

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T(SS).A. Nos.197&198/Ahd/2013  
(A.Ys.: 2009-10 & 2010-11)

Uma Shakti Corporation Residency Project, A-128, Heritage Bungalows, Opp. Science City Road, Ahmedabad-380060	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(1), Ahmedabad
[PAN No.AACFU2135J]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

I.T(SS).A. No.196/Ahd/2013  
(A.Y.: 2008-09)

Vikas R. Patel, 23, Uma Bungalows, R.C. Technical Road, B/h. Nirman Tawar, Ghatlodia, Ahmedabad-380061	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(1), Ahmedabad
[PAN No.ACCPP4640D]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

I.T(SS).A. No.201/Ahd/2013  
(A.Y.: 2008-09)

Deepak G. Prajapati, 2, Kunta Park Society, Nava Vadaj, Opp. Ganesh School Ahmedabad-380013	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(1), Ahmedabad
[PAN No.ABCPP4846L]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

I.T.A. No.1001/Ahd/2013  
(A.Y.: 2008-09)

Shri Brijesh Sukhdev Patel, A-128, Heritage Bungalow, Sola Bhadej Road, Ahmedabad	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(1), Ahmedabad
[PAN No.AGWPP4151H]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri M. S. Chhajed, Shri D. K. Parikh & Ms. Nupur Shah, A.Rs.
<b>Respondent by:</b>	Shri A.P. Singh, CIT-DR

<b>Date of Hearing</b>	30.09.2024
<b>Date of Pronouncement</b>	25.10.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

At the outset, we would like to point out that the present appeals are arising out of M.A. No. 10/Ahd/2022, M.A. Nos. 24&25/Ahd/2022, M.A. No. 26/Ahd/2022 and M.A. No. 28/Ahd/2022, recalling the earlier orders passed by ITAT, Ahmedabad ‘C’ Bench dated 08.11.2021 in IT(SS)A No. 196/Ahd/2013, IT(SS)A No. 201/Ahd/2013, ITA No. 1001/Ahd/2013 and IT(SS)A Nos. 197&198/Ahd/2013, for adjudicating specific issue. IT(SS)A Nos. 197&198/Ahd/2013 in the case of M/s. Uma Shakti Corporation Residency Project is recalled for the limited purpose of adjudicating the quantum of income to be subjected to tax on the on-money received by it. The specific finding of the ITAT in Miscellaneous Application is at Para 12 to 14 of the order is reproduced as under:

*“12. We shall first be dealing with the mistake pointed out in the order passed by the ITAT in the case of the firm, i.e. M/s. Uma Shakti Corporation Residency Project in MA Nos. 24 & 25/Ahd/2022, which is to the effect that while the ITAT had upheld the order of the Ld. CIT(A) taxing profits earned on unaccounted receipts @ 30% in both the years, i.e. A.Y 2009-10 & 2010-11, the fact on record was that the firm had collected Rs.3 crores from its members and paid Rs.2.50 crores to the land-owners. That, therefore, only Rs.50 lakhs was to be treated as an income of the assessee which the assessee had disclosed, as opposed to the ITAT estimating the net profit @ 30% of the on-money received. The ld. DR, in his counter to the mistake as pointed out by the ld. Counsel for the assessee, has not controverted the facts pointed out by the ld. Counsel for the assessee. On the contrary, he has merely stated that considering this contention would tantamount to review of the order.*

13. *We are not in agreement with the Ld. DR. It is apparent from the facts pointed out by the ld. Counsel for the assessee, which has remained uncontroverted by the Revenue, that the ITAT had not taken into consideration the entire facts pointed out to it while computing the income from on-money received by treating 30% of the unaccounted receipts as profits of the assessee, when the facts on records clearly revealed that out of the on-money received of Rs.3 crores, the assessee had made payment of Rs.2.5 crores to the land-owners. We are in agreement with the ld. Counsel for the assessee that there is an apparent error in the order of the ITAT for not having dealt with the issue based on the facts before it.*

14. *In view of the same, the order of the ITAT in IT(SS)A Nos.197 & 198/Ahd/2013 in the case of M/s. Uma Shakti Corporation Residency Project is recalled for the limited purpose of adjudicating the quantum of income to be subjected to tax on the on-money received by it.”*

The order of the ITAT in IT(SS)A No. 196/Ahd/2013, ITA No. 1001/Ahd/2013 and IT(SS)A no. 201/Ahd/2013, all for A.Y. 2008-09, are recalled for the limited purposes of adjudicating quantum of addition to be made in the hands of the partners on account of unexplained investment. The specific findings of the ITAT in M.A. No. 10/Ahd/2022 is at Para 15 to 21 is reproduced as under:

“15. *Taking up next the Miscellaneous Applications filed by the partners of the firm i.e. Shri Deepak G. Prajapati, Shri Vikash R. Patel and Shri Brijesh Sukhdevbhai Patel in MA Nos. 10, 26 & 28/Ahd/2022, the mistake pointed out is to the effect that out of the total payment of Rs.2.5 crores made to the land-owners in cash which remained unaccounted and unexplained, and added in the hands of the three partners @ 33% each, an amount of Rs.41 lakhs was paid in the preceding year and, therefore, could not be part of addition in the impugned year.*

16 *The ld. DR has fairly agreed with this fact in his submissions made before us and has stated that the issue may be decided considering the provisions of the Act in this regard that the addition on account of unexplained investment is to be made in the year in which it is so made.*

17. *In view of the same, to the extent of subjecting Rs.41 lakhs to tax in the impugned year on account of payment made to land-owners by the three partners, clearly there is mistake in the order of the ITAT having not adjudicated it in the light of the facts before it.*

18. *The next mistake pointed out before us that while the cash payment made to the land-owners of Rs.2.50 lakhs was attributed to 3 partners, i.e. Shri Deepak G. Prajapati, Shri Vikash R. Patel and Shri Brijesh Sukhdevbhai Patel, the document found during the search, i.e. MoU, which formed the basis of alleging that the cash had been paid for purchasing land, revealed the name of only one partner/person i.e. Shri Brijesh Sukhdevbhai Patel. That, therefore, the ITAT had erred in confirming the addition on account of cash payment made to other two partners. The ld. DR has fairly agreed with the same in his submission filed before us.*

*Therefore undoubtedly there is an apparent mistake in the order of the ITAT attributing the cash payment to all three partners.*

19. *Further, the other mistake pointed out by the ld. Counsel for the assessee that there were 8 partners in the partnership firm while the cash payment was attributed to only 3 persons, and no basis for the proportionate addition for the unaccounted investment was mentioned in the assessment order. The ld. DR fairly agrees with the contentions of the assessees.*

20. *In view of the above, since the ld. DR has fairly conceded to the fact that there was mistake in the order of the ITAT with regards to the quantum of unexplained investments added in the hands of the partners as also the amount attributed to each partner, the order of the ITAT, therefore, needs to be recalled for the limited purposes of re-adjudicating these issues.*

21. *The MAs filed by the partners, i.e. Shri Vikash R. Patel, Shri Deepak G. Prajapati, and Shri Brijesh Sukhdevbhai Patel in MA No.10, 26 & 28/Ahd/2022 are allowed in above terms. **The order of the ITAT in IT(SS)A No. 196/Ahd/2013, ITA No. 1001/Ahd/2013 and IT(SS)A No. 201/Ahd/2013, all for AY 2008-09, are recalled for the limited purposes of adjudicating quantum of addition to be made in the hands of the partners on account of unexplained investment as stated in paragraph Nos. 15-20 of our order above.***

**Giving a brief background leading to the recall of the orders before the ITAT.**

**We shall first deal with Assessee's Appeal in IT(SS)A No. ITA 197 & 198/Ahd/2013 for A.Y. 2009-10 & 2010-11**

2. The assessee had raised the following grounds of appeal:

**IT(SS)A No. 197/Ahd/2013**

- “1. *The order passed by the Ld. CIT(A) is against, law equity and justice.*
2. *The Ld. CIT (A) has erred in law and on facts in considering the payment of Rs. 40,00,000/- to the partners of M/s. Uma Shakti Corporation by the appellant as unaccounted income and thus the Ld. CIT(A) has erred in law and on facts in estimating net profit of Rs. 12,00,000/- @30% on alleged unaccounted sales of Rs. 40,00,000/-.*
3. *The Ld. CIT(A) has erred in law and on facts in considering the payment of Rs. 40,00,000/- made to Deepak Prajapati by the appellant firm as unaccounted sales income and thus the Ld. CIT(A) has erred in law and on facts in estimating net profit of Rs. 12,00,000/- @30% on alleged unaccounted sales of Rs. 40,00,000/-.*
4. *Alternatively the Ld. CIT(A) has erred in law and on facts in not allowing deduction made for purchase of land of Rs. 2,50,00,000/- from the profit of the project.*
5. *The appellant craves liberty to add, amend, alter or modify all or any grounds before final hearing.”*

**IT(SS)A No. 198/Ahd/2013**

- “1. *The order passed by the Ld. CIT(A) is against, law equity and justice.*
2. *The Ld. CIT(A) has erred in law and on facts in considering the collection from members received in cash of Rs. 3,00,19,000/- as unaccounted sales and thus estimating 30% of net profit of alleged unaccounted sales and thus making addition of Rs. 66,05,700/-.*
3. *Alternatively the Ld. CIT(A) has erred in law and on facts in not allowing deduction made for purchase of land of Rs. 2,50,00,000/- from the profit of the entire project.*
4. *The appellant craves liberty to add, amend, alter or modify all or any grounds before final hearing.”*

3. The brief facts of the case that a search under Section 132 of the Income-tax Act was conducted at the residential premises of Shri Vikash R. Patel in Ahmedabad, on March 4, 2010. During this search, a Memorandum of Understanding (MOU) dated April 7, 2007, was found and seized, which related to the purchase of land at Chandlodia, Plot No.

32 IT-29, under Survey Nos. 217/1 and 218/2. As per the MOU, Shri Brijesh S. Patel and Shri Mahendra D. Patel (the first party) agreed to purchase the land from Shri Anil Kumar G. Darji, Shri Amit Kumar K. Patel, and Shri Narendra R. Patel (the second party) at a price of ₹10,171/- per square yard. Shri Vikas R. Patel, in his statement recorded during the search, **admitted that an unaccounted cash payment of ₹2.5 crores was made for this transaction.** The registered sale deed for the said land was executed on October 31, 2007, at a stated value of ₹20 lakhs between the aforementioned sellers and M/s. Uma Shakti Residency. During the assessment proceedings, the assessee (Uma Shakti Residency Corporation) claimed that **the source of the unaccounted ₹2.5 crore cash payment was derived from unaccounted collections received from clients of Uma Shakti Residency.** The assessee submitted that a total payment of ₹2.5 crores, including ₹20 lakhs in cheques, was made to the landowners. A detailed submission by the assessee dated November 29, 2011, was incorporated in the Assessing Officer's order from pages 2 to 8. The assessee further submitted that the unaccounted payment came partly from the unaccounted collections from Umiya Tirth Apartment (UTAP) members and partly from the Umiya Tirth Residency (UTRE) project. According to the assessee, ₹87 lakhs was sourced from UTAP collections, which began on January 20, 2007, and the remaining ₹1.63 crore was sourced from UTRE. A fund flow statement supporting these claims was submitted by the assessee. However, the Assessing Officer rejected the assessee's claims regarding the cash flow of unaccounted receipts, particularly for the period preceding the formation of the assessee firm.

The assessing officer highlighted that no original documents or Affidavits corroborating the unaccounted receipts were found during the search. The assessing officer noted that the firm, M/s. Uma Shakti Residency, did not exist before October 20, 2007, and thus could not have received contributions from clients before that date. It was deemed implausible that clients would invest in a project without land ownership or an approved plan. Based on these findings, the cash flow statements were dismissed as afterthoughts aimed at justifying the unaccounted investment of ₹2.5 crores in the Chandlodia land. The Assessing Officer further stated that the assessee's claim that ₹87 lakhs had been distributed to partners for land acquisition was not credible, as no evidence supported this assertion. Additionally, the officer found that ₹40 lakhs and ₹47 lakhs, allegedly repaid in FY 2008-09 and FY 2009-10, respectively, could not be explained, leading to their addition to the assessee's total income. Another sum of ₹40 lakhs paid to Shri Dipak G. Prapati was also added to the total income due to unexplained sources.

**Proceedings before CIT(Appeals) for A.Ys. 2009-10 and 2010-11**

4. The assessee appealed to the Commissioner of Income-tax (Appeals) [CIT(A)], who held that the entire unaccounted sale proceeds could not be taxed in the assessee's hands. Instead, only an estimated profit of 30% of the unaccounted sale was considered taxable. Accordingly, the addition was restricted to ₹12 lakhs each for the two payments of ₹40 lakhs. The CIT(A) observed that during the search at Shri Vikas R. Patel's residence, a MOU dated April 7, 2007, was found, relating to the purchase

of Chandlodia land, where Umiya Tirth Residency was developed. Shri Vikash Patel admitted to making an unaccounted payment of ₹2.5 crores for the land. The seized documents indicated that ₹2.3 crores of this payment had been made between February 22, 2007, and June 19, 2007. Ld. CIT(Appeals) observed that during the assessment, the assessee claimed that ₹87 lakhs from the UTAP project and ₹1.63 crore from the UTRE project were used for the land purchase. However, no supporting documents were found during the search. Accordingly, Ld. CIT(Appeals) held that the Assessing Officer was correct in rejecting the claim, as the firm was not in existence at the time the payments were purportedly made. Additionally, the assessee submitted a cash flow statement indicating unaccounted receipts of ₹3,00,19,000/- from Uma Shakti Residency. The CIT(A) restricted the addition to 30% of the unaccounted receipts, estimating that the rest was used for project development.

5. In appeal before ITAT, the Tribunal observed that the case under consideration involves an assessment following a search conducted under section 132 of the Income Tax Act on the Umiya Group on March 4, 2010, and subsequent dates. During the search at the residence of Shui Vikas R. Patel, who later became a partner in the assessed firm, a Memorandum of Understanding dated April 7, 2007, was found. This memorandum pertained to land associated with the residential project Umiya Tirth Residency, which the assessee firm developed. Vikas Patel, in a statement recorded under section 132(4) during the search, acknowledged unaccounted payments totaling Rs. 2.5 crores made for the purchase of

land in Chandlodia from certain sellers. The seized documents indicated that Rs. 2.30 crores of this amount was paid between February 22, 2007, and June 19, 2007. **Approximately 22 months after the search**, the assessee firm claimed that Rs. 87 lakhs was paid to two partners, Vikas R. Patel and Brijesh Patel, for acquiring the Chandlodia land from unaccounted collections from the Umiya Tirth Apartment project. The assessee stated that the remaining payment of Rs. 1.63 lakh was sourced from unaccounted receipts from members of the Umiya Tirth Residency project. The assessee firm provided a chart detailing unaccounted cash receipts from the project, claiming a total of Rs. 3,00,19,000/-. However, during the assessment proceedings, the Assessing Officer (AO) found no supporting evidence for these claims and requested substantiation of the unaccounted collection. In response, the firm submitted Affidavits from clients regarding cash contributions. Yet, the AO noted that these Affidavits lacked specific dates and the attached ledgers were unsigned, suggesting they were prepared without genuine supporting evidence. Moreover, the AO pointed out that the firm was established only on October 22, 2007, making it implausible for clients to have made contributions before this date. The AO concluded that since the firm had not been in existence prior to the payments made for the land, the cash payments could not be linked to the firm's activities. In assessment year 2009-10, the assessee firm claimed to have refunded Rs. 40 lakhs each to partners Brijesh Patel and Dipak G. Prapati concerning unaccounted funds used to acquire the land. The AO deemed this claim as unexplained and added it to the firm's total income. However, the Commissioner of Income

Tax (Appeals) (CIT(A)) restricted the addition to 30% of the amount, acknowledging that some expenditure related to land development could not be ruled out and only income element can be brought to tax in the hands of the assessee firm. The ITAT noted that the findings of the CIT(A) indicated that, despite the firm not existing during the time unaccounted cash payments were made, it was justifiable to recognize that some cash collection had occurred during the assessment year. The CIT(A) highlighted that since the firm was established after the disputed transactions, the entirety of the cash collection could not be attributed to it. **In an alternative ground of appeal, the assessee firm before the Tribunal, argued against the CIT(A)'s decision not to allow a deduction of Rs. 2.5 crores from the project profits for land purchases.**

The ITAT noted that unaccounted payments were made before the assessee firm's establishment, and the Affidavits provided were insufficiently supported by evidence. Thus, the appeal was dismissed by ITAT on this issue. Additionally, in another related appeal for the assessment year 2010-11, the assessee firm challenged the CIT(A)'s restriction of an unaccounted cash receipt of Rs. 3,00,19,000/- to a 30% estimate of profit, which was established based on previous assessments. The ITAT held that the circumstances were similar to those in the earlier case, leading to the dismissal of this ground as well. Ultimately, the appeals related to both assessment years were dismissed, affirming the findings and decisions made by the CIT(A) and the AO.

6. The assessee filed a Miscellaneous Application (MA), in which the order passed by ITAT vide order dated 08.11.2021 was partly recalled. The ITAT, while partly recalling the earlier order observed that the crux of the issue lies in the ITAT's affirmation of the CIT(A)'s decision to tax profits derived from unaccounted receipts at a rate of 30% for the assessment years 2009-10 and 2010-11. The ITAT in the Miscellaneous Application proceedings observed that the facts on record indicate that the assessee firm collected a total of Rs. 3 crores from its members, of which Rs. 2.5 crores was paid to the landowners. The Counsel for the assessee argued that only Rs. 50 lakhs should have been classified as the assessable income of the firm, which had already been disclosed, contrary to the ITAT's affirmation of estimation of net profit based on 30% of the unaccounted receipts. ITAT noted that the learned Departmental Representative (DR) responded to this assertion of the counsel for the assessee, but did not contest the factual basis presented. Instead, the DR suggested that acknowledging this argument would effectively involve a review of the ITAT's prior ruling. However, the Bench disagreed with the DR's stance, and held that the facts highlighted by the counsel for the assessee had not been contradicted by the Revenue. The bench concluded that the ITAT in its earlier order had failed to consider all relevant facts when calculating the income derived from the on-money received, particularly the fact that substantial payment of Rs. 2.5 crores made to the landowners. In light of these considerations, the ITAT vide order dated 24.07.2024 concurred with the counsel's assertion that there was an error in the ITAT's previous order for not adequately addressing the issue based on the facts presented.

7. Before us, the Counsel for the assessee reiterated the submission made before CIT(A) and the Tribunal, which are primarily to the effect that the Ld. CIT(A) erred in estimating net profit @ 30% on alleged unaccounted sales and also that the Ld. CIT(A) erred in not allowing deduction made for purchase of land of Rs. 2,50,00,000/- from the profit of the project.

8. On going through the facts of the instant case, we find force in the contention of the Ld. Counsel of the assessee that there is a direct nexus between the unaccounted receipts for the impugned assessment years i.e. A.Y. 2009-10 and 2010-11 and the payment of Rs. 2.50 crores to the land owners of the property. Therefore, we agree with the contention of the Counsel for the assessee that while the assessee firm had collected a sum of Rs. 3 crores from its members as unaccounted receipts, while a sum of Rs. 2.50 crores had been paid by the assessee firm to the land owners this fact has also not been countered / disputed by the Ld. D.R. Therefore, the Ld. CIT(A), in our considered view, should have directed deduction of this amount of Rs. 2.50 crores from the unaccounted receipts for the impugned year under consideration. We observe that from the facts on record, it is coming out that out of the on-money receipt by the assessee for the impugned years under consideration, the assessee firm had made payment of Rs. 2.5 crores to the land owners. Therefore, we hold that this amount of Rs. 2.50 crores is liable to be deducted from the on-money receipts of

the assessee for the impugned years under consideration i.e. A.Y. 2009-10 and 2010-11.

9. In the result, this alternative ground of the assessee is allowed.

10. However, with respect to the other grounds of the assessee, for the impugned years under consideration we find no infirmity in the order of Ld. CIT(A) so as to call for any interference. Even, we observe that the earlier order of ITAT was recalled vide Miscellaneous Application dated 24.07.2024, only with respect to adjudication for this limited issue. Therefore, the other grounds raised by the assessee for the impugned years under consideration are dismissed.

11. In the result, the appeal of the assessee is partly allowed for A.Ys. 2009-10 and 2010-11.

**Now we come to Assessee's Appeal in IT(SS)A Nos. 196 & 201/Ahd/2013 for A.Y. 2008-09 and ITA No.1001/Ahd/2013 for A.Y. 2008-09**

12. The assessee has raised the following grounds of appeal:

**IT(SS)A No. 196/Ahd/2013**

*"1. The ld. Commissioner of Income Tax (Appeals) has erred in law and on fact treating the land payments of Rs. 143 lac from amount received as advances for land collection by firm M/s. Uma Shakti Corporation Residency Project, as payments made by appellant. It is therefore prayed that addition so made may kindly be deleted.*

2. *Your appellant craves liberty to add, to alter, to modify, to amend or to withdraw / delete any of the grounds of appeal at any time, on or before the hearing of appeal.”*

**IT(SS) No. 201/Ahd/2013**

“1. *The Ld. CIT(A) has grossly erred in law and on facts in allowing the appeal partly. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.*

*I. ADDITION U/S. 69 OF THE I.T. ACT ON ACCOUNT OF UNEXPLAINED INVESTMENT IN THE LAND –RS. 47,66,666/- ON SUBSTANTIVE BASIS.*

1. *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 47,66,666/- u/s. 69 of the Act out of total addition of Rs. 54,33,333/- made by the Assessing Officer on account of alleged unexplained investment in land on substantive basis in the hands of appellant.*

2. *The Ld. CIT(A) has erred in law and on facts in confirming the addition without considering the facts of the case and submission and explanation with supporting details furnished by the appellant.*

*The appellant reserves his right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing.”*

**ITA No. 1001/Ahd/2013**

“1. *The order passed by the Ld. CIT(A) is against law, equity and justice.*

2. *The Ld. CIT(A) has erred in law and on facts in upholding the order of the Ld. A.O. of addition made on presumption and surmises of unaccounted investment by the appellant in purchase of land to the extent of Rs. 47,66,666/-.*

3. *The Ld. CIT(A) has erred in law and on facts in upholding the notional rent income of to the extent of Rs. 25,200/-.*

4. *Appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final hearing.”*

13. This matter is concerning three appeals for assessment year 2008-09. Given the similarity in facts and issues, the appeals are being adjudicated together.

14. The brief facts of the case are that search operation conducted on March 4, 2010, at the residence of Shri Vikas R. Patel. During this search, a memorandum of understanding (MOU) dated April 7, 2007, was seized, which detailed an agreement concerning the purchase of land in Chandlodia. According to this MOU, Shri Brijesh S. Patel and Shri Mahendra D. Patel (the first parties) had agreed to acquire land from Shri Anil Kumar G. Darji, Shri Amit Kumar K. Patel, and Shri Narendara R. Patel (the second parties) at a rate of Rs. 10,171/- per square yard. During the assessment proceedings, Shri Vikas R. Patel admitted to making an unaccounted cash payment of Rs. 2.5 crores. This was notable as a registered sale deed indicated a much lower sale price of Rs. 20 lakhs for the land in question. The assessee submitted before the Assessing Officer that the funds were sourced from unaccounted collections from clients of the firm involved in the Uma Shakti Residency project. The assessee stated that the Rs. 2.5 crore payment included cheques totaling Rs. 20 lakhs paid to the landowners. A detailed submission dated November 29, 2011, was made, asserting that funds collected from clients for additional work on the project were used to pay the landowners. The firm claimed to have begun collecting funds from members of M/s. Shakti Corporation (UTAP) on January 20, 2007, and that these funds were utilized for part payments to landowners. Additionally, the firm noted that bookings for their project commenced shortly before the MOU, thereby justifying their financial dealings. However, the Assessing Officer rejected these claims, stating that no evidence of unaccounted receipts related to the Uma Shakti Residency project was found during the search. The affidavits submitted by the

assessee's clients did not specify the dates of the cash contributions, and the attached ledgers lacked signatures from the clients, suggesting they were prepared without proper verification. **The Assessing Officer further indicated that since the firm was established only on October 22, 2007, it was implausible for clients to have contributed cash before that date. The Assessing Officer also noted the absence of an approved project plan, which weakened the statement that clients could choose flats for a non-existent project.** Consequently, the Assessing Officer dismissed the cash flow statement provided by the assessee as a fabrication meant to conceal the unaccounted investment. The Assessing Officer calculated the unexplained cash paid at Rs. 163 lacs after deducting of Rs. 87 lakhs from the total consideration of Rs. 2.5 crores. The Assessing Officer has also reduced payment of Rs. 20 lakhs paid by cheque by the Uma Shakti Corporation towards purchase of land and the remaining amount of Rs. 1.43 crore was held as paid by the erstwhile partners of the assessee firm. The Assessing Officer has made addition @ Rs. 47,66,666/- each in the cases of Shri. Vikash R. Patel, Shri Brijesh S. Patel and Shri Dipak G. Prajparti.

15. In appeal before CIT(A), he affirmed/held that the partnership firm did not exist prior to October 20, 2007, and deleted the protective addition related to the firm. However, the substantive additions made to the partners' incomes were upheld, totaling Rs. 4.76 crores across the three partners.

16. In appeal to ITAT, the Tribunal concurred with the CIT(A)'s conclusion that the firm was not in existence when the cash payments were made to land sellers. The ITAT was of the view that it was established that on-money payments could not commence before the firm's formation. The Tribunal scrutinized the Affidavits presented by the assessee and noted the lack of specific details regarding cash contributions, the absence of payment receipts, and the overall absence of supporting documentation. The claims made by the assessee were deemed to be an afterthought aimed at addressing the unexplained cash payments made before the firm's establishment. Accordingly, the Tribunal found no merit in the appeals and upheld the earlier decisions regarding the unaccounted cash payments, confirming that the assessments made by the Assessing Officer and the CIT(A) were justified.

17. The assessee filed MA against the order of ITAT. The ITAT observed that the Counsel for the assessee highlighted a mistake in the previous Tribunal order regarding the addition of unexplained cash payments. The Counsel for the assessee submitted that this amount was apportioned equally among the three partners at 33% each. However, the Counsel for the partners pointed out that Rs. 41 lakhs of this payment had been made in the preceding financial year, indicating that it should not have been included in the taxable income for the current year. The ITAT in the Miscellaneous Application proceedings observed that learned Departmental Representative (DR) acknowledged this point during the proceedings, agreeing that the issue needed to be evaluated in light of the

provisions of the Income Tax Act, which dictate that additions related to unexplained investments should reflect the year in which the payments were actually made. Consequently, the Tribunal recalled the earlier order of ITAT dated 08-11-2021 by observing that the inclusion of Rs. 41 lakhs in the current year's taxable income was indeed erroneous and had not been properly addressed / examined in their earlier order. Additionally, the Counsel for the assessee partners highlighted another mistake in order of ITAT, noting that while the cash payment to the landowners was attributed to all three partners, the Memorandum of Understanding (MOU) seized during the search explicitly named only one partner, Shri Brijesh Sukhdevbhai Patel, in connection with the cash payment. The Counsel for the assessee partners further contended that there were actually eight partners in the firm, yet the cash payment was solely attributed to three individual partners without any rationale for this selective attribution. The DR agreed that there was a lack of justification for the proportionate addition of the unaccounted investment across the partners, further emphasizing the apparent inconsistencies in the earlier ruling. Given the DR's concessions regarding these errors in the Tribunal's order, the Tribunal recalled the earlier order of ITAT for re-adjudicated to assess the appropriate attribution among the partners involved.

18. Before us, the Counsel for the assessee reiterated the submissions made earlier at the time of hearing of Miscellaneous Application. The Counsel for the assessee also filed submission dated 30.09.2024 in support of it's arguments. After going through the written submissions as well as

the oral arguments of the Counsel for the assessee and the records of the instant case, we agree with the Counsel for the assessee that so far as three payments aggregating to Rs. 41 lakhs is concerned (listed at Page 7 of the ITAT order dated 08.11.2021) the same were made on 22.02.2007, 23.02.2007 and 25.03.2007 and accordingly, the same could not be the subject matter of the addition for the impugned assessment year i.e. A.Y. 2008-09, since the same pertain to A.Y. 2007-08. Accordingly, the addition aggregated to Rs. 41 lakhs is directed to be deleted.

19. However, we are unable to agree with the contention of the Counsel for the assessee that the CIT(A) erred in facts and in law in making the additions only in the hands of three partners i.e. Shri Vikas R. Patel, Shri Brijesh S. Patel and Shri Dipak G. Prajapati. We observe that in the assessment order, the AO has noted that vide assessee's submission dated 23.12.2011, the assessee have itself submitted that the main partners of both the projects viz. UTAP and UTRE are only the three partners namely Shri Vikas R. Patel, Shri Brijesh S. Patel and Shri Dipak G. Prajapati. It was submitted by the assessee that it was only these partners to had utilised the funds received from UTAP and UTRE projects for making payments towards purchase of land. Accordingly, it was keeping in view these particular facts wherein the Department has observed specifically that it was only these three operational partners who were in charge of the affairs of the company that the addition was made in the hands of these three partners. Accordingly, we find no infirmity in the order of Ld. CIT(A) in confirming the additions in the hands of these three partners only.

20. Further, on going through the facts of the instant case, all the other grounds raised by the assessee are hereby dismissed since we find no infirmity in the order of Ld. CIT(A) so as to call for any interference. Further, we also observe that vide order dated 24.07.2024, the earlier order of ITAT dated 08.11.2021 was recalled only to adjudicate on these specific issues relating to year of taxability of Rs. 41 lakhs and on the issue of apportionment on quantum addition on account of unexplained investment in the hands of the respective partners. In the proceedings paragraphs accordingly, we have directed deletion of a sum of Rs. 41 lakhs on the ground that this addition does not pertain to the impugned year under consideration and on the issue of apportionment of the addition in the hands of three partners, we are of the considered view that looking into the instant facts, wherein it has been observed that it was only these three partners who were at the helm of the affairs of the partnership firm we find no infirmity in the order of Ld. CIT(A) in upholding the order of the AO, where proportionate amount was added in the hands of these three partners. Our findings in the preceding paragraphs shall be treated as part of the substituting or modifying our earlier orders dated 08.11.2021 and IT(SS)A Nos. 196/Ahd/2013, IT(SS)A No. 201/Ahd/2013 and ITA No. 1001/Ahd/2013 and IT(SS)A Nos. 197&198/Ahd/2013.

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

22. In the combined result, the appeal of the filed by the assessee for A.Y. 2009-10 & 2010-11 in IT(SS)A Nos. 197&198/Ahd/2013 are partly

*IT(SS)A Nos.197 & 198/Ahd/2013 &  
196/Ahd/2013 & 201/Ahd/2013 & ITA No. 1001/Ahd/2013  
Uma Shakti Corporation Residency Project vs. ACIT and others  
Asst. Years –2008-09, 2009-10 & 2010-11  
- 21-*

allowed and the appeal of the assessee for A.Y. 2008-09 in IT(SS)A No. 196 & 201/Ahd/2013 & ITA No. 1001/Ahd/2013 are also partly allowed.

<b>This Order pronounced in Open Court on</b>	<b>25/10/2024</b>
---	-------------------

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 25/10/2024

TANMAY, Sr. PS

True Copy

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad