आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं /**ITA No.78 to 80/Viz/2025**
(निर्धारण वर्ष/Assessment Year: 2016-17 to 2018-19)

Sridhar Pinnamaneni Vijayawada [PAN : ATDPP8744N]	Vs.	ACIT Central Circle Vijayawada
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri C.Subrahmanyam, AR	
राजस्व द्वारा/Revenue by::	Dr.Satyasai Rath, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	12/03/2025	
घोषणा की तारीख/Date of Pronouncement:	18/03/2025	

आदेश / **ORDER**

PER. MANJUNATHA G., A.M:

These appeals filed by the assessee are directed against the orders dated 04.02.2025 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)]- Hyderabad, relating to A.Y.2016-17, 2017-18 and 2018-19. Since the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all three years, therefore, for sake of brevity grounds of appeal filed for A.Y.2016-17 are reproduced as under :

> *1. On the facts and circumstances of the case and in law, the order passed u/s 143(3) r.w.s.153C of the IT Act, 1961, dt.30.12.2019, as upheld by the Ld.Commissioner of Income Tax (Appeals)-12, (in short CIT(A)) vide order u/s 250 dt.04.02.2025, is contrary to the facts of the case and the provisions of law.*
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> *2. The Ld.CIT(A) erred in holding that the satisfaction note dt.06.09.2018 was recorded in the capacity of the AO of the searched person, despite the fact that the AO had already recorded a satisfaction note on dt.03.09.208 in the capacity of the AO of the other person. Any subsequent satisfaction note would also be in the same capacity, failing to meet the statutory requirements u/s 153C and vitiating the assessment.*
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> *3. The Ld.CIT(A) failed to appreciate that the satisfaction note dt.06.09.2018 was not recorded in the capacity of the AO of the searched person, as the assessee's case had already been centralized u/s 127 of IT Act on dt.25.06.2018 as by this date the AO had assumed jurisdiction over the assessee. This procedural lapse violates the mandatory requirements of section 153C rendering the assessment null and void ab initio.*
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> *4. The Ld.CIT(A) failed to take note and consider that a portion of the on-money received was utilized towards unrecorded expenditure, which is evident from the records. By confirming the entire on-money as liable for tax, the Ld.CIT(A) has ignored the settled position that only the profit element embedded in the "on-money" receipt should be brought to tax.*
>
> *5. The Ld.CIT(A) ought to have held that AO could not have ignored the return filed in resp0onse to notice issued u/s 153C of the IT Act, wherein the claim of the assessee was that the impugned land is an agricultural land, situated*

beyond the specified limit from any municipality, therefore, is not a capital asset not liable for tax.

6. The appellant respectfully prays that, for the reasons outlined above and additional arguments that may be advanced at the time of hearing, the order passed u/s 250 of the IT Act, 1961 be quashed and the addition made by the Assessing Officer be deleted.

3. The brief facts of the case are that the assessee, an individual, deriving income from business and income from other sources, filed his return of income for the A.Y.2016-17 on 14.10.2016, declaring total income of Rs.68,62,680/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 ("the Act") was conducted in the group cases of M/s Yugaandhar Housing Private Limited, M/s Lifestyle Housing & M/s Lifestyle Livingspace and other connected cases on 25.10.2017. During the course of search in the residential premises of Shri Chalasani Ramesh Babu, Managing Partner of M/s Lifestyle Livingspace, incriminating material in the form of loose sheets and documents (MOU) were found. As per MOU entered into between Shri Pinnamaneni Sridhar and Shri Chalasani Ramesh Babu, Managing Partner of M/s Lifestyle Livingspace, the assessee has agreed to develop land owned by him, admeasuring Ac15.24 cents to form a residential layout. As per the MOU, the developer, M/s Lifestyle Livingspace will develop the land into residential lay out, after obtaining relevant permissions from the authorities on their own cost. During the course of search, a statement on oath was recorded from the assessee and in response to a specific question, the assessee has admitted undisclosed income of Rs.11,22,10,700/-, being unaccounted receipts, over and above

the SRO value of flats sold during the F.Y.2015-16 and 2016-17. Consequent to search, notice u/s 153C of the Act was issued to the assessee for the A.Y.2016-17 and 2017-18 and in response, the assessee has filed return of income on 25.10.2018, declaring total income of Rs.6,26,886/-. During the course of assessment proceedings, the Assessing Officer ("the AO"), by taking note of relevant statement recorded from the assessee and other incriminating material found during the course of search, including MOU between the parties, made addition of Rs.9,59,96,700/- and Rs.1,62,91,000/- for A.Y.2016-17 and 2017-18 respectively towards on-money received for sale of flats and admitted by the assessee in the statement recorded during the course of search.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has challenged the notice issued by the AO u/s 153C of the Act and consequent assessment order passed by the AO for the A.Y.2016-17 and 2017-18 and argued that the notice issued by the AO for both the assessment years on the basis of satisfaction note recorded on 03.09.2018 and 06.09.2018 is bad in law and liable to be quashed, because, there is no valid satisfaction recorded as required u/s 153A of the Act by the AO of the searched person before transmission of relevant documents belongs to the assessee to the AO of the other person. The assessee had also challenged the additions made by the AO towards purported on-money received for sale of flats and argued that the entire money cannot be treated as income and reasonable

amount of profit to be estimated. During the course of appeal proceedings, the Ld.CIT(A) forwarded additional evidences filed by the assessee to the AO for his comments. The AO vide his remand report submitted that the AO of the other person has recorded satisfaction on 03.09.2018, on the basis of material received from the AO of the searched person and the AO of the searched person has recorded satisfaction on 06.09.2018.

5. The Ld.CIT(A), after considering the submissions of the assessee and also taking note of various evidences filed by the assessee, including remand report of the AO, rejected the legal ground taken by the assessee, challenging the validity of notice issued u/s 153C of the Act, by holding that the satisfaction note dated 06.09.2018, recorded in the capacity of the AO of the searched person, fulfils the procedural requirement of section 153C and this principle is supported by the decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd. Vs. Principal Commissioner of Income Tax [2020] 115 taxmann.com 105 (SC), where, it has been clearly held that single satisfaction note is sufficient, when the AO is common for both the searched person and the other person. Satisfaction note dated 06.09.2018, clearly established the connection between the seized material and has bearing on the income of the assessee, therefore, the argument of the assessee that there is no valid satisfaction of the AO of the searched person before transmitting relevant documents pertains / belongs to the AO of the other person is not correct. Thus, rejected the legal ground taken by the assessee. The Ld.CIT(A) had also rejected the ground taken by the assessee, seeking estimation

of a reasonable amount of profit from on-money received for sale of flats, on the ground that going by the MOU between the parties, the developer has incurred total expenditure for development of the property and the assessee has received fully developed flats, therefore, the question of allowing further deductions towards expenditure against on-money received for sale of properties does not arise. The Ld.CIT(A) further observed that, the assessee has converted inherited land into stock-in-trade, making this one time transaction, rendering continuous business activity and therefore, there is no question of regular overhead expenses like any other business activity and the arguments of the assessee, that on-money is not income and only profit to be estimated is devoid of merit and thus, rejected.

6. Aggrieved by the order of the Ld.CIT(A), the assessee is now in appeal before the Tribunal.

7. The main plank of the argument of the Ld.AR is that, in this matter, satisfaction in the case of other person (assessee) was recorded on 03.09.2018, whereas, according to the remand report submitted by the AO in the first appellate proceedings, satisfaction in the case of the searched person was recorded on 06.09.2018. Based on the decision of Hon'ble Apex Court in the case of Super Malls (P.) Ltd. Vs. Principal Commissioner of Income Tax [2020] 115 taxmann.com 105 (SC) and Hon'ble Delhi High Court in the case of Ganpati Fincap Services Pvt. Ltd. & Ors. Vs. Commissioner of Income Tax & Ors., the view taken by coordinate Bench of Delhi Tribunal in the case of M/s Ambawatta Buildwell P.Ltd. Vs. DCIT,

he argued that, where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, satisfaction must be recorded by the Assessing Officer of the searched person first, before the material is transmitted to the Assessing Officer of the other person; whereas, if the Assessing Officer of the searched person and the Assessing Officer of the other person are one and the same, suffice, if the Assessing Officer of the searched person records his satisfaction that the material seized does not belong to the searched person, but belongs to other person to issue notice u/s 153C of the Act. Basing on this case law, he submitted that recording of satisfaction by the Assessing Officer of the searched person is a threshold requirement and it is only after crossing the same recording of the satisfaction by the Assessing Officer of the other person arises and in such an event, it is not always necessary that a separate satisfaction must be recorded and mentioning in the satisfaction recorded by the Assessing Officer of the searched person that the material belonged to the other person is enough. He, therefore, submits that in so far as, the appeals for the A.Y.2016-17 and 2017-18 are concerned, such assumption is bad in law, because the assumption of jurisdiction by the Assessing Officer of the other person (assessee) is bad because of violation of jurisdictional principle u/s 153C of the Act.

8. The learned counsel for the assessee, further referring to various judicial precedents, including the decision of Hon'ble Gujarat High Court DCIT Vs. Panna Corporation [2012] 74 DTR (Guj) 89, submitted that the Ld.CIT(A) erred in not considering the

arguments of the assessee, for estimation of profit element embedded in on-money received for sale of flats, even though the assessee, during the course of search itself has clearly stated in the statement recorded that he has invested surplus amount after incurring various expenditure for purchase of lands. Going by the statement recorded from the assessee and also nature of business, it is undisputedly clear that the entire on-money received by the assessee cannot be treated as income. Therefore, reasonable profit may be estimated, out of total on-money additions made by the AO.

9. Per contra, Ld.DR submitted that though it is a fact that there are two satisfactions in this matter, namely, satisfaction dated 03.09.2018 recorded by the Assessing Officer of the other person (assessee) and the satisfaction dated 06.09.2018 recorded by the Assessing Officer of the searched person, satisfaction recorded on 06.09.2018 satisfies the legal requirement, that the material / document recovered during the search do not belong to the searched person and it belongs to the other person (assessee). Stating so, he urged the Bench to ignore satisfaction dated 03.09.2018 and in as much as satisfaction recorded on 06.09.2018 satisfies the legal requirement. It may be taken into consideration, in which event the argument of the Ld.AR falls to ground.

10. The Ld.DR further submitted that there is no merit in the arguments of the assessee for estimation of profit on on-money received for sale of flats, because, the assessee himself has

admitted total income of Rs.11,22,10,700/- towards on-money received for sale of property in the statement recorded during the course of search. Further, going by the MOU between the parties, the developer has incurred all expenses for development of the property and the assessee has received only developed flats. Therefore, the assessee incurring various expenditure against sale receipts is devoid of merit and cannot be accepted. The Ld.CIT(A), after considering relevant facts has rightly rejected the claim of the assessee and thus, the order of the Ld.CIT(A) should be upheld.

11. We have gone through the record in light of the submissions made on either side. We have also perused both the satisfactions recorded in this matter, namely, satisfaction dated 03.09.2018 recorded in the case of other person (assessee) and the satisfaction dated 06.09.2018 said to have been recorded in the case of the searched person. Since both are on record, it is imperative for us to consider both, let alone their legal impact. In so far as the satisfaction dated 03.09.2018 is concerned, there is no dispute that clearly, it is in the case of other person (assessee). It reads that on a perusal of the documents / loose sheets found during the search, the Assessing Officer reached a conclusion that such documents / loose sheets belonged to the assessee and recommended for issue of notice u/s 153C of the Act for the F.Ys.2015-16 and 2016-17, relevant to the A.Y.2016-17 and 2017-18.

12. Now coming to the satisfaction recorded on 06.09.2018, it contains the heading “Proforma for Recording Satisfaction under

section153C" (to be filled by the Assessing Officer of the person referred to under Section 153A). This indicates that the satisfaction is recorded by the Assessing Officer of the searched person. In this satisfaction, column No.6, which reads that "Satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S.No.4 belongs to the person referred in S.No.5. and placed on record.

13. Nowhere, in the satisfaction recorded on 06.09.2018, it is stated that the seized documents / loose sheets do not belong to the person searched, necessitating to look for the person to whom they belong or pertain to. It is only, when this threshold of recording satisfaction with reasons that the seized document / loose sheets do not belong to the searched person, then only, the question arises as to whom those are attributable to. This is the threshold requirement to traverse distance between the person which is searched and the other person, without which, there cannot be legal assumption of jurisdiction by the Assessing Officer of the other person. Though it is stated in Column No.6 of the satisfaction recorded on 06.09.2018 that satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S.No.4 belongs to the person referred in in S.No.5 has been received and placed on record, no such document is to be found and such a document has never seen the light of the day in as much as the satisfaction recorded on 03.09.2018 was attributed to the Assessing Officer of the other person (assessee). As we have already noted above, nowhere, in the satisfaction recorded on 06.09.2018, the Assessing Officer,

recorded the reasons as to how he reached a conclusion that the document / loose sheets recovered in the search do not belong to the searched person. Unless this satisfaction is reached by the Assessing Officer, neither the question of transmitting the documents to the Assessing Officer of the other person(assessee) nor the Assessing Officer of the other person recording a satisfaction that such documents are attributable to the other person (assessee) to proceed u/s 153C of the Act.

14. On perusal of the judicial view referred to above make the things very clear. In case of the Assessing Officer of the searched person is different from the Assessing Officer of the other person, then satisfaction of the Assessing Officer of the searched person that the recovered documents do not belong to the searched person is the fundamental jurisdictional requirement to proceed further for either transmission of material or the Assessing Officer of the other person to consider that the material for the purpose of issuing notices u/s 153C of the Act. The Assessing Officer of both the searched person and the other person is one and the same, then the Adjudicatory Fora said that it is sufficient, if the Assessing Officer of the searched person records that the documents do not belong to the searched person and in the same breath, he further records that such document belongs to the other person. In such an event, it is not necessary to record second satisfaction in the capacity of the Assessing Officer of the other person. The judicial opinion as per the decisions of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd.(supra), Hon'ble Delhi High Court in the case of Ganpati Fincap Services Pvt. Ltd.

& Ors. (supra) and also the coordinate Bench of Delhi Tribunal in the case of M/s Ambawatta Buildwell P.Ltd. (supra) is unanimous that threshold jurisdictional requirement of the Assessing Officer of the searched person is a must, without which, the Assessing Officer of the other person cannot assume any jurisdiction to issue notice u/s 153C of the Act, Whether or not the second satisfaction is required is clarified, stating that in the event of the Assessing Officer of the searched person, while recording that the documents do not belong to the searched person, also records that such documents belong to the other person. So, none of the decisions dispense with the requirement of the Assessing Officer of the searched person, recording satisfaction, firstly, that such documents do not belong to the searched person and secondly, that such documents belong to other person.

15. Now coming to the facts of the case on hand, as noted above, there is no dispute that the satisfaction recorded on 03.09.2018 was by the Assessing Officer of the other person (assessee), without the Assessing Officer of the searched person parted with his jurisdiction by saying that the documents do not belong to the searched person. The satisfaction recorded on 06.09.2018 though refers to the satisfaction of the Assessing Officer of the searched person, vide column No.6, no such satisfaction is forthcoming and it has never seen light of the day. A perusal of the satisfaction recorded on 06.09.2018 inspires confidence in our mind to believe that it is consequence of the satisfaction recorded on 03.09.2018, but it does not assume the status of satisfaction recorded by the Assessing Officer of the

searched person, because, nowhere, it is recorded that the documents do not belong to the searched person and on the other hand, it says that the satisfaction of the Assessing Officer of the searched person was already received and placed on record. This clearly shows that the satisfaction of the searched person is something foreign to this satisfaction recorded on 06.09.2018, it forms part of record, but, had never seen the light of the day.

16. On this factual finding, we conclude that there is no legal and valid satisfaction recorded by the Assessing Officer of the searched persons, without which, the satisfaction recorded on 03.09.2018 has no jurisdictional foundation and therefore, the entire edifies of the Revenue gets collapsed. We, therefore, accept the contention of the assessee and hold that for want of jurisdiction invested in the Assessing Officer in his capacity as Assessing Officer of the other person (assessee), the satisfaction dated 03.09.2018 is non-est in the eye of law and the consequent assumption is liable to be quashed. Accordingly, the assessment orders passed by the AO u/s 153C for the A.Y.2016-17 and 2017-18 are quashed. We hold and order so.

17. Coming back to A.Y.2018-19. During the F.Y.2017-18, relevant to A.Y.2018-19, the assessee has received total gross amounting to Rs.43,82,000/- on account of sale of land. The AO treated the entire gross receipts as unaccounted sale, only on the basis of additions made towards on-money received over and above the SRO value of the flats for the A.Y.2016-17 and 2017-18. The AO has not given any reason as to why the entire amount of

Rs.43,82,000/- has been treated as undisclosed business income. There are no details as to whether, it is an amount of on-money received, over and above the SRO value or the entire sale consideration received for sale of flats. Going by the observations of the AO, it seems that addition is on entire gross receipts pertain to sale of land. Once the amount pertains to sale of land, then, relevant cost, including cost of acquisition and other development expenses needs to be allowed as deduction. Further, the assessee has reported average net profit of 18% for the last two assessment years. Going by the nature of business of the assessee and statement recorded during the course of search, it is undisputedly clear that the entire on-money received towards sale of flat is not income of the assessee, which is evident from a specific question in the statement, where the assessee has clearly admitted that he has incurred various expenditure, out of on-money and the balance amount has been invested for the purchase of lands. Therefore, we are of the considered view, that once the assessee is into business of development of flats, there is a possibility of unaccounted expenditure against unaccounted on-money received towards sale of property or flats. It is a fact on record that, if the entire amount of on-money received is treated as unaccounted income of the assessee, then the profit earned by the assessee is almost more than 60% of gross receipts, which is improbable in any business, let alone in the business of real estate development. Therefore, we are of the considered view, when evidences in the form of statement recorded from the assessee suggest unaccounted expenditure, against unaccounted on-money receipts, in our considered view, the AO ought to have estimated

reasonable amount of profit on total unaccounted receipts towards on-money for sale of flats.

18. Be that as it may, in the year under consideration, there is no clarity as to whether the entire gross receipts of Rs.43,82,000/- is on-money or consideration received for sale of property, including sale consideration as per the registered sale deed. Since there is ambiguity in the findings of the AO and also the fact that there is evidence for incurring unaccounted expenditure against unaccounted receipt of on-money for sale of flats, in our considered view, a reasonable rate of profit needs to be estimated on purported on-money received by the assessee for sale of flats. This principle is supported by the decision of Hon'ble Gujarat High Court in the case of DCIT Vs. Panna Corporation (supra) and also decision of ITAT Visakhapatnam in the case of Yugaandhar Housing Pvt.Ltd. Vs. ACIT in ITA Nos.83, 84, 85, 86, 87 & 88/Viz/2022 dated 30.08.2022, where a similar view has been taken by the Tribunal and directed the AO to estimate profit on on-money received for sale of flats. Further, as pointed out by the Ld.DR, the assessee is co-developer of the lands and as per terms and conditions of MOU, the entire development expenditure has been incurred by the developer. If at all any expenditure for the assessee, then the assessee may incur regular overhead expenditure applicable to any kind of business. Therefore, considering the totality of the facts of the case and also by following the decision of Hon'ble Gujarat High Court, we deem it appropriate to estimate 25% profit on total unaccounted receipt towards sale of flats. Thus, we direct the AO to estimate 25% profit

on total gross receipts of Rs.43,82,000/- and delete the balance addition.

19. In the result, appeal filed by the assessee for the A.Y.2018-19 is partly allowed.

20. To sum up, appeals filed by the assessee for the A.Y.2016-17 and 2017-18 are allowed and for the A.Y.2018-19 is partly allowed.

Order pronounced in the Open Court on 18th March, 2025.

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA G.)** **ACCOUNTANT MEMBER**

Hyderabad,
dated 18th March, 2025
L.Rama, SPS

Copy to:

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4	The DR, ITAT, Visakhapatnam
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