

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4470/MUM/2024
Assessment Year: 2021-22
&
ITA No.4471/MUM/2024
Assessment Year: 2019-20
&
ITA No.4472/MUM/2024
Assessment Year: 2018-19**

Assistant Commissioner of Income Tax Central Circle 6(1), Mumbai BKC, Mumbai Room No. 445, 4 th Floor, Kautilya Bhawan, BKC, Mumbai 400051.	vs	Roshni Enterprises 519, The Great Eastern Gallaria, Sector 04, Nerul 400706. PAN: AASFR6639Q
Appellant		Respondent

Present for:

Appellant by : Shri Nishit Gandhi, Advocate
Respondent by : Smt. Sanyogita Nagpal, CIT DR

Date of Hearing : 28.01.2025
Date of Pronouncement : 25.04.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These three appeals filed by the revenue are against the orders of Ld. CIT(A)-54, Mumbai vide Order nos. ITBA/APL/S/250/2024-25/1065343505(1), ITBA/APL/S/250/2024-25/1065343031(1) and ITBA/APL/S/250/2024-25/1065342652(1), dated 03.06.2024, passed against the assessment orders by DCIT, Central Circle 6(1), Mumbai, u/s. 143(3) r.w.s.147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.02.2024 for Assessment Year 2021-22, dated

28.02.2024 for Assessment Year 2019-20 and dated 31.03.2023 for Assessment Year 2018-19.

2. Grounds taken by the revenue are reproduced as under:

ITA No. 4470/Mum/2024 for AY 2018-19

“Ground No.1

Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in estimating the net profit @20% on unaccounted business receipts of Rs.6,01,99,815/- by giving relief to the assessee without appreciating the fact that the assessee has not submitted any documentary evidences that @80% 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?”

Ground No.2

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

ITA No.4471/MUM/2024 for AY 2019-20

“Ground No.1

Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in estimating the net profit @20% on unaccounted business receipts of Rs.6,01,99,815/- by giving relief to the assessee without appreciating the fact that the assessee has not submitted any documentary evidences that @80% 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?”

Ground No.2

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

ITA No.4472/MUM/2024 for AY 2018-19

Ground No.1

Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in directing the AO consider the “on money” receipts of Rs. 8,76,58,325/- as offered by assessee in the return of income for the AY 2018-19 on substantive basis instead of protective basis without appreciating the fact that the assessee had failed to provide even basic supporting details, such as nature of expenses, parties to whom such payments are made?”

Ground No.2

Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in holding that net profit @20% on unaccounted business receipts of Rs. 8,76,58,325/- by giving relief to the assessee of Rs. 7,01,26,660/- without appreciating the fact that the assessee has not submitted any documentary evidences that @80% 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”

Ground No. 3

Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the additions made u/s, 69C of Rs. 50,00,000/- without appreciating the fact that the expenses incurred were not recorded in the books of accounts and the assessee failed to provide the detailed breakup of the said expenses and also failed to substantiate its claim with any invoices or documentary evidences?”

Ground No. 4

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

3. All the three appeals have common issue relating to estimating net profit @ 20% on unaccounted business receipts. In ITA No. 4472/Mum/2024 for AY 2018-19, there are two additional issues raised by the revenue, first relating to addition made u/s. 69(C) of Rs. 50,00,000/- deleted by the ld. CIT(A) and the second relating to disallowance of expenditure from unaccounted business receipts made on protective basis without there being any addition on substantive basis. Accordingly, we take up all the three appeals together for adjudication by passing a consolidated order. We draw facts from the appeal for Assessment Year 2018-19. Our observations and findings for this year shall apply mutatis mutandis to the other two years. The additional two issues for AY 2018-19 shall be dealt separately in this order itself.

4. Brief facts of the case are that assessee, a partnership firm is part of GNP group and was subjected to search u/s 132 of the Act on 23.09.2021 along with other entities of GNP group. In the present appeals, common issue is regarding disallowances made in respect of

deduction of expenditure incurred from the on-money receipts based on seized documents as claimed by the assessee. In its return, assessee had offered these on-money receipts on a 'net basis' after claiming deduction towards expenditure incurred by it, found recorded in the seized documents though itemized claim of such expenditure was not made. Ld. Assessing Officer however, made the addition by taking 100% of such on-money receipts as gross level. Ld. CIT(A) considered the submission of the assessee and on the basis of various documents and evidences, including the Gross Profit declared by the assessee over the years, held that the income from on-money receipts offered on 'net basis' at 20% of such on-money receipts deserved to be accepted. Against the said relief granted by the Ld. CIT(A), department filed the instant appeals before the Tribunal.

5. Assessee filed its return of income for AY 2018-19 on 25.07.2018, reporting total income at Rs. NIL. This return was revised on 04.08.2018 with total income at Rs. NIL. Assessee is a partnership firm and is engaged in the business of development and construction of commercial and industrial galas comprising of project "GNP Galaxy" at Ambarnath, district: Thane. Assessee offered its income on percentage of completion method in respect of its business of development and construction of Real Estate. It is important to note that during the post search proceedings, assessee had accepted that it had received on-money of Rs. 29.45 crores, spread over 5 years comprising of assessment year 2018-19 to AY 2022-23. Assessee had offered on-money in its returns for the respective years. According, to the statements given during the course of search, according to the assessee, on-money is received in cash at the time of booking of flat. After booking of the flat, the installment is received by cheque. Considering the date of booking of

each flat, assessee computed the on-money and offered the same to tax, details of which is tabulated as under:

Assessment year	Phase I	Phase II	Total
2018-19	7,13,40,000	1,63,18,325	8,76,58,325
2019-20	4,42,37,500	1,59,62,315	6,01,99,815
2020-21	74,97,000	71,41,101	1,46,38,101
2021-22	8,99,34,500	67,45,100	9,66,79,600
2022-23	3,33,01,500	20,51,000	3,53,52,500
Total	24,63,10,500	4,82,17,841	29,45,28,341

5.1. For the assessment year 2018-19, assessee claims that it offered on-money of Rs.8,76,58,325/- against which it incurred various expenditure and are not recorded in the books of accounts. For this, reference was made to details of construction related income and expenditure furnished in order to explain the seized documents. Reference was also made to the reply recorded in the statement recorded of Shri Kaustub Latke, during the course of search. These elaborate details are placed in the paper book at page no.183 to 199. Based on these workings, assessee estimated that 80% of on-money receipts are expensed out and therefore, for taxation, it offered net income @ 20% of the on-money receipts received by it. In the present case for AY 2018-19 thus, assessee offered Rs. 1,75,31,665/-, which is 20% of Rs. 8,76,58,325/-.

5.2. Ld. AO did not accept the submissions of the assessee as it was submitted that on-money is to be taxed on the basis of accrual method of accounting followed regularly by the assessee. According to the assessee, sale proceeds received in cash on units sold which is based on seized material is not taxable in the year of receipt, since taxability of income on sale of units is always in the year when possession is given to the buyers, that is, when actual transfer takes places. Assessee had

also contended that seized documents should be interpreted as a whole and not in parts. While not concurring with the submissions made by the assessee, ld. AO noted that since the on-money transactions are already being considered for addition in AY 2019-20 and 2021-22, he did not consider the deduction of 80% claim by the assessee from the receipt of on-money and added the same as unaccounted business income u/s. 28 on 'protective basis'. Thus, he made an addition of Rs. 7,01,26,660/- which is 80% of the on-money receipt by the assessee, in the Assessment Year 2018-19.

6. Before the Ld. CIT(A), in addition to the submissions made before the Ld. AO, assessee also submitted that during the course of search, in the statement recorded of the directors/partners of the GNP group who are common to the assessee also, it was submitted that the assessee group has earned unaccounted income and also incurred unaccounted expenditures for the business purpose of the assessee. Reply to Q. Nos. 31, 44 of statement recorded of Shri Girish Pawar u/s 132(4) dated 23.09.2021 wherein it is stated that as and when on-money is received in cash, it is spent on the projects. The same are reproduced as under:

“Q.31 Please state whether you receive cash on sale of industrial and commercial galas in construction business?”

Ans. In construction business, we receive cash on sale of industrial and commercial galas which is unaccounted in our books of account. Cash received from these sales of galas was used in construction payments. Shailesh Patil was our trusted associate who used to help in movement of cash received or paid in our construction business.

Q.44 Do you record unaccounted cash received or paid in the business of construction and consultancy?”

Ans. No Sir, we do not record such unaccounted cash transactions in our books of accounts. As and when we receive such unaccounted cash, it is spent in projects or investments.”

7. Assessee submitted that seized papers found reveals the fact of incurring of various expenditures for the purpose of business which are

in the nature of brokerage, steel purchase, tiles purchase, contractor payment, salary and administrative expenses. Statement of unaccounted expenditure as explained by the assessee in the course of assessment proceedings are placed at page nos. 183 to 199 of the paper book. Page 183 and 184 for reference is extracted below to take note of how and what details were furnished by the assessee which Id. AO did not consider:

Summary of Construction Expenses

Annexure	Statement of	Location	Amount Rs.
1	Girish Pawar	Shanti Kutir	60,81,605
4	Girish Pawar	Nariman Point	1,50,00,000
2	Girish Pawar	Nariman Point	5,70,000
Q-45/46	Kaustub Latke	Shanti Kutir	2,89,250
Q-61	Kaustub Latke	Shanti Kutir	30,65,00,000
Q-62	Kaustub Latke	Shanti Kutir	64,63,850
Q-68/69	Kaustub Latke	Shanti Kutir	10,00,000
3	Girish Pawar	Nariman Point	8,49,58,926
1	Girish Pawar	Nariman Point	1,00,00,000
Q-80/81	Kaustub Latke	Shanti Kutir	9,92,752
	Total		43,18,56,383

Sr no	Question Number	Date	Particulars	Page no	Assessee Response In Statement	Fin Year	Unaccounted			Unit No
							Dr	Cr	Entity	
1	Q-50	03-09-2021	Given to Prasad More(GM of Roshni Enterprises) by GP	1	Project Galaxy Ambarnath	2021-22	12,64,800			
2	Q-68	03-09-2021	Received from Prasad More	1	Received back from prasad out of amount of Rs.12,64,800 given in sr no 2 above	2021-22	(10,00,000)			
3	Q-52	07-09-2021	Paid to Prasad More	3	For Roshni Galaxy Project	2021-22	19,74,000			
4	Q-52	08-09-2021	Paid to Prasad More	5	For Project	2021-22	7,00,000			
5	Q-52	09-09-2021	Paid to Prasad More	6	Expense for Construction site	2021-22	84,700			
6	Q-52	11-09-2021	Received from Prasad More	8	Received towards unit No. G-19 & G-20 of M/s Roshni Enterprises and duly considered in "ON MONEY" estimated by group.	2021-22		24,00,000	Roshni Enterprises	G19-20
7	Q-52	13-09-2021	Received from Prasad More	8	Received towards unit No. G-19 & G-20 of M/s Roshni Enterprises and duly considered in "ON MONEY" estimated by group.	2021-22		10,00,000	Roshni Enterprises	G19-20
8	Q-52	14-09-2021	Received from Prasad More	8	Received towards unit No. G-19 & G-20 of M/s Roshni Enterprises and duly considered in "ON MONEY" estimated by group.	2021-22		10,00,000	Roshni Enterprises	G19-20
9	Q-136 to 138	15/22-09-2021	Received from rohit dixit -on sale of ind gala -on money -roshni entp.	9,13	Received towards unit No. G-19 & G-20 of M/s Roshni Enterprises and duly considered in "ON MONEY" estimated by group.	2021-22		15,57,000	Roshni Enterprises	G19-20
10		15-09-2021	SP Paid to Prasad More	9	For Roshni Galaxy Project	2021-22	13,47,300			
11	Q-52	17-09-2021	Received from Prasad More	11	Received towards unit No. G-19 & G-20 of M/s Roshni Enterprises and duly considered in "ON MONEY" estimated by group.	2021-22		25,00,000	Roshni Enterprises	G19-20
12	Q-52	17-09-2021	Paid to Prasad More	13	Expense for Construction site	2021-22	17,10,805			
			Total				60,81,605	84,57,000		

8. Assessee further submitted that due to business compulsion, it had received business receipts in cash and also incurred various business expenses both of which were not recorded in regular books of accounts and therefore third-party evidences cannot be made available with respect to PAN, address etc. as required by the ld. AO. Source of such expenses is out of the on-money receipts and ld. AO has accepted the on-money as business receipts u/s 28 of the Act while making the addition. It was contended that provisions of the Act are not intended to restrict the business activities of the assessee. Ld. AO has not disputed the fact and nature of expenditure incurred as they form part of seized documents.

9. In this regard, assessee placed reliance on the decision of Coordinate bench of ITAT Mumbai in the case of Prime Developers vs. DCIT in ITA no. 175/Mum/2010 which was affirmed by the Hon'ble jurisdictional High Court of Bombay in ITXA 2452 of 2013, wherein Hon'ble Court explained the scope of reasonable expenditure to be allowed as there are hidden expenses and evidencing such expenses is impossibility and no need to demonstrate genuineness of claim of unaccounted expenses and held reasonable profit to be estimated. Relevant extracts are as under:

"42. 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 unaccounted evidences is impossibility. Probably, for this reason, the courts have taken conscious view that it is 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 Ahmadabad 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. 16.6.2012). 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 unevicenced 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.”

10. Further, according to the assessee, presumption u/s 132(4) of the Act is that when the receipts recorded in the seized 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 Hon'ble High Court of Delhi in the case of CIT vs. Indeo Airways Pvt. Ltd. [2012] 26 taxmann.com 244 (Del). Hon'ble Court held that –

“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 effect to, whenever the statute directs a particular non-existent state of affairs to be assumed.

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) [Para 16].

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 Commissioner (Appeals) held that the margin of profit, a little over 17 per cent compared favourably with the general trend in the business. In view of these facts, the ITAT, it is held did not commit any error of law in holding that such expenses were deductible under the main part of section 37(1). [Para 17]"

11. On the observation of ld. AO for claim of expenditure in cash that they cannot be allowed as same are in violation of provision of section 40(A)(3) of the Act, it was submitted that no disallowances u/s 40(A)(3) can be made where the taxable income of the assessee was computed by applying GP rate. In several decisions, Hon'ble Co-ordinate benches of ITAT as well as High Courts have held that there is no need to look into the provision of section 40(A)(3) and rule 6DD when gross profit rate is applied as it would take care of everything and there was no need for AO to make scrutiny of the amount incurred on the expenses by the assessee. In this regard, assessee placed reliance on the following decisions also: -

- a) PCIT vs. Jadau Jewellers & Manufactures (P) Ltd in [2019] 101 taxmann.com 217 (Raj.)
- b) CIT-II vs. Hindustan Equipment (P.) Ltd [2013] 30 taxmann.com 295 (MP).
- c) CIT (Central) vs. Gobind Ram [2014] 48 taxmann.com 14 (P&H).
- d) M. Shyamalanathan & Co. vs. ITO [2023] 153 taxmann.com 23 (Chennai)
- e) CIT vs. Santosh Jain [2008] 296 ITR 324 (P&H)
- f) CIT vs. Purshottam Lal Tamrakar [2004] 270 ITR 314 (MP)

12. Assessee also submitted that no addition u/s 69C can be made once the on-money/unaccounted receipts are considered as "revenue receipts" while making addition to income and any expenditure out of such money cannot be treated as unexplained expenditure as it would amount to double addition. Assessee referred to the decision Hon'ble

Bombay High Court in the case of CIT vs Golani Brothers [2017] 85 taxman.com 355 (Bom) wherein it held in Para 21 as under:

"The Tribunal found that if the unaccounted expenditure is determined, then, necessarily the question which would arise for consideration before the Tribunal is whether the Assessing Officer was justified in making addition under section 69C for the years under consideration. The Tribunal, found that the explanation as derived from the records and placed by both can be traced to the on-money received at the time of booking/sale of shops. The statement of the senior partner is referred. The senior partner admitted that the sums have been received as on money. Therefore, both the amounts, namely the on-money as well as the unexplained expenditure cannot be brought to tax, according to the Tribunal. If the unaccounted expenditure so incurred was from the on money received by the assessee, then, the question of making any addition under section 69C does not arise because the source of the expenditure is duly explained. It is only the on-money which can be considered for the purpose of taxation. That is what the Tribunal therefore concluded and once the on-money is considered as revenue receipt, then any expenditure out of such money cannot be treated as unexplained expenditure, for that would amount to double addition in respect of the same amount." [Para 21]."

13. Assessee further submitted that it is a settled position of law whereby entire undisclosed receipts cannot be taxed and it is only the net profits which is arrived at after deducting expenditure therefrom, is the income liable to be taxed under the Act. It referred to decision in CIT vs. President Industries [2002] 258 ITR 654 (Guj.).

14. Assessee also contended that the approach of ld. AO even otherwise is grievously flawed in as much as he cannot partly accept the statement of Shri Girish Pawar and others so far as taxing of income is concerned and thereafter partly reject the statement so far as the allowance of expenditure is concerned. According to it, this approach is impermissible in law for which it referred to the decisions of Rajrani Gupta vs. DCIT [2000] 72 ITD 155 (Mum) affirmed in [2013] 257 CTR 47 (Bom) by the Hon'ble jurisdictional High Court of Bombay.

15. Ld. CIT(A) objectively considered the detailed submissions made by the assessee and took note of several judicial precedents relied upon to arrive at the conclusion that reasonable profit has to be estimated on

detection of on-money receipts. He thus, held 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 the entire receipts itself. Thus, by taking into consideration the legal position as well as the submission of the assessee and evidence of expenditure found during the course of search for which detailed explanation were placed on record backed by statements recorded during the course of search, Id. CIT(A) concluded that reasonable profit is required to be estimated out of such unaccounted business receipts and would require fair estimation of net income earned by the assessee out of receipt of on-money.

15.1. Id. CIT(A) also noted that assessee had offered its income in the returns for AYs 2018-19 to 2022-23 based on percentage of completion method of accounting and recognizing its revenue which remains an uncontroverted fact. He analyzed the net income offered by the assessee from the real estate business as reported in the audited financial statements which evidently demonstrated that net profit of the assessee as per its books of accounts ranges from 3% to 21% in the relevant period from AY 2018-19 to 2022-23. These details are tabulated as under for ease of reference:

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	-	48,14,624	2%
2020-21	19,87,42,792	3,58,02,617	18%
2021-22	37,53,09,099	7,92,52,078	21%
2022-23	29,49,76,974	5,71,14,977	19%

15.2. In this respect, he also referred to the consolidated income offered by the assessee from its real estate business for the period from AYs 2018-19 to 2022-23 as per books of accounts and as a result of search which worked out to be @ 20%. Details of the same are tabulated below:

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	-	8,76,58,325	8,76,58,325	-	1,75,31,665	1,75,31,665	
2019-20	-	6,01,99,815	6,01,99,815	48,14,624	1,20,39,963	1,68,54,587	
2020-21	19,87,42,792	1,46,38,101	21,33,80,893	3,58,02,617	29,27,620	3,87,30,238	
2021-22	37,53,09,099	9,66,79,600	47,19,88,699	7,92,52,078	1,93,35,920	9,85,87,998	
2022-23	29,49,76,974	3,53,52,500	33,03,29,474	5,71,14,977	70,70,500	6,41,85,477	
Total	86,90,28,865	29,45,28,341	1,16,35,57,206	17,69,84,296	5,89,05,668	23,58,89,965	20%

16. Based on the above analytics and after considering the seized documents containing details of expenditure as well as explanation furnished by the assessee, he held that net profit @ 20% on unaccounted business receipts of Rs.8,76,58,325/- for AY 2018-19 as offered by assessee is reasonable. Thus, the addition of Rs.7,01,26,660/- made by the ld. AO in this respect was deleted.

17. Before us, ld. CIT DR placed reliance on the order of ld. AO who had based his decision on seized material and specific data found during the course of search. Per contra, ld. Counsel for the assessee reiterated the submissions made before the authorities below, details of which are already narrated in the above paragraphs.

17.1. We have heard both the parties and perused the material on record. We have also given our thoughtful consideration to the various contentions raised by the assessee which have been objectively dealt

with by the ld. CIT(A) including financial data analyzed in respect of income from the Real Estate business after taking into account the books result as well as receipt of on-money spread over 5 years from AY 2018-19 to AY 2022-23. There is no dispute on the fact that assessee had incurred expenditure outside its books of accounts. Seized papers found during the course of search reveals the fact of incurring of various types of expenditure for the purpose of business which includes brokerage, steel purchase, tiles purchase, contractor payment, salary and administrative expenses, etc. Assessee had explained the recordings in the seized materials which relates to both, receipts of on-money as well as incurring of expenditure against the receipt of such on-money. In the statement recorded during the course of search, assessee through its partners/employees had categorically stated that cash received was used in construction payments. It was also stated in the statement so recorded that assessee did not record such unaccounted cash transactions in its books of account. It had spent the unaccounted cash receipts in projects undertaken by it. There is no 'after thought' on this fact since it was explained in the course of search itself as recorded in the statements made u/s 132(4) of the Act.

17.2. Further, it is noted that Ld. AO has not doubted the fact of incurring of such expenditure. He has merely disallowed the same in absence of details relating to identity of payees which according to the assessee is not available since the said expenditure are not recorded in the books of accounts and are typical of the Real Estate industry. It is also noted that assessee follows accrual basis of accounting and sales are booked when the possession is given to the buyer, that is, when the transfer takes place.

17.3. Assessee had offered the entire on-money of Rs.29,45,28,341/- spread during the period of five years from AY 2018-19 to AY 2022-23, details of which are already tabulated above, based on booking dates since, according to the assessee, on-money is typically received at the time of booking of the flat i.e. when initial purchase deal is done and before the first cheque is paid by the buyer. It is pertinent to point out that during the course of search, evidence in respect of unaccounted expenditure was also found as the same is part of the seized material and also annexure to the relevant statement. Copy of the same are already placed in the paper book at page no.183 to 199 and one page is extracted above for reference purpose.

17.4. We are thus, in agreement with the submissions made by the assessee which have been objectively considered by the Id. CIT(A), all of which have been narrated in the above paragraphs and are not repeated to avoid duplicity. It is important to note in the present set of facts that income element offered by the assessee towards on-money receipts is not out of mere guess work but based on seized material which relates to both, receipts as well as expenses and have been duly explained in the course of search as well as in the post-search assessment proceedings. There is nothing brought on record to establish that expenses incurred by the assessee were prohibited by law or amounted to offence. Explanations furnished for explaining the entries found recorded in the seized material have also not been controverted in the assessment so made. Also, what is found in the course of search cannot be used in piecemeal to advantage of the revenue and adversely for the assessee. The income component of on-money receipts has been fairly arrived at by the assessee and offered to tax in its returns. Accordingly, considering the factual matrix of the case, elaborate submissions made buttressed by relevant judicial precedents, detailed analysis done by the

ld. CIT(A), we find no reason to interfere with the findings so arrived at by the ld. CIT(A) in granting relief to the assessee. Thus, ground no. 2 raised by the revenue is dismissed.

18. Similar ground is raised by the revenue in other two appeals for AY 2019-20 and 2021-22. Since there is no change in fact pattern and applicable law, our observations and findings on this issue in appeal for AY 2018-19 apply mutatis mutandis to these two years also. Thus, relevant ground raised by the revenue for these two years are also dismissed.

19. We now take up ground no. 3 for AY 2018-19 in respect of addition of Rs.50,00,000/- made u/s 69C towards unexplained expenditure. In this respect, ld. AO had made addition of unaccounted business receipts u/s 28 and did not allow deduction of expenses against the same. He made the addition of Rs.50,00,000/- as unexplained expenditure even though source for the same was explained to be the same business receipts for which separate addition was made. The said addition relates to payment made to construction contractor which forms part of the seized document. In terms of our observations and findings on ground no. 2 in the above paragraphs, wherein treatment of expenses found recorded in seized material has been extensively dealt with, in our considered view, no separate addition in respect of unexplained expenditure can be made u/s 69C. We do not find any reason to interfere with the finding arrived at by the ld. CIT(A) in this respect. Accordingly, ground no. 3 raised by the revenue in appeal for AY 2018-19 is dismissed.

20. On ground no. 1 in appeal for AY 2018-19 relating to addition made on 'protective basis' by the ld. AO, we note that in the impugned

assessment order, ld. AO stated that since on-money transactions are already being considered for addition in AY 2019-20 and 2020-21 based on evidences found during the course of search proceedings, in the impugned year 2018-19, the addition is made on 'protective basis'. However, it is brought on record by the assessee that no addition has been made on 'substantive basis' in respect of the impugned addition of AY 2018-19 either in the hands of the assessee in those referred assessment years, that is AY 2019-20 and 2020-21 nor in the hands of any other assessee. To corroborate, assessee placed on record, assessment orders for AY 2019-20, 2020-21 and 2021-22 wherein no such addition is made on 'substantive basis'.

20.1. Ld. CIT(A) took note of the above stated factual position from the assessment orders of the subsequent years and held in favor of the assessee. He directed the ld. AO to consider the on-money receipts of Rs. 8,76,58,325/- as offered by the assessee on substantive basis in the return for AY 2018-19.

20.2. On the above aspect of considering the on-money receipts of Rs. 8,76,58,325/- as offered by the assessee on substantive basis in the return for AY 2018-19, we have already dealt in ground no. 2 with the issue on the income component of the on-money receipts offered by the assessee in its return. Specific to ground no. 1 on addition made on 'protective basis', according to the assessee, since no addition has been made on 'substantive basis', the impugned addition made on 'protective basis' is unsustainable in the law. We find ourselves in agreement with this submission, drawing force from the decisions of Co-ordinate benches in the case of Ramesh Chand Soni vs. ACIT 115 TTJ 904 (Jodh), Kanav Metals vs. ITO in ITA no. 7778/Del/2019 and Pravinkumar Valgibhai Pujara vs. ITO in ITA no. 142/Ahd/2016 dated

28.06.2021. Accordingly, addition made by the ld. AO in AY 2018-19 on 'protective basis' without making substantive addition of the same in the assessment made for other assessment years for the assessee or for persons other than assessee is not sustainable in law. However, since we have already affirmed the deletion of addition in ground no. 2, finding in this ground no. 1 has no bearing to alter the outcome in the appeal. Ground no. 1 raised by the revenue is dismissed.

21. In the result, all the three appeals by the revenue are dismissed.

Order pronounced in the open court on 25th April, 2025.

Sd/-
[Amit Shukla]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 25.04.2025

Divya R. Nandgaonkar
Stenographer

Copy to:

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai