writ Petition is accordingly allowed. No costs.”

14. Since admittedly there is no recording of satisfaction by the Assessing Officer in the body of the assessment order for initiating penalty proceedings u/s 271D of the I.T.Act, therefore, respectfully following the decision of the Hon'ble jurisdictional High Court in the case of *Srinivas Reddy Reddeppagari vs. Jt. CIT (Supra)* the penalty levied by the Assessing Officer and sustained by the CIT (A) is liable to be quashed. We hold accordingly and direct the Assessing Officer to cancel the penalty levied u/s 271D of the I.T. Act, 1961. Since

*the assessee succeeds on this legal ground, the grounds challenging the levy of penalty of Rs.40.00 lakhs u/s 271D on merit become academic in nature and therefore, not adjudicated.*

20. We have heard the rival submissions and perused the material on record. From the decision of Co-ordinate Bench of the Tribunal in the case of Rajareddy Nalla (supra) relied upon by the assessee, it is evident that non-recording of satisfaction in the assessment order is fatal to the case and on account of such failure, the penalty order passed u/s 271D of the Act is required to be quashed. Therefore, respectfully, following the decision in the case of Rajareddy Nalla (supra), the penalty levied by the Assessing Officer and sustained by the Id.CIT(A) is liable to be quashed. Further, we do not find any infirmities in the order passed by the Id.CIT(A) and hence, the appeal of Revenue in ITA No.64/Hyd/2024 is liable to be dismissed. Accordingly, the appeal in ITA No.64/Hyd/2024 is dismissed.

21. In the result, the appeal filed by Revenue in ITA No.64/Hyd/2024 is dismissed.

**ITA Nos.50 and 54/Hyd/2024**

22. The grounds raised by Revenue in ITA 50/Hyd/2024 read as under :

*“1. The Ld. CIT(A) erred in allowing relief of Rs. 1,81,76,890/- to the assessee in the absence of evidence in support of its claim of unaccounted cash receipts towards interior works.*

*2. The Ld. CIT(A) erred in allowing relief of Rs. 1,81,76,890/- to the assessee in the absence of corroboration from marketing staff who alleged to have received the unaccounted cash receipts towards interior works.*

*4. The Ld. CIT(A) erred in restricting the addition to the extent of 20% of unaccounted cash receipts in the absence of evidence for incurring of any expenses out of the unaccounted cash receipts.”*

23. The grounds raised by the Revenue in ITA No.54/Hyd/2024 read as under :

*“1. The Ld. CIT(A) erred both in law and on the facts of the case in granting relief to the assessee.*

*2. The Ld. CIT(A) erred in allowing relief of Rs. 7,16,97,010/- to the assessee in the absence of evidence in support of its claim of unaccounted cash receipts towards interior works.*

*3. The Ld. CIT(A) erred in allowing relief of Rs. 7,16,97,010/- to the assessee in the absence of corroboration from marketing staff who alleged to have received the unaccounted cash receipts towards interior works*

*4.The Ld. CIT(A) erred in restricting the addition to the extent of 20% of unaccounted cash receipts in the absence of evidence for incurring of any expenses out of the unaccounted cash receipts.”*

23.1. As the Revenue has filed similar grounds in both these appeals, except for the figures involved, and therefore, for the sake of brevity, the facts of appeal in ITA No.50/Hyd/2024 is given below for the sake of brevity.

24. The brief facts of the case as per ITA No.50/Hyd/2024 for A.Y. 2019-20 filed by the Revenue are that assessee is a company engaged in real estate development. A search & seizure operation u/s 132 of the Act was conducted on 13.02.2020 in the case of M/s.

Lotus Farms. The assessee was covered under survey u/s 133A being connected case to M/s Lotus Farms on the same day. During the course of survey, certain loose sheets/documents were impounded vide Annexure-DSR/01 containing receipts of the amounts, details of price structure for each flat etc. Thereafter, notices u/s.143(2) and 142(1) of the Act for AY 2019-20 were issued on 29.09.2020 and 24.10.2020, respectively, to the assessee calling for information. In response, assessee has furnished the information stating that the return of income filed u/s 139(1) on 30.10.2019 declaring a total income of Rs.23,52,54,350/- which includes, the additional income offered in course of survey conducted on 08.02.2019 of Rs.11,69,39,600/- on account of advances received from customers for sale of flats during the year under consideration and paid taxes as applicable. Thereafter, the Assessing Officer requested the assessee to offer explanation with supporting documents for the unaccounted cash receipts of Rs.3,02,94,816/-, for which assessee submitted its reply. Subsequently, the Assessing Officer did not accept the explanation of assessee due to absence of verifiable documentary evidence in support of assessee's claim and treated the unaccounted cash receipts of Rs.3,02,94,816/-, as additional income in the hands of assessee for A.Y. 2019-20 and accordingly, completed the assessment u/s 143(3) of the Act and passed order on 25.03.2021.

25. Aggrieved with such assessment orders, Revenue preferred appeals before the Id.CIT(A). In appeal, the Ld. CIT(A) had issued enhancement notice to the assessee on 03.11.2023, for which assessee filed a reply, which was reproduced hereinbelow :

*“In the sworn statement given by the Director, viz., Mr D.Sudhakar Reddy, he has categorically stated that the amounts mentioned in the loose sheets found during the survey were not related to the Appellant and those amounts might have been collected by the marketing staff*

- *At this point, it is pertinent to note that the considering the size of apartment complex and the number of customers involved, we came to know post survey proceedings that some of the marketing staff were undertaking additional works either by themselves or facilitating the customers with contactors for the additional works based on requirements of the customers;*
- *Unfortunately, most of the marketing staff who were undertaking these works are currently not working with the Appellant due to Covid-19 Pandemic and also as the project has been completed in the year 2019;*
- *We humbly reiterate that the Appellant has not received any money in addition to the amount mentioned in the sale deed and hence the same is not recorded in the books of account;*
- *The material relied by the income tax department are purely estimates provided to the customers by the Appellant for undertaking interior works on specific request by those customers. However, we would like to humbly submit that the additional works were not undertaken by the Appellant and hence the same were not part of our books of account. As mentioned above, pursuant to survey proceedings, we also came to know that there were certain marketing staff who have undertaken certain interior works coordinating with the customers directly at the site for a reduced cost compared to the cost proposed by the Appellant. We would like to humbly submit that we were not even aware of these additional works undertaken by the marketing staff till the time of survey proceedings.*
- *We would like to reiterate the fact that these estimates are only loose sheets kept at the office for reference purpose in case the Appellant need to undertake the interior works as requested by certain customers. It is pertinent to note that these loose sheets were not even signed by either party clearly*

*indicating the fact that the works were not executed by the Appellant;*

*· Further, we would like to humbly submit before your goodself that the customers whose names were mentioned in the loose sheets have already provided affidavits stating that the amounts were not paid to the Appellant but were paid at the marketing office during the construction period. Copies of the affidavits were enclosed in our earlier submissions. In view of the above, we are once again reiterating that the Appellant has not even received the 50% of the alleged on money receipts as added by the Ld AO during the course of assessment proceedings. Hence, the proposed enhancement of entire amount in the hands of Appellant is not warranted under any circumstance. The proposed enhancement notice stating that the entire receipts shall be added in the hands of appellant would cause severe financial hardship and injustice to the Appellant.*

*Without prejudice to the above, alternatively, we submit as follows for your favourable consideration:*

*· The Appellant has been earning a profit margin of 10% year on year basis.*

*· Without admitting any receipt of money in addition to the sale consideration, we would request your goodself to estimate the additional income @ 10% towards commission only to buy peace with the income tax department and not to have prolonged litigation. We would also like to further submit that the Appellant has agreed to such additional income before the Ld AO subject to non-initiation of any penalty proceedings under the Act.*

- In this regard, we would like to reiterate that the total amount received by the marketing staff shall not be added to the income of the Appellant and not consider the expenditure that might have incurred by them while performing the additional works;*
- We were also given to understand that the Income Tax officers from Bangalore who has undertaken the survey proceedings categorically stated that 50% of the alleged on moneys shall be taxable in the hands of M/ s Pioneer Builders based on the Joint Development entered into by the Appellant. The same was also accepted by the Ld AO and accordingly concluded the*

*assessments of the Appellant and M/ s Pioneer Builders;*

- Further, we would also request your goodself that the above proposition for estimation of profits on the alleged on money receipts should be on the addition made by the Ld AO during the assessment proceedings and should not be on the entire amount relating to estimates for the proposed additional works found during the course of survey proceedings;*
- We would also like to state that the Appellant is only willing to pay additional income tax on the estimated profit (if any) by your good office and the same shall not be considered as business turnover of the Appellant as the same was never received by the Appellant and the proposal to pay additional taxes is purely based on buying peace with the income tax department and to avoid protracted litigation in this regard;*

*Based on the above, we would like to humbly reiterate that though the Appellant has no connection in relation to the additional works undertaken by the marketing staff or facilitated the customers and identified certain sub-contractors for the additional works required by the customer, only in order to buy peace with the department and to avoid unwarranted prolonged litigation, we request your goodself to estimate profit based on the percentage of profit declared by the Appellant in the past years.*

*We would be glad to provide any further information your goodself may require in this regard. We also request you to provide another opportunity of being heard, in case your good self is not agreeable to the above proposition made by the Appellant.*

25.1 The Ld. CIT(A), in the order had proceeded to enhance the addition made in the hands of the assessee by holding as under :

*“However, as a consequence of the said deletion of addition in the case of M/s. Pioneer Builders, the notice of enhancement was given in the case of the appellant for taxing the whole quantum so received in cash for A.Y. 2019-20 of Rs. 6,05,89,632/- and Rs. 23,89,90,034/- for*

AY 2020-21 in the hands of the appellant cumulating to a total of Rs. 29,95,79,666/-.”

25.2 The Id.DR had submitted that the Id.CIT(A) had granted partial relief to the assessee, and our attention was given to the following finding regarding the Id.CIT(A) :-

*It is important to consider, in the present case, that the interior works is a separate activity and there is a sizable profit element to custom made requirements of the buyers and cannot be subjected to just a profit of 10% as stated by the appellant. It is seen that this is a completely unaccounted activity and has no bearing on the books of accounts of the appellant and therefore, the receipts and the corroborative expenses were not part of the books as it being an unaccounted activity. Therefore, the appellant/marketing staff was using its premises for this activity and the said activity therefore does not have expenditures relating to establishment and thus the profit percentage will be higher than normal.*

*It is important to note that these are cash transactions and there are no other accounts available to estimate the profits and also with regard to further payments, there is no tax trail left with regard to these unaccounted expenditure which would have been done for interior works. Thus, the appellant's act of not accounting the receipts and payments has also costed the revenue not only of the legitimate tax of the appellant but of the persons who were given such an accounted expenditure in cash.*

*Thus, considering the factum of cash transaction and the receipt being for interior works, it would be fair to estimate the income from the said receipts at the rate of 20% for the respective years under consideration. In view of the same, the income attributed to the appellant on account of interior works is calculated as under for the respective year as per the table below:*

Sl.No	A.Y.	Quantum of interior works	Income Assessed at 20%	Relief granted
1	2019-20	6,05,89,632	1,21,17,926	1,81,76,890

2	2020-21	23,89,90,034 <sup>4</sup> . -	4,77,98,006	7,16,97,010
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*In view of the part relief granted as above, the ground nos. 1, 3 and 5 of both the appeals are partly allowed accordingly. Needless to state that on account of finally an estimation at 20% of the enhanced receipts, there is no enhancement as such with regard to the assessed income and the appellant has got a relief as tabulated above with regard to the assessed income.*

*In the ground no. 2 and 4 of both the appeals, the appellant contested that it had not received the excess consideration and it has no role in the amounts received by the marketing staff from respective flat owners for certain additional works. The issue has been discussed in detail in the preceding paragraphs and it has been concluded that the profit on excess consideration received towards -additional works is either the income or the deemed income to taxed in the hands of the appellant company. Therefore, the ground nos. 2 and 4 of both the appeals are dismissed accordingly.*

26. Aggrieved with the orders of Id.CIT(A), assessee and Revenue both are now in appeal before us.

27. In the preceding paragraphs, while deciding the case of Pioneer, we have decided that the deletion made in the hands of the said assessee by the Ld. CIT(A) was not in accordance with law and hence, enhancement notice and the entire addition based on that made by the Ld. CIT(A) in the hands of assessee was not in accordance with law. In fact, as held by us, the assessee along with Pioneer have entered into JDA with equal revenue share of 50% each and both were the beneficiary of additional money received by them for the additional work carried out on the flats. Therefore, in our view, the additions are required to be made in equal proportion in the hands of the assessee as well as with Pioneer.

28. The contention of the ld.DR before us that incriminating documents were found from the possession of the marketing staff during the course of survey and in respect of 33 flats, the ld.CIT(A) at page 24 of his order had reproduced the details of flats. It was submitted that the total sale proceeds as per registered deed of these flats to be the share of the developer and owner was Rs.21,61,26,040/- each respectively. The additional work in respect of these 33 flats which was accounted for in the books of accounts of the assessee was Rs.2,37,86,591/- and amount of Rs.18,55,56,234/- was remained unexplained and was not reflected in the books of accounts of the assessee. Thus, it was the contention of the ld.DR that an amount of Rs.18,55,56,234/- remained unexplained and was not reflected in the books of accounts of the assessee and the amount of Rs. Rs.7,15,94,632/- was required to be added on account of data found in computers for the remaining 10 flats.

29. The ld.DR submitted that ld.CIT(A) has brought on record that there were in total 292 flats in the project and addition in respect of only 44 flats were made. The ld.CIT(A) had wrongly examined the sale deeds pertaining to 292 flats and had wrongly recorded as under :

*“A perusal of the above shows that out of 292 flats, 223 flats have been sold at the rate of Rs. 4,000/- per sq.ft and 29 flats at Rs. 3,800/- per sq.ft and 3 flats at Rs. 3,900/- per sq.ft. This data cumulates to 262 flats falling within the price range of Rs. 3,800 to Rs. 4,000 per sq.ft. Thus, around 76% of the flats have been sold at Rs. 4,000/- per sq.ft. There are 14 flats which are sold at 3,500/- which are very few in number and mostly relate to pre-booking of the project.*

*The AO has thus accepted the sale value of the other flats which were 248 in number and has not disturbed those sales and has not attributed anything in contrary to the appellant in that regard.”*

30. Further, the ld.CIT(A) also noted down that there was a huge variation of alleged ‘On Money’ in respect of 44 flats and the ‘On Money’ was raising between 269 per sq.ft to Rs.3216/- per sq.ft. The ld.DR submitted that the above said exercise carried out by the ld.CIT(A) was without any basis and has wrongly discarded the loose sheets found during the course of survey. It was submitted that the ld.CIT(A) had failed to take cognizance of document found during survey which on the face of it shows the acceptance of ‘On Money’ by the assessee. The ld.DR has drawn our attention to the price structure of 33 flats. In fact, the documents were summarized by the survey team itself and the question was put to the assessee during the survey. However, the assessee had not given any satisfactory reply. It was submitted by the ld.DR that the ld.CIT(A) relied upon the affidavit filed by the flat owners where they have denied to have any payment of ‘on money’ to the assessee.

31. Per contra, the ld.AR had made elaborate submissions and had also filed written submissions, which are to the following effect :

*“Brief Background:*

*Founded in 1988, DSR Infrastructure is one of the leading real estate developers across various cities of South India namely, Bengaluru, Hyderabad, and Chennai. The company boasts a diverse portfolio of real estate projects, such as villas, luxury homco, gated communities, and corporate offices.*

*A search & seizure operation u/s 132 of the Act was conducted on 13.2.2020 in the case of M/s Lotus Farms. The Appellant was covered under survey u/s 133A being connected case to M/s Lotus Farms on the same day. During the course of survey, certain loose sheets/documents were impounded containing discrepancies between recorded sales and receipts from customers. Our submission on loose sheets as a documentary evidence is enclosed as Annexure -1. Pursuant to the survey proceedings conducted on 13/2/2020 in the business premises of the Assessee, show-cause notices were issued by the Ld Assessing Officer stating that why an amount of Rs 11,94,95,017 and Rs 3,02,94,816 shall not be added to the total income of the Assessee for the AY 2019-20 and AY 2020-21 respectively towards unaccounted sales of the Appellant.*

*The Ld AO disregarding the submissions made by the Assessee added the entire amount of Rs 11,94,95,017 and Rs 3,02,94,816 for the AY 2019-20 and AY 2020-21 respectively to the total income of the Assessee. Aggrieved by the order passed by the Ld AO, the Appellant filed an appeal before the Ld CIT(Appeals).*

*Proceedings before the Ld CIT(A):*

*The proceedings before the Ld CIT(A) are as under:*

*· The Appellant has filed a detailed submission stating that the Appellant has not received any money over and above the value mentioned in the sale deed. It is pertinent to note that the Managing Director of the Company has stated the same in the statement during the course of survey proceedings;*

*· The Ld CIT(A) during the course of proceedings has issued an enhancement notice asking the Appellant to make submission why the alleged total amounts shall not be added to the Appellant instead of dividing the same between the Appellant and the Landowner in the ratio of 50:50 as added by the Ld AO;*

*· Pursuant to the submissions made by the Appellant in response to the enhancement notice, the Ld CIT(A) has estimated a profit of 20% on the entire amount in the hands of the Appellant and deleted the entire addition in the hands of landowner;  
Aggrieved by the above order by the Ld CIT(A), the Appellant is before  
Our submissions on merits of the case:*

*In this regard, we wish to humbly submit the following for your favourable consideration:*

*· In the sworn statement given by the Director, viz., Mr D. Sudhakar Reddy, he has categorically stated that the amounts*

mentioned in the loose sheets found during the survey were not related to the Appellant and those amounts might have been collected by the marketing staff;

· At this point, it is pertinent to note that the considering the size of apartment complex and the number of customers, the Appellant came to know post survey proceedings that some of the marketing staff were undertaking additional works either by themselves or facilitating the customers with contactors for the additional works/interior works based on requirements of the customers;

· Unfortunately, most of the marketing staff who were undertaking these works are currently not working with DSR infra due to Covid-19 Pandemic and also as the project has been completed in the year 2019;

We humbly reiterate that the Appellant has not received any money in addition to the amount mentioned in the sale deed and not recorded in the books of account;

· As your honour would also appreciate the fact that there were certain instances where additional works undertaken by the Appellant were considered as part of the turnover and appropriate taxes were paid on these amounts received towards additional works. This fact can also be established from the table in the order by the Ld CIT(A) for quantifying the addition made by the Ld AO;

· Further, we would like to humbly submit before your honour that the customers whose names were mentioned in the loose sheets have also provided affidavits stating that the amounts were not paid to DSR infra but were paid at the marketing office during the construction period. Copies of the affidavits were enclosed as part of the paper book filed before your honors.

Based on the above, we humbly submit that it would be a gross injustice if the addition of Rs 11,94,95,017 and Rs 3,02,94,816 for the AY 2019-20 and AY 2020-21 respectively to the total income is upheld by your honour.

Without prejudice to the above, alternatively, we submit as follows for your favourable consideration:

· In this regard, we would like to reiterate that the amount received by the marketing staff shall not be added to the income of the Appellant and not consider the expenditure that might have incurred by them while performing iltu ad di Lim w urks;

· *We would like to humbly submit that adding the entire receipts as income in the hands of the Appellant would cause severe financial hardship and also gross injustice to the assessee;*

· *The Appellant has been earning a profit margin of — 10% year on year basis.*

· *Without admitting any receipt of money in addition to the sale consideration, during the course of assessment proceedings, the Appellant has requested the Ld AO to estimate the additional income @ 10% only to buy peace with the income tax department and not to have prolonged litigation.*

· *As your honour may appreciate the fact that the income estimated by the Ld CIT(A) @ 20% is certainly on a very higher side and is not as per the industry standard;*

*In this regard, we would like to rely on the following rulings wherein the income estimation was upheld by various appellate authorities:*

· *The Hon'ble Supreme Court in the case of CIT vs Williamson Financial Services (165 taxmann 638) held as follows: "It is important to bear in mind that u/s 4 of the Income tax Act, the levy is on the total income of the Assessee computed in accordance with and subject to the provisions of the Income Tax Act. What is chargeable to tax under the Income Tax Act is not the gross receipt but the income under the Income Tax Act. The tax is on income but not on gross receipts."*

· *The Hon'ble Punjab & Haryana High Court in the case of Telelinksys.CIT [377 ITR 158, P&H HC] held that discretion to determine net profit vested in authorities must be exercised on basis of relevant factors which are past tax history of assessee, an appraisal of value of contract, price of raw material, labor etc.*

· *We would like to humbly submit that in the case of a sub-contractor undertaking construction works, the Hon'ble Courts in the following cases in the context of civil contractors have held net profit rate of 5% to 7% as reasonable and fair in the case of Sub contractors.*

ü *CIT vs. P. Sudhakar [ 61 Taxmann.Com 17, Kar HC]- Rate of 5% is determined as fair and reasonable for sub contracts in civil works*

ü *CIT vs. Ratansingh. M.Rathod [371 ITR 135, Born HC (Mag)]- Rate of 8% was upheld as justified for main contractor in civil works*

ü *G.Raja Gopala Rao vs. DCIT [163 ITD46, Vishakhapatnam 'TAT] -Rate of 8% was rightly adopted for the assessee engaged in the business of execution of civil contract works*

ü *TejaConstrction vs. ACIT [39 SOT 13, Hyd ITAT] - The assessee was a sub-contractor of the contractor who earned some profit, Therefore the CIT(A) rightly applied net profit rate of 7 per cent.*

ü *DCIT vs. M.P.B. Kutumba Rao [43 Taxmann.com 205, Hyd ITAT] it was held as under:*

*51. We have considered the rival submissions and perused the record as well as gone through the orders of the authorities below. This issue is squarely covered by the decision of the coordinate bench in the case of M/s C. Eswara Reddy & Co. v. Asstt. CIT [IT Appeal No. 668 (Hyd.) of 2009, dated 31-1-2011] wherein the coordinate bench held as follows:*

*"We have also carefully gone through the orders of the lower authorities. The CIT (A) after referring to the decision of this Tribunal in the case of Krishna mohan Constructions (supra) and the Special Bench decision in Arihant Builders (supra) estimated the profit at 8% for main contract and for sub contract at 5%. It may not be out of place to mention that this Tribunal uniformly estimating the profit from main contract at 8% to 12.5% depending upon the factual situation and 5% to 7% on the sub contract depending upon the factual situation. Therefore, in our opinion, estimation of profit at 8% by the CIT(A) on main contract and at 5% on sub contract is justified. We do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed."*

*Based on the above, we would like to humbly reiterate that though the Assessee has no connection in relation to the additional works undertaken by the marketing staff or facilitated the customers and identified certain sub-contractors for the additional works required by the customer, only in order to buy peace with the department and to avoid unwarranted prolonged litigation, we request your honour to*

*estimate profit based on the percentage of profit declared by the Assessee in the past years.*

II. *Our submission on adding the entire amount in the hands of Appellant. The Ld CIT(A) while upholding that the entire amounts to be added in the hands of Appellant held as under:*

*"The Appellant was the developer and in control of the construction as well as the premises and thus, had the right of entry to the premises and no other party has the same. Even if it was the marketing staff which was under the employment/control of the appellant and the right to entry was thus granted by the appellant only. Therefore, the appellant cannot distance itself from these receipts which were received for the purpose of interior contracts and so the income from the same has to be attributed only to the appellant unless established otherwise, which the appellant failed to do so.*

*It is further seen that the quantum of receipts has been divided in the ratio of 50:50 by the AO between the Appellant developer and the landowner. While passing the appellate order in the case of land owner, M/s Pioneer Builders, it was seen that they had no role with regard to receipts of such unaccounted cash and especially when these amounts are for interior works, there is no role of land owner and all the receipts are attributed to the Appellant developer."*

· *As your honour can observe from the above finding by the Ld CIT(A), the important presumption made by him is that the Appellant is having full control over the premises and hence any income generating activity happening in that premises shall be taxed in the hands of the Appellant.*

· *In this regard, it is important to take a note of the following clauses in the Joint Development Agreement entered into between the Appellant and the land owner merit consideration:  
"9) The land owner hereby permits and grants license to the developer. to enter upon the schedule property, free of all encumbrances and obstructions, solely for the purposes as contemplated in this agreement. It is however agreed that the permission and license granted to the developer to enter into the schedule property, is not intended to and shall not be construed as delivery of possession in part performance of the contract, under the provisions of sec.53 (A) of Transfer of Property Act, 1882 or otherwise parting with the possession of the schedule property by the Land owner.*

a) *That the marketing expenses for sale of the Schedule B ensured through the developer part, the landowners shall pay the sum of 1% of the, sale value irrespective of the actual cost of marketing*

*incurred by the developer. That in case the landowner sells any portion of the schedule - B properties by themselves the developer shall not be entitled for the marketing expenses for sale of the same.*

*b) It is agreed between the Land Owner and Developer that they shall jointly negotiate and fix the selling price of any and every portion of the Schedule B and C properties from time to time.*

*15) The Land Owners shall not interfere with the developmental activities or construction work being carried by the Developer on the said site or cause any disturbance or interruption in the work or in the development of the Schedule property by the Developer. However, the Land owner shall be at liberty to make inspection of the construction at all reasonable times. If the Land owner points out any defects/deficiencies found by them during such inspection, the same shall be rectified within a reasonable period by the Developer. That the Land Owner are free to appoint any one person on their behalf to supervise construction activities for which Developer shall have no objection."*

*· As your honors can observe from the above clauses, the Appellant developer has only right to enter the premises for the purpose of construction. The land owner has categorically stated in the Joint Development Agreement that the same shall not be construed as a transfer which means that the owner of the premises is still the land owner until and unless the project is completed and the residential flats are sold to the customers.*

*· Hence, the conclusion by the Ld CIT(A) for adding the entire amount in the hands of the appellant clevekpuc citing the reason that the Appellant is in the full control of the premises is grossly misplaced.*

*· Without prejudice to the above submission that the Appellant has not received any amount over and above the sale deeds, if your honours decide to attribute certain income in relation to the above mentioned activity relating to additional works/interior works, the same shall be divided between the Appellant and the land owner in the ratio of 50:50 in the interest of justice."*

31.1. Further, the assessee had filed the following additional submissions :

*"During the Course of survey proceedings, certain loose sheets were found by the Investigation team which was confronted with the Managing Director of the Assessee Company;*

□ *However, thereafter the assessment proceedings were completed based on the appraisal report submitted by the Investigation team to the Jurisdictional Assessing Officer;*

□ *During the course of survey proceedings, the Managing Director of the Assessee Company was confronted by the receipts found and the Managing Director has completely denied any receipt of amount over and above the sale consideration mentioned in the registered sale deed;*

□ *However, we believe that there was certain data which was retrieved by the investigation wing after the conclusion of the survey proceedings and accordingly quantified the amounts that should be added to the total income of the Assessee. The said appraisal report was sent to the Jurisdictional Assessing Officer who has completed the assessment proceedings based on the appraisal report;*

□ *It is pertinent to note that the additional amount quantified by the Investigation team was also not confronted with the Managing Director of the Assessee;*

□ *In this regard, we would like to rely upon the following ruling by the Hon'ble Jurisdictional Tribunal in the case of Shri Purushotham Naidu Lekkala vs ACIT (ITA No.608/Hyd/2023) in relation to the electronic evidence as per section 65B of the Indian Evidence Act, held as follows:*

*“6. We have heard the rival contentions made by both the parties and gone through the orders of the authorities below. There is no dispute on the fact that the Revenue authorities have not filed the certificate u/s 65B of the Indian Evidence Act. However as per the decision of the Hon'ble Madras High Court (Supra) as cited by the Ld. DR, the Hon'ble High Court held under Para No.77 (iii) of the order that, the Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available u/s 119 of the I.T. Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, Instructions and directions issued by CBDT” . The Hon'ble High Court also held that if the procedure as specified under the CBDT Manual have not been followed while relying on the electronic record, the said record must be supported by corroborative evidence. The relevant portions of the decision of the Hon'ble High Court are reproduced as under:*

*“iii) The Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available under Section 119 of the IT Act*

*and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, instructions and directions issued by CBDT. In the case of Commissioner of Customs (referred supra), the Hon'ble Apex Court had culled out the principles, which has to be followed while conducting search and seizure of evidences and the same has been extracted at paragraph No.50 of this order. Hence, it is mandatory for the respondents to follow the Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.*

*iv) The electronic data have been collected in .txt files in violation of the provisions of Digital Evidence Investigation Manual.*

*v) Though the procedures have not been followed while collecting the electronic data in .txt files, the data collected by the respondents can be relied upon only if the said data are supported by the corroborative evidences.”*

*7. It is abundantly clear from the decision of the Hon'ble Madras High Court (Supra) that in the absence of such E certificate, (65 B Certificate) the electronic data must be supported by corroborative evidences. The sale deed on which the Ld. DR is relying as corroborative evidence does not confirm that whether any interest was to be payable or paid to the assessee. Further, there is no reference of paying of on money or cash amount or interest by the assessee in the said sale deed. Hence, under such circumstances, the sale deed cannot be taken as corroborative evidence. Hence, in our considered opinion, the Revenue Authorities has made the addition without obtaining any E certificate and without any corroborative evidence with regard to the electronic data. Hence, we delete the addition made by the Revenue authorities, thereby allowing the appeal of the assessee.”*

- As your honour may appreciate the fact that the enhancement of income from the statement recorded as per the survey proceedings and the appraisal report based on which the assessment was completed by the Jurisdictional Assessing Officer based on the electronic evidence shall not stand the test of law as enumerated in the ruling above by the Hon'ble Jurisdictional Tribunal.”*

32. We have heard the rival submissions of both the parties and perused the material on record. At the outset, it would be relevant to mention here that while deciding the appeal of Pioneer in paragraph

13 to 15 (supra), we have held that the addition of Rs.7,15,94,632/- is not sustainable in the eyes of law. Therefore, following the same reasoning, the prorata addition of Rs.7,15,94,632/- or the whole addition of Rs.7,15,94,632/- made in the hands of assessee are not sustainable.

33. After reducing the additions of Rs.7,15,94,632/- remained additions in the hands of the assessee and Pioneer as per the case of Revenue would be Rs.22,79,85,038/-. It is clear that the addition, if any, can be made in respect of 33 flats only as per the above discussions made hereinabove and it cannot be made in respect of the remaining flats. The addition in respect to 33 flats, as initially proposed by the Assessing Officer was Rs.22,79,85,038/- assessee and Pioneer.

33.1 The ld.CIT(A) in the order had brought on record that the money reflected in the incriminating document was not in the nature of 'On money' but was in the nature of payment made for interior work. The ld.CIT(A) at page 51 has decided so and the ld.CIT(A) thereafter, has discussed various discrepancies in the money shown to have been received by the assessee from the owners of 33 flats. However, the sum and substance of the finding of the ld.CIT(A) was that the alleged money was in the nature of payment for interior works and was paid by the owners of 33 flats and the ld.CIT(A) had concluded that as the assessee failed to produce the marketing persons and had volunteered to offer 10% on receipt as the undisclosed income, the ld.CIT(A) rejected the contention and held

that the assessee was liable to pay the 20% of the unexplained receipt and had partly decided the issue in favour of the assessee.

34. During the course of argument, the Id.DR had submitted that the price structure as per the seized document was as under :

**FORTUNE PRIME  
PRICE STRUCTURE**

<b>PARTICULARS</b>	<b>COST</b>
Basic Price	Rs.5800/- per SFT
Floor Rise (6 <sup>th</sup> Floor Onwards, For each Floor)	Rs.25/- per SFT
2 Car Parking (Basement I and II)	Rs.500000/-
Amenities : APCPDCL, HMWS & SB Connection Charges, Club Facilities, DG Sets, Piped Gas Connection	Rs.250/- per SFT
Legal and Documentation Charges	Rs.15000/-
Corpus Fund Payable at the time of Flat Registration	Rs.100/- per SFT

35. Similar price structure was placed by the Department before us and on the basis of said price structure, it was submitted that the assessee company has received various amount in cash which are relatable to amenities like APCPDCL, HMWS and SB Connections charges, Club facilities, DG Sets, Piped Gas Connection. The summary of the additions made on the basis of the cash payment received by the assessee along with Pioneer as per the documents filled before us for 30 flats are as under :

S No	Flat No.	Area	Rate	Sale Deed Value	Amount as per seized material	Cash as per addition made	Cash addition made	Rate as per seized material
1	E702	3,370	3,709	1,25,00,000	2,11,57,000	86,57,000	86,57,000	5,800
2	E301	3,190	4,000	1,27,60,000	2,05,97,000	78,37,000	78,33,503	6,050
3	E503	2,625	4,000	1,05,00,000	1,65,12,500	60,12,500	60,12,500	5,850
4	B1504	2,865	4,000	1,14,60,000	1,94,94,125	80,34,125	80,34,125	6,050
5	C1001	2,660	4,000	1,06,40,000	1,70,92,500	64,52,500	64,52,500	5,750
6	C1101	2,660	3,900	1,03,74,000	1,70,93,750	67,19,750	67,51,000	5,850
7	E802	3,370	4,000	1,34,80,000	2,09,72,750	74,92,750	74,93,000	5,750
8	C702	2,655	4,000	1,06,20,000	1,72,26,500	66,06,500	64,87,936	6,000
9	E1403	2,625	4,000	1,05,00,000	1,71,68,750	66,68,750	25,00,000	5,800
10	C302	2,655	4,000	1,06,20,000	1,70,93,750	64,73,750	68,34,170	6,000
11	B501	2,870	4,000	1,14,80,000	1,77,20,000	62,40,000	62,40,000	5,750
12	F302	2,865	4,000	1,14,60,000	1,77,20,000	62,60,000	46,00,000	5,750
13	E1104	3,350	4,000	1,34,00,000	2,16,05,000	82,05,000	81,63,430	5,900
14	B305	3,190	4,000	1,27,60,000	2,01,18,500	73,58,500	73,57,750	5,900
15	F702	2,865	4,000	1,14,60,000	1,82,63,000	68,03,000	38,03,000	
16	E105	2,975	4,000	1,19,00,000	1,95,40,000	76,40,000	76,40,000	6,150
17	E1201	3,190	3,687	1,17,60,000	2,03,57,750	85,97,750	85,97,750	5,800
18	F805	3,800	4,200	1,59,60,000	2,41,55,000	81,95,000	82,15,700	5,900
19	C102	2,450	3,800	93,10,000	1,53,22,500	60,12,500	59,68,645	5,800
20	C103	3,975	3,800	1,51,05,000	2,45,48,750	94,43,750	96,43,750	5,800
21	E701	3,190	4,000	1,27,60,000	2,05,97,000			6,000
22	B1204	2,865	4,000	1,14,60,000	1,79,04,875	64,44,875	66,45,000	5,650

23	E1501	3,190	4,000	1,27,60,001	2,17,24,250	89,64,249	85,37,700	6,100
24	F603	2,835	4,000	1,13,40,000	1,81,47,875	68,07,875	64,89,000	5,950
25	B1403	2,625	4,000	1,05,00,000	2,14,12,380	1,09,12,380	1,09,12,380	7,400
26	E1103	2,625	4,000	1,05,00,000	1,63,00,000	58,00,000	56,22,000	5,750
27	B605	3,190	4,200	1,33,98,000	1,94,00,750	60,02,750	60,00,000	5,650
28	E803	2,625	4,000	1,05,00,000	1,68,40,625	63,40,625	51,00,000	5,900
29	C1203	3,975	4,000	1,35,00,000	2,42,50,625	1,07,50,625	1,07,50,625	5,550
30	B601	2,870	4,000	1,14,80,000	1,81,91,375	67,11,375	17,07,250	5,900

36. The Id.CIT(A) has reproduced the table in respect to 33 flats, which is available at page 22 of this order which is as under :

<b>s. NO</b>	<b>Flat No.</b>	<b>Name of the customer</b>	<b>Sale Deed 50% Developer</b>	<b>Sate Deed 50% Land of Land Owner</b>	<b>Additional Works accounted</b>	<b>Total</b>	<b>As per loose Sheets</b>	<b>Difference</b>
1	13-601	Manish Bhagirath L &Shefali	5690000	5690000	5971299	17351299	18222250	870951
2	C-1203	DurgaLaxmi	6750000	6750000	0	13500000	24250625	10750625
3	5-803	d.R. RAMKRISHNA &SHALINI	5250000	5250000	525706	11025706	17090625	6064919
4	B-605	D. DURGA PRASAD	6765898	6765898	342991	13874787	19400750	5525963
5	5-1103	SAVITHA DETEMENON	5618825	5618825	325890	11563540	16300000	4 736460
6	13-1403	Dr. A. RAJESH	5250000	5250000	2469125	12969125	21412380	8443255
7	F-603	APARNA KAUSHIK RAGURAM	7030800	7030800	1381950	15^3550	18147875	2704325
8	5-1501	MALIN KUMAR SHAH	6316200	6316200	1531200	14163600	21724250	7560650
9	B-1204	U RAVI KUMAR VARA	5987850	5987850	0	11975700	18104875	6129175
10	5-701	K. MANJULA 6 'SRINIVAS	10387600	10387600	0	20775200	20897000	121800
11	C-103	DR. V. S REDDY	9365100	9365100	1400000	20130200	24 748750	4618550
12	C-102	B RATNAAA AU	4855000	4855000	0	9710000	15522500	5812500

13	2-305	RATHNAMALA & SASHREDDY	6480000	6480000	0	12960000	20102000	7142000
14	P-905	T SRIDHAR REDDY	10180000	10180000	221158	20581158	24650000	4068842
15	5-1201	ROHIT & MAUTHI RAAAACHANDRAN	5880000	5880000	1499925	13259925	20357750	70 <b>97825</b>
16	P-1502	AVRP MUNI SEKHAR a SHYMALA	5720000	5720000	795438	12235438	18477875	624243 7
17	E-H02	VEDANT MALAPANI	8208000	8208000	0	16416000	19119525	2703525
18	5-105	K LAKSHM MAALLIKARJUN & UMA	7378000	7378000	0	14756000	19540000	4 784000
19	5-702	T.S REDDY	6250000	6250000	511800	13011800	21157000	8145200
20	13-305	SESI KUMARAN	6380000	6380000	900000	13660000	20118500	6458500
21	5-1104	M. RAHUL REDDY	6764800	6764800	790000	14319600	21805000	7485400
22	F-302	G PADMAJA	5730000	5730000	941000	12401000	17690000	5289000
23	13-501	S DIVYA REDDY BHARGAVA THUDI	5740000	5740000	0	11480000	17720000	6240000
2-4	5-304	RAJESH GUPTA	6666500	6666500	1012 750	1434 5750	21102500	6756 750
25	C-302	A RAVINDER	5310000	5310000	0	10620000	17493 750	6873 750
26	5-1403	B MURALIDHAR KALYAN	8049175	8049175	1395810	17494160	17168750	325410
27	C-702	VISHNU CHOKANI MANJARI AGARWAL	5560000	5560000	456000	11576000	17226500	5650500
28	5-802	SANTOSH RATHI SHOBHA RATHI	6733368	6733368	0	13466736	20972750	7506014
29	C-1101	A NAGAVENI	5202000	5202000	836404	11240404	17125000	5884596
30	C-1001	KRAMESH	5320000	5320000	0	10640000	17092500	6452500
31	B-1504	AANCHAL NARISHLAL	5729999	5729999	4 78145	11938143	19494125	7555982
32	5-503	V SWARUPA RANI	6028750	6028 750	0	12057500	16512500	4455000
33	5-301	D REKHA REDDY	7548175	7548 I 75	0	15096350	2084 7000	5750650
		<b>TOTAL</b>	<b>216126040</b>	<b>216126040</b>	<b>23786591</b>	<b>456038671</b>	<b>641594905</b>	<b>185556234</b>

37. From the conjoint reading of the two tables above, it is clear that the additional work which was accounted in the books of account of JDA for Rs.2,37,86,591/- and the amount of Rs.18,55,56,234/- was not accounted in respect to 33 flats in the books of account. However, for the reasons available on record, the addition made in respect of these flats worth Rs.22,79,85,038/-. The case of the Revenue was that the documents were found in respect of these 33 flats showing the payment of ‘On money’ on account of difference found in the books of accounts of the assessee and the seized documents with respect to the following items :

1. Basic Price
2. Floor Rise (6th Floor Onwards, For each Floor)
3. 2 Car Parking (Basement I and II)
4. Amenities : APCPDCL, HMWS & SB Connection Charges, Club Facilities, DG Sets, Piped Gas Connection
5. Legal and Documentation Charges
6. Corpus Fund Payable at the time of Flat Registration

38. The Revenue has submitted that the ld.CIT(A) instead of treating the amount found mentioned on the seized document which were tabulated hereinabove in paragraph 36 were wrongly treated by the ld.CIT(A) as the additional work and thereafter, the ld.CIT(A) has calculated the profit on the additional work @ 20%.

39. The ld.CIT(A) in the impugned order had elaborately discussed the reasons why the amount mentioned on the seized documents cannot be related to 'On money' in paragraph at page 43, 45, 50, 52, 53, 55, 56 and 58. It is the case of the ld.CIT(A) that various sale deeds were executed on same date and there was a huge variation in the for payment of 'On money'. However, the ld.CIT(A) came to the conclusion that there cannot be huge variation in the payment of 'On money' when the flats were registered on the value reflected in the table available at pages 29 to 42 of the order of ld.CIT(A) on the adjacent dates. Admittedly no addition was made by the Assessing Officer in respect to 248 flats approximately when the registered value in respect of these 248 flats was in the same range of amount. Further, the ld.CIT(A) has also brought on record the

affidavit filed by most of the flat owners, whereby, they confirmed that no 'On money' was paid by them to the assessee / JDA and in some cases, it was confirmed that some amount was paid for carrying out additional repair work. For the above said purpose, we may refer to the tabulation available at pages 53 and 54 of the order of Id.CIT(A). Further, we found that the major constituent of the addition made on the basis of the seized document was alleged to be relatable to the difference in basic price mentioned on the seized document and the registered value. No independent or corroborated evidence was produced before us showing that the amount of Rs.5800/- per sq. ft was paid by the flat owners or it was agreed by them. There is no endorsement for the seized document showing the receipt of cash with corresponding dates by the assessee from the flat owners. In most of the cases, as per the seized document, the basic price mentioned was Rs.5800/- per sq.ft and as against that the Id.CIT(A) has brought on record that the registered value in respect of all the flats were in the range of Rs.3500/- per sq.ft to Rs.4,200/- per sq.ft. We have independently analyzed the price of these 33 flats in the tabulation reproduced hereinabove and as per the said tabulation, the prices of these 33 flats were in the range of Rs.3687/- to Rs.4200/- per sq.ft. In view of the above, we are of the opinion that no addition can be made on the basis of the difference in basic price for the constructed area of the 33 flats on the basis of the seized document which shows the basic price as Rs.5800/- as against the registered price of the flats in the community value from Rs.3687/- to Rs.4200/- per sq.ft.

40. The Revenue has failed to produce any evidence either by way of the receipt of money mentioned on the seized document agreed by the assessee or the flat owners which confirms that the amount was paid by the them to the assessee as 'On money'. Even these seized documents, as per the case of the Revenue, were found during the course of survey from the marketing office of the assessee, however, to a great surprise, no statement of marketing personnel had been recorded by the survey team or the Assessing Officer to support the case of the Revenue. The name, designation and signature of the marketing team are all missing from the seized document. No confirmation had been received by the survey team from the marketing personnel confirming that the amount mentioned in receipt was not a paper for discussion but was the agreement between the parties to pay the 'On money'. Furthermore, the Managing Director of the assessee in his statement had denied the contents of the document and had only submitted that some additional charges might had been recovered by the marketing team for carrying out some additional work in the flat purchased by the flat owners.

41. As brought on record that some of the additional work was duly reflected in the statement confronted by the Managing Director wherein it was mentioned that an amount of Rs.2,37,86,591/- was received by the assessee against the additional work which was duly accounted for in the books of accounts. If we compare the registered value of the flats for which the additional work were done by the assessee after receiving that amount by way of cheque vis-à-vis the

price paid by the other flat owners for five components, then it is crystal clear that there is no difference in basic price, floor wise, parking wise, amenities like club facilities etc., and legal documentation. Even in the assessment order, the Assessing Officer has not made out a case of payment of 'On money' by the flat owners and the Assessing Officer has rejected the contentions of the assessee for the reasons mentioned in para 5.2 that the assessee has failed to justify the claim of cash receipt by the marketing staff with any verifiable documents and further, the assessee has failed to corroborate the additional work undertaken by the marketing staff with any evidence and lastly, the Assessing Officer has concluded that the assessee has not produced any evidence with respect to expenses incurred on account of additional work. In fact, by giving the above said reasons, the Assessing Officer has not denied that the amount was received by the assessee for additional work only. However, on account of the failure of the assessee to produce the evidences the entire cash amount was added in the hands of the assessee as the income of the assessee. The above said aspect has been dealt by the Id.CIT(A) in the order passed by him and had held that the entire amount cannot be added and only the percentage profit embedded to carry out the additional work can only be added. We do not find any error in the view taken by the Id.CIT(A). Further, the Assessing Officer has failed to take cognizance of the additional work reflected in the question put to the assessee during the survey proceedings, which was duly answered by him in reply to question no.9 of his statement. Besides that the Assessing Officer had also failed to take note of the affidavits filed by the flat owners disputing

the making of “On money’ to the developer and he has not brought on record anything contrary to that and further, he has not dealt with the above said aspect while passing the assessment order.

42. In the light of the above, we are of the considered opinion that the view taken by the ld.CIT(A) considering the totality of the circumstances and after comparing the price structures of the 248 flats approximately, that the amount paid by the 33 flat owners was nothing but an amount paid for additional work. We are of the opinion that the said approach of the ld.CIT(A) is correct and we do not find any fault in the order of ld.CIT(A). In the light of the above, we are of the opinion that the additions which required to be made for 33 flats only.

43. Having held that the amount received by the assessee of /- Rs.22,79,85,038/- was for the additional work, we find that the ld.CIT(A) had restricted the addition to 20% of the amount, in our view, the estimation of profit computed by the ld.CIT(A) @ 20% on the unexplained amount was on the lower side, though for that purposes, the ld.CIT(A) had relied upon the various judgments referred by him at pages 59 to 65 of his order. In our view, it would be appropriate that the assessee who happens to be the reputed builder and has indulged into receiving the amount in cash for carrying out the additional work should not be equated with the other persons, who have also received the unexplained amount for carrying out the additional work. In view of the above, we are of the view that the estimation made by the ld.CIT(A) is required to be sustained at 20% of

the unexplained amount of Rs.18,55,56,234/. As held by us in the preceding paragraph that the revenue share between the assessee and the Pioneer Builder was in the proportion of 50 : 50. Therefore, we hold and direct the Assessing Officer to make the addition of 50% of 20% of Rs.22,79,85,038/- (Rs.2,72,98,504/- approximately) in the hands of assessee and the remaining addition may be made in the hands of the Pioneer, subject to our finding given hereinabove. In the light of the above, both the appeals of the Revenue are dismissed.

44. In the result, the appeals of Revenue in ITA Nos.50 and 54/Hyd/2024 are dismissed.

**ITA Nos.49 and 51/Hyd/2024**

45. The appeals filed by the assessee in ITA Nos.49 and 51/Hyd/2024 are taken care of while deciding the Revenue appeals in ITA Nos.50 and 54/Hyd/2024. In view of our decision in ITA Nos.50 and 54/Hyd/2024 in the preceding paragraphs, the appeals of assessee in ITA Nos.49 and 51/Hyd/2024 are dismissed.

46. In the result, the appeals in ITA Nos.49 and 51/Hyd/2024 are dismissed.

**ITA No.53/Hyd/2024**

47. The facts and issues involved in this appeal are identical to the facts and issues which we had considered in ITA No.64/Hyd/2024 in the case of Pioneer for A.Y. 2019-20. The facts considered by us and reasons given in preceding paragraph nos.20 and 21 shall apply mutatis and mutandis to this appeal, as well. Therefore, for similar reasons, penalty levied by the Assessing Officer and sustained by the Id.CIT(A) is hereby quashed. Accordingly, the appeal in ITA No.53/Hyd/2024 is dismissed.

48. In the result, the appeal in ITA no.53/Hyd/2024 is dismissed.

49. To sum up, the appeals of Revenue in ITA Nos. 56 and 57/Hyd/2024 are allowed for statistical purposes, ITA Nos.50, 53, 54 and 64/Hyd/2024 are dismissed. The appeals filed by assessee in ITA Nos.49 and 51/Hyd/2024 are dismissed.

Order pronounced in the Open Court on 29<sup>th</sup> August, 2024.

<b>Sd/-</b> <b>(MADHUSUDAN SAWDIA )</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 29<sup>th</sup> August, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Pioneer Builders, Hyderabad, 8-2-309/M/5, Navodaya Colony, Road No.14, Banjara Hills – 500034, Hyderabad.
2	D S R Infrastructure Private Limited, Hyderabad, 8-2-596, 1st Floor, Orivercl Towers, Road No.10, Banjara Hills – 500034, Hyderabad, Telangana.
3	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Hyderabad.
4	PCIT, (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*