

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'G', MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER  
AND SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER**

**ITA No. 3966/Mum/2024 (A.Y. 2019-20)  
ITA No. 3965/Mum/2024 (A.Y. 2020-21)  
ITA No. 3980/Mum/2024 (A.Y. 2021-22)**

Ganadhish GNP  Shop No. 1203, 12 <sup>th</sup> Floor, Rupa Solitaire, Building No. A-I, Sector-I, Millennium Business Park, Mahape Navi Mumbai-400710.  <b>PAN: AAPFG 1164 L</b>	vs	DCIT, Circle-6(1), Mumbai
(Appellant)		(Respondent)

**ITA No. 4485/Mum/2024 (A.Y. 2019-20)  
ITA No. 4481/Mum/2024 (A.Y. 2021-22)**

DCIT, Circle-6(1), Mumbai	vs	Ganadhish GNP  Shop No. 1203, 12 <sup>th</sup> Floor, Rupa Solitaire, Building No. A-I, Sector-I, Millennium Business Park, Mahape Navi Mumbai-400710.  <b>PAN: AAPFG 1164 L</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nishit Gandhi & Aadnya Bhandari  
Revenue by : Dr. Kishor Dhule, CIT/DR

Date of Hearing : 18.12.2024  
Date of Pronouncement : 17.03.2025

**ORDER**

**PER BENCH:**

These five appeals filed by the Revenue and the assessee are pertained to A.Y. 2019-20 to A.Y. 2021-22. These three appeals filed by the assessee and two appeals filed by the Revenue are

based on identical issue on similar facts, therefore, for the sake of convenience all these appeals are adjudicated together by taking the ITA No. 3966/M/2024 for the A.Y. 2019-20 filed by the assessee and ITA No. 4485/M/2024 for the A.Y. 2019-20 filed by the Revenue as a lead case and their findings will be applied to the other appeals mutatis and mutandis wherever applicable.

ITA No. 3966/M/2024 (A.Y. 2019-20) (Assessee Appeal)

*“On the facts of the case, in law and under the circumstances the ld. CIT(A), Central erred in estimating net profit @ 26% on unaccounted business receipts as against net income @ 20% offered by the assessee.”*

ITA No. 4485/M/2024 (A.Y. 2019-20) (Revenue Appeal)

*“1. Whether on the facts and in the circumstances of the case the ld. CIT(A) erred in estimating the net profit @ 26% on unaccounted business receipts of Rs. 3,79,07,014/- by giving relief to the assessee of Rs. 2,80,51,190/- without appreciating the fact that the assessee has not submitted any documentary evidence that @ 74% of the expenses were incurred for the earning of such income and ignoring the fact that the cases of Hon’ble High Courts on which reliance was placed by the ld. CIT(A) are distinguishable on facts.*

*2. The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be.”*

2. Fact in brief is that return of income declaring nil income was filed on 08.08.2019. A search and seizure action u/s 132 of the Act was carried out at the group cases and at the offices of GNP Group at Nariman Point, Mumbai on 23.09.2021. During the search incriminating evidences in the form of “On-Money” sheets were found pertaining to the assessee M/s. Ganadhish GNP. The assessee firm constructed a commercial complex at

Dombivali in the name of “GNP Galleria”. During the course of search action at the office premises of the GNP Group incriminating evidences in the form of “On-Money” sheets found as per which various commercial units were sold on which “On-Money” was received as per the detail of the sheet dated 23.08.2019 reproduced at page 3 of the assessment order. During the course of search action, the contents of the sheet on which the “On-Money” was reflected shown to Shri Kapil Talreja, Accounts Manager of GNP Group. The contents of his statement recorded u/s 132(4) of the Act reproduced by the assessing officer at page no. 3 of the assessment order as under:

*i. The document appears to be related to the Real Estate Projects undertaken GNP Galleria.*

*ii. The document contains list of buyer wise project receipts.*

*iii. The amount mentioned in the column “S” of the above produced sheet matched with the sales deed values for the respective buyers.*

*iv. Shri Kapil Talreja accepted that the amounts mentioned in the column “N” of the above produced sheet is the cash receipt and they are not part of the amount agreed in the sales deed.*

*v. He confirmed that the amount mentioned in the column “N” of the above produced sheet are not accounted in the books of accounts of M/s. Ganadhish GNP.”*

3. During the course of search action, the contents of the said “On-Money” sheet was also shown to Shri Girish Pawar, the partner of the firm in which he accepted that part of the total consideration mentioned as “N” was received in cash. He also explained that transactions mentioned under the column “N” was

not recorded in the books of accounts of the assessee firm, M/s. Ganadhish GNP. During the course of search action conversation recorded in the whatsapp chat of various transactions of GNP group related to cash receipt from the sale of commercial units in GNP Galaria Project was also shown to Shri Girish Pauer for his comment and he has accepted that part of the cash was received from the sale of commercial units. During the course of assessment proceedings, he submitted that the entire receipts of Rs. 13,65,13,712/- was offered as undisclosed receipts. The break-up of the undisclosed cash receipts as reflected at para 5.4 of the assessment order is reproduced as under:

<i>Sl. No.</i>	<i>A.Y.</i>	<i>Amount</i>
1	2018-19	Rs. 1,22,97,238/-
2	2019-20	Rs. 3,79,07,014/-
3	2020-21	Rs. 50,00,000/-
4	2021-22	Rs. 8,13,09,460/-
	<i>Total</i>	Rs. 13,65,13,712/-

4. However, the assessing officer observed that during the year under consideration, the assessee had only declared income of Rs. 75,81,403/- of the undisclosed receipts of Rs. 3,79,07,014/- offered for the assessment year under consideration. The assessee had claimed expenses of Rs. 3,03,25,611/- which was 80% of the unaccounted cash receipts of Rs. 3,79,07,014/-. The assessee was asked why the claim of expenses of Rs. 3,03,25,611/- should not be disallowed. The assessee made detailed submission which has been reproduced at para 5.6 of the assessment order. The assessee mainly explained that they

had offered net income from construction business @ 20% after claiming estimated expenses @ 80% from the gross business receipts offered to tax u/s 132(4) of the Act in the return of income filed for the assessment year. The assessee also explained that the project was located at a place surrounded by small time vendors/traders/agriculturist/vegetable supplier etc. and they generally trade in cash. The assessee also submitted that during the course of search action, the partner of the assessee firm Shri Girish Pauer in his submission recorded u/s 132(4) of the Act submitted that cash received from the sale of gala was used in the construction related expenses. The assessee also submitted that seized papers found reveals the fact of incurring of various expenditure for the purpose of business in the nature of brokerage steel purchase, Tiles purchase, contractor payment, salary and administrative expenses which were not recorded in regular books of accounts. The assessee submitted that due to business compulsion it has received business receipts and also incurred various business expenses which were not recorded in regular books of accounts for which third party evidences cannot be made available with respect to their PAN number, address etc. However, the assessing officer has not agreed with the submission of the assessee. The assessing officer stated that assessee failed to furnish the PAN number of the party to whom such expenses were incurred and the claim of incurring the expenses were made on general basis. Therefore, the assessing officer has treated the whole receipts of Rs. 3,03,25,611/- as

unaccounted income without providing any deduction for the expenditure incurred out of the undisclosed receipts.

5. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has estimated the net profit @ 26% on unaccounted business receipt of Rs. 3,79,07,014/- instead of 20% offered by the assessee for the year under consideration. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

*“7.8 I have considered the Assessment Order, the Grounds of Appeal, the submissions made by the assessee, Paper Book filed and various judgments relied on by the assessee.*

*7.9 It is noticed that during the course of search, numerous evidences of unaccounted business receipts and expenditure were found which were not recorded in books of the assessee. It has also been noticed that in the statement recorded of the Partner, he had deposed that the unaccounted business receipts found are also spent for business purpose. Based on the evidence found of various unaccounted*

*expenses incurred, the assessee has offered net income of Rs. 75,81,403/- @ 20% of unaccounted business receipts of Rs. 3,79,07,014/- during the course of search u/s 132(4) of the Act vide letter dt. 12.01.2022 as well as in return of income filed for the relevant assessment year. The same has been done on the basis that while estimating net income all unaccounted expenses are subsumed in net income so estimated and so no separate claim of expenditure has been made by the assessee. The assessee has provided the details of unaccounted expenditure incurred in the Paper Book filed before the AO on Page Nos. 92 to 108 of Paper Book filed in the assessment proceedings and accordingly net income is estimated. However, the AO has not considered the explanation given by the assessee and has also not given the reason that why claim of the assessee of net income offered has been rejected. It is also found that assessee has offered unaccounted business receipts as per the various seized documents found and same has been duly accepted by AO as business receipts*

*u/s 28 who also made addition of entire gross receipts without allowing claim of the assessee of expenditure @ 80% made before the AO.*

*7.10 In this ground of appeal, the assessee has disputed only claim of deduction of expenditure @ 80% of the unaccounted business receipts offered by it pursuant to the search. This ground has been raised since the AO has treated the entire gross receipts as undisclosed business income. Against this issue, the assessee has offered a net income after claiming expenses at 80% of unaccounted business receipts of Rs. 3,79,07,014/- and offered net amount of Rs. 75,81,403/- as undisclosed income pursuant to search. The said undisclosed income is offered yearwise considering all the seized documents. The grievance of the assessee is that in contradistinction to the income offered by it year-wise, the AO has added entire alleged gross business receipts without giving any reason as to why the net income offered by assessee in the return pursuant to search is not acceptable. In this regard, the grievance of the assessee is that such action of the AO is contrary to the provision of the Act and that the deduction in respect of expenditure should have been allowed by him. The AO has not given any reason to reject the said claim of expenditure made by assessee.*

*7.11 Further, it is seen that in numerous judgments it has been laid down by the Hon'ble Courts that there does not have to be direct evidence co-relating the expenditure and a reasonable estimate on the basis of seized documents to be made while computing the undisclosed income pursuant to search. The following observation of the jurisdictional Hon'ble Mumbai Tribunal in the case of Prime Developer vs. DCIT – ITA 175 to 178/M/2010 and ITA 321 to 324/M/2010 are relevant:*

*“42. Scope of Reasonable Expenditure: Assessee needs to expend in order to earn income / profit and it is basic and universal principle in any business. This principle applies to both accounted and unaccounted profits. In a case of unaccounted profits due to its very nature of unaccounting, normally, the parties do not maintain evidences and therefore, evidencing such accounted evidences is impossibility. Probably, for the reason, the courts have taken conscious view that it for the assessing authority to quantify reasonable expenditure considering the facts of the case and industry. Legally speaking, the judgments are uniform in asserting that entire sale proceeds should not be added as*

*income. Hon'ble High Court of Ahmedabad ruled in the case of Panna Corporation that the 'assessee ought to have spent reasonable amount for the purpose of receiving such gross profit' (Para 14 of Tax Appeal No. 325 of 2000 dt.16.06.2012). Further, Hon'ble High Court of Madhya Pradesh held in the case of President Industries 258 ITR 654 that 'entire sale proceeds of the assessee should not be added in his income'. Further, from the judgment in case of Panna Corporation (Supra), it is settled proposition that there is no need for the assessee to demonstrate the genuineness of the claim of unaccounted expenditure in the cases of this kind. The underlined logic is that the unaccounted expenditure is always unevidenced and never maintained. Therefore, transferring onus on to the assessee in matters of this kind is not approved. Ex consequenti, it is for the AO allow necessarily reasonable deduction towards such unaccounted expenditure without demanding evidences, considering the nature of industry and also evidences relating to extents of net profits earned by the assessee. Considering the above legal position on the matter, we are of the clear-cut opinion, the AO's conclusions on this issue are certainly erroneous. In principle, we uphold the views of the CIT(A) in this regard. Therefore, relevant grounds raised in the revenue's appeals are dismissed".*

*7.12 The said judgment has been affirmed by the Jurisdictional High Court vide ITA No. 2452 of 2013. Further, there are number of decisions wherein various High Courts have held that net income has to be estimated on the unaccounted business receipts offered by the assessee. In this regard, the Hon'ble Gujrat High Court in case of DCIT vs. Panna Corporation reported in ITA No. 323/325 of 2000 held that there is a consistent view which the various High Courts have been following and that is the principle that even upon detection of "on money" receipts or unaccounted cash receipts what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that be the legal position, then reasonable profit is to be estimated. The relevant extracts are as under:*

*It can, thus, be seen that consistently, this Court and some other Courts have been following the principle that even upon detection of on money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that be the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation.*

*(8.) IN view of the legal position that not the entire receipts, but the profit element embedded in such receipts can be brought to tax, in our view, no interference is called for in the decision of the Tribunal accepting such element of profit at Rs.26 lakhs out of total undisclosed receipt of Rs.62 lakhs. In other words, we accept the legal proposition, the Tribunal accepting Rs.26 lakhs disclosed by the assessee as profit out of total undisclosed receipt of Rs.62 lakhs, would not give rise to any question of law. In the result, the tax appeals are dismissed.*

*7.13 Similar view also been held in case of CIT vs. Shri Hariram Bhambhani reported in ITA No. 313 of 2013 (Bom.) and CIT vs. President Industries (2002) reported in 258 ITR 654 (Guj.). Further, in fact the Hon'ble Jurisdictional High Court in case of Golani Brothers (Supra) has held that once the receipts are taxed or sought to be taxed, the deduction of expenditure incurred therefrom must be allowed.*

*7.13.1 The relevant extracts of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Shri Hariram Bhambhani reported in ITA No. 313 of 2013 (Bom.) are as under:*

*6 On further Appeal, the Tribunal by the impugned order held that the entire sales which are unaccounted cannot be undisclosed income of the assessee, particularly as the purchase had been accounted for. It was held that only net profit which would arise on such unaccounted sales can rightly be taken as the amount which could be added to the Respondent Assessee's income for the purpose of tax.*

*7 The grievance of the Revenue is that Section 69C of the Act is to be invoked and entire amount of undisclosed sales has to be brought to tax. We are unable to appreciate how Section 69C of the Act which speaks of unexplained expenditure is all at relevant for this appeal. We are not concerned with any unexplained expenditure in this case.*

*8 In any view of the matter, the CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Thus, in the above view, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. The view taken by the authorities is a reasonable and a possible view. Thus, no substantial question of law arises for our consideration.*

7.14 There are several other decisions viz in case of Anand Builders ITA No. 52 of 2002 in which Hon'ble Gujarat High Court has upheld the order of the Hon'ble ITAT directing the Assessing Officer to tax only 8% of the unaccounted money receipt instead of fully taxing it in the absence of any evidence of expenditure, the SLP (C) No. 14166 of 2003 filed by the department against the order of Hon'ble Gujarat High Court has not been admitted reported in 265 ITR 337 (Statutes).

7.15 Similar decision in case of Hon'ble Mumbai ITAT in the case of Nalini V Shah vs. ACIT ITA No. 6183/M/2006 AY 2002-03 dated 20.05.2009 in which the Hon'ble ITAT have held that 15% profit rate of "on money" is a reasonable rate.

7.16 Further, Hon'ble Ahmedabad ITAT in case of Kishor Mohanlal Teliwala vs. ACIT 64 TTJ 543 held that 8% profit of unaccounted turnover was reasonable by the ITAT. The relevant extracts are as under:

Thus, what can be added as the undisclosed income of the assessee under section 158BC, is a reasonable amount of profit which the assessee could have earned by charging "on money" in respect of flats and the Mumbai Bench of the Tribunal in the case of Mrs. Mehroo N. Irani in ITA No. 1140/Bom/89 has taken the view that when a person is found to have been engaged in building construction activity and has received unaccounted money, what is required to be taxed is not the receipt but only 5 per cent of the receipt which is to be taken as a net profit. As against the above decision the assessee has himself offered 8 per cent profit on the total receipts which should be considered fair and reasonable. In any case it is to be seen that after the exhaustive search and obtaining the disclosure of Rs. 17 lakhs the search party has not been able to find any unaccounted assets except those which have been referred to in the statement of the assessee and a broad break-up of which was given by the assessee in his statement aggregating to Rs. 17 lakhs. These assets are by way of application of the unaccounted income which have been earned by the assessee from Hare Krishna Apartment project, part of which was reflected on the piece of paper found during the course of search against which the assessee himself has offered a sum of Rs. 17 lakhs as his unaccounted income. Thus, it is clear that the assets found at the time of search were the application of the unaccounted income of Rs. 17 lakhs which was offered to tax by

*the assessee in his return filed in response to notice under section 158BC. Thus, keeping in view the totality of the facts and circumstances of the case we are of the opinion that the Assessing Officer was not justified in making the addition of Rs. 1,47,91,840 as the concealed income of the assessee because the profit earned on the unaccounted receipts on the basis of the special provisions at 8 per cent as per section 44AD of the Act will be less than the amount of Rs. 17 lakhs disclosed by the assessee as undisclosed income in the return filed in response to notice under section 158BC. Accordingly we do not find any justification in the action of the Assessing Officer in making the addition of Rs. 1,47,91,840 which is directed to be deleted.*

*7.17 Also, the Hon'ble Mumbai Bench of ITAT in case of Mrs. Mehroo N Irani vs.*

*ACIT 75 Taxmann (Mag.) 123 held that 5% of the gross receipts was found to be reasonable as income out of unaccounted money received. The relevant extracts are as under:*

*In the instant case, from a perusal of the seized material, it could be said that no conclusive inference could be drawn from these papers that the assessee in fact had received Rs. 50 per sq. ft. on sale of flats. The papers did indicate that 'on money' would have exchanged hands on such sale. But what made out a case for additions were the seized papers which go to show that the assessee could have incurred cash expenditure for purchase of scarce material like cement and steel. The contention of the assessee that merely because unrecorded expenditure might have been incurred by the assessee, an inference that there could be receipt of 'on money' had to be rejected, had merely to be stated to be rejected. The assessee had embarked on a business venture, i.e., construction of multistoreyed building and such action on the part of the assessee could not have been motivated by altruism or philanthropy. The papers which indicated that the assessee could have incurred unaccounted expenditure were seized at the premises of the assessee. It would be idle to speculate that papers did not represent any real expenditure. No staff member would be expected to make a jotting of this nature and keep it in the file of the office. There, therefore, had to be some truth in the whole thing. The totality of the facts, if considered in a dispassionate manner, could lead to a conclusion that the assessee in fact had received 'on money' and had also incurred expenditure out*

*of the same. An estimated addition to the total income based on the ground realities would be a better way out. In doing so, one should take into consideration the net profit disclosed by the assessee and also the net profit that would be reflected after the additions finally sustained were taken into consideration. In the instant case, having regard to the totality of the facts and circumstances of the case, a net addition of 5 per cent of the gross receipts exclusive of receipts on account of garages and installation of generator would meet the ends of justice. Moreover, no separate addition of 'on money' would be necessary in regard to sale of garages which were nothing but parking spaces.*

*7.18 Further, the following legal precedents have held that only the profit element embedded in the "on money" / a reasonable percentage of "on money" can be taxed.*

- CIT v/s Golani Brothers reported in ITXA 17, 19, 26, 27 & 42 of 2015 (Bombay High Court)*
- Pranav Construction Co. v ACIT [1998] 96 TAXMAN 323 (MUM.)*
- CIT v C Najeeb [2019] 104 taxmann.com 250 (Kerala)*
- DCIT v Adarsh Industrial Estate Pvt Ltd [2021] 130 taxmann.com 142 (Mumbai - Trib.)*
- DCIT v/s Panna Corporation reported in ITA No. 323/325 of 2000 (Gujrat High Court)*

*7.19 It is also noticed that, there is no dispute on the fact that the assessee has incurred expenditure outside the books of accounts. The seized papers found reveal the fact of incurring of various type of expenditure for the purpose of business in the nature of brokerage, Steel Purchase, Tiles Purchase, Contractors Payment, salary & administrative expenses.*

*7.20 During the assessment proceedings, the AO has not doubted the fact that such expenditure is incurred. The AO merely was enquiring as to the identity of the payee. It is but natural in real estate business that there are unaccounted expenditures incurred in cash. Such expenses are typical of the real estate industry.*

7.21 In the present case, the AO has accepted the “on money” receipts found in the search but has disregarded the claim of expenses found during the search. The Gujarat High Court in the case of Glass Lines Equipments Co. Ltd reported in 253 ITR 454 (Guj) held that the seized papers have to be interpreted as a whole and AO cannot accept part which is in favour of revenue and ignore the rest for making the addition. Hence, the action of the AO in taxing the “on money” receipts but ignoring the expenses out of “on money” is against the law. Therefore, the AO cannot pick and choose those portions of the statement of Mr Girish Pawar that are favourable to him and ignore the other parts. The relevant extracts of the aforesaid judgment are as under:

As laid down by the Supreme Court in the case of Mehta Parikh and Co. v. CIT [1956] 30 ITR 181, none of the authorities considered it necessary to cross-examine the deponent with reference to the statement made in the affidavit, and, hence, under these circumstances it was not open to the Revenue to challenge the correctness of the statement made by the deponent in the affidavit. In other words, consequently, the assessee was entitled to assume that the authorities were satisfied with the affidavit as sufficient proof on this point. In the present case, we find that the Commissioner of Income-tax (Appeals) while dealing with the affidavit has conveniently chosen to accept only one part of the statement which was in favour of the Revenue and against the assessee while ignoring the rest of the portion wherein specific averments were made in relation to the balance items of expenditure.

In view of the settled legal position, it was not open to either the Commissioner of Income-tax (Appeals) or the Tribunal to ignore a part of the contents of the affidavit. We are conscious of the fact that the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal are concurrent as regards the facts and evidence on record and but for the averments made in the affidavit which have been ignored, we would not have interfered with the said findings. It is a well settled canon of interpretation that a document has to be read as a whole: it is not permissible to accept a part and ignore the rest of the document.

7.22 Further, presumption u/s 132(4) of the Act is that when the receipts are recorded in the search document are believed to be income,

*the entries of expenditure recorded therein are also to be believed without asking more evidence of such expenditure. The said view has been held by Delhi High Court in case of Indeo Airways Pvt. Ltd reported in 26 taxmann.com (Delhi). In the case of CIT vs. Indeo Airways Pvt Ltd (supra), it has been categorically held by the Hon'ble Delhi High Court that once the receipts as per the seized documents are believed, expenditure from the very same seized documents must also be believed. The relevant extracts of the said judgment are as under:*

*16. In P.R. Metrani v. Commissioner of Income Tax, Bangalore (2007) 1 SCC 789 the Supreme Court elaborated upon the nature of presumption under Section 132 (4A) and the scheme of the provision, in the following words:*

*"Sub-section (4A) was inserted by Taxation Law (Amendment) Act, 1975 with effect from 1.10.1075 to permit a presumption to be raised in the circumstances mentioned therein. Before the insertion of sub-section (4A) the onus of proving that the books of*

*account, other documents, money bullion, jewellery etc. found in possession or control of a person in the course of a search belonged to that person was on the Income Tax Department. Subsection (4A) enables an assessing authority to raise a rebuttable presumption that such books of account, money, bullion etc. belonged to such person; that the contents of such books of account and other documents are true, and, that the signatures and every other part of such books of account and other documents are signed by such person or are in the handwriting of that particular person. Raising of such presumption has been enacted by the Legislature to enable the assessing authority to make a provisional adjudication within the time frame prescribed under Section 132. Otherwise it may not be possible to do so. The object of introduction of Section 132 is to prevent the evasion of tax, i.e., to unearth the hidden or undisclosed income or property and bring it to assessment. It is not merely an information of undisclosed income but also to seize money, bullion etc. representing the undisclosed income and to retain them for the purposes of realization of taxes, penalties etc. Search and seizure is a serious invasion in the privacy of the person. Section 132 which is a complete code by itself provides that the money, bullion or the books of account etc. should not be retained unnecessarily and that the provisional assessment made under Section 132 for the*

*purpose of retention of the books is passed within a specified time in accordance with law. It provides that the books of account, money and bullion which are not required are not retained unnecessarily thereby causing harassment to the person concerned. In order to see that the assessment order is framed within the time frame provided under Section 132 , legislature provided for a rebuttable presumption to be raised against the person from whose possession and control the books of account, money, bullions etc. are seized so that the order can be passed within the time frame provided under Section 132. A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular inference from a particular fact. It is of three types, (i) "may presume", (ii) "shall presume" and (iii) "conclusive proof". "May presume" leaves it to the discretion of the Court to make the presumption according to the circumstances of the case. "Shall presume" leaves no option with the Court not to make the presumption. The Court is bound to take the fact as proved until evidence is given to disprove it.*

*In this sense such presumption is also rebuttable. "Conclusive proof" gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebuttable presumption.*

*The words in sub-section (4) are "may be presumed". The presumption under subsection (4A) therefore, is a rebuttable presumption. The finding recorded by the High Court in the impugned judgment that the presumption under subsection (4A) is a irrebuttable presumption in so far as it relates to the passing of an order under sub section (5) of Section 132 and rebuttable presumption for the purpose of framing a regular assessment is not correct. There is nothing either in Section 132 or any other provisions of the Act which could warrant such an inference or finding. Presumption under sub-section (4A) would not be available for the purpose of framing a regular assessment. There is nothing either in Section 132 or any other provision of the Act to indicate that the presumption provided under Section 132 which is a self-contained code for search and seizure and retention of books etc. can be raised for the purposes of framing of the regular assessment as well."*

*If the revenue was of the opinion that the expenses claimed towards "green boxes" was inadmissible or was excessive, or not genuine, in*

*order to reject the entries in the books of account and other documents of the assessee, seized during the search, it ought to have relied on other materials. Having once drawn the presumption that the contents of the documents (of the assessee) taken into possession during the search were true, the revenue could not have, consistently with that presumption, proceeded to require the assessee to produce materials in support of the expenditure entries. Such an inconsistent approach in respect of the contents of the same book appears to have been founded only on suspicion that they were not genuine. However, suspicion cannot replace proof. Moreover, the full effect of the presumption should be given effect to, whenever the statute directs a particular non-existent state of affairs to be assumed. (Ref State of Bombay v. Pandurang Vinayak, AIR 1953 SC 244; Karnataka State Road Transport v B.A. Jayaram & Ors, AIR 1984 SC 790). In these circumstances, the effect of the presumption (which bade the revenue, when it chose to invoke it, to presume that the "contents of such books of account and other documents are true.". Therefore, in the absence of any materials, in the form of documents, the revenue could not have denied the benefit of any expenses which would otherwise have inured to the assessee, as an allowable deduction under Section 37 (1).*

*17. So far as the heads of expenses are concerned, the revenue was unable to show how any of them were prohibited by law, or amounted to offences. The assessee's business was to transport export goods, and ensure their door-to-door delivery in Moscow. Confirmations had been received during the course of proceedings, from some of the assessee's clients. The assessing officer himself allowed some deductions; which in turn implied that what aroused his suspicion was the seemingly high level of expenditure. On this aspect, however, the CIT (A) held that the margin of profit, a little over 17% compared favourably with the general trend in the business. In view of these facts, the ITAT, in the opinion of this court, did not commit any error of law in holding that such expenses were deductible under the main part of Section 37 (1) of the Act.*

*7.23 Further, apart from the above cases related to "on money" earned by builders, there are general legal precedents which have held that if any undisclosed sales are found during the search, only the profit element can be taxed:*

*CIT vs. Shri Hariram Bhambhani reported in I.T.A. No.313 of 2013 (Bombay)*

*CIT v. President Industries [2002] 258 ITR 654 (Gujarat)*

7.24 *The common thread of the above judicial precedents shows that if the “on money” receipts are unearthed during a search action, it is but obvious that the entire undisclosed receipts cannot be taxed but only the profit element can be taxed.*

7.25 *After considering the decision of various Hon’ble High Courts and ITAT as mentioned above it is clear that it has consistently held that the reasonable profit has to be estimated on detection of “on money” receipts. Following the principle that on detection of “on money” receipts or unaccounted cash receipts what can be brought to tax is the profit embedded in such receipts and not entire business receipts itself and considering the legal position and the submission of the assessee and evidence of expenditure found, reasonable profit is required to be estimated out of such unaccounted business receipts and thus it would require fair estimation of net income earned by assessee out of “on money” receipts.*

7.26 *It is also noticed that assessee is following percentage completion method of recognizing the revenue in the books of accounts. Assessee has offered the income on proportionate completion method in the return of income filed for the period AY 2018-19 to AY 2022-23 and said facts are not disputed by AO. During the course of hearing, details of net income offered by assessee as offered in regular books of accounts and return of income filed were provided by the assessee. On going through the above details, it is noticed that assessee has offered net income from construction business in the audited books of accounts for the period AY 2018-19 to 2022-23 as under: -*

AY	Sales as per books of accounts	Net Income offered by assessee on percentage completion method	Net profit as per books (in %)
2018-19	-	-	-
2019-20	-	-	-
2020-21	-	1,31,95,081	13%
2021-22	23,67,06,040	6,81,97,793	29%
2022-23	9,30,53,313	1,19,96,715	13%

7.27 It is also noticed on the details submitted by the assessee that the assessee has offered net profit as per books of accounts ranging from 13% to 29% over the relevant years.

7.28 Further, the consolidated income from the real estate business offered by assessee during the AY 2018-19 to AY 2022-23 as per books of accounts and as a result of search works out to be at the rate of 26% which can be seen as under:

AY	Sales as per books of accounts	On money receipts offered by assessee	Total Turnover	Net profit offered as per books of accounts	Net income offered u/s 132(4)	Total income offered by assessee u/s 132(4)/139(1)	Avg. profit
2018-19		1,22,97,238	1,22,97,238		24,59,448	24,59,448	
2019-20		3,79,07,014	3,79,07,014		75,81,403	75,81,403	
2020-21		50,00,000	50,00,000	1,31,95,081	10,00,000	1,41,95,081	
2021-22	23,67,06,040	8,13,09,460	31,80,15,500	6,81,97,793	1,62,61,892	8,44,59,685	
2022-23	9,30,53,313		9,30,53,313	1,19,96,715		1,19,96,715	
Total	32,97,59,353	13,65,13,712	46,62,73,065	9,33,89,589	2,73,02,742	12,06,92,331	26%

7.29 In my view, after considering the seized documents containing the details of expenditure found, submission made by the assessee, net income offered in the regular books of accounts and legal position as cited above, I estimate the net profit @ 26% on unaccounted business receipts of Rs. 3,79,07,014/- instead of 20% offered by assessee for the relevant year which is considered to be reasonable. Therefore, I direct the AO to restrict the addition to Rs. 22,74,421/- in the above AY 2019-20. Accordingly, assessee would get the relief of Rs. 2,80,51,190/-. Accordingly, this ground of appeal is partly allowed.”

6. During the course of appellate proceedings before us, the Id. Counsel referred the details submission filed before the lower authority as placed in the paper book. The Id. Counsel submitted that during the course of search and in the assessment proceeding, the assessee has explained the contents of each and every seized document and also explained evidences of incurring expenditure out of the cash receipt found during the course of search action. The Id. Counsel also referred the copies of seized

document pertaining to unaccounted expenditure and unaccounted receipt found during the course of search as placed in the paper book. The ld. Counsel also referred the statement of the partners during the course of search action as copies of such statements placed in the paper book filed. The ld. Counsel also referred page no. 66 of the paper book showing working of gross profit as per books of accounts of the Ganadhish GNP group for the various assessment years.

7. On the other hand, ld. DR submitted that the ld. CIT(A) has estimated the total income of the assessee @ 26% without any basis and ignore the relevant evidences found during the course of search that assessee has obtained “On-Money” on the sale of Galas and also contended that assessee also could not produce relevant supporting documentary evidences of incurring expenditure out of the “On-Money” receipt. The ld. DR has also referred the judicial pronouncements of the Hon’ble Bombay High Court in the cases of Harish Textile Engrs. Ltd. vs DCIT (2015) 63 taxmann.com 66 (Bom), in the case of CIT vs Hariram Bhambhani Income Tax Appeal No. 313 of 2013 and in the case of CIT vs Golani Brothers vide ITA No. 17 of 2015 dated 29.08.2017.

8. Heard both the sides and perused the material on record. The assessee is a firm engaged in the Real Estate Construction Business. The firm has constructed project named “GNP Galleria at Dombivli Dist. Thane. This was the first project constructed by

the assessee. The assessee GNP group was subject to search action u/s 132 of the Act on 23.09.2021. During the course of search action documents containing detail of receiving "On-Money" was found and seized. In the documents total estimated sales consideration receivable on sale of unit was mentioned under the alphabet "T" amounting to Rs. 27,25,99,174/-. The break-up of the same was given in column "S" which mean total amount receivable in cheque amounting to Rs. 13,55,45,462/- and in column "N" amount receivable in cash (On-Money) amounted to Rs. 13,65,13,712/-. As per the document, the total on-money receivable was estimated at Rs. 13,65,13,712/-. The assessee has offered the total on-money receipt of Rs. 13,65,13,712/- in 4 years as already referred in this order. During the year under consideration, the assessee has offered on-money to the amount of Rs. 3,79,07,014/-. However, during the course of search, the assessee has offered the gross "On Money" as discussed above and net income in respect of the said "On Money" receipts has been offered @ 20% of such unaccounted gross business in the return of income after reducing the estimated unaccounted expenses. The assessee has also placed in the paper book at pages 92 to 108 the evidences in respect of unaccounted expenditure found as part of the seized material during the course of search action. The assessing officer has disallowed the claim of unaccounted expenses claimed out of the on-money on the ground that assessee has not provided name of the payees, address, PAN etc. It is undisputed fact that during

the course of search action statement of the partners were recorded in which they stated that unaccounted expenditure were incurred out of the unaccounted business receipt. The judicial pronouncements referred by the Id. DR are distinguishable from the facts of the cases of the assessee as in the case evidences of "On Money" on sale of "Galas" along with expenses incurred in cash were found and the project was located at the area surrounded by the small types vendors and sellers who were generally trading in cash. Looking to the facts and evidences found/seized the addition of whole "On Money" receipt on gross basis would lead to estimating unreasonable profit in the case of the assessee. The Id. CIT(A) has considered the various judgements of the Hon'ble High Court on the proposition that it is not required to have direct co-relating of expenditure with the undisclosed income and a reasonable estimate may be made on the basis of seized document. The Id. CIT(A) has also referred the decision of various Hon'ble High Court that consistent view has been taken in respect of on-money receipt that the profit embedded in such receipt to be brought to tax and not the entire receipt itself. Further, it is noticed that assessee has followed percentage completion method of recognizing the revenue in the books of account. It is evident from the return of income filed by the assessee for the A.Y. 2018-19 to 2022-23 that assessee has offered the income on proportionate completion method. The Id. CIT(A) has reproduced the detail of proportionate income offered by the assessee on the basis of percentage completion method as

per which the assessee has offered net profit as per books of accounts ranging from 13 to 29% for the A.Y. 2020-21 to 2022-23 and no income has been offered for the initial two A.Y. 2018-19 and 2019-20 as reproduced under:

AY	Sales as per books accounts	Net income offered by assessee on percentage completion method	Net profit as per books (in %)
2018-19	-	-	-
2019-20	-	-	-
2020-21	-	1,31,95,081	13%
2021-22	23,67,06,040	6,81,97,793	29%
2022-23	9,30,53,313	1,19,96,715	13%

The Id. CIT(A) has computed the consolidated income from the project as per books of account and after including the on money offered by the assessee 2018-19 to 2020-21 and arrived at 26% of average profit as under:

AY	Sales as per books of accounts	On Money receipts offered by assessee	Total turnover	Net profit offered as per books of accounts	Net income offered u/s 132(4)	Total income offered by assessee u/s 132(4)/ 139(1)	Avg. profit
2018-19	-	1,22,97,238	1,22,97,238	-	24,59,448	24,59,448	
2019-20	-	3,79,07,014	3,79,07,014	-	75,81,403	75,81,403	
2020-21	-	50,00,000	50,00,000	1,31,95,081	10,00,000	1,41,95,081	
2021-22	23,67,06,040	8,13,09,460	31,80,15,500	6,81,97,793	1,62,61,892	8,44,59,685	
2022-23	9,30,53,313	-	9,30,53,313	1,19,96,715	-	1,19,96,715	
Total	32,97,59,363	13,65,13,712	46,62,73,065	9,33,89,589	2,73,02,742	12,06,92,331	26%

The Id. CIT(A) could not substantiate the basis of estimating the total turnover and net profit for the A.Y. 2018-19 and 2019-20 when the assessee has followed the percentage completion

method of recognizing the revenue in the books of account. Neither the AO nor the CIT(A) has carried out any exercise to determine the net profit and total turnover on the basis of material on record for arriving at a reasonable profit embedded in the unaccounted transaction of on-money found in the case of the assessee. Since the assessee has not offered any income for the A.Y. 2018-19 and 2019-20 and they have offered only income on the proportionate completion of the project from the A.Y. 2020-21 to 2022-23 as referred above in this order and average net profit percentage offered is 18.33% (13% + 29% + 13%).

9. The assessee has offered average net income from construction business in the audited books of accounts for the period A.Y. 2018-19 to 2022-23 at 18.33%. The action of the AO to treat the whole on money receipt of Rs. 13,65,13,712/- as part of net profit would result in abnormal net profit as about 70% on the sale amount of Rs. 32,97,59,363/- after adding the on money result of Rs. 13,65,13,712/- to the net profit of Rs. 9,33,89,589/- already declared as per the books of account. We further noticed infirmities in the consolidated income computed by the Id. CIT(A). Since the assessee was following the project completion method but for the A.Y. 2020-21 no sale/revenue was mentioned against the net incme / net profit of Rs. 1,31,95,081/- which was shown for the A.Y. 2020-21 for the purpose of arriving consolidated income of all the years at the average net profit of 26% because the Id. CIT(A) at page no 20 of the order has considered the net profit for the A.Y. 2020-21 @ 13%. Therefore, we consider that the

profit embedded in the on-money transaction is reasonable to estimate @ 22%. Therefore, we estimate the net profit @ 22% of accounted receipt of Rs. 3,79,07,014/- instead of 26% estimated by the Id. CIT(A). Accordingly, the appeal of the assessee is partly allowed and appeal filed by the Revenue is dismissed.

ITA No. 3965/M/2024 (A.Y. 2020-21) (Assessee Appeal)

10. Since on similar issue and identical fact vide ITA No. 3966/M/2024 we have partly allowed the appeal of the assessee by estimating the net profit @ 22% on unaccounted business receipt. Therefore, applying the findings of the same mutatis mutandis the net income of the assessee from unaccounted business is also estimated @ 22%. Therefore, the appeal of the assessee is partly allowed.

ITA No. 3980/M/2024 (A.Y. 2021-22) (Assessee Appeal)

11. Since on similar issue and identical fact vide ITA No. 3966/M/2024 we have partly allowed the appeal of the assessee by estimating the net profit @ 22% on unaccounted business receipt. Therefore, applying the findings of the same mutatis mutandis the net income of the assessee from unaccounted business is also estimated @ 22%. Therefore, the appeal of the assessee is partly allowed.

ITA No. 4481/M/2024 (A.Y. 2021-22) (Revenue Appeal)

12. Since this appeal of the Revenue is based on identical issue on similar fact to the ITA No. 4485/M/2024 for A.Y. 2019-20 as adjudicated (supra) in this order by which the appeal of the Revenue is dismissed applying the findings of the same mutatis mutandis this appeal of the Revenue is also dismissed.

13. In the result, all the appeals filed by the assessee are partly allowed and all the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 17.03.2025

**Sd/-**

**(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-**

**(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai: 17.03.2025  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai