IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.5709/MUM/2024	**ITA No.5714/MUM/2024**
Assessment Year : 2011-12	**Assessment Year : 2012-13**

ITA No.5710/MUM/2024
Assessment Year : 2009-10

DCIT- Central Circle-6(2),
Room No.450,
Kautilya Bhawan, BKC,
Maharashtra – 400051

……. Appellant

v/s

Samira Habitats India Limited
G-8, Shrikant Chambers,
Sion Tromboy Road,
Chembur,
Maharashtra - 400071
PAN: AABCS1677F

……. Respondent

CO No.12/MUM/2025	**CO No.13/MUM/2025**
(Arising out of ITA No.5709/Mum/2024)	**(Arising out of ITA No.5714/Mum/2024)**
Assessment Year : 2011-12	**Assessment Year : 2012-13**

CO No.11/MUM/2025
(Arising out of ITA No.5710/Mum/2024)
Assessment Year : 2009-10

Samira Habitats India Limited
G-8, Shrikant Chambers,
Sion Tromboy Road,
Chembur,
Maharashtra – 400071
PAN: AABCS1677F

……. Cross Objector
(Original Respondent)

v/s

DCIT- Central Circle-6(2),
Room No.450,
Kautilya Bhawan, BKC,
Maharashtra – 400051

……. Respondent
(Original Appellant)

Assessee by : Shri Rakesh Joshi
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing – 22/04/2025	Date of Order – 09/05/2025

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals by the Revenue and cross-objections by the assessee have been filed against the separate impugned orders of even date 21/08/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-54, Mumbai, ["*learned CIT(A)*"], for the assessment years 2009-10, 2011-12 and 2012-13.

2. Since the present appeals pertain to the same assessee, raising similar issues arising out of the similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the appeal by the Revenue and cross-objection by the assessee for the assessment year 2011-12 are considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to other matters in the present batch.

ITA No. 5709/Mum/2024
Revenue's appeal – A.Y. 2011-12

3. In this appeal, the Revenue has raised the following grounds: –

"(i) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO to 50% on account of bogus purchases by relying on decision of CIT(A) in the case of Samira Residences Pvt Ltd, without appreciating the fact that the genuineness of such purchases were not established by the assessee"

"(ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money, to 10%, received by the assessee w.r.t the Nagaon project, based on the admission of the assessee and while doing so, failed to appreciate that the assessee offered such on-money to tax for the respective years in the statement recorded on oath u/s 132(4) of the Act."

"(iii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money to 10% with respect to evidences like various loose papers and documents found and seized during search action and on which assessee has not submitted any proofs during the assessment proceedings for respective years?"

"(iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO relating to on-money at 10% even though the entire amount has been admitted by the assessee, before the Hon'ble ITSC, as being on-money received during the respective years?"

"(v) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of unexplained cash expenditure based on evidences found during search on cash payments and also on the basis statements given by brokers involved in such transactions?"

"(vi) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of ineligible cash expenditure done by the assessee?"

"(vii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of Unexplained cash deposits as per ITS data, the source of which has not been established by the assessee?"

"(viii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of Sale of property as reported in ITS data when assessee has not been able to prove that the said sale proceeds have been offered to tax or not?"

"(ix) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of unexplained expenditure as per ITS data with respect to payment made for hotels and restaurants for which no supporting evidences were submitted by the assessee w.r.t. source of such expenditure?"

"(x) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO with respect to penal interest on short deduction/no deduction of TDS?"

"(xi) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO u/s 14A of the Act to the extent of Exempt Income earned without appreciating the CBDT Circular No. 5 of 2014 dated 11/02/2014 which has clarified that the disallowance u/s 14A is to be made even if no exempted income had been earned by the assessee during the year under consideration?"

4. The issue arising in Ground No. (i), raised in Revenue's appeal, pertains to restricting the disallowance made on account of bogus purchases to 50%.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the real estate business and is a part of the Samira Group, which is engaged in the construction and development of the real estate project. For the year under consideration, the assessee filed its return of income on 30/09/2011, declaring a total income of INR 2,37,74,450. Pursuant to the search and seizure operation conducted under section 132 of the Act in the case of Samira group on 21/03/2013, notice under section 153C of the Act was issued to the assessee on 24/09/2019. In response to the notice, the assessee filed its return of income on 09/12/2014, declaring a total income of INR 2,37,74,450. During the assessment proceedings, multiple notices were issued, which were not responded to by the assessee. Considering that the assessment was getting barred by limitation, a final opportunity was granted to the assessee to make submissions with respect to all the notices issued. However, the assessee failed to respond to the same. Accordingly, the Assessing Officer ("*AO*") proceeded to complete the assessment based on the material available on record on a best judgment basis. During the search proceedings on the Samira

Group, various evidences pertaining to debiting of bogus purchases were found, which was confronted with the assessee and a specific query was raised. However, no evidence to the contrary was produced by the assessee during the assessment proceedings, despite multiple opportunities provided to the assessee and categorical queries raised in the statutory notices. Further, notices issued under section 133(6) of the Act also remained unserved, and the Inspector deputed to serve the same could not trace the parties from whom the alleged purchase was made. Since the key persons of the group admitted to the *modus operandi* of taking bogus purchases and also confirmed the quantum of the same before the Income Tax Settlement Commission, the AO, vide order dated 27/03/2015 passed under section 144 read with section 153C of the Act, made an addition amounting to INR 90,49,665 on account of bogus purchases.

6. The learned CIT(A), vide impugned order, following the decision rendered by the first appellate authority in assessee's sister concern, i.e. Samira Residences Private Limited, for the assessment year 2009-10, directed the AO to restrict the disallowance on account of bogus purchases to 50%. The learned CIT(A) further directed that the amount disallowed, i.e. the balance 50%, needs to be reduced from the Work in Progress and no addition be made to the total income of the assessee. The relevant findings of the learned CIT(A), vide impugned order, pertaining to this issue are reproduced as follows: –

> *"8.1 I have gone through the assessment order and the submission filed by the appellant carefully. It is the contention of the appellant that similar addition alleging bogus purchase made from Karma Industries Ltd were made*

in the hands of the appellant's group concern i.e. M/s Samira Residences Pvt Limited in AY 2009-10. I have gone through CIT(A) order dated 29.12.2017 passed in case of M/s Samira Residences Pvt Limited for AY 2009-10. On perusal of the same, it is seen that the then CIT(A) has accepted the contention of the assessee wherein it was stated that 50% of alleged purchases were utilized for business purpose and in stating so, partially allowed the claim of the said company and restricted the addition to 50%.

8.2 Considering the overall factual position and the fact that parties involved in the instant case i.e. Karma Industries Ltd is similar to that of the addition made in M/s Samira Residences Pvt Limited for AY 2009-10, 1 am inclined to follow decision of the CIT(A) passed in the case of in the case of the group concern M/s Samira Residences Pvt Limited The relevant extract is reproduced as under:

> *"6.2. The submissions filed by the Ld. Counsel has been carefully considered. It is the contention of the Ld. Counsel that at least 50% of the above mentioned bogus purchase amount was utilised by the assessee for its business purposes. The cash expenses which are unaccounted by the assessee include development expenditures in the form of levelling of land, fencing, construction of compound and roads, etc. Part of these expenses are paid as wages to the labourers. Further payment in cash is also required to be made for the purchase of lands from farmers, intermediaries and the like. Even before the Settlement Commission the assessee has offered 50% of the income i.e. Rs. 2,35,84,279/- However, the Settlement Commission rejected the assessee's application for the reason that this amount though generated and utilised in AY 2009-10, was computed by the assessee in AY 2011-12.*
>
> *6.3. The assessee has also produced copies of the seized material seized by the investigation wing during the search. The seized material produced is a loose paper folder containing pages 1 to 15 and marked as Annexure A-3. These papers have the details of lands purchased and sold by the assessee group, the Village details, Name of purchaser, area, Gat no., Govt value, Cash paid and deal value. The GAT number of the lands acquired by Samera Residences have also been seen. The land has been purchased at Village Sogaon in Raigad District. In all there are 12 transactions and as per the seized material, a cash of Rs. 2,77,51,625/- has been paid by the assessee to acquire these lands. The Ld. Counsel for the assessee submitted that there are other expenses which are also incurred by the assessee and therefore requested to allow 75% of the bogus purchase amount and make addition of 25% of the said amount. Other than the seized material referred to, supra, which mentions cash paid to farmers on the land acquisitioned there is no other material evidencing the application of income for business purpose. The Ld. Counsel explained difficulties in acquiring the land by payment through cheque only. The farmers were not interested in cheque payment. They wanted a part consideration in cash. The land aggregators wanted their share in the deal without the knowledge of the land owners, who otherwise would not have parted with their land. These accommodation purchases were not used to inflate the expenses but to substitute the other out of books purchases and requested for allowing 75% of such expenses. As already mentioned, there are notings in the seized material which show payment of Rs. 2,77,51,625/- to the land owners. This expenditure is incurred out of books. The courts have held that what can be taxed is only the real income and not the entire receipt. Some leverage has to be given to the assessee for application of income. The Hon'ble ITAT in the case of ACIT vs Jignesh V. Koralwala ITA No. 262/263/264/Ahd/2010 held that the whole of gross receipts of on-money cannot be taxed in the case of the assessee and only the reasonable profit*

earned can be taxed. The decision of AO for taxing the gross receipts is not factually collect where the evidences of expenditure incurred are available in the seized material. The assessee itself has offered 50% of the same before the Settlement Commission. As the assessee's application of income is more than 50% allowing 50% of the expenses as having incurred for business is felt reasonable. In view of the above, the AO is directed to allow Rs.2,35,84,376/- which is 50% of the amount of bogus purchases.

This ground of appeal is Partly Allowed."

8.3 In view of the above, the AO is directed to restrict the disallowance on account of bogus purchase to 50%. Further as mentioned in para 9.3 and 9.4 of the assessment order that the total purchases were debited to WIP, it is directed that the amount disallowed i.e. the balance 50% needs to be reduced from WIP and no addition is made to the total income of the appellant. Thus, the ground of appeal is partly allowed."

Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, proceedings under section 153C of the Act were initiated against the assessee pursuant to the search and seizure operation conducted under section 132 of the Act in the case of Samira Group. During the search, the bills of the purchase parties from whom the assessee had made genuine purchases were compared with those of the alleged purchase parties who had not supplied any genuine material to the assessee. Upon comparison of the bills, it was observed that the bills of the genuine parties were accompanied by supporting documents, while the bills of the bogus purchase parties did not have any supporting documentation. It is evident from the record that during the search, the statement of the Director of the assessee was recorded on oath under section 132(4) of the Act, wherein he admitted as follows: –

"Ans. Sir, M/s Samira Habitats (I) Ltd., M/s Samira Reality Projects P. Ltd. and M/s Samira Residences P. Ltd. are my related concerns in which I am a director. These companies are involved in real estate business wherein they purchase agricultural land from farmers, convert it into non-agricultural land,

do the plotting and subsequently sell the land either as a plot or after construction of residential houses thereon.

At the time of purchase of land, the farmers insist on cash payment over and above the agreement value. We cannot fund this cash requirement by withdrawals from the bank. Therefore, these companies had entered into transactions with M/s Karma Industries Ltd. I accept that there were no actual purchases from M/s Karma Industries Ltd. and we had received back cash after getting the commission deducted by M/s Karma Industries Ltd. The cash generated was used for cash payment to the farmers for land acquisition.
Sir, in view of the above, I offer the following sums as additional undisclosed income in the hands of following companies as follows :

Sir, in view of the above, I offer the following sums as additional undisclosed income in the hands of following companies as follows:

(i)	*M/s. Samira Habitats (I) Ltd. :*	*F.Y. 2008-09 : Rs.1,30,54,552/-* *F.Y. 2009-10 : Rs.42,51,12/-* *F.Y. 2010-11 : Rs.90,49,665/-*
(ii)	*M/s. Samira Reality Projects P. Ltd.*	*F.Y. 2008-09 : Rs,3813133/-* *F.Y. 2010-11 : Rs.26,71,898/-*
(iii)	*M/s. Samira Residences P. Ltd.*	*F.Y. 2008-09 : Rs.3,71,66,037/-*

8. Thus, the Director claimed that the assessee received unaccounted cash after giving the cheque for bogus expenses, which was used by it at the time of purchase of land from the farmers who insist upon cash payment over and above the agreement value. The Director of the assessee further accepted that the purchases made from entities, such as M/s Karma Ispat Ltd., M/s Vimal Sales Corporation and M/s Vastu Trading Co. by the assessee along with other sister concerns, including Samira Residence Private Limited, are not accompanied by supporting documents and in the absence of the same, the genuineness of the purchases cannot be verified. Before the learned CIT(A), the assessee submitted that 50% of the cash generated from bogus purchases was utilised for business purposes and the assessee incurred various development expenditure in the form of levelling of land, fencing, construction of compound and roads, supply of electricity and water, etc. Further, part of

these expenses, such as wages paid to the labourers, hiring of vehicles and equipment for which the assessee has to hire local suppliers, are of such a nature that the same need to be paid in cash. The assessee further submitted that besides the above, payment in cash was also required to be made for the purchase of land from farmers, intermediaries and the like. Therefore, the assessee submitted that it was forced to enter into the deal in such a fashion that the accounted funds, which went out of the hands of the company through banking channels, were utilised thereafter in cash for various business purposes. In this regard, the assessee referred to statements of various brokers recorded under section 131 of the Act during the search, as noted on pages 13-25 of the impugned order, wherein they admitted that the assessee made certain payments in cash. Accordingly, the assessee submitted before the learned CIT(A) that multiple employees/parties have stated the same fact that the expenditure for agricultural land and other expenses were incurred in cash, and therefore, at least 50% of the cash generated from the alleged bogus purchases was utilised for business purposes. Further, it was submitted that the seized material itself substantiated the above contention.

9. During the hearing, the learned Departmental Representative ("*learned DR*") by placing reliance upon the decision of the Hon'ble Jurisdictional High Court in PCIT v/s Kanak Impex (India) Ltd, reported in [2025] 172 Taxmann.com 283 (Bom.), submitted that since the assessee could not prove the genuineness of the purchase transaction, the entire amount claimed by the Director of the assessee company as bogus purchases for the year under consideration should be disallowed without granting any deduction.

10. From the perusal of the decision of the Hon'ble Jurisdictional High Court in Kanak Impex (supra), we find that in the facts of that case pursuant to the information received from the Sales Tax Department, proceedings under section 147 of the Act were initiated on the basis that the taxpayer is a beneficiary of accommodation entry transaction in the form of bogus purchases. During the assessment proceedings, despite several notices, the assessee did not file any response. Further, the notices issued under section 133(6) of the Act at the address of the persons from whom the taxpayer had purchased the goods were also returned "*unserved*". As the assessee did not appear before the AO during the reassessment proceedings, and also failed to prove the genuineness of the purchase transaction, the AO made the addition of the entire amount of bogus purchases. In further appeal, the learned CIT(A) estimated 12.5% of the bogus purchases as an addition to be made instead of confirming the entire bogus purchases, placing reliance upon the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P Sheth, reported in [2013] 356 ITR 451 (Guj.). The Tribunal, in further appeal, by placing reliance upon the decision of the Hon'ble Jurisdictional High Court in Mohd. Haji Adam, reported in [2019] 103 Taxmann.com 459 (Bom.), dismissed the appeal filed by the Revenue and directed the AO to restrict the addition to the extent of bringing the gross profit rate of disputed purchases to the same rate as that of the other purchases. The Hon'ble Jurisdictional High Court, allowing the appeal filed by the Revenue, held that the onus of proving the genuineness of the expenditure claimed as a deduction is on the assessee. The Hon'ble High Court held that the primary onus is on the assessee to discharge his burden

to prove the purchases, which the assessee has claimed as a deduction under the Act for arriving at the taxable income. The Hon'ble High Court held that the genuineness of the purchases would, inter alia, also include an explanation with regard to the source of payment for such purchases. It was held that in the facts of the case, the taxpayer did not appear before the AO during the reassessment proceedings to prove the deduction claimed for purchases, and there was no justification to establish the purchases. The Hon'ble High Court held that there is no justification in the findings of the learned CIT(A) in restricting the disallowance to 12.5% of such purchases once it came to the conclusion that the taxpayer failed to prove the genuineness and source of purchases, and also confirmed its involvement in the *modus operandi*. It was further held that the Tribunal also misdirected itself by approaching the issue with the erroneous belief that it was estimating profit. Thus, the Hon'ble High Court held that if this approach of the CIT(A) and the Tribunal is accepted, then it would be contrary to the provisions of section 69C of the Act, which mandates the assessee to explain the source of expenditure. Since in the facts of the case the taxpayer did not attend the reassessment proceedings and there was no explanation of the source of expenditure incurred for making the bogus purchases, the Hon'ble Jurisdictional High Court in Kanak Impex (supra) restored the addition made under section 69C of the Act.

11. Before considering the applicability of the ratio of the Hon'ble Jurisdictional High Court in Kanak Impex (supra) to the present case, it is pertinent to reiterate certain relevant facts of this case. It is undisputed that in the present case, the Director of the assessee explained in its statement,

as noted on page 12 of the assessment order, the *modus operandi* of accommodation entries availed by the group companies, wherein after giving the cheque for bogus expenses, the assessee received the unaccounted cash which was used by it for various purposes as noted above, including the purchase of land from the farmers. It is further pertinent to note that the assessee never disputed the fact that the transaction with M/s Karma Industries Ltd was bogus, and the Director, vide his statement recorded under section 132(4) of the Act, also offered additional undisclosed income amounting to INR 90,49,665 in the hands of the assessee for the year under consideration, which ultimately resulted in the impugned addition. Further, it is pertinent to note that the AO neither disputed payment through cheque by the assessee to M/s Karma Industries Ltd. nor brought any material on record to doubt the source of expenditure by the assessee. Therefore, we find that the facts of the present case are on a different footing from the facts that were under consideration before the Hon'ble Jurisdictional High Court in Kanak Impex (supra). Thus, we are of the considered view that the reliance placed by the learned DR on the decision of the Hon'ble Jurisdictional High Court in Kanak Impex (supra) is completely misplaced.

12. It is further worth noting that the AO made the impugned addition under the head "*income from business*". It is the plea of the assessee that since 50% of the cash generated from bogus purchases was utilised for business purposes, the disallowance on account of bogus purchases should be restricted to that extent. Thus, as per the assessee, as the income taxed under the head "*income from business*" was utilised by the assessee for business

purposes only, i.e. purchase of land and developing the same, the addition should be reduced correspondingly. At this stage, it is relevant to refer to the provisions of section 115-BBE(2) of the Act, which deny deduction of any expenditure or allowance under any provisions of the Act while computing the income referred to, inter alia, in section 69C of the Act. Since, in the present case, the impugned addition was not made under any of the provisions as referred to in section 115-BBE(1), and instead, the same was made under the head "*income from business*", therefore, section 115-BBE(2) of the Act has no applicability to the facts of the present case.

13. We find that considering the similar facts, the coordinate bench of the Tribunal in case of assessee's sister concern in DCIT v/s Samira Residences Private Limited, in ITA No. 1775/Mum./2018, for the assessment year 2009-10, vide order dated 29/06/2021, upheld the findings of the learned CIT(A), which were relied upon in the impugned order in the present case. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

> *"11. Considered the rival submissions and material on record. We notice that in the search proceedings it was agreed by the assessee that it has indulged in taking bogus purchase bills from various parties and the documents found during search clearly indicates that the assessee had utilised the same making payment to farmers and other similar parties for acquiring the lands for the purpose of its business. We also noticed that the assessee also claimed that it had incurred other expenditures for the purpose of development of land in cash. However, the assessee has not brought any material on record to demonstrate the same before the Ld. CIT(A). However, it is fact on record that the Ld. CIT(A) has observed that the cash payments were recorded in the documents found during search which include details of parties, GAT numbers etc. Therefore, it clearly indicates that the assessee had utilised the cash received from the accommodation entry providers in their business. The purchase of lands and developing the same is part of the business operation of the company. It is only the case of the Revenue that the assessee has indulged in taking bogus purchase bills from the entry providers. It is proved*

beyond doubt that the assessee has indulged in the above transactions. However, the cash generated in the above transactions were in turn utilised by the assessee for the purpose of business only. There is no material brought by the Assessing Officer to prove contrary or utilised by the assessee in any other personal use or illegal activities. Therefore, we do not see any reason to interfere with the findings of the Ld. CIT(A) and, hence, we are inclined to dismiss the grounds raised by the Revenue."

14. Therefore, respectfully following the decision of the coordinate bench of the Tribunal rendered in the case of assessee's sister concern, we do not find any infirmity in the findings of the learned CIT(A) in restricting the disallowance on account of bogus purchase to 50%. Accordingly, the same is upheld, and Ground No. (i) raised in its Revenue's appeal is dismissed.

15. The issue arising in Grounds No. (ii) to (iv), raised in Revenue's appeal, pertains to restricting the addition made on account of on-money received by the assessee.

16. The brief facts of the case pertaining to this issue, as emanating from the record, are: As one of the key findings of the search and seizure operation was that the assessee indulged in the practice of taking on-money on sale of land/flats, which were not recorded in the books of accounts, notice under section 142(1) of the Act was issued to the assessee during the assessment proceedings. In the absence of any response from the assessee, the AO, vide assessment order, made an addition of INR 20 lakhs to the income of the assessee under the head "*income from other sources*". The learned CIT(A), vide impugned order, following the decision of the Tribunal in assessee's own case for the assessment year 2006-07, directed the AO to restrict the addition on account of on-money to 10% after considering the

unaccounted/unexplained expenditure incurred by the assessee. Being aggrieved, the Revenue is in appeal before us.

17. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that in the statement recorded during the search and seizure proceedings, the Director of the assessee admitted that at the time of sale of property, the assessee received on-money in cash. We find that while considering a similar issue in assessee's own case for the assessment year 2006-07, wherein a similar addition was made by the AO in view of the statement given on oath by the Director of the assessee, the coordinate bench of the Tribunal in M/s Samira Habitats India Ltd V/s ACIT, in ITAs No. 529 and 531/Mum/2022, vide order dated 20/10/2022, after considering the statements of the brokers recorded during the search proceedings, observed as follows: –

> *"10. In the seized documents also reference of payment of Rs. 6, 00, 77, 175/- for purchase of the lands. Thus, in the light of statements of the brokers and seized documents, it cannot be denied that on-money was paid while purchase of land by the assessee. We find that identical issue of addition of on-money in assessments under section 153A for search period i.e. AY 2007-08 onward has been restored back to the file of the Assessing Officer by the Tribunal wide order dated 19/07/2022, therefore, in the facts and circumstances of the case, we feel it appropriate to restore the issue in dispute involving grounds raised by the assessee to the file of the Learned Assessing Officer for considering the claim of the assessee for making addition for undisclosed income for on-money at the rate of the 10% of the sales after giving set off of the expenses of on-money incurred for purchase of the land. The grounds of the appeal of the assessee accordingly allowed for statistical purposes."*

18. We find that the said order was modified on 11/08/2023, passed in MA No. 304/Mum/2023, arising out of ITA No. 529/Mum/2022, rectifying the typographical error in para-10 of the aforesaid order as follows: –

"10. In the seized documents also reference of payment of 6,00,77,175/- for purchase of the lands. Thus, in the light of statements of the brokers and seized documents, it cannot be denied that on-money was paid while purchase of land by the assessee. We find that identical issue of addition of on-money in assessments under section 153A for search period i.e. AY 2007-08 onward has been restored back to the file of the Assessing Officer by the Tribunal wide order dated 19/0712022, therefore, in the facts and circumstances of the case, we feel it appropriate to restore the issue in dispute involving grounds raised by the assessee to the file of the Learned Assessing Officer for considering the claim of the assessee for making micend addition for undisclosed income for on-money at the rate of the 10% of the unrecorded sales after giving set off of the expenses of on-money incurred for purchase of the land. The grounds of the appeal of the assessee accordingly allowed for statistical purposes."

19. Therefore, respectfully following the decision rendered in assessee's own case cited supra, we do not find any infirmity in the findings of the learned CIT(A) in directing the AO to restrict the addition on account of on-money to 10%. Accordingly, the same is upheld, and Grounds No. (ii) to (iv) raised in Revenue's appeal are dismissed.

20. The issue arising in Grounds No. (v) and (vi), raised in Revenue's appeal, pertains to the deletion of the addition made on account of unexplained cash expenditure.

21. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the search proceedings, evidence of cash loans taken and cash interest paid by the assessee were found. Accordingly, notice was issued to the assessee during the assessment proceedings. However, the assessee offered no explanation regarding the source of such expenditure. Accordingly, the AO, vide assessment order, in the absence of any explanation and/or documentary evidence regarding the recording of expenditure in the books of account, treated the interest payment in cash to be in the nature of unexplained expenditure taxable under section 69C of the Act. Further, upon

perusal of the details of interest payment in cash, the AO noted that they were in excess of INR 20,000, which is in contravention of the provisions of section 40A(3) of the Act. In the absence of any response from the assessee, the AO treated the interest payment in cash to be disallowable under the provisions of section 40A(3) of the Act. Accordingly, the AO made an addition of INR 1,39,24,500 on account of interest payment in cash.

22. The learned CIT(A), vide impugned order, deleted the addition made by the AO, by observing as follows: –

> *"9.4 Also, on perusal of the assessment order it is seen that the AO in para 17 has dealt with unexplained cash expenditure for purchase of land and in para 16, 18 & 19 has dealt with cash loans obtained from various parties and alleged interest paid in cash to the said parties. With regards to AO's contention in para 17, it is evident from the statement of various brokers that appellant had acquired lands in villages for which payment was made in cash and hence it is presumed that the same are out of on-money receipts. Further with regards to contention made in para 16, 18 & 19, I hold that even if the interest as computed by the AO is accepted, the same were in nature of business expenditure and paid out of alleged unaccounted cash receipts which as per AO's own assessment is far greater that interest payments. Thus, it is admitted that fact that the said expenses have been incurred out of alleged on-money / cash receipts. Hence considering the decision of Hon'ble Bombay High Court in the case of CIT vs Golani Brothers (300 CTR 245) wherein it has been held that once 'on money' was considered as revenue receipt, and addition to income was made, any expenditure out of such money could not be treated as unexplained expenditure doing so would amount to double addition."*

Being aggrieved, the Revenue is in appeal before us.

23. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A) granted the relief to the assessee on the basis that the interest expenditure incurred by the assessee is in the nature of business expenditure and the same is paid out of the alleged unaccounted cash receipts, which are far greater than the interest

payments. However, we find that the learned CIT(A) failed to appreciate that these interest payments in cash were in excess of the limit provided under the provisions of section 40A(3) of the Act, and the same was also one of the reasons for disallowing the interest expenditure and making the impugned addition. Thus, even if the findings of the learned CIT(A) that the source of payment of interest in cash was the cash receipts are accepted, even then the conditions as laid down in the provisions of section 40A(3) of the Act need to be satisfied. During the hearing, the learned Authorised Representative ("*learned AR*") by referring to the remand report of the AO, forming part of the paper book from pages 173-179, submitted that no such expenditure was claimed by the assessee. From the perusal of para-5.2 of the remand report on page 176 of the paper book, we find that the same refers to the cash payment of INR 7,25,000, which was also added by the AO under section 40A(3) of the Act. Further from the perusal of the assessment order, we find that the addition of INR 7,25,000 was a separate addition made by the AO in para-20 of the assessment order under section 40A(3) of the Act. Therefore, we do not find any merit in the aforesaid submission of the learned AR. Since there is no material contrary to the findings of the AO that the interest expenditure incurred in cash was in excess of the limit provided in the provision of section 40A(3) of the Act, we are of the considered view that the AO righty made the addition amounting to INR 1,39,24,500 to the total income of the assessee. Accordingly, the said addition is upheld, and Ground No. (vi) raised in Revenue's appeal is allowed. In view of the aforesaid findings, Ground No. (v) raised in Revenue's appeal needs no separate adjudication as it also pertains to the same addition.

24. The issue arising in Ground No. (vii), raised in Revenue's appeal, pertains to the deletion of the addition made on account of unexplained cash deposits as per the ITS data.

25. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was seen from the ITS data for the year under consideration that the assessee had made cash deposits totalling INR 1,06,06,000. However, the source of the same was not explained. Further, the assessee was specifically asked to reconcile the entries as appearing in the ITS along with documentary proof. However, no reconciliation for the same was submitted. In the absence of any details being filed by the assessee, the AO, vide assessment order, made an addition of INR 1,06,06,000 to the total income of the assessee as deemed income in the nature of unexplained cash deposits. The learned CIT(A), vide impugned order, deleted the addition made by the AO on the basis that all the deposits were duly recorded in the books of account and the source of such cash deposit stands explained. Being aggrieved, the Revenue is in appeal before us.

26. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of data available on the ITS, it was noticed that the assessee made cash deposits total amounting to INR 1,06,06,000 during the year under consideration. We find that during the remand proceedings before the AO, the assessee submitted the ledger account of the cash book in order to support its submission that

the cash deposits made in the bank during the year under consideration were out of the cash in hand. From the perusal of para-5.5 of the remand report, on pages 177-178 of the paper book, we find that ongoing through the ledger account, the AO noted that the assessee has shown opening cash balance of INR 64,04,602 in September 2010, INR 1,53,63,350 in August 2010, INR 4,81,582 in May 2010, INR 19,20,439 in January 2011, INR 14,21,002 in December 2010, and INR 67,44,116 in March 2011. However, despite noting the aforesaid details from the ledger account of the cash book, the AO did not agree with the contentions of the assessee that cash deposited in the bank was out of the cash in hand of the assessee. In the factual paper book filed before us, the assessee has placed on record the statement of its bank account maintained with the Bank of India, the HDFC Bank and Axis Bank. Further, the assessee has also placed on record the cash book. On the basis of these details, which were also furnished during the remand proceedings, the learned CIT(A) observed as follows: -

> *"14.4.3 Unexplained Cash deposits as per ITS*
>
> *I have gone through the assessment order, remand report and written submission of the appellant. The allegation as per ITS data was regarding unexplained cash deposits amounting to Rs. 1,06,06,000/- made by the assessee. However, on perusal of details submitted at the time of remand proceedings, it is evident that the appellant had sufficient cash balance for making the said deposit, which was duly reflected in the cash book. It is not the case that the AO has rejected the books of accounts. Since all the deposits were duly recorded in the books of account, the source of such cash deposit stands explained and hence the addition of Rs. 1,06,06,000/- made by the AO is deleted."*

27. No material has an brought on record by the Revenue contrary to the aforesaid findings of the learned CIT(A). Further, there is no material available on record contrary to the claim of the assessee that it had a sufficient cash

balance for making the cash deposits during the year under consideration. As a result, we do not find any infirmity in the findings of the learned CIT(A) on this issue, and accordingly, the same are upheld. Consequently, Ground No. (vii) raised in Revenue's appeal is dismissed.

28. The issue arising in Ground No. (viii), raised in Revenue's appeal, pertains to the deletion of the addition made on account of the sale of property as reported in the ITS data.

29. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the information available on ITS, it was noticed that the assessee sold properties for a total consideration of INR 37,41,00,750. Accordingly, during the assessment proceedings, the assessee was asked to reconcile the same along with the necessary documentary proof. In the absence of any details/information being furnished by the assessee, the AO, vide assessment order, made an addition of INR 37,41,00,750 on account of the sale of property as per the ITS data. The learned CIT(A), vide impugned order, decided this issue in favour of the assessee, and deleted the addition made by the AO on the basis that the ledger account and sale agreements duly show that the impugned amount was already offered to tax by the assessee. Being aggrieved, the Revenue is in appeal before us.

30. Having considered the submissions of both sides and perused the material available on record, we find that during the remand proceedings before the AO, the assessee furnished copy of the sale deeds vide submission

dated 28/02/2017 in respect of the property transactions, total amounting to INR 37,41,00,750 as appearing in the ITS data. However, the AO, on the basis that the assessee has not furnish the complete details of all the sales offered in the profit and loss account for the year under consideration, disagreed with the submissions of the assessee that the transaction reflected in the ITS has already been offered as income for the year under consideration. In the factual paper book filed before us, the assessee has placed on record the ledger account along with the registered deed of conveyance in respect of the properties, whose sale transaction was reflected in the ITS data. The learned CIT(A), vide impugned order, on the basis of the aforesaid information filed by the assessee, concluded that the assessee has already offered to tax the entire amount of INR 37,41,00,750. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

> *"14.4.1 Sale of property as reported in ITS:*
>
> *I have gone through the assessment order, remand report and written submission of the appellant. The allegation in this case was that as per the ITS data, the assessee had not reported certain sales. However, on perusal of the ledger account and sale agreements, it is evident that the amount of addition Rs. 37,41,00,750/- has already been offered to tax as 'sales'. The matter was also remanded to the AO and the AO has herself stated in the. remand report that the sale deeds were submitted. The ledger account was also submitted before the AO showing the sales of the impugned amount. It is not the case that the books of accounts were rejected by the AO. Hence there is no question of adding this amount, which has been duly offered for taxation as sales, and the addition made by the AO is deleted.*
>
> *Further, the AO in her remand report has stated that the appellant has failed to provide the stock details and the source of funds utilised for building the stock which has been claimed to have been sold during the year under consideration. It is pertinent to point out that the addition had been made on the basis of ITS data where the allegation was regarding non-reporting of sales, which is not borne out by facts. Moreover, the ledger account and sale agreements had been duly provided to the AO and show that the amount in question has already been offered as income for tax purposes. Also, it is not the case that the AO has rejected the books of accounts. Therefore, there is*

again no basis for the addition made by the AO. Hence, the addition of Rs. 37,41,00,750/- based on ITS data is deleted."

31. During the hearing, the Revenue did not bring any material on record to controvert the aforesaid findings of the learned CIT(A), according the same are upheld. Accordingly, Ground No. (viii) raised in Revenue's appeal is dismissed.

32. The issue arising in Ground No. (ix), raised in Revenue's appeal, pertains to the deletion of the addition made on account of unexplained expenditure as per the ITS data.

33. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, on the basis of the information available on the ITS, it was noticed that the assessee has incurred expenditure total amounting to INR 17,06,979 in respect of payments to hotels and restaurants. Since the assessee failed to furnish basic details such as party-wise breakup of expenses, etc., the AO, vide assessment order, added the sum of INR 17,60,979 to the total income of the assessee as unexplained expenditure. The learned CIT(A), vide impugned order, granted partial relief to the assessee and restricted the addition to INR 7,43,089 on the basis that payments in respect of two bills total amounting to INR 7,43,089, are not recorded in the books of account of the assessee. Being aggrieved, the Revenue is in appeal before us.

34. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A), on the basis

that the expenditure totalling to INR 10,17,890 was duly recorded in the books of account in the sales promotion ledger and the bank statement has also shown the payments made, deleted the addition to that extent. As per the assessee, the said payment was made in the nature of sales promotion expenses and was incurred for meeting the various business needs. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

> *"14.4.2 Unexplained Expenditure as per ITS:*
>
> *I have gone through the assessment order, remand report and written. submission of the appellant. The allegation was regarding incurring of unexplained expenditure amounting to Rs. 17,60,979/- as per ITS data. On perusal of details submitted at the time of remand proceedings, it is again clear that part of the said expenses were duly recorded in the books of, account in the sales promotion ledger and the banks statement show the payments made. Hence once the source of such expenditure is explained the addition to that extent made by the AO cannot be sustained. However, the perusal of the details submitted by the assessee before the AO also shows that payments in respect of two bills (i) Bill No. 54301 dated 16.06.2010 amounting to Rs. 6,06,650/- and ii) Bill No. 35517 dated 14.12.2010 amounting to Rs. 1,36,439/- are not recorded in the books of accounts.*
>
> *The AO in her remand report has rejected the submission made by the appellant under rule 46A by stating that the appellant failed to explain the business need for incurring such expenditure. However, this seems to be incorrect on part of AO as initially the allegation was regarding incurring of unexplained expenditure. However, once the source was explained the AO changed her stand asking the appellant to prove the need for incurring such expense. In the case of S.A Builders Ltd v CIT [2007] 158 Taxman 74/288 ITR 1 (SC), the Hon'ble Supreme Court has held that it is for the assessee to take care of business exigency and the assessee is free to do his business as per his wisdom. His arm cannot be twisted to do business as per the choice of somebody else. Thus, the AO cannot apply his hypothesis on the assessee as to how he should conduct his business. Thus, the contention of the AO to this extent is rejected. However, as payments in respect of two bills (i) Bill No. 54301 dated 16.06.2010 amounting to Rs. 6,06,650/- and (ii) Bill No. 35517 dated 14.12.2010 amounting to Rs. 1,36,439/- are not recorded in the books of accounts, the addition to the extent of Rs. 7,43,089/- (606650 plus 136439) is confirmed and the balance addition of Rs. 10,17,890/-(1760979 minus 743089) is deleted."*

35. In the absence of any material contrary to the findings of the learned CIT(A), we do not find any infirmity in the impugned order on this issue. Accordingly, the same is upheld, and Ground No. (ix) raised in Revenue's appeal is dismissed.

36. The issue arising in Ground no.(x), raised in Revenue's appeal, pertains to the deletion of the disallowance of interest on delayed payment/short deduction of TDS.

37. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A), vide impugned order, deleted the disallowance of interest on delayed payment/short deduction of TDS under section 37(1) of the Act on the basis that the interest paid on delayed payment/short deduction of TDS is not penal but compensatory in nature.

38. We find that the Hon'ble Bombay High Court in Ferro Alloys Corporation Ltd. v/s CIT, reported in (1992) 196 ITR 406 (Bom), held that the interest levied for delayed payment of TDS is not an allowable business expenditure. The relevant findings of the Hon'ble Bombay High Court, in the aforesaid decision, are reproduced as follows: -

> *"At the instance of the assessee, the following question of law is referred for the opinion of this court under section 256(1) of the Income-tax Act, 1961:*
>
> > *"Whether, on the facts and in the circumstances of the case, the claim for deduction of interest levied under section 220(2) of Rs. 6,03,168, interest levied under section 215 of Rs. 1,38,506 and interest levied under section 201(1A) of Rs. 66,590 was rightly rejected as not allowable under section 37 of the Income-tax Act, 1961, for the assessment year 1976-77?"*
>
> *The assessee was required to pay the following amounts as interest.*

Rs. 6,03,168 under section 220(2),

Rs. 1,38,506 under section 215, and

Rs. 66,590 under section 201(1A) of the Income-tax Act. These amounts were claimed as business expenditure under section 37 of the Income-tax Act. The Income-tax Officer, the Commissioner in first appeal and the Tribunal in second appeal, rejected the said claim as not allowable under section 37 and it is against the above basic undisputed background that the question has been referred.

The point stands concluded against the assessee by the consistent view of this court right from Aruna Mills Ltd. v. CIT [1957] 31 ITR 153 to CIT v. Ghatkopar Estate and Finance Corporation (P) Ltd. [1989] 177 ITR 222 (Bom). The Delhi High Court in the case of Bharat Commerce Industries Ltd. v. CIT [1985] 153 ITR 275 and the Kerala High Court in the case of Federal Bank Ltd. v. CIT [1989] 180 ITR 37, have also taken the same view. Very fairly, Shri Bhide, learned counsel for the assessee, informs us that there is no decision which has taken a contrary view."

39. We further find that the issue whether the interest under section 201(1A) of the Act paid by the assessee was an expenditure incidental to business and allowed as a deduction from the profits and gains of the business, came up for consideration before the Hon'ble Madras High Court in CIT vs. Chennai Properties & Investment Ltd., reported in [1999] 239 ITR 435 (Madras). While answering the issue in negative and in favour of the Revenue, the Hon'ble Madras High Court, after considering the decision of the Hon'ble Supreme Court in the case of Bharat Commerce & Industries Ltd. v/s CIT, reported in [1998] 230 ITR 733 (SC), observed as follows: -

"14. As already noticed, the payment of interest which takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be paid but not paid in time, which rendered (sic) the assessee liable for payment of interest, was in the nature of a direct tax and in settlement of the income-tax payable under the Income-tax Act. The interest paid under section 201(1A), therefore, would not assume the character of business expenditure and cannot be regarded as a compensatory payment as contended by the learned counsel for the assessee.

15. The counsel for the assessee in support of his submission that the interest paid by the assessee was merely compensatory in character besides relying

on the case of Mahalakshmi Sugar Mills Co. (supra) also relied on the decisions of the Apex Court in the cases of Prakash Cotton Mills (P.) Ltd. v. CIT[1993] 201 ITR 684 / 67 Taxman 546 ; Malwa Vanaspati & Chemical Co. v. CIT[1997] 225 ITR 383 and CIT v. Ahmedabad Cotton Mfg. Co. Ltd. v. CIT[1994] 205 ITR 163. In all those cases, the Court was concerned with an indirect tax payable by the assessee in the course of its business and admissible as business expenditure. Further, liability for interest which had been incurred by the assessee therein was regarded as compensatory in nature and allowable as business expenditure.

16. The ratio of those cases is not applicable here. Income-tax is not allowable as business expenditure. The amount deducted as tax is not an item of expenditure. The amount not deducted and remitted has the character of tax and has to be remitted to the State and cannot be utilised by the assessee for its own business. The Supreme Court in the case of Bharat Commerce & Industries Ltd. (supra) rejected the argument advanced by the assessee that retention of money payable to the State as tax or income-tax would augment the capital of the assessee and the expenditure incurred, namely, interest paid for the period of such retention, would assume the character of business expenditure. The Court held that an assessee could not possibly claim that it was borrowing from the State the amounts payable by it as income-tax and utilising the same as capitalization in its business, to contend that the interest paid for the period of delay in payment of tax amounted to a business expenditure.

17. The question referred to us, therefore, is required to be and is answered in the negative, in favour of the revenue and against the assessee. The revenue shall be entitled to costs in the sum of Rs. 1,000."

40. Thus, respectfully following the decisions of the Hon'ble High Courts as cited supra, we do not find any merits in the claim of the assessee in seeking deduction under section 37(1) of the Act in respect of interest on delayed payment/short deduction of TDS. Accordingly, the impugned order on this issue is set aside, and the disallowance made by the AO is upheld. As a result, Ground no. (x) raised in Revenue's appeal is allowed.

41. The issue arising in Ground No. (xi), raised in Revenue's appeal, pertains to disallowance under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("*the Rules*").

42. The brief facts of the case are that during the assessment proceedings, it was noticed that the assessee had earned exempt dividend income amounting to INR 78,000 during the year under consideration. Further, it was noticed that expenditure such as interest is debited to the profit and loss account, however, no expenditure has been treated as attributable to the earning of exempt income by the assessee, and no disallowance under section 14A of the Act has been made. Accordingly, the assessee was asked to show cause as to why the disallowance under section 14A of the Act should not be made. In the absence of any response from the assessee, the AO, vide assessment order, computed the disallowance of INR 4,35,137 under section 14A read with Rule 8D of the Rules. The learned CIT(A), vide impugned order, following the judicial precedents, directed the AO to restrict the disallowance to the extent of exempt income earned by the assessee. The relevant findings of the learned CIT(A) on this issue are reproduced as follows: –

> *"15.2 The appellant has earned an exempt income of Rs. 78,000/- during the year under consideration. The said fact is duly accepted by the AO on page 52 of his assessment order. It is observed that on the issue of extent of disallowance u/s 14A which can be made if the dividend income earned during the relevant year is either nil or less than the amount of disallowance computed under section 14A, earlier there used to be substantial debate. However, this was settled by the recent decision of the Hon'ble Supreme Court dated 02.07.2018 in the case of Chettinad Logistics P. Ltd. (95 taxmann.com 250) wherein the Revenue SLP against the decision of the Hon'ble Madras High Court (80 taxmann.com 221) has not been admitted. In 15.2 The appellant has earned an exempt income of Rs. 78,000/- during the year under consideration. The said fact is duly accepted by the AO on page 52 of his assessment order. It is observed that on the issue of extent of disallowance u/s 14A which can be made if the dividend income earned during the relevant year is either nil or less than the amount of disallowance computed under section 14A, earlier there used to be substantial debate. However, this was settled by the recent decision of the Hon'ble Supreme Court dated 02.07.2018 in the case of Chettinad Logistics P. Ltd. (95 taxmann.com 250) wherein the Revenue SLP against the decision of the Hon'ble Madras High Court (80 taxmann.com 221) has not been admitted. In this case, the Hon'ble Madras High Court held that Rule 8D cannot over-ride the provisions of sec. 14A. The Hon'ble Madras Court held that if provisions of sec 14A itself are not applicable,*

then there is no question of invoking Rule 8D and computing the disallowance. It was noted by the Hon'ble High Court that the language used in the provisions of sec. 14A makes it abundantly clear that the same is triggered only when there is an income which does not form part of the total income under the Act. It was held by the Hon'ble High Court that the provisions of sec. 14A cannot be invoked if no exempt income has been earned for the relevant year. The Hon'ble High Court granted relief to the said assessee on the disallowance made by the AO u/s. 14A on the ground that no exempt/dividend income was earned during the relevant year. The Hon'ble Bombay High Court in the case of M/s. Nirved Traders Pvt. Ltd. (ITA No. 149 of 2017) in their decision dated 23.04.2019 approved the claim that the disallowance under section 14A was to be restricted to the tax-exempt income earned during the year. Therefore, following the decision of Hon'ble Apex Court and High Court, I direct the A.O to restrict the disallowance to the extent of exempt income earned by the assessee. Thus, the ground of appeal raised by the appellant is partly allowed."

Being aggrieved, the Revenue is in appeal before us.

43. Having considered the submissions of both sides and perused the material available on record, we find that this issue is no longer res integra and has been decided in favour of the taxpayer. We find that the Hon'ble Supreme Court in Maxopp Investment Ltd. v/s CIT, reported in (2018) 402 ITR 604 (SC), upheld the disallowance under section 14A of the Act to the extent of exempt income earned by the taxpayer. We further find that the Hon'ble Jurisdictional High Court in Nirved Traders Pvt. Ltd. v/s DCIT, in ITA No.149 of 2017, vide judgment dated 23.4.2019, held that the disallowance under section 14A of the Act cannot be more than the exempt income. Thus, respectfully following the aforesaid decisions, we find merit in the plea of the assessee that the disallowance under section 14A of the Act is to be restricted to the amount of exempt income earned by the assessee during the year under consideration. Accordingly, the impugned order on this issue is upheld, and Ground No. (xi) raised in Revenue's appeal is dismissed.

44. In the result, the appeal by the Revenue for the assessment year 2011-12 is partly allowed.

CO No. 12/Mum/2025
Assessee's cross-objection - A.Y. 2011-12

45. The assessee, vide its application filed on 04/03/2025, seeks to revise the grounds preferred in its cross-objection. The revised grounds raised by the assessee in its cross-objection are as follows: –

> *"1) On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in making certain additions in Assessment order passed u/s.144 r.w.s 153C of the Income Tax Act, 1961, which is not an abated assessment, without any incriminating documents were found during the course of search.*
>
> *2) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the addition made by the Learned Assessing Officer to the extent of Rs.7,43,089/-on account of alleged Unexplained expenditure on the basis of ITS, without considering the facts and circumstances of the case."*

46. During the hearing, Ground No. 1 raised in the cross objection was not pressed. Accordingly, the same is dismissed as not pressed.

47. The issue arising in Ground No. 2, raised in assessee's cross-objection, pertains to the addition made on account of unexplained expenditure as per the ITS data.

48. We have considered the submissions of both sides and perused the material available on record. As noted in the foregoing paragraphs, the learned CIT(A) upheld the part disallowance amounting to INR 7,43,089 made on account of unexplained expenditure as per the ITS data. The learned CIT(A), after perusal of the details submitted by the assessee during the remand proceedings, noticed that the expenditure to an extent of INR

10,17,890 was duly recorded in the books of account in the sales promotion ledger and the bank statement shows the payments made. It was further noticed that payments in respect of two bills, i.e. Bill No. 54301 dated 16/06/2010 amounting to INR 6,06,650 and Bill No. 35517 dated 14/12/2010 amounting to INR 1,26,439, are not recorded in the books of accounts. Accordingly, the learned CIT(A) confirmed the addition to the extent of INR 7,43,089. During the hearing, the learned AR, apart from merely submitting that the addition is only based on the ITS data without any further enquiry, did not bring any material on record to prove the genuineness of the aforesaid expenditure. Accordingly, we do not find any infirmity in the findings of the learned CIT(A) in upholding the disallowance to an extent of INR 7,43,089, and the same is upheld. As a result, Ground No. 2 raised in assessee's cross-objection is dismissed.

49. In the result, the cross-objection by the assessee for the assessment year 2011-12 is dismissed.

ITA No. 5710/Mum/2024
Revenue's appeal – A.Y. 2009-10

50. In this appeal, the Revenue has raised the following grounds: –

"i "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO to 50% on account of bogus purchases by relying on decision of CIT(A) in the case of Samira Residences Put Ltd, without appreciating the fact that the genuineness of such purchases were not established by the assessee"

ii. " Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money, to 10%, received by the assessee w.r.t the Nagaon project, based on the admission of the assessee and while doing so, failed to appreciate that the assessee offered such on-money to tax for the respective years in the statement recorded on oath u/s 132(4) of the Act."

iii. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money to 10% with respect to evidences like various loose papers and documents found and seized during search action and on which assessee has not submitted any proofs during the assessment proceedings for respective years?"

iv. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO relating to on-money at 10% even though the entire amount has been admitted by the assessee, before the Hon'ble ITSC, as being on-money received during the respective years?"

v. "Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition done by the AO on account of unexplained cash expenditure based on evidences found during search on cash payments and also on the basis statements given by brokers involved in such transactions?

vi. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition done by the AO on account of club expenses in the absence of any evidence being submitted by the assessee to substantiate the genuineness of transaction or its relation to being a business promotion activity of the company?"

51. We find that the issues arising in Grounds No. (i)-(v), raised in Revenue's appeal, have already been considered by us while adjudicating Revenue's appeal for the assessment year 2011-12. Accordingly, our findings/conclusions as rendered in respect of these issues shall apply *mutatis mutandis* to the present appeal. These grounds are adjudicated accordingly.

52. The issue arising in Ground No. (vi), raised in Revenue's appeal, pertains to the deletion of the addition made on account of club expenses.

53. The brief facts of the case pertaining to this issue, as emanating from the record, are: From the audit report, it was found that the assessee has debited a sum of INR 43,529 to the profit and loss account as club expenses. In the absence of any details regarding the genuineness of the same as business expenditure, the AO, following its approach adopted in assessment

year 2007-08, made a disallowance of INR 43,529 vide order dated 27/03/2015 passed under section 144 read with section 153C of the Act. The learned CIT(A), vide impugned order, deleted the addition made on account of club expenses. Being aggrieved, the Revenue is in appeal before us.

54. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the club expenditure amounting to INR 43,529 was incurred by the Directors of the assessee for the promotion of its business. We find that accepting the submission of the assessee, the learned CIT(A), vide impugned order, observed as follows: –

> *"12.1 I have gone through the assessment order and submission filed by the appellant. On perusal of the assessment order, it is seen that the AO has stated that the appellant has failed to prove the genuineness of the transaction as business expenditure. However, in stating so, the AO failed to appreciate the appellant is a huge company and the said expenses were essential for promoting the company's business. Further the fact that the tax auditor has not qualified the report substantiates the fact that the said expenses were not incurred for personal use.*
>
> *12.2 Therefore, considering the Hon'ble Madras High Court decision in the case of CIT vs Sundaram Industries (240 ITR 335), wherein it was concluded that club expenses incurred were aimed at promoting its business interests by facilitating networking and enhancing the social status of its directors. While there were incidental personal benefits to the directors from club amenities, such as relaxation and social status, these benefits were secondary to the primary purpose of promoting the company's business. The expenditure was deemed allowable because it primarily served the business objectives of the company, aligning with the requirements of Section 37 despite the directors also benefiting personally from the memberships."*

55. In the absence of any material contrary to the findings of the learned CIT(A), we do not find any infirmity in the impugned order on this issue. Accordingly, the same is upheld, and Ground No. 6 raised in Revenue's appeal is dismissed.

56. In the result, the appeal by the Revenue for the assessment year 2009-10 is partly allowed.

CO No. 11/Mum/2025
Assessee's cross-objection - A.Y. 2009-10

57. In its cross-objection, the assessee has raised the following grounds: -

"1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the Assessment Order u/s.144 r.w.s. 153C of the Income Tax Act, 1961, which is bad in law and null and void as the same is passed in violation of the provisions of the Income Tax Act, 1961.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing the salary paid to Mr. Milan S. Nerurkar of Rs.24,00,000/-, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the addition made by the Learned Assessing Officer to the extent of 50% of alleged bogus purchases amounting to Rs. 1,30,54,552/-, without considering the facts and circumstances of the case."

58. During the hearing, Grounds No. 1 and 3 raised in the cross-objection were not pressed. Accordingly, the same are dismissed as not pressed.

59. The issue arising in Ground No. 2, raised in assessee's cross-objection, pertains to the disallowance on account of the salary paid to the Director's wife.

60. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the search proceedings, it was found and admitted by the Director of the assessee that the salary was paid to Mrs Milan S. Nerurkar, i.e. the wife of the Director, without rendering any services. Accordingly, the opportunity was granted to the assessee during the assessment proceedings to make its submissions. In the absence of any response from the assessee,

the AO, vide assessment order, in light of the categorical admission during the search proceedings, made an addition of INR 24 lakh being the salary paid to the Director's wife as ineligible business expenditure. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO.

61. Having considered the submissions of both sides and perused the material available on record, we find that it is an admitted position that the wife of the Director did not render any service to the company nor does any activity in the company. Therefore, there is no material available on record to show that the expenditure in terms of salary paid to the Director's wife was for the purpose of the business of the assessee. Accordingly, we do not find any infirmity in the findings of the learned CIT(A) in upholding the disallowance made by the AO. As a result, the impugned order on this issue is upheld, and Ground No. 2 raised in assessee's cross-objection is dismissed.

62. In the result, the cross-objection by the assessee for the assessment year 2009-10 is dismissed.

ITA No. 5714/Mum/2024
Revenue's appeal – A.Y. 2012-13

63. In this appeal, the Revenue has raised the following grounds: –

i. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money, to 10%, received by the assessee w.r.t the Nagaon project, based on the admission of the assessee and while doing so, failed to appreciate that the assessee offered such on-money to tax for the respective years in the statement recorded on oath u/s 132(4) of the Act."

ii. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO on account of on-money to 10% with respect to evidences like various loose papers and documents

found and seized during search action and on which assessee has not submitted any proofs during the assessment proceedings for respective years?"

iii. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO relating to on-money at 10% even though the entire amount has been admitted by the assessee, before the Hon'ble ITSC, as being on-money received during the respective years?"

iv. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of unexplained cash expenditure based on evidences found during search on cash payments and also on the basis statements given by brokers involved in such transactions?"

v. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition done by the AO on account of Unexplained cash deposits as per MI'S data, the source of which has not been established by the assessee?"

vi. "Whether on the facts and circumstances of the case and in law, the Ld. CITA) erred in deleting the addition done by the AO on account of unexplained expenditure as per IT'S data with respect to payment made for hotels and restaurants for which no supporting evidences were submitted by the assessee w.r.t. source of such expenditure?

vii "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO with respect to penal interest on short deduction/ no deduction of TDS?"

viii. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition done by the AO u/s 14A of the Act to the extent of Exempt Income earned without appreciating the CBDT Circular No. 5 of 2014 dated 11/02/2014 which has clarified that the disallowance u/s 14A is to be made even if no exempted income had been eared by the assessee during the year under consideration?"

64. We find that the issues arising in the grounds raised by the Revenue in its appeal for the assessment year 2012-13 have already been considered by us while adjudicating Revenue's appeal for the assessment year 2011-12. Accordingly, our findings/conclusions as rendered therein in respect of these issues shall apply *mutatis mutandis* to the present appeal. The grounds raised by the Revenue are adjudicated accordingly.

65. In the result, the appeal by the Revenue for the assessment year 2012-13 is partly allowed.

CO No. 13/Mum/2025
Assessee's cross-objection - A.Y. 2012-13

66. The assessee, vide its application filed on 04/03/2025, seeks to revise the grounds preferred in its cross-objection. The revised grounds raised by the assessee in its cross-objection are as follows: –

> *"1) On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in making certain additions in Assessment order passed u/s.144 r.w.s 153C of the Income Tax Act, 1961, which is not an abated assessment, without any incriminating documents were found during the course of search.*
>
> *2) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the addition made by the Learned Assessing Officer to the extent of Rs. 1,98,540/- on account of alleged Unexplained expenditure on the basis of ITS, without considering the facts and circumstances of the case."*

67. During the hearing, Ground No. 1 raised in the cross objection was not pressed. Accordingly, the same is dismissed as not pressed.

68. The issue arising in Ground No. 2, raised in assessee's cross-objection, pertains to the addition made on account of unexplained expenditure as per the ITS data. As a similar issue has already been considered in assessee's cross-objection for the assessment year 2011-12, accordingly, our findings/conclusions as rendered therein in respect of this issue shall apply *mutatis mutandis*. As a result, Ground No. 2 raised in assessee's cross-objection is dismissed.

69. In the result, the cross-objection by the assessee for the assessment year 2012-13 is dismissed.

70. To sum up, all the appeals by the Revenue are partly allowed, while all the cross-objections by the assessee are dismissed.

Order pronounced in the open Court on 09/05/2025

Sd/-	**Sd/-**
NARENDRA KUMAR BILLAIYA **ACCOUNTANT MEMBER**	**SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 09/05/2025
Prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai