

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.762/SRT/2023

Assessment Year: (2021-22)

(Hybrid Hearing)

The ACIT, Central Circle – 1, Vapi	Vs.	Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.41/SRT/2024

Assessment Year: (2021-22)

Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat	Vs.	The ACIT, Central Circle – 1, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

आयकर अपील सं./ITA Nos.625/SRT/2024

Assessment Year: (2018-19)

The ACIT, Central Circle – 1, Vapi	Vs.	Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.632/SRT/2024

Assessment Year: (2018-19)

Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat	Vs.	The ACIT, Central Circle – 1, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.626/SRT/2024

Assessment Year: (2019-20)

The ACIT, Central Circle – 1, Vapi	Vs.	Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.633/SRT/2024

Assessment Year: (2019-20)

Radha Madhav Eco-Industrial Park, Village Degam, Opp – Padmavati Logistics, Nasik Road, Degam, Tal – Vapi, District – Valsad – 396191, Gujarat	Vs.	The ACIT, Central Circle – 1, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAOFR2845L		
(Appellant)		(Respondent)

Appellant by	Shri Hardik Vora, AR
Respondent by	Shri Ravinder Sindhu, CIT-DR
Date of Hearing	29/01/2025
Date of Pronouncement	05/03/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

These six appeals by the assessee and revenue emanate from the orders passed under section 250 of the Income-tax Act, 1961 [in short, ‘the Act’] of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [in short, the ‘CIT(A)’], dated 15.09.2023 and 25.04.2024 for the assessment years (AYs) 2018-19, 2019-20 and 2021-22. Since facts are almost similar, with consent of both parties, the appeals were heard together, and a common order is passed for the sake of convenience and

brevity. The separate grounds raised by the assessee in ITA No.632/SRT/2024 will be discussed and decided separately after deciding the common issues in other years. The ITA No. 762/SRT/2024 is taken as 'lead case'.

2. The grounds of appeal raised by the revenue in ITA No.762/SRT/2024 are as under:

"1) On the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred in restricting the addition of Rs.24,45,10,934/- made by the AO on account of unaccounted income of the assessee to Rs.12,26,05,467/- by observing that it would be just and reasonable to take 50% of the gross cash receipt despite the fact the assessee has not furnished documentary evidences in support of the claim the expenses and to prove genuineness of any expenses incurred outside of the book of the account and the addition has been made on the basis of incriminating details/documents recovered during the search proceedings.

2) In addition and without prejudice to the ground no. 1 above, on the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred in restricting the addition of Rs.24,45,10,934/- made by the AO on account of unaccounted income of the assessee to Rs.12,26,05,467/- by observing that it would be just and reasonable to take 50% of the gross cash receipt despite the fact that as per the seized material the details of the unaccounted expenditure of Rs.8,45,99,570/- only for entre project and pertains to AY. 2017-18 to 2021-22 was found which was claimed the assessee before the CIT(A) in ground of appeal and the CIT(A) has granted the relief of Rs.12,26,05,467/-.

3) In addition and without prejudice to the ground no. 1 above, on the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred in restricting the addition of Rs.24,45,10,934/- made by the AD on account of unaccounted income of the assessee to Rs.12,26,05,467/- by observing that it would be just and reasonable to take 50% of the gross cash receipt despite the fact that as per the return of income filed u/s 139 of the Act the assessee has declared the net profit of Rs. 55.43% for the current year and 60.50% in immediate preceding year

4) On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in holding that Mrs. Maya Garg has made payment of Rs. 10 Lacs by cheque, merely relying upon the entry of Rs. 23,16,000/- (dtd.01,02,2021) in the Bank Statement and without appreciating the fact the said payment was not supported by any other corroborative documentary evidence proving its nexus and there were multiple other entries of payments by her, and

hence above entry was not exclusively getting co-related to the payment of purchase consideration of plot.

5) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in relying upon the rulings in the case of CIT Vs President Industries reported in 258 ITR 654, CIT Vs Gurubachhan Singh Juneja reported in 302 ITR 63 especially when the facts involved in these cases are not identical to the assessee's case because the issue decided of unaccounted sales of goods and not receipt of on-money in construction/development business

6) On the facts and in the circumstances of the case and in law the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

7) It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

8) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made the facts and in the circumstances of the case and in law, the Ld. CIT (A)-4, Surat ought to have upheld the order of the Assessing Officer."

3. The grounds of appeal raised by the assessee in ITA No.41/SRT/2024

are as under:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming the addition of Rs.12,16,05,467/- on account of profit element of on-money receipts of Rs.24,32,10,934/- instead of profit of Rs.10,79,13,346/- on admitted on-money of 19,28,12,916/- which is declared in the return of income.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.77,44,500/- (being 50% of Rs.1,54,89,000/-) as profit element of on-money receipts without considering that the said plots were not sold to the parties mentioned in the loose papers.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.1,44,26,328/- (being 50% of Rs.2,88,52,656/-) as profit element of on-money receipts without considering that the said plots were not sold to the parties mentioned in the loose papers.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.38,78,316/- (being 50% of Rs.77,56,632/-) as profit element of on-money receipts without considering that said amounts were not received in F.Y. 2020-21.

5. It is therefore prayed that the above addition/disallowance made by the assessing officer may please be deleted.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

4. The appeal filed by the assessee is barred by limitation by 63 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing the appeal before the Tribunal. In the affidavit, the assessee stated that CIT(A) has passed order u/s 250 of the Act on 15.09.2023. However, the assessee filed the appeal on 29.06.2024. Therefore, there is a delay of 63 days. The assessee submitted that the order was received in mid of September, 2024 during which he had to handle not only the replies to be filed before the authorities during assessment and/or appellate proceedings but also finalizing of account for AY.2023-24 as the due date of filing of audit reports and income tax return were 30.09.2023 and 31.10.2023. Thereafter, the assessee approached the Advocate, Shri Hardik Vora for legal assistance and advised him to file appeal before the ITAT. The assessee submitted that the delay of 63 days in filing the appeal was neither intentional nor deliberate. Therefore, the assessee requested to condone the delay in the interest of justice.

5. On the other hand, learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) for the revenue submitted assessee has failed to adduce 'sufficient cause' for the delay; hence, delay should not be condoned.

6. We have heard both the parties on this preliminary issue and find that there is a delay of 63 days. We find that assessee was neither negligent nor deliberate in filing the present appeal before the Tribunal. The reasons given in the affidavit for condonation of delay would constitute sufficient cause for delay in filing this appeal. We, therefore, condone the delay and admit the appeal for hearing.

7. The Id. AR of the assessee did not press ground No.4 in ITA No. 41/SRT/2024, the same is accordingly dismissed as not pressed.

8. Brief facts of the case are that the assessee is a partnership firm engaged in the business of real estate development. It belongs to the Laxminarayan Jethmal Garg group of Vapi. A search and seizure action u/s 132 of the Act was carried out in case of the assessee on 08.12.2021. Additionally, a search and seizure operation u/s 132 of the Act was also carried out at the residence of Shri Kanubhai M. Patel, where various diaries, documents and loose papers belonging to assessee were found and seized. The assessee filed e-return u/s 139 of the Act for AY.2021-22 on 10.12.2021, declaring total income of Rs.5,31,89,271/-. The case was centralized with the ACIT, Central Circle – 1, Vapi who issued various notices u/s 143(2) and 142(1) to the assessee. As stated earlier, various documents, diaries and loose papers were found and seized during the search proceedings. The Assessing Officer (in short, 'AO'), on verification of page no.7 of Annexure – 54, found that assessee had received cash of Rs.8,61,04,656/- on sale of plots in Radha

Madhav Eco-Industrial Park during the year under consideration, which was not entered into the regular books of account of the assessee. In response to notice u/s 142(1), assessee submitted that deal with two parties, namely, Dr. Laxmichand and Shri Trilokchand Kamdar could not be finalized and the cash mentioned in the impugned paper was not received by the assessee. The said explanation was not accepted because the said paper was signed by all five partners. Similarly, on page 16 of Annexure A-55, there is noting of cash receipt of Rs.36,25,40,804/- and cheque receipt of Rs.41,25,37,667/- in FYs.2016-17 to 2020-21. The assessee had received Rs.15,71,06,278/- in cash during the year under consideration, which was not accounted for in the regular books of account. In reply, assessee stated the cash receipt from Ms Maya Garg was lesser by Rs.10 lakhs. The explanation was not accepted and the AO added both cash receipts of Rs.8,61,04,656/- and Rs.15,81,06,278/-, totalling to Rs.24,42,10,934/- to the total income of the assessee. As a result, the assessed income was Rs.29,74,00,210/- against returned income of Rs.5,31,89,271/-.

9. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) has reproduced submission of the assessee in para 6.2 of the appellate order. Before CIT(A), the assessee submitted that he had not received cash from Dr. Laxmichand and Shri Trilokchand Kamdar of Rs.1,54,89,000/- and Rs.2,88,52,656/- respectively. As no confirmation from these two persons as regards the payment in cash or refund were given by

appellant when the deal was cancelled, the explanation of assessee to exclude these cash receipts was not accepted. The CIT(A), however, accepted that cash receipt from Ms. Maya Garg was less by Rs.10 lakhs. The CIT(A) also rejected the submission of the assessee that cash of Rs.77,56,362/- received from Ms. Atmaram Agrawal was in FY.2013-14 and 2017-18, because it was noted in page 16 of Annexure A-55 that the same was received in FY.2020-21. Therefore, the CIT(A) has given relief of Rs.10 lakhs only out of cash receipt of Rs.24,42,10,934/-. The CIT(A) has, however, favourably considered the plea of the assessee that total receipts cannot be taxed and only the profit embedded therein has to be taxed. The appellant had relied on the decisions of the Hon'ble jurisdictional High Court in case of CIT vs. President Industries, 258 ITR 654 (Guj.), CIT vs. Gurbachhan Singh Juneja, 302 ITR 63 (Guj.) and DCIT vs. Narayan Land Estate, ITA No.1836/2019, dated 10.06.2022 (Guj.). In all these decisions, it has been held that on-money / unaccounted sales cannot be totally brought to tax because developers have to incur various unaccounted expenses for procurement of land, approval of the projects and other civil expenses. The appellant also submitted that there are no other details of receipts, but there are details of expenditure in the incriminating materials. Hence, normal business expenditure is to be allowed from the gross cash receipts. The CIT(A) found that assessee had shown net profit of 55.43% in the return filed u/s 139 of the Act. The assessee also offered Rs.10,79,13,346/- as additional income during the assessment proceedings.

The additional income was 44.37% of the gross cash receipt of Rs.24,32,10,934/-. Considering that there were details of expenditure in the incriminating material and also the totality of facts, the CIT(A) held that 50% of gross cash receipts would be just and reasonable net income of the assessee in addition the income offered by it in the return of income filed u/s 139 of the Act. Accordingly, addition of Rs.12,16,05,467/- out of Rs.24,42,10,934/- was sustained.

10. Aggrieved by the order of CIT(A), the revenue as well as assessee filed appeal before the Tribunal. The learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) of the revenue supported the order of the AO. He submitted that there is no basis for estimating the income out of the on-money received in cash for which no proper incriminating documents have been found and seized. The assessee has not been able to provide details of expenses in cash and no incriminating documents were found containing details of unaccounted expenses in cash. He, therefore, requested that the entire on-money received in cash should be added.

11. On the other hand, the learned Authorised Representative (Id. AR) of the assessee submitted a paper book containing 132 pages including submissions and reply to the show cause notices issued by lower authorities. He filed copies of various relevant incriminating materials and submitted that the papers/document seized include both details of cash receipts as well as cash expenses upto 31.03.2021. The total cash expenses as per page 62 of

the paper book (seized paper no.68) was Rs.28,75,03,028/-. Page 14 of Annexure A-55 also contains details of unaccounted expenses of Rs.3,87,53,240/-. He submitted that out of Rs.24,42,10,934/- as mentioned in the assessment order, assessee has offered Rs.10,79,13,346/- as additional income, which is 44.37% of the on-money receipt. He submitted that the alleged on-money of Rs.1,54,89,000/- received from Dr. Laxmichand for Plot Nos.3 & 8 and Rs.2,88,52,656/- received from Shri Trilokchand Kamdar for Plot Nos.1, 2, 9 & 10, which have been considered by AO as well as CIT(A) for determining the income of assessee is not correct because those plots were sold to Shri Manoj Biharilal Goyal/ Mrs Shradhdha Goyal on 14.09.2021. Similarly, Plot No.3 was sold to Shri Sheyansh Shah on 22.03.2022 and Plot No.8 was sold to Mrs Usha Shah on 22.03.2022. Hence, the on-money should be reduced accordingly. The Id. AR also submitted that on-money of Rs.10 lakhs received from Ms Maya Garg has to be reduced because in the revised terms of payments, the total amount receivable was same but the cash component was reduced by Rs.10 lakhs and cheque amount was increased by Rs.10 lakhs. The Id. AR submitted that the AO erred in adding the gross on-money in cash and not the net receipts. The assessee is entitled to get benefit of deduction of expenses in cash and only profit element should be taxed. Since the assessee has already offered additional income of Rs.10,79,13,346/- , the AO may be directed to accept the returned income. The Id. AR further submitted that percentage of profit can only be taxed, which should be based

on the books of account of the assessee and other comparison cases. He relied on the decisions in cases of DCIT vs. M/s M. Poonam Developers, ITA No.284/SRT/2022, dated 26.06.2023 and submitted that the ITAT, Surat Bench has restricted the addition to 8% of the gross receipt. In view of the above, the Id. AR requested that the additional income offered by assessee, which is 45.83% of gross receipt of Rs.23,54,54,302/- [as per CIT(A)] may be accepted. Alternatively, the average book profit rate for AYs.2017-18 to 2020-21, which comes to 44.79% should be considered. Given that assessee had already offered profit @ 45.83%, which is higher than the average profit of last 4 years, the returned income may be accepted.

11.1 Regarding ground No.2 of revenue's appeal that unaccounted expenses as per seized material was only Rs.8,45,99,570/-, the Id. AR submitted that the revenue has overlooked that details of cash expenses, totalling to Rs.28,75,03,028/-, is clearly mentioned in page No.68 of Annexure A-1. Further, at page 14 of Annexure A-55, details of unaccounted expenses are written which totals to Rs.3,87,53,240/-. Hence, contention of revenue that unaccounted expenses as per seized materials is only Rs.8,45,99,570/- is not correct.

12. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Id. AR. The undisputed fact in the instant case is that there were notings of on-money receipt in cash to the extent of Rs.24,42,10,934/- in the documents

seized from the premises of the assessee. The details of such notings have been mentioned in the assessment order as well as the appellate order. At page 7 of A-54 of the seized paper, there was entry of cash receipt of Rs.8,78,04,656/-. Similarly, cash receipt as per page 16 of Annexure A-55 (page 58 of paper book) was Rs.15,81,06,278/-. The appellant has contended that receipt of on-money of Rs.1,54,89,000/- and Rs.2,88,52,656/- from Dr. Laxmichand and Shri Trilokchand Kamdar should be reduced because the plots against their names were sold to some other parties, namely, Shri Manoj Biharilal Goyal / Mrs Shradhdha Goyal and Shri Sheyansh Shah and Mrs Usha Shah. However, we find that the appellant has not been able to furnish any supporting evidences such as confirmation from the original payers of the impugned cash to substantiate its claim. We also find that the said cash transactions have been specifically mentioned in page 7 of Annexure – 54, which has been signed by the five partners/representatives of the partners. Further, Shri Laxminarayan Garg had also admitted that the income earned on sale of plots in cash was not recorded in the regular books maintained by the assessee. Only because of registration of the impugned property subsequently in the name of some other persons, the receipt of cash by assessee from the original/initial buyer cannot be ignored. There is no evidence that the cash was returned by assessee to Dr. Laxmichand and Shri Trilokchand Kamdar. Therefore, the request of the Id. AR to reduce the aforesaid amounts from the receipt of on-money in cash cannot be accepted.

We do not find any infirmity in the finding of the CIT(A) in rejecting similar claim during the appellate proceedings before him.

13. Regarding request of the Id. AR to reduce Rs.10,00,000/- from the addition of Rs.24,42,10,934/- on account of receipt of on-money in cash, the CIT(A) has given a categorical finding that the terms of payments were subsequently changed and Mrs Maya Garg has paid Rs.10 lakhs more in cheque and reduced the cash component by same amount. The finding of CIT(A) is at para 6.3(ii) at page 16 of the appellate order. As the total amount paid by Mrs Maya Garg has remained the same and only the cash component has been reduced due to increase of equivalent amount in cheque, the finding of the CIT(A) cannot be faulted with. Accordingly, the ground of revenue is dismissed.

14. The next issue is as to whether the entire receipt in cash should be taxed as income of the assessee. The AO, in the assessment order, has added the entire cash receipt of Rs.24,42,10,934/- as unaccounted business income of the assessee. He has also initiated penalty proceedings u/s 270A of the Act for under-reporting of income due to misreporting. The CIT(A), while deciding the issue, has accepted plea of the assessee that only profit element on the cash receipt has to be taxed. He has held that 50% of the gross cash receipt would be the net income of the appellant, in addition to the income offered by the appellant in the return of income filed u/s 139 of the Act. One of the reasons for adding the gross cash receipt by the AO is that the assessee did

not provide details of expenditure during the assessment proceedings. Hence, expenditure was not allowed to be set off against the on-money receipts. However, we find that details of cash expenses incurred by the assessee totalling to Rs.28,75,03,028/- is available in the seized paper itself at page 68 in Annexure A-1. Similarly, page 14 of Annexure A-55 also contains details of unaccounted expenses of Rs.3,87,53,240/-. Hence, conclusion of the AO that there is no evidence of unaccounted cash expenses is factually incorrect. Having found that there are evidences indicating expenses in cash, it would be proper to estimate the net income embedded in the gross cash receipt. The CIT(A) has estimated the same at 50% of the gross cash receipt. This is over and above net profit of 55.43% shown by assessee in the return of income filed u/s 139 of the Act. The assessee has offered additional income of Rs.10,79,13,346/- which comes to 44.37% of the gross cash receipts. The Id. AR has relied on the decision in case of M. Poonam Developers (supra) where Co-ordinate Bench of ITAT, Surat has restricted the addition to 8% of the gross receipt. We have gone through the decisions relied upon by the assessee including the decisions in cases of President Industries (supra), Gurubachhan Singh Juneja (supra), Narayan Land Estate (supra) and Poonam Developers (supra). It is well settled that only the profit element of the receipt can be taxed and not the gross receipt. The estimation of net profit is basically a factual issue and the rate of profit would vary from case to case depending upon the facts involved in each case. In the present

case, appellant has himself declared profit at 45.83% on gross receipt of Rs.23,54,54,302/-. However, the CIT(A) has taken the gross receipt at Rs.24,32,10,934/- and estimated net profit @50% at Rs.12,16,05,467/-. In our considered view, it would be just and reasonable if the profit is taken at 45% of the gross receipt of Rs.24,32,10,934/-, which comes to Rs.11,43,09,139/-. Accordingly, the AO is directed to restrict the addition to Rs.11,43,09,139/-. The ground is partly allowed.

15. In the result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

ITA Nos.626/SRT/2024 & 633/SRT/2024 (AY:2019-20):

16. The facts of the case are similar to the facts in ITA Nos.762/SRT/2023 and 41/SRT/2024. The grounds raised by the parties are also similar. The Id. AR at the time of hearing, has not pressed ground No.1 and 2 of ITA No. 633/SRT/2024. Hence, they are dismissed as not pressed.

17. Ground No.3 of assessee's appeal pertains to addition of Rs.2,29,85,400/- on account of profit element of on-money receipt of Rs.4,59,17,800/- in cash instead of profit of Rs.2,28,33,410/-, declared in the return of income filed u/s 148 of the Act. The revenue, on the other hand, raised the ground that the CIT(A) erred in restricting the addition of on-money to 50% of the cash receipt of Rs.4,59,70,800/-. The facts of the case are similar and the arguments put forth by both sides are similar. We have already decided the above issue in ITA No.762/SRT/2023 and 41/SRT/2024

wherein we have held that 47% of the on-money received in cash would be the net income of the assessee for the subject year in addition to the income filed by the assessee u/s 143(3) of the Act. Following the reasons given in the aforesaid decision, the AO is directed to add 45% of the on-money and delete the remaining amount. The ground is partly allowed.

18. In the result, appeal of the assessee is partly allowed and appeal of revenue is dismissed.

ITA Nos.625 & 632/SRT/2024 (AY:2018-19):

19. The grounds of appeal relating to the quantum addition are similar to the grounds raised by the assessee for AY.2020-21 and 2019-20 decided above. However, the appellant has raised jurisdictional issue regarding validity of re-assessment proceedings on various grounds. It would be proper to extract the grounds raised by the appellant below, which are as under:

“1.1 On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming initiation of re-assessment proceedings by Assessing Officer without providing at least 7 days to reply to the notice u/s 148A(b) of the Act.

1.2 Alternatively, on the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming that case of assessee falls under clause (c) of proviso to section 148A of the Act without considering that Assessing Officer has not provided satisfaction note and copy of prior approval of PCIT/CIT for initiating re-assessment proceedings.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in not considering that the order u/s 147 of the Act was passed on 24.06.2023 and same is time-barred for the reason that it is not passed with 12 months from the end of financial year in which the notice u/s 148 of the Act was served (i.e. F.Y. 2021-22).

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming the action of Assessing Officer in treating the return filed u/s 148 of the Act as non-est.

4. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming the addition of Rs.7,08,09,485/- on account of profit element of on-money receipts of Rs.14,16,18,971/- instead of profit of Rs.2,83,30,961/- on admitted on-money of 9,76,25,946/- which is declared in the return of income filed u/s 148 of the Act.*

5. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.1,51,20,000/- (being 50% of Rs.3,02,40,000/-) as profit element of on-money receipts without considering that the cash receipts were received from Shri Rishab Agarwal in FY 2016-17 and not FY.2017-18.*

6. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.70,96,013/- (being 50% of Rs.1,41,92,025/-) as profit element of on-money receipts without considering that said receipts without considering that said receipts were received from various parties in FY 2014-15.*

7. *It is therefore prayed that the above addition/disallowance by the assessing officer may please be deleted.*

8. *Appellant craves leave to add, alter or delete ground(s) either before or in the course of hearing of the appeal."*

20. Since jurisdictional issue are involved, let us first discuss ground nos.1, 2 and 3, the appellant has not pressed ground nos.2 and 3 and hence they are dismissed as not pressed.

21. Ground Nos.1.1 and 1.2 pertain to validity of issue of notice u/s 148 without providing at least 7 days to reply the notice u/s 148A(b) and the order of CIT(A) confirming that case of the assessee falls under clause (c) of provision 148A of the Act. Before deciding the issue, it would be proper to briefly discussed the relevant fact. The appellant-firm filed return of income for AY.2018-19 on 01.09.2018, declaring income of Rs.4,21,16,720/-. The case was processed u/s 143(1) of the Act on 09.02.2019. A search and seizure

operation u/s 132 of the Act was conducted at the Shri Kanubhai M. Patel on 18.11.2021 and at the residence and office of Shri Laxminarayan Garg, partner of the assessee-firm on 07.12.2021. Various documents, diaries and loose papers pertaining to the assessee were found and seized in course of the search action. The AO issued notice u/s 148A(b) stating that as per the information available in his office, appellant had received cash of Rs.14,16,18,971/- towards unaccounted sale of industrial plots. The notice was issued on 24.03.2022 and assessee was required to submit his objection by 29.03.2022. Thereafter, the AO passed order u/s 148A(d) on 30.03.2022 by observing that on verification of seized documents, bearing identification no. A-55, page 21-77, and statements recorded of Shri Laxminarayan Garg and Shri Kanubhai M. Patel, it was seen that cash of Rs.14,16,18,971/- received by the M/s Radha Madhav Eco-Industrial Park, assessee firm, was not included in the ITR and books of account. Thereafter, AO issued notice u/s 148 on 30.03.2022, digitally signed on 31.03.2022. In response to the said notice, assessee filed return of income on 03.05.2023, declaring income of Rs.7,04,47,680/- including additional income of Rs.2,83,30,961/-. The AO treated the return as non-est because the return was not filed within the time allowed in the notice u/s 148 of the Act. Thereafter, AO issued notice u/s 143(2) and 142(1) and show cause notice and after hearing assessee, added Rs.14,16,18,971/- and Rs.17,70,000/- to the total income of the assessee. Before AO, the assessee has not raised jurisdictional issue of

inadequate time in furnishing reply to notice u/s 148A(b). However, before CIT(A), the assessee raised grounds stating that AO erred in passing order u/s 148A(d) without providing statutory time of 7 days mandated as per section 148A(b) of the Act. The CIT(A) has dealt the issue in para 6 of the appellate order u/s 250 of the Act. He has dismissed the ground of the assessee by stating that there is no requirement to conduct enquiry and provide opportunity u/s 148A of the Act before issue of notice u/s 148 in cases covered u/s 132 of the Act. He observed that the AO appears to have provided opportunity u/s 148A of the Act before issuing notice u/s 148 out of abundant precaution. As provisions of section 148A are not mandatory requirement for cases covered u/s 132 of the Act, the grievance of the assessee for not providing adequate time before passing order u/s 148A(d) of the Act is devoid of merit. Accordingly, he dismissed the ground of the assessee.

22. Aggrieved by the decision of CIT(A) as above, the appellant raised ground Nos.1, 2 and 3 of which ground Nos.2 and 3 were not pressed by the Id. AR. Therefore, we are required to decide ground Nos.1.1 and 1.2 of the appeal filed by the assessee. The Id. AR has more or less made similar submission, which was made before the CIT(A). He has also relied on the decisions, namely, CIT vs. Amit K. Jain, (2017) 79 taxmann.com 430 (Gujarat) and Sudman Consultant LLP vs. ACIT, SCA No.2354 of 2023, dated 05.03.2024 (Gujarat HC). The Id. AR submitted that only 4 days were provided by the AO

to furnish the reply in response to notice u/s 148A(b) of the Act. This is against clear provisions of section 148A(b), which requires time of not less than 7 days from the date on which the notice is issued. The AO has decided to follow procedure u/s 148A of the Act and has not invoked the proviso. The AO has apparently neither prepared the satisfaction note nor approval u/s 151 of the Act was obtained. Hence, condition mandated for invoking exception to section 148/148A of the Act has not been fulfilled.

23. On the other hand, the Id. CIT-DR relied on the order of the CIT(A) and relied on the decision of Bombay High Court in case of Anandkumar Dhanraj Rathod vs. UoI & Ors., WP No.1147 of 2023, dated 23.01.2025. He submitted that the case of appellant is covered under the proviso to section 148A of the Act, which provides exception to application of provisions of section 148A of the Act in search and survey cases.

24. We have heard both parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both parties. Since, applicability of provisions of section 148 and 148A are the issues for consideration, it would be proper to reproduce the said sections for ready reference and clarity:

“Issue of notice where income has escaped assessment.

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the

prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or

other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

[Conducting inquiry, providing opportunity before issue of notice under section 148.

148A. *The Assessing Officer shall, before issuing any notice under section 148,—*

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
- (b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

Provided *that the provisions of this section shall not apply in a case where,—*

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or*
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day*

of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

25. Section 148 was substituted w.e.f. 01.04.2021 as a part of series of amendments intended to reform the system of assessment or re-computation or re-computation of income escaping assessment and the assessment of search cases. The substituted section provides that before such assessment or re-assessment or re-assessment, a notice u/s 148 is required to be issued subject to provisions of section 148A and a copy of the order passed u/s 148A(d) be served requiring assessee to furnish a return of income within the specified period. Such notice can be issued only when there is information with the AO, which suggests that the income chargeable to tax has escaped assessment in the case of assessee for the relevant assessment year. Prior approval of the specified authority has to be obtained before issuance of such notice by the AO. Any information which has been flagged in accordance with the risk management strategy formulated by the CBDT shall be considered as information which suggests that income chargeable to tax has escaped assessment. Similarly, final objection by the C&AG to the effect that assessment for relevant AY has not been in accordance with the provisions of the Act shall also be considered as information for re-opening. In search, survey or requisition cases initiated or made or conducted, on or after 01.04.2021, it shall be deemed that the AO has information, which suggest that income chargeable to tax has escaped

assessment. It is, therefore, clear that if a search or survey had been conducted on or after 01.04.2021, the AO shall be deemed to have information which suggest that income chargeable to tax has escaped assessment. In the present case, there was a search in case of Shri Kanubhai M. Patel on 18.11.2021 and Shri Laxminarayan Garg on 07.12.2021 and various documents, diaries, loose papers pertaining to and information relating to the assessee were found and seized. In fact, statements of both the above persons were recorded who admitted that Annexure A-1 to A-55 belong to Shri Laxminarayan Garg, partner of the assessee-firm. Therefore, the AO had information, which suggests that income chargeable to tax has escaped assessment in case of the assessee for the relevant assessment year. It is also evident from the assessment order that the AO has taken approval before issuing notice u/s 148 of the Act. It is further seen that the AO has passed the order u/s 143(3) r.w.s. 147 with prior approval of JCIT on 14.06.2023.

26. As regards, the provisions of section 148A are concerned, it may be stated that section 148A was also simultaneously inserted as part of series of amendments to reform the system of assessment or re-assessment or income escaping assessment and the assessment or search related cases. It provides that before issuance of notice u/s 148, the AO shall conduct inquiries, if required and provide an opportunity of being heard to the assessee. After considering reply of the assessee, the AO shall decide, by

passing an order, where it is a fit case for issue of notice u/s 148 and served a copy of such order along with the notice on the assessee. The AO shall before conducting any such inquiries or providing opportunity to the assessee or passing such order, obtain the approval of the specified authority. However, this procedure of inquiry, providing opportunity and passing order, before issuing notice u/s 148 of the Act, shall not be applicable in search or requisition cases.

27. If the facts of the instant appeal are considered against the above statutory backgrounds, it is clear that the case of the assessee is clearly covered by Explanation 2 of section 148 and proviso to section 148A of the Act. For purpose of section 148, the AO shall be deemed to have information, which suggests that income chargeable to tax has escaped assessment in case of assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted. As per proviso to section 148A of the Act, the provisions of section 148A shall not apply in a case where search is initiated u/s 132 of the Act on or after 01.04.2021. It shall also not apply where the AO is satisfied with prior approval of the PCIT or CIT that any books of account or documents seized in a search u/s 132 of the Act in case of any person on or after 01.04.2021 pertains or pertain to, or any information contained therein, relates to the assessee. The case of the assessee is squarely covered by the proviso to section 148A of the Act. In this case, search was conducted after 01.04.2021

and the impugned documents on basis of which addition have been made where found and seized from the premises covered during the search. Shri Kanubhai M. Patel and Shri Laxminarayan Garg have also admitted in their statement recorded during the search that papers belong to the assessee. Therefore, the finding of the CIT(A) that there is no requirement to conduct inquiry and provide opportunity before issue of notice u/s 148 of the Act in cases covered u/s 132 of the Act cannot be said to be incorrect. Once provisions of section 148A of the Act are not applicable and case is covered by the proviso to the said section, the question of granting time as per section 148A(b) of the Act does not arise.

28. The Id. AR of the assessee has relied on the decisions in case of Amit K. Jain (supra) and Sudman Consultants LLP (supra) and argued that case of the appellant is fully covered by ratio of these decisions. The Id. CIT-DR, on the other hand, relied in the case of Anandkumar Dhanraj Rathod (supra). We have carefully gone through the decisions relied upon by the rival parties. There is no dispute that only 4 days' time was given by the AO in the notice issued u/s 148A(b). This is not even disputed by the revenue. However, the ratio of the decisions relied upon by the Id. AR are not applicable because facts of those cases are different from the facts of the present case. In case of Amit K. Jain (supra), the Hon'ble Court held that the words "not less than 15 days" means clear 15 days. In case of Sudman Consultants LLP (supra), the assessee filed return for AY.2018-19 on 16.08.2019. The case was selected for

limited scrutiny under e-assessment scheme and order u/s 143(3) was passed on 23.03.2021. Subsequently, notice u/s 148A(b) was issued on 21.03.2022, requiring the assessee to file reply on or before 28.03.2022, giving only 6 days' time to respond, which is contrary to the provisions of section 148A(b) of the Act, which requires to provide minimum 7 days' time. Hence, the impugned notice u/s 148A(b) was held to be invalid as a consequence of which the order u/s 148A(d) and notice u/s 148 would not survive. However, the present case is not a normal re-assessment proceedings but a case where search and seizure operation u/s 132 of the Act had been undertaken after 01.04.2021. Search cases are covered under **proviso** to section 148A of the Act, which clearly provides that provisions of section 148A of the Act shall not apply. Hence, the case of the appellant is covered under the instances provided in the proviso to section 148A of the Act, whereas the case of Sudman Consultants LLP (supra) is covered under the main provisions of section 148A of the Act. Hence, reliance of the Id. AR on these two decisions would not further the cause of the appellant. In view of the clear statutory provisions and facts discussed above, we do not find any infirmity in the order of the CIT(A). Accordingly, the ground raised by the appellant is dismissed.

29. Coming to the merits of the addition, we find that the AO has made two additions of Rs.17,00,000/- and Rs.14,18,971/-. So far as the addition of Rs.17,00,000/- is concerned, the AO has added the same based on noting at

page 17 of Annexure A-54. Though the period of payment received was as on 31.03.2021, there is a handwritten date of 10.02.2018 against the impugned amount. The total payment was Rs.8,61,04,656/-. The assessee claimed that it was a receipt of FY.2020-21 and the same was added by AO in AY.2021-22. Hence, the CIT(A) has deleted the addition because it would amount to separate addition of the same amount in another assessment year. We do not find any infirmity in the order of CIT(A) because double addition of the same amount is not permissible. This ground No.3 raised by revenue is accordingly dismissed.

30. Ground No.4 of assessee's appeal pertains to addition of Rs.7,08,09,485/- on account of profit element of on-money receipt of Rs.14,16,18,971/- instead of profit of Rs.2,83,30,961/- admitted by assessee on on-money of Rs.9,76,25,946/-, which is declared in the return of income filed u/s 148 of the Act. The revenue, on the other hand, has raised the issue that the CIT(A) erred in restricting the addition of on-money to 50% of the cash receipt of Rs.14,16,18,971/- instead of 100% of on-money receipt. The facts of the case are similar and the arguments put forth by both sides are also similar to those of AY.2021-22. We have already decided the above issue in ITA No.762/SRT/2023 and 41/SRT/2024 for AY.2021-22, wherein we have held that 47% of the on-money received in cash would be net income of the assessee in addition to the income shown in the return of income u/s 139 of

the Act. Following the reasons therein, the AO is directed to add 45% of the on-money and delete the remaining amount. The ground is partly allowed.

31. In the result, appeal of the assessee is partly allowed and appeal of revenue is dismissed.

Order is pronounced in the open court on 05/03/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 05/03/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat