IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.

BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER

I.T.A. No. 706 to 709/Jodh/2024
Assessment Year: 2013-14 to 2016-17

Ashiana Buildprop Pvt. Ltd., 17, Naya Marg Court Circle, Udaipur.	Vs.	The DCIT, Central Circle-1, Udaipur.
PAN No. AAHCA7939G		
Appellant		Respondent

Appellant by	Shri Shrawan Kumar Gupta, Adv.
Respondent by	Shri Lovish Kumar, CIT-DR

Date of Hearing	26/03/2025
Date of Pronouncement	26 /05/2025

ORDER

PER DR. S. SEETHALAKSHMI, J.M.

These are four appeals filed by the assessee against four separate orders of ld. CIT (Appeals), Udaipur-2 dated 27.08.2024 passed under section 250 of the I.T. Act, 1961, for the assessment years 2013-14, 2014-15, 2015-16 & 2016-17. The grounds and revised grounds raised in these appeals are being reproduced as under :-

In ITA No. 706/Jodh/2024 A.Y. 2013-14

"Ground No.*1: The impugned order u/s 153A r.w.s 143(3) of the I.T. Act,1961 dated 29.12.2017 as well as theaction taken u/s 153A(passed by the ld. AO and confirmed by the ld. CIT(A)) is illegal, bad in law and on the facts of the case for want of jurisdiction and various otherreasons and further contrary to the real facts of the case hence the same may kindly be quashed.*

Ground No.2: *The search action taken u/s 132 is illegal, bad in law and on the facts of the case for want ofjurisdiction and various other reasons, against the provisions and procedure as per law and further contrary to thereal facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal andbad in law hence liable to be quashed.*

Ground No.3: *Rs.44,70,826/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.44,70,826/- made by the ld. AO on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

4. The ld. AO has grossly erred in law as well as on thefacts of the case in charging the interest u/s 234A, B,C and D. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full .

"Revised Ground No.3: *Rs.44,70,826/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.44,70,826/- made by the ld. AO on account of alleged underreporting sales, on money received on sales, on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts, without cross examination or inquiry from purchasers or Bharat Manwani,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.*"*

In ITA No. 707/Jodh/2024 A.Y. 2014-15

"Ground No.*1: The impugned order u/s 153A r.w.s 143(3) of the I.T. Act,1961 dated 29.12.2017 as well as theaction taken u/s 153A(passed by the ld. AO and confirmed by the ld. CIT(A)) is illegal, bad in law and on the facts of the case for want of jurisdiction and various otherreasons and further contrary to the real facts of the case hence the same may kindly be quashed.*

Ground No.2: *The search action taken u/s 132 is illegal, bad in law and on the facts of the case for want ofjurisdiction and various other reasons, against the provisions and procedure as per law and further contrary to thereal facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal andbad in law hence liable to be quashed.*

Ground No.3: *1,64,40,157/-or Rs.5,91,76,693/-or:-*The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.5,91,76,693/- (correct figure or addition for this year is Rs.1,64,40,157/- vide 154 order dt. 27.04.2018) made by the ld. AO on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

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addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.*"*

In ITA No.708/Jodh/2024 A.Y. 2015-16

"Ground No.*1: The impugned order u/s 153A r.w.s 143(3) of the I.T. Act,1961 dated 29.12.2017 as well as theaction taken u/s 153A(passed by the ld. AO and confirmed by the ld. CIT(A)) is illegal, bad in law and on the facts of the case for want of jurisdiction and various otherreasons and further contrary to the real facts of the case hence the same may kindly be quashed.*

Ground No.2: *The search action taken u/s 132 is illegal, bad in law and on the facts of the case for want ofjurisdiction and various other reasons, against the provisions and procedure as per law and further contrary to thereal facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal andbad in law hence liable to be quashed.*

Ground No.3: *Rs.5,91,76,693/- or 1,64,40,157/-:*-The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.1,64,40,157/- (correct figure or addition for this year is Rs.5,91,76,693/- vide 154 order dt. 27.04.2018) made by the ld. AO on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

Ground No.4: *Rs.67,50,000/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.67,50,000/- made by the ld. AO on account of alleged extra business receipts on account of charges as treatingundisclosed business income on estimate basis without invoking the provision of sec. 145(3) and without rejecting thebooks of accounts on assumption and presumption without any material evidence,*also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO

and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

5. The ld. AO has grossly erred in law as well as on thefacts of the case in charging the interest u/s 234A, B,C and D. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full .

"Revised Ground No.3: *Rs.5,91,76,693/- or 1,64,40,157/-:*-The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.1,64,40,157/- (correct figure or addition for this year is Rs.5,91,76,693/- vide 154 order dt. 27.04.2018) made by the ld. AO on account of alleged underreporting sales, on money received on sales, on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts, without cross examination or inquiry from purchasers or Bharat Manwani,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full."

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In ITA No.709/Jodh/2024 A.Y. 2016-17

"Ground No.*1: The impugned order u/s 153A r.w.s 143(3) of the I.T. Act,1961 dated 29.12.2017 as well as the action taken u/s 153A(passed by the ld. AO and confirmed by the ld. CIT(A)) is illegal, bad in law and on the facts of the case for want of jurisdiction*

and various other reasons and further contrary to the real facts of the case hence the same may kindly be quashed.

Ground No.2: *The search action taken u/s 132 is illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons, against the provisions and procedure as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal and bad in law hence liable to be quashed.*

Ground No.3: *Rs.1,14,89,554/-:*-The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.1,14,89,554/-made by the ld. AO on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

Ground No.4: *Rs.57,50,000/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.57,50,000/- made by the ld. AO on account of alleged extra business receipts on account of charges as treating undisclosed business income on estimate basis without invoking the provision of sec. 145(3) and without rejecting the books of accounts on assumption and presumption without any material evidence,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

5. The ld. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C and D. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full .

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estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts, without cross examination or inquiry from purchasers or Bharat Manwani, also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full."

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2. The brief facts of the case are that the assessee is a private limited company and engaged in the business of real estate. For the year under consideration original return of income under section 139 was filed on 25.09.2013 declaring total income of Rs. 7,70,040/-. A search and seizure proceeding was carried out at the residential and business premises of the assessee on 26.08.2015 to 28.08.2015. Notice under section 153A was issued by the AO to the assessee on 13.01.2016. In response to the notice under section 153A of the IT Act, 1961, return of income was filed by the assessee on 18.01.2016 declaring total income of Rs. 7,47,800/-

whereas the assessee declared total income of Rs. 7,70,040/- in original return of income filed under section 139 of the IT Act, 1961 on 25.09.2013. Notice under section 143(2) was issued by the AO on 11.07.2017 and asked the assessee to furnish submission. The assessee furnished the requisite information against the above said notice in writing and also contended that the notice issued under section 143(2) of the IT ACT, 1961 is barred by limitation and thus illegal. In addition thereto the assessee has objected/challenged the proceeding under section 132 and 153A also. Further, notice under section 142(1) of the Act was also issued by the AO to the assessee on 21.09.2017. The AO completed the assessment under section 143(3) read with section 153A of the IT Act, 1961 vide his order dated 29.12.2017 without appreciating the legal objections of the assessee, by making addition of Rs. 44,70,826/- as undisclosed income without mentioning any section of the IT Act, without appreciating the submission in this respect. Accordingly, the AO assessed the total income of the assessee at Rs. 52,18,626/-.Aggrieved by the order of the AO, the assessee preferred appeal before the ld. CIT (A). The ld. CIT (A) considered the submissions furnished before him, but could not find it acceptable and accordingly dismissed the appeal of the assessee.

Now the assessee has come in appeal before the Tribunal on the grounds reproduced herein above.

3. Before us, the ld. A/R of the assessee reiterated the submissions as were made before the ld. CIT (A) and further submitted his ground-wise written submission in support of his case, as under :

> "Your honor in the above matters there are 4 appeal from A.Y. 2013-14 to 2016-17 ITA NO. 706 TO 7098/Jodh/2024 respectively. The Assessments for A.Y. 2013-14 to 2016-17 were completed u/s 153A rws 143(3).
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> Your honor firstly we rely upon on our Written Submissions and Add. Written Submissions filled before the ld. CIT(A) available in the paper book of respective assessment years appeals also reproduce in the CIT(A)'s orders. Hence for the facts, figures, submissions and legal position the same may kindly be considered as our WS before your honor. As in all the appeals the Grounds of appeal are same. Now we are submitting our further submissions on the observations given by the ld. CIT(A) ground wise as under:
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> On GOA-1-2: Invalid Action u/s 153A or 132 and invalid Assessment:
>
> 1. The ld. CIT(A) has stated that on going through the provisions of the Act, it can be observed that there is no specific provision in the Act requiring the assessment made under section 153A to be after issue of notice under section 143(2). In support the ld. CIT(A) has referred some judgments and he has tried to distinguish some of judgments given by us.
>
> However we have already submitted at length in our WS filed before the ld. CIT(A) with various judgments and we have also stated that it is also settled that if in case both the side has been referred then it is the settled legal position that to remove the undue hardship and considering the decision of supreme Court in case of CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC) where it is held that when two views are possible on an issue, the view in favour of the assessee has to be preferred. And also many High court also held the same.
>
> As in the latest decisions of Honble Delhi High court of Pr. CIT v/s N.S. Software (Firm) 403 ITR 259 (2018) in which it has been held that "The court also notices in this regard, that the *non- obstante* provisions in both Sections 153A and 153C are identical; they override Sections 136, 147, 148, 149, 151 and 153. However, they do not override the mandatory provisions of Sections 142(2) or 143(2)".

In DCIT Sushil Kumar Jain 134 TTJ 844 (Indore)that "*Time-limit of service of notice under s. 143(2) shall also apply in respect of assessments framed under s. 153A and such time limit would start from the end of the month in which return is filed in response to notice issued under s. 153A/142(1) and, in case, no such notice has been issued, then, it shall be construed from the end of month in which return was filed; where the assessee has filed a letter stating that return of income filed under s. 139 may be treated as filed in response to notice under s. 153A, the time-limit for service of notice under s. 143(2) should be considered from the date of letter filed by the assessee and not from the date when the return of income was filed under s. 139.*

CIT v/s Fomento Finance and Investment Pvt. Ltd 106 CCH 2019 (Bombay H.C. (Goa Bench) dt. 13.09.2019

2. On our submissions the objection not decided by the ld. AO the ld. CIT(A) has stated only that there is no requirement under the law for passing a specific speaking order while framing the assessment u/s 153A. Nevertheless the AO has dealt the arguments of the appellant during the assessment proceedings as admitted by the appellant. Therefore, argument of the appellant are not found to be acceptable. In this regard it is submitted that when we had filed our details, WS and legal position on the same and the ld. CIT(A) has not rebutted our WS and legal position by bringing any contrary material or evidence, hence we strict on our WS and legal position filed before the ld. CIT(A) and the same may kindly be considered.

Further on the legality of search the ld. CIT(A) has stated that as the CIT(A) is not the correct forum to challenge the issue of warrant by the DGIT (Inv.) or examining the satisfaction recorded before issuing warrant of authorization. The present appeal is not filed against these warrants or against the satisfaction recorded. Hence, raising the issues which are out of the scope of jurisdiction of the CIT (A) are not found to be relevant and rejected. And other issues of issuance of notice u/s 153A, incriminating documents he has summarily rejected the contention of the assesseee without brining any adverse material. Hence our contentions, plea and legal position brought before the ld. CIT(A) may kindly be considered, which have been not been considered by the ld. CIT(A) in their true perspective and sense.

3. Prayer: Considering the above over all facts of the case and the position of law, we request your honor to please cancel/quash the impugned order passed u/s 153A r.w.s. section 143(3) dated 30.12.2017 in the interest of equity and justice on this ground alone.

GOA-3: Addition of Rs. 44,701,826/- in A.Y. 2013-14, Rs.1,64,40,157/- or 5,91,76,693/- in A.Y. 2014-15, Rs.5,91,76,693/- or 1,64,40,157/- in A.Y. 2015-16 and Rs.1,14,89,554/- in A.Y. 2016-17 *on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law.

GOA-4: Addition of Rs. 67,50,000/- in A.Y. 2015-16 and Rs.57,50,000/- in A.Y. 2016-17 *on account of alleged extra business receipts on account of charges as treating undisclosed business income on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law.

SUBMISSIONS:

1. No provisions has been applied by the ld. AO: At the very outset it is submitted that the ld. AO made all the additions *on account of alleged underreporting sales on estimate basis and alleged extra business receipts on account of charges as treating undisclosed business income on estimate basis. However while making the additions*he has not invoked or applied any provisions of law while making the addition. The ld. AO has not stated under what provision of law he has made the addition and under what head whether, under business or trading income, agriculture income, capital gain or u/s 48, 56 or u/s 68 or 69. Thus the addition so made without any provision of act is also against the law and liable to be deleted on this ground alone. When the ld. AO has not invoked any provision of Act/law then also how the ld.AO can make the addition. When in the law and in the Act for each and every offence specific provisions are given to held any person as victim defaulter, then without applying any provision for that a person cannot be taxed and penalized. When the ld. AO himself has not stated that under what provision the assessee liable to be taxed or penalized or under what provision his offence falls then how the addition can be made.

on this preposition we also would like to draw your kind attention toward the recent decision of this Honble ITAT in the case of Arvind Kumar Nehra V/s ITO Ward 7(1), Jaipur 32/Jp/2024 dt 10.04.2024 where it has been held

> "It is also noteworthy to mention from the entire conspectus of the case that the AO has also not invoked any provisions of IT Act while making the lump Sum addition of Rs.50,00,000/- for cash deposits in the bank account during the Demonetization Period, Unsecured Loan & capital introduced. Hence, in our view lump-sum addition cannot be made under these accounts. The AO must have referred the specific amount with specific details and documents which he has not provided and as to what basis lump sum addition has been made and also failed to mention that on which account and as to what amount of addition consists of. It is also noted that the AO has not stated under which provisions or section he has made the lump-sum addition either u/s 68 or 69 or 69A or trading or u/s 56 i.e. other sources. It may be worthwhile to mention that when in the Act for every additions, the provisions or section has been provided by the legislature, otherwise there shall be no meaning of the Act. Hence the addition is wrongly made against the Act . (vide page 21-22 of the order)."

The same has also been held recently in the case of Rajendra Kumar Meena v/s ITO Swaimodhopur in ITA No.516/Jp/2024 dt. 2507.2024.

In the case of M/S. Pasari Casting And Rolling Mills ... vs Income-Tax Department Through Its ... on 25 January, 2024 in W.P. (T) No. 1850/2022 dt. 25.01.2024 where it has been held that " Furthermore, the recorded reason is also silent under which provision of the Act the additions are sought to be made i.e. whether Section 68, Section 69A, Section 69B, Section 69C or any other provisions of the Act. It is not the case of the Revenue that the Petitioner has paid any cash to the so-called accommodation entry provider to obtain the accommodation entry to plough back own funds, hence, there is no ground/material to form reasonable belief of any accommodation entry. (Refer PCIT Vs. Meenakshi Overseas P. Ltd. reported in [2017] 395 ITR 677 (Del).

In the case of Oryx Fisheries Pvt. Ltd. Vs. UOI reported in (2010) 13 SCC 427, it is held by the Hon'ble Supreme Court that the show cause notice should give the noticee a reasonable opportunity of making objections against proposed charges indicated in the notice and the person proceeded against must be told the charges against him so that he can make his defense and prove his innocence. In the entire course of the proceeding, at no stage the Petitioner is made aware of the provisions of law which have been contravened and/or under which the additions are sought to be made which is in gross violation of the principles of natural justice and the procedure adopted by the Department is not fair or proper.

In the case of New Delhi Television Ltd. Vs. DCIT reported in [2020] 424 ITR 607 (SC), it is held by the Hon'ble Apex Court that the Assessee must be put to notice of all the provisions on which the Department relies.

Recently the same has also been laid down by this honble ITAT in the case of M/s Kajari Mineral Pvt. Ltd v/s DCIT Central Circle-1 Udaipur in ITA No. 217 and 218/Jodh/2024 dt.21.11.2024 and also in Smt. Prabhati Devi v/s ITO Ward Dausa in ITA No. 1031/Jp/2024 dt. 01.10.2024. Copy is enclosed.

Hence the additions so made by the ld. AO is illegal, invalid bad in law and liable to be deleted in full.

2. The ld. CIT(A) has confirmed the addition and action of the ld. AO only on the basis of observations made by the ld. AO, the ld. CIT(A) has failed to controvert our WS and legal position of law.

2.1 The ld. CIT(A) also of the view of as of the AO that the assesseehas booked 64.70% of actual sale in its regular books of account and remaining 35.30% sale is not recorded in the books of account as well as not offered for taxation, Unbilled sale/on money is received in cash and out of books. The ld. CIT(A) has further stated that the arguments are theoretical explanation without explaining the facts of the case. The AO has clearly noted that none of the cash transactions as reported in the seized pages match with receipts shown in the books of account of the assessee company. No plausible explanation is furnished by the assessee in this regard. Before the AO the AR of the assessee refused to accept the ledger copy of the parties whom flats were sold and cash receipts have been shown is belong to the assessee company. Now in the appellate proceedings, the assessee is accepting that the documents are belonging to the company but the conclusions drawn by the AO especially with regard to receipt of ‘on- money’ are not correct. The explanation that unbilled sale is sale not executed through registered sale deed or through bill but has to be recognized and declared for income tax purposes under the specific provisions related to revenue recognition as prescribed under the Act for Real Estate business is not matching with the actual figures of the books of accounts of the assessee. Hence, the explanation is not found to be acceptable.

:-In this regard it is submitted that both the lower authorities have proceeded on is own assumption, presumption when it is the clear facts that the transaction mentioned in loose papers are projected, estimated andworking by and also brought other facts or reasons had been brought on record during the course of assessment and search, which have not been rebutted with the help of any documentary evidences by the lower authorities.

2.2 The ld. CIT(A) has stated that the arguments that the figures in the sheet were projected figures are not supported by any independent verifiable evidence. In the absence of any verifiable evidence, the figures mentioned in the seized documents are to be treated as actual figures. The appellant has not furnished any evidence before the AO in the form of any independent witness who can support the arguments of the appellant. It is admitted fact that statement of Mr. Bharat Manwani could not be provided as he was no more. However, the purchasers could have been produced before the AO to prove the facts as per arguments. In the absence of any independent evidence, the arguments of the appellant that these figures are projected are not found to be acceptable.
The AO noted that on examination of the seized documents, it is quite clearthat ledger copy of all the parties whose name appearing in these papers are the actual owner of the flats. Hence, the argument that the bookings were cancelled is not found to be acceptable. The AO also recorded that even the flat numbers are also mentioned therein. In these ledger copies the date of receipt of cash is also mentioned. Thus the facts are very much apparent that these parties have paid cash to the assessee company which is not recorded in the regular books of the assessee company. Therefore, the assessee cannot refuse that no payment has been received from these parties. The appellant has not controverted these findings of the appellant. The date of receipt of cash from the flat owners is clearly noted on the seized papers. The appellant has given theoretical explanation but the facts of the receipt of cash as On Money is not proved to be incorrect. Hence, the argument of the appellant that these are only projections is not found to be acceptable.

:- In this regard it is submitted that the facts of project to be marketed by the Late Sh. Bharat Manwani has never been denied by the lower authorities, and when Bharat Manwani has expired, then it was the duty of the ld. AO to cross verify our contentions by calling purchasers from whom alleged cash on money received to know whether they had given any cash or own money over to the amount mentioned in the sale deed, when the assessee had filed the sale deeds and details. And the ld. AO has failed to call a single persons to support his allegations. But they failed to do so, further when we had already taken the arguments of the cross examination of the purchasers or other before the ld. CIT(A), vide our WS (PB313-314), as assessee has not power to use muscle pressure to produce and the AO was having power u/s 131 or 133(6), which have not been used by the lower authorities, hence the observations of the ld. CIT(A) is wrong and incorrect and liable to be ignored.

2.3 The ld. CIT(A) stated that the argument of the appellant is that unbilled sale is the difference because of following percentage completion method as per accounting standard. If this is true, then the appellant should have shown that the total amount of sale is Rs. 25,94,25,580/- over the years from the project and because of following the

percentage completion method there are differences in the figures of sale booked in different years. However, it is evident that the appellant has not made any effort in this regard. In the absence of complete reconciliation, the claim of the appellant was rightly rejected by the AO.It is also observed that the AO has not disturbed the method of accounting followed by the assessee. The sales as declared by the assessee are increased in the ratio of cash received as per the detection made during the search proceedings. No fault is pointed out by the assessee in this regard.

In view of these facts, the explanation of the assessee with respect to method of accounting is not found to be acceptable as the explanation is not matching with the books of accounts of the assessee.

:- In the this regard it is submitted that the observation of the ld. CIT(A) is based on conjecture and surmises, the assessee filed the calculation of POC method vide (PB125-127), which have been ignored by both the lower authorities despite available on record.

2.4 The ld., CIT(A) has stated that the arguments of the appellant are considered but not found acceptable. It is incorrect to say that there was material difference because of change of name of the project. The project remained same and only the name was changed. The AO has applied the rate per square feet as per the seized documents. Hence, even if there is minor change in area of the flat as claimed by the assessee, the rate per square feet will not change. The area of flat is taken by the AO as per actual area sold. No discrepancy is pointed out by the assessee in this regard.

:- In the this regard it is submitted that again the observation of the ld. CIT(A) is based on conjecture and surmises, as the lower authorities have not denied the facts regarding the projected earlier given to Bharat Manwani in the name of Sahil Enclave and in the broachers this name is coming vide (PB128-132) it and due to some unfortunate and unavoidable circumstances the same could not be materialized. This facts have never been disproved. And the market position and modus operandi can be realized only by the businessmen not by the ld. AO or revenue who were not technical persons of this line. This also not the case of the revenue that the assessee has received the less amount to the DLC rate. How the ld. CIT(A) can say there is no material difference in the name. It is well known facts that there is value of Brand Name in the market. And in adverse situation and in the competition market and to stand its reputation/goodwill some time a business has to scarifies its profit/margin. Hence the observation of the ld. CIT(A) is baseless and far from the practical position of the market.

2.5: Regarding the alleged cash transaction mentioned in alleged seized documents we have already stated that the same has been done by the Bharat Manwani and reason of the same also been stated and also stated that why the same have been mentioned and also refunded with reason. However all these been ignored without verifying the same from the concerned buyers, if the ld. AO was having any doubt he could have made in depended inquiry to rebut the contention of the assessee, but he failed to do so rather made wrongt allegation on the assessee, which is not permissible in law.

2.6 The ld. CIT(A) has stated that Payment of cash for purchase of flats is not an unusual practice but was very much of a usual practice. The transaction of cash takes place in secret and direct evidence about such transaction would be rarely available.

:- In the this regard it is submitted that again the observation of the ld. CIT(A) is based on assumption , presumption, conjecture and surmises, when the assessee has explained the same by filling the reply and details, after receiving the reply and details the ld. AO has not rebutted the same and not confronted the allegation or not brought on record and materials evidence in his support.

2.7 The ld. CIT(A) at page 81-82 of his order discussed about the books of accounts and was of the view that the entries in seized documents are also the part of the books of account. In this regard it is submitted that when the assessee has filed the return with audited accounts on the basis of regular books of account and as per the ld. CIT(A) these are defective and not correct, then why the books of account have not been rejected by the lower authorities.

2.8 Further the allegations/observation of the ld. CIT(A) that the assessee has not provided any explanation regarding the seized documents/alleged cash transactions is absolutely incorrect on perusal of the reply of the assesseee vide (PB50-102) and WS vide (PB283-338).

2.9 The ld. CIT(A) has stated that the assessee has not discharged the onus casted upon it. Without discharging the onus casted upon by it the assessee cannot be allowed to argue that no cross examination was provided by the AO from the buyers. The AO has not relied upon the statement of buyers. The AO has relied upon the documents found from the possession of the assessee.

In this regard it is submitted that when in the search documents and alleged transaction were found and on being the explanation of the same, the assessee filed the reply, explanation and details by explaining all the things and matter and the reasons of entries,

meaning thereof and other details and discharged its onus. Thereafter if the ld. AO was having any doubt regarding the above then it was the duty of the ld. AO to bring other documentary evidence or examination of the person and in that situation in the present case either the ld. AO accept the contention of the assessee or called the person here buyer to rebut the contentions of the assessee, if there were any adverse in the contentions of the assessee and buyer then the ld. AO was required to provide the cross examination, which have not been done by the lower authorities.

2.10 The ld. CIT(A) has not considered the judgments relied upon by the assessee in their true perspective and sense and rather tried to distingue in wrong interpretation which is not applicable.

Hence in view of the facts, submissions and legal position the additions so made by the ld. AO and confirmed by the ld. CIT(A) may kindly be deleted in full."

4. On the other hand the ld. DR also filed the Written Submissions , the extract of the same are as under:

"Dated : 24.02.2025

1. The assessee also claimed before the Ld. CIT Appeal that the project was renamed after the cancellation of agreement with Sh. Bharat Manwani (para B.6 on page 44 of the order of ld. CIT Appeal for A.Y. 2013-14). There is no mention of search and seizure annexure number by the appellant in this regard and also there is no mention of any reply given during the search and seizure action in this regard. Thus the referred agreement and its cancellation agreement were not found during search and seizure action. The Assessing Officer has clarified that the cancellation agreement was not even produced during the assessment proceedings. These also do not find mention in the paper book.

   In this regard the contentions of the appellant of entering into agreement with Sh. Bharat Manwani and cancellation and the entire story of change of project design and sale process after such cancellation are mere after thought and are incorrect and it is humbly prayed that the same are rejected. At the maximum, change of name from 'Sahil Enclave' to 'Sanchi Enclave' was the mere change of name by the appellant itself as per its own decision and has no connection with Sh. Bharat Manwani.
2. The presumption under section 132(4A) and 292C is applicable to the print outs of seized material ledger accounts from accounting software showing cash transaction as extracted in the assessment orders (page 23 to 27 of assessment order for the AY 2013-14 and

respective pages of other AYs). As per the statutory presumption these as well as content therein are to be treated as correct and binding on the assessee. The accounting entries of receiving cash are recorded in these ledger accounts however such cash entries are not recorded in the books of accounts disclosed by the assessee appellant. This shows that the assessee was maintaining appellant set of books of accounts. The clear copies of the same have been received today itself from the Assessing Officer and will be submitted before the Hon'ble Tribunal.

3. Regarding the objection of the appellant against the validity of the search and the satisfaction note, in addition to the findings in the order of the Ld. CIT(A), it is submitted that the reasons recorded by the income tax authority in this regard shall not be disclosed to any person or any authority or the Appellate Tribunal as is specifically mentioned in the Explanation to 132(1), Explanation to 132(1A), Explanation to 132A(1) as inserted by the Finance Act 2017 with retrospective effect from 01.04.1962.
4. Regarding the objection of the appellant against the common warrant of authorisation, in addition to the finding in the order of the Ld. CIT(A), it is submitted that the same is expressly covered by the section 292CC of the Act as inserted by the Finance Act 2012 with retrospective effect from 01.04.1976.
5. Judgments of Honble Supreme Court in Pr. CIT v/s AbhisharBuildwell(P) (Ltd.)
6. Regarding the contention of the appellant that the books of accounts have not been rejected by the assessing officer in the assessment order, in addition to the finding of the order of the Ld. CIT Appeal, it is submitted that undisputedly it cannot be said that the book results shown by the appellant have been accepted by the assessing officer in the assessment order. It is clearly seen that the turnover shown in the books of **accounts is** found to be incorrect and has not been accepted and the turnover has been worked out as per the basic of the seized material. Even if it is not formally mentioned that the books of accounts have been rejected however it was also not been mentioned **anywhere** that the books of accounts have been accepted by the assessing officer. Going by the intent and finding of the assessment order it is clear that the financial results as per the books of accounts have not been accepted. Further, the method of accounting has not been changed and also it is not a case of estimated gross profit percentage ratio addition.
7. Further regarding the contention of the appellant that the section of addition has not been mentioned, it is submitted that the addition has been made in the assessment order on the basis of seized material and the amount of turnover disclosed has been reworked the on the basis of seized material and normal rate of tax has been applied, and there is no doubt in this regard that the addition has been made as the normal business income. The judgements cited by the appellant are in the context where the addition was not clear and was ambiguous.

8. On the above two issues that the books of accounts have not been rejected and the section has not been mentioned in the assessment order it is submitted that no prejudice has been caused to the appellant and there is no violation of the principles of natural justice.

In the facts of the case, it can certainly be said that it is not a case of any real prejudice or a case of the breach of principles of natural justice, but a borrowed plea of natural justice. A demonstrable prejudice, was to be set out by the assessee, which would go to the root of the adjudication. If there is nothing on prejudice being pointed out to the Court except for bald plea of defect in the notice, such plea as made by the assessee cannot be accepted.

8.1 Without prejudice, on the above two issues that the books of accounts have not been rejected and the section of addition has not been mentioned in the assessment order it is also submitted that in case the Hon'ble Bench is pleased to allow relief to the appellant in any of these two contentions of appellant, it is humbly prayed that opportunity for making fresh assessment may be provided to the assessing officer.

In view of the ratio of the above judgements, whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. (Canara Bank and Others (supra)). Further, an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeals and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statue. (Kapur chandShrimal(supra)). It was upheld in Vishwanath Prasad Bhagwati Prasad v. CIT[1993]202 ITR 469 (All.), Tribunal in restoring the assessment to the ITO with directions to consider the matter afresh from the stage where the irregularity intervened, and was relied upon in Bhagwat Prasad (supra).

Dated :25.03.2025

In continuation of the earlier written submissions dated 24.02.2025 it is submitted that the rejection of the books of accounts is not mandatory as it is seen from the number of judgments regarding the bogus purchase issue wherein the additions have been upheld in principle even when the books of accounts have not been rejected. In this regard the following judgment is also hereby referred to wherein the addition has been upheld even where the books of accounts were not rejected.

Case referred Shree Krishan Kripa Feeds v/s CIT, Karnal 101 Taxman.com 132 (Puj. & Har.) Dated :02.04.2025

(a) Regarding the brochure of the claimed abandoned project "Sahil Enclave" as submitted by the assessee in the paper book (Page 129-148 for AY 2013-14) are mere after though as these are bound to have been prepared after the search and seizure action as there is no reference to any specific seizure annexure by the assessee in this regard and also no specific submission before the assessing officer in this regard has been highlighted in these pages. Hence the same may kindly be rejected.

(b) Regarding the argument of the assessee of high gross profit rate as per the addition made in the assessment order, it is highlighted that even as per the Annexure 'A' the cost is at the rate of Rs. 1092.13 psf and the sale is at the rate of Rs. 2151 psf as per the Annexure 'B' and seized material extracted on Page 5 of the Assessment Order for AY 2013-14. These seized materials itself give the gross profit ratio of 49.23%.

Also the gross profit ratio is shown by the assessee appellant is highly abnormally different than the cost and revenue prices as per the seized material, and thus the same (low profit shown by the assessee) may kindly be rejected.

(c) On page 48 and 49 of the order of the CIT Appeal for the AY 2013-14 (other respective pages of the respective appeal orders for the other years), the submission of the assessee has been extracted. As per para (c) which is the last para on page 48, it has been admitted by the assessee that as per the POC Method there should have been a list of 29 flats whereas the list at Annexure C is of 27 flats. In this regard as per the submission of the assessee as extracted on page 49 of the appeal order, the assessee submitted that "In order to remove the confusion about 27 flats or 29 flats we have to submit that the statement containing 27 flats was wrong statement prior to finalisation of accounts and correct statement was of 29 flats." Thus going by these admissions of the assessee even the number of flats in Annexure C is not matching with the number for which the assessee would have prepared the POC working. The contention of the appellant assessee of "wrong statement" is a mere afterthought and self-serving statement as monitoring of the construction stage is one of the crucial aspect of the construction of flats and such kind of blatant wrong in the statement is highly abnormal and beyond human probabilities. Further there is no such statement highlighted by the appellant assessee that such statement was made during the course of search and seizure action. The findings of the assessment order and of the order of the CIT Appeal that the details at the Annexure C are not pertaining to the POC working is further fortified. It is humbly prayed that this contention of the assessee that Annexure C pertains to the POC Method working may kindly be rejected.

(d) The (i) Annexure B (seized material) sowing sale price @ Rs. 2151 per square feet, (ii) seized material extracted on Page 5 of the Assessment Order for AY 2013-14 showing sale price @ Rs. 1251 p.s.f. (and other page numbers of the respective assessment order), (iii) Annexure C which is the seized material regarding the unbilled amount, (iv) Annexure A 06, which is the set of the seized ledger accounts which shows the date-wise

and party was receipt of cash (which are not shown in the disclosed books of accounts) – all these seized material along with other evidences as discussed in the orders of the AO and CIT Appeal, point out towards the same direction of suppression of selling price in the disclosed books by the assessee and taking of unaccounted cash on money by the assessee on the sale of flats.

(e) The assessee has made several self-serving statements regarding the story of Sh. Manwani and cancellation of flats whereas the same is not supported with the seized material and it is a mere afterthought and the appellant has neither produced (i) representatives of Sh. Manwani, (ii) buyers of the flats, etc. for examination by the authorities during the search and seizure action and not during the post search enquiries and not during the assessment proceedings. The appellant has also not placed on record any RERA filings in support of its contention. "

5. We have heard the rival submissions, perused the material on record and gone through the orders of the authorities below.

5.1 **In first and second ground of appeal** the appellant has challenged the order passed u/s 153A for want of jurisdiction and specifically on account of non issuance of timely notice u/s 143(2) of the Income tax Act, 1961 and has also challenged the validity of action undertaken u/s 132 on the assessee . In this regard the ld. AR of the assessee has stated that notice u/s 143(2) was issued on 11.07.2017 whereas the ITR in response to section 153A was filed on 18.01.2016 and hence was beyond statutory time limit upto 30.09.2016 and therefore has requested for quashing the assessment order. In this regard we refer to the judgement of the ld. CIT (A) on this issue which is appearing at para 4.3 of his order. He has stated that issue of notice u/s 143(2) is not mandatory for

proceedings u/s 153A/153C of the Income tax Act, 1961. He has relied on various case laws for his decision such as Tarsem Singla v/s DCIT, Ludhiana (81 taxmann.com 347 (P & H)), ACIT v/s Sunshine Infraestate P Ltd. (139 taxmann.com 60 (Allahabad ITAT)), B. Kubendran v/s CIT, CC 2(1), Chennai (434 ITR 161). We have gone through the judgements so quoted by ld. CIT (A) and find ourselves in agreement with his decision that there is no requirement of issuing notice u/s 14392) of the Income Tax Act, 1961 while framing the assessment u/s 153A/153C of the Income Tax Act, 1961 and hence we reject this contention of the ld. AR. On another issue of challenge to search proceedings wherein he has challenged that no proper satisfaction was recorded and there was no material with the authority recording satisfaction and based thereon he has challenged the action u/s 132 of the Income tax Act, 1961. In this regard we have verified that as per explanation to section 132(1) inserted vide Finance Act, 2017 w.r.e.f. 01-04-2009 the reasons to believe as recorded by the income tax authority under section 132(1) can not be disclosed to any authority or the Appellate Tribunal. Therefore due to this restriction we are unable to call for the records of investigation wing and reasons recorded for action u/s 132 and hence ground nos. 1 & 2 in all the appeals are dismissed.

6. Now we deal with Ground no. 3 and revised Ground no. 3 which reads as under:-

> *Ground No.3: Rs.44,70,826/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.44,70,826/- made by the ld. AO on account of alleged underreporting sales on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.
>
> *"Revised Ground No.3: Rs.44,70,826/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.44,70,826/- made by the ld. AO on account of alleged underreporting sales, on money received on sales, on estimate basis without invoking the provision of sec.145(3) and without rejecting the books of accounts, without cross examination or inquiry from purchasers or Bharat Manwani,* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.*"*

We would also like to deal with the Ground No. 4 for A.Y. 2015-16 and 2016-17 which is also related to Ground No. 3 and revised Ground no. 4 for A.Y. 2013-14 to 2016-17. The ground reads as under :-

"Ground No.4: *Rs.67,50,000/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.67,50,000/- made by the ld. AO on account of alleged extra business receipts on account of charges as treatingundisclosed business income on estimate basis without invoking the provision of sec. 145(3) and without rejecting thebooks of accounts on assumption and presumption without any material evidence,*also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

"Revised Ground No.4: *Rs.67,50,000/-:* The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the *addition of Rs.67,50,000/- made by the ld. AO on account of alleged extra business receipts on account of charges as treatingundisclosed business income on estimate basis without invoking the provision of sec. 145(3) and without rejecting thebooks of accounts on assumption and presumption without any material evidence,without cross examination or inquiry from purchasers* also erred in not considering the material and details in their true perspective and sense despite available on record. Also erred in making the addition without invoking any provision of the Act/law. Hence the addition so made by the ld. AO and confirmed by the d. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.*"*

6.1 In this regard, the brief facts of the case are that the assessee is a Private Limited Company engaged in the business of real estate i.e. property developers. A search and seizure operation was carried out at the residential and business premises of the assessee group on 26/08/2015 to 28/08/2015 u/s 132 of the Income Tax Act, 1961. During search, as per record some documents were found and seized. The assessee filed its original return of income u/s 139 on 25.09.2013 declaring total income of Rs.7,70,040/-. Consequent upon search, Notice u/s 153A

was issued to the assessee on 13.01.2016, in response thereto assessee submitted its return of income u/s 153A ONLINE on 18.01.2016 declaring income at Rs.7,47,800/-. For making the assessment, theAssessing Officer issued notice u/s 143(2) and 142(1) on 11.07.2017 asking to the assesses to file the details and explanations on the ITR and seized documents, which was replied.

In Assessment, AO has noted that during the course of search proceeding u/s 132 on 26.08.2015 a hard disc was seized (Annexure-AS-5) from the residence of Shanti Lal Maroo group Udaipur. A working copy of the same was prepared and seized alongwith the original hard disc and the hard disc contained the incriminating material about the assessee company M/s Ashiana Buildprop Pvt. Ltd. and the working copy of hard disc has been examined and an excel sheet named POC method/total estimated cost has been found at **new folder/newfolder/work/other desktop &excel last** where average construction cost per sq. ft on saleable area has been shown to be calculated at Rs.1092.13 vide Annexure-A as under:-

Ashiyana Buildprop Estimated Cost		
No.	**Particulars**	**Rate/Sq. Ft.**
1	Electrical Services	85
2	Fire Fighting	15
3	Lift	25

4	Structures	110
5	Finishing	185
6	Plumbing, Sanitary & Drainage	60
7	Labour Contract	257
8	Steel & Cement	280
9	External Development	30
	Total Const. Cost	1047

Total Construction Area	125000
Construction Cost/Sq Ft	1047
Total Construction Cost	130875000
Total Saleable Area	119835
Avg. Construction Cost/Sq ft on Saleable Area	1092.13

The AO further stated that apart from above another excel sheet named *"as Book1 kajari/DLC at E Drive backup dt. 25.04.2015/ backup/ Desktop/ extra "*which contains accounting details of all the 63 flats of "Sanchi Enclave of M/s Ashiana Build Prop Pvt. Ltd., the table of which is reproduced at pages 3-5 of the assessment order as under :-

(Amount in Rs.)

S. No.	Name	Flat No.	Flour	Area	% of DLC	DLC Rate	DLC Rate	Total	Agree ment	Estimated	Pro fit Per	Total Profit
					ie Rs. 970/-	of Land	of Const.	DLC	Rate	Revenue	Sq. Ft.	(I-100)*E
1	Alka Mailkani	G-1	Ground	2060	90%	873	600	1473	1500	3,090.000	400	824.000
2	For Sale	G-2	Ground	1958	90%	873	600	1473	1473	2,884.134	373	730.334
3	Secure Meters	G-3	Ground	1790	90%	873	600	1473	1473	2,636.670	373	667.670
4	Secure Meters	G-4	Ground	2040	90%	873	600	1473	1473	3,004.920	373	760.920

5	Secure Meters	G-5	Ground	1485	90%	873	600	1473	1473	2,187.405	373	553.905
6	For Sale	G-6	Ground	2022	90%	873	600	1473	1473	2,978.406	373	754.206
7	For Sale	G-7	Ground	1960	90%	873	600	1473	1473	2,887.080	373	731.080
8	Bharat Manwani	101	First	2060	80%	776	600	1376	1500	3,090.000	400	824.000
9	Manu Smriti	102	First	1958	80%	776	600	1376	1376	2,694.208	276	540.408
10	For Sale	103	First	1790	80%	776	600	1376	1376	2,463.040	276	494.000
11	Vikas Tuklia	104	First	2040	80%	776	600	1376	1376	2,807.040	276	563.040
12	Salini Pandya	105	First	1485	80%	776	600	1376	1751	2,600.235	651	966.735
13	For Sale	106	First	2022	80%	776	600	1376	1376	2,782.272	276	558.072
14	Jeevan Lal Nagda	107	First	1960	80%	776	600	1376	1376	2,696.960	276	540.960
15	Deepak Sir	201	Second	2060	70%	679	600	1279	1279	2,634.740	179	368.740
16	K.P. Sarupriya	202	Second	1958	70%	679	600	1279	1279	2,504.282	179	350.482
17	Romil Ji Jain	203	Second	1790	70%	679	600	1279	1279	2,289.410	179	320.410
18	Hasan Ji Paliwal	204	Second	2040	70%	679	600	1279	1279	2,609.160	179	365.160
19	Praveen Ji Singhi	205	Second	1485	70%	679	600	1279	1279	1,899.315	179	265.815
20	Gorana Ji Construction	206	Second	2022	70%	679	600	1279	1279	2,586.138	179	361.938
21	For Sale	207	Second	1960	60%	679	600	1279	1279	2,506.840	179	350.840
22	Nagarmal Ji Jain	301	Third	2060	60%	582	600	1182	1300	2,678.000	200	412.000
23	Nagarmal Ji Jain	302	Third	1958	60%	582	600	1182	1182	2,314.356	82	160.556
24	Anil Sukhla	303	Third	1790	60%	582	600	1182	1300	2,327.000	200	358.000
25	Anil Sukhla	304	Third	2040	60%	582	600	1182	1300	2,652.000	200	408.000
26	For Sale	305	Third	1485	60%	582	600	1182	1300	1,930.500	200	297.000
27	Malay Indravat (Rajeev Ji)	306	Third	2022	60%	582	600	1182	1236	2,500.000	136	275.800
28	For Sale	307	Third	1960	60%	582	600	1182	1300	2,548.000	200	392.000
29	Anubhav Ji Sinha	401	Fourth	2060	60%	582	600	1182	1300	2,678.000	200	412.000
30	Shabana Khan	402	Fourth	1958	60%	582	600	1182	1300	2,545.400	200	391.600
31	Dr. S.K. Luhudia	403	Fourth	1790	60%	582	600	1182	1300	2,327.000	200	358.000
32	Anupam Luhadia	404	Fourth	2040	60%	582	600	1182	1300	2,652.000	200	408.000
33	Rajshree Shakatwat	405	Fourth	1485	60%	582	600	1182	1300	1,930.500	200	297.000
34	For Sale	406	Fourth	2022	60%	582	600	1182	1300	2,628.600	200	404.400
35	For Sale	407	Fourth	1960	60%	582	600	1182	1300	2,548.000	200	392.000

36	Yasmin Mustafa Mandli	501	Fifth	2060	60%	582	600	1182	1300	2,678.000	200	412.000
37	Dr. Kapil Vyas	502	Fifth	1958	60%	582	600	1182	1500	2,937.000	400	783.200
38	Dashora Ji	503	Fifth	1790	60%	582	600	1182	1300	2,327.000	200	358.000
39	Vikram Chofla	504	Fifth	2040	60%	582	600	1182	1500	3,060.000	400	816.000
40	Nitesh Yadav	505	Fifth	1485	60%	582	600	1182	1300	1,930.500	200	297.000
41	Manisha Porwal (Rajeev Ji)	506	Fifth	2022	60%	582	600	1182	1236	2,500.000	136	275.800
42	Not For Sale	507	Fifth	1960	60%	582	600	1182	1300	2,548.000	200	392.000
43	Dhanraj Ji Bafna	601	Sixth	2060	60%	582	600	1182	1300	2,678.000	200	412.000
44	Abhishek Ji	602	Sixth	1958	60%	582	600	1182	1500	2,937.000	200	783.200
45	Sushila Jain	603	Sixth	1790	60%	582	600	1182	1300	2,327.000	200	358.000
46	Rahul Maheshwari	604	Sixth	2040	60%	582	600	1182	1500	3,060.000	400	816.000
47	For Sale	605	Sixth	1485	60%	582	600	1182	1300	1,930.500	200	297.000
48	Sunita Jain	606	Sixth	2022	60%	582	600	1182	1300	2,628.600	200	404.400
49	Not For Sale	607	Sixth	1960	60%	582	600	1182	1300	2,548.000	200	392.000
50	Kavita Ji Singhi	701	Seventh	2060	60%	582	600	1182	1300	2,678.000	200	512.000
51	Kamal Sainani	702	Seventh	1958	60%	582	600	1182	1500	2,937.000	400	783.200
52	Rajendra Jain	703	Seventh	1790	60%	582	600	1182	1300	2,327.000	200	358.000
53	Natin Maheshwari	704	Seventh	2040	60%	582	600	1182	1500	3,060.000	400	816.000
54	Not For Sale	705	Seventh	1485	60%	582	600	1182	1300	1,930.500	200	297.000
55	Ashvi Indravat (Rajeev Ji)	706	Seventh	2022	60%	582	600	1182	1236	2,500.000	136	275.800
56	Not For Sale	707	Seventh	1960	60%	582	600	1182	1300	2,548.000	200	392.000
57	Navnit Constnication	801	Eighth	2060	60%	582	600	1182	1300	2,678.000	200	412.000
58	Not For Sale	802	Eighth	1958	60%	582	600	1182	1300	2,545.400	200	391.600
59	Not For Sale	803	Eighth	1790	60%	582	600	1182	1300	2,327.000	200	358.000
60	Not For Sale	804	Eighth	2040	60%	582	600	1182	1300	2,652.000	200	408.000
61	Not For Sale	805	Eighth	1485	60%	582	600	1182	1300	1,930.500	200	297.000

62	Himang Ji (Mumbai)	806	Eighth	2324	60%	582	600	1182	1300	3,021.200	200	464.000
63	Navnit Cibstrucation	807	Eighth	1960	60%	582	600	1182	1300	2,548.000	200	392.000
	Total			120137						16,18,63.811		2,97,13,111

On the basis of above table, AO was of the view that the agreement of these flats have been shown to be made at almost DLC rate and the profit calculated on the sale of above flats seems to have been shown in the regular books of accounts according to sale agreement rates only and assessee booked sales of Rs.16,81,63,811/-(Approximate) in its regular books of accounts.

The AO stated that another excel sheet retrieved from the hard disc named "**copy of price list Sahil Enclave at E drive Backup dt.25.04.2015/backup c/My document/downloads"**folder contains details of construction linked payment schedule, offer price and rate per sq ft. However project name mentioned Sahil Enclave". The AO assumed that the table appears to be contained the details of "Sanchi Enclave of M/s Ashiana Buildprop Pvt. Ltd vide table at page 4 of the assessment order as under :

ASHIANA BUILDPROP PRIVATE LIMITED (SANCHI GROUP)

SAHIL ENCLAVE - CONSTRUCTION LINKED PAYMENT SCHEDULE

Product Offered:

Type	Saleable Area (Sq ft)	Saleable Area (Sq ft)	Price (INR)*	+ Additional Charge	Total
2 BHK (Standard)	1485	2151/-	31,94,235	2,50,000	34,44,235/-
3 BHK (Standard)	1790	2151/-	38,50,290	2,50,000	41,00,290/-
3 BHK (Standard)	1958	2151/-	42,11,658	2,50,000	44,61,658/-
3 BHK (Standard)	2022	2151/-	43,49,322	2,50,000	45,99,322/-
3 BHK (Standard)	2040	2151/-	43,88,040	2,50,000	46,38,040/-
3 BHK (Standard)	2060	2151/-	44,31,060	2,50,000	46,81,060/-

On the basis of above, the AO was of the view that the assessee has offered to sell flats in "Sanchi Enclave Project " at the rate of 2151/- per Sq. ft. plus additional charges of Rs. 2,50,000/- per flat for development charges, club membership, and parking charges . The AO has calculated the total salable area at 119835 Sq. ft. and calculated the sales of entire project (63 flat) at Rs.27,35,15,085/- (Rs. 2151 X 119835 + Rs.250000 X 63) as against approximate sales at Rs.16,81,63,811/- shown by assessee. On this basis the AO was of the view that there is under reporting of receipts/sales by Rs.10,53,51,274/- (for A.Y.203-14 to A.Y. 2016-17).

The AO further observed that another excel sheet named POC method/flat details/ found at **new folder/new folder/work/other desktop & excel last** contains the details of agreement amount, amount received in FY 2012-13, FY 2013-14 and unbilled sales, in respect of 27 flats of projects "Sanchi Enclave". The AO was of the view that the table contains details of 27 flats of "Sanchi Enclave Project " of the assessee company, wherein in fact 63 flats were built in Udaipur under the brand name "Snachi Enclave". This table also contains the details of flat No., floor, area of flat and rate per sq. ft. of 27 Flats of "Sanchi Enclave". The ld. AO has stated that total agreement amount of these 27 flats is Rs.7,20,38735/- and unbilled sales amount is Rs.3,94,06,235/- which is additional sale consideration.

On the basis of Annexure-C, AO has worked out unbilled sales amount at Rs.44,70,826/- for A.Y. 2013-14 and from A.Y. 2013-14 to AY 2016-17 at Rs.9,15,77,230/- vide table at page 6 of the assessment order.

A.Y	*Sales/Receipt recorded in the regular books of accounts as per Trading and P & L Account*	*Unbilled sale' amount/cash receipts which is not recorded in the books of accounts*	*Actual sale consideration of the project of project*
2013-14	*8194403*	*4470826*	*12665229*
2014-15	*108462664*	*59176693*	*167639357*
2015-16	*30132525*	*16440157*	*46572682*
2016-17	*21058758*	*11489554*	*32548312*
Total	***16,78,48,350/-***	***9,15,77,230/-***	***25,94,25,580/-***

On this Annexure-C and table, the AO asked the explanation of the assessee as to why the income may assessee company may not be determined on the basis of the actual sales as calculated in the above table for the respective years. In response thereto the assessee has filed the detailed reply dated 01.12.2017 available at PB 71 to 102 with details also reproduced at page 7 to 19 of the assessment order through which assessee explained the things and confusion in the mind of the AO. But AO did not find satisfy with the reply of the assessee. He was of the view that the Unbilled sales is unaccounted sales of the assessee which is supported by seized material as against the contention that it has recognized the revenue by

percentage. The AO stated that the assessee has projected to sell at an average rate of 2151/- per Sq. ft. on super built up area and other charges of Rs.2,50,000/-per flat as parking, club membership and development charges. The cost of per Sq. Ft. has also been estimated at Rs. 1092.13. He stated that the assessee has booked these flats from 1200/- to 1500/- per Sq. ft. and assessee has shown the sale price approx 64.70% of actual sale consideration in its books of accounts and profit calculated on this only and there is unbilled sale is the approx 35.30% of the actual /projected sales which is not recorded in the books of account and not offered for taxation.He also stated that unbilled sales/on money is received in cash and out of books of account. In this support he referred some ledger A/c in the assessment order vide pages 22 to 27and made summary at page 28 of the assessment order. He also stated that during the course of assessment the registries of the flats sold during the year were obtained and payment details have been verified from the regular books of accounts and found that none of the cash transactions as reported in the seized pages match with receipts shown in the books of accounts. AO also drawn inference that as per common practice in the real estate businesses, on money in lieu of cash has been received prior to the date of registry and assessee also adopted same modus operandi. AO has also stated that seized material has been confronted to the director Sh. Himanshu Jain and reproduced his part

statements at page 31 to 34 of the assessment order but as per record he was not director of the assessee company.

On the basis of above, the AO has concluded that actual sale consideration of a flat consists of total amount of agreement amount plus "Unbilled sale" which is assumed by the AO to be received in cash but not recorded in the books of accounts by the assessee and the Assessee Company recorded in the regular books of accounts only agreement amount which is alleged to be 64.70% and the unbilled amount which is received in cash from the customers and are not recorded in the books of accounts and thus presume that sale amount is suppressed to that extent which is 35.30% and assessee has shown only 64.70% only. Based on these observation AO has concluded that for the year under consideration sales/receipts in the regular books of accounts are 81,94,403/- and unbilled sale amount not recorded in the regular books of accounts is 44,70,826/- and accordingly the actual sale consideration of the projects are of Rs. 1,26,65,229/-(8194403+4470826) instead of Rs.81,94,403/- declared by the assessee. Accordingly he has made addition of Rs.44,70,826/- in the A.Y. 2013-14. Same type of additions have also been made in the A.Y. 2014-15 to 2016-17 asper the above chart.

6.2. Further in the A.Y. 2015-16 and 2016-17, the AO has also observed that the company has been found to have collected Rs.2,50,000/- per flat for additional charged which includes parking charges, club membership charges, development

charges etc. but the agreement has been made only at the DLC rate of the flat. Thus he presumed that the additional charges of Rs.2.50 lacs per flat have also been received in cash and alleged that such amount has not been recorded in the regular books of accounts. On being asked assessee has furnished reply explaining the position in this regards, but the he rejected the same by stating that "the submission furnished has been considered but found not acceptable" and stated that - it is common practice in real estate business, the purchaser has to bear additional charges which includes parking charges, club membership charges, developments charges, maintenance charge etc. The AO further stated that as per the details furnished, it is noticed that the assessee has booked 27 flat for financial year 2014-15 and 23 flats for financial year 2015-16. Accordingly he estimated the additional charges of these flats and worked out to Rs.67,50,000/- and Rs.57,50,000/- for financial year 2014-15 and 2015-16 i.e A.Y. 2015-16 and 2016-17 respectively by stating that the same is not considered and declared by the assessee company in the return of income and are brought to tax in the hands of the assessee as its undisclosed income for the relevant assessment years.

6. 3. Aggrieved with the order of the AO, assessee filed appeal before the ld. CIT(A). During the course of appellate proceedings assessee has filed the detailed written submission which is available at Paper Book (A.Y. 2013-14) pages 268 to 320 and also filed the additional common written submission available at Paper

Book Page 321-338 for respective years. Assessee also filed the Paper book before ld. CIT(A) wherein he challenged allegations of the AO and submitted its submissions and legal position. As in A.Y. 2015-16 and 2016-17 there is one more Grounds of appeal regarding the Additional Charges and the submission on the same was also filed in the respective Assessment Years.

6.4. The ld. CIT(A) he has confirmed the order of the Assessing Officer by observing as under :-

> "(i) The arguments are theoretical explanation without explaining the facts of the case. The AO has clearly noted that none of the cash transactions as reported in the seized pages match with receipts shown in the books of account of the assessee company. No plausible explanation isfurnished by the assessee in this regard. Before the AO the AR of the assessee refused to accept the ledger copy of the parties whom flats were sold and cash receipts have been shown is belong to the assessee company. Now in the appellate proceedings, the assessee is accepting that the documents are belonging to the company but the conclusions drawn by the AO especially with regard to receipt of 'on- money' are not correct. The explanation that unbilled sale is sale not executed through registered sale deed or through bill but has to be recognized and declared forincome tax purposes under the specific provisions related to revenue recognition as prescribed under the Act for Real Estate business is not matching with the actual figures of the books of accounts of the assessee
>
> (ii) The arguments that the figures in the sheet were projected figures are not supported by any independent verifiable evidence. In the absence of any verifiable evidence, the figures mentioned in the seized documents are to be treated as actual figures. The appellant has not furnished any evidence before the AO in the form of any independent witness who can support the arguments of the appellant. It is admitted fact that statement of Mr. Bharat Manwani could not be provided as he was no more. However, the purchasers could have been produced before the AO to provethe facts as per arguments. In the absence of any independent evidence, the arguments of the appellant that these figures are projected are not found to be acceptable.

The AO noted that on examination of the seized documents, it is quite clear that ledger copy of all the parties whose name appearing in these papers are the actual owner of the flats. Hence, the argument that the bookings were cancelled is not found to be acceptable. The AO also recorded that even the flat numbers are also mentioned therein. In these ledger copies the date of receipt of cash is also mentioned. Thus the facts are very much apparent that these parties have paid cashto the assessee company which is not recorded in the regular books of the assessee company. Therefore, the assessee cannot refuse that no payment has been received from these parties. The appellant has not controverted these findings of the appellant. The date of receipt of cash from the flat owners is clearly noted on the seized papers. The appellant has given theoretical explanation but the facts of the receipt of cash as On Money is not proved to be incorrect.

(iii) In its reply, the appellant has accepted that the amount of unbilled sale mentioned in this statement was not correct for 2013-14. Financial Year 2013-14 was already over on the date of search i.e. 26.08.2015. Hence, the explanation that figures as appearing in the seized papers were under preparation is not found to be convincing. The noting made by the AO that in the ledger copies the date of receipts of cash is also mentioned is not disproved by the appellant. These parties have paid cash to the assessee company which is not recorded in the regular books of the assessee company. The appellant has not controverted the findings of the AO.

(iv) The argument of the appellant is that unbilled sale is the difference because of following percentage completion method as per accounting standard. If this is true, then the appellant should have shown that the total amount of sale is Rs. 25,94,25,580/- over the years from the project and because of following the percentage completion method there are differences in the figures of sale booked in different years. However, it is evident that the appellant has not made any effort in this regard. In the absence of complete reconciliation, the claim of the appellant wasrightly rejected by the AO.
It is also observed that the AO has not disturbed the method of accounting followed by the assessee. The sales as declared by the assessee are increased in the ratio of cash received as per the detection made during the search proceedings. No fault is pointed out by the assessee in this regard.

(v) In the absence of any verifiable evidence, the figures mentioned in the seized documents are to be treated as actual figures. The appellant has not furnished any evidence before the AO in the form of any independent witness who can support the arguments of the appellant. It is admitted fact that statement of Mr. Bharat Manwani could not be provided as he was no more. However, the purchasers could have been produced before the AO to prove the facts as per arguments. No efforts have been made

by the assessee to prove his arguments. In the absence of any independent evidence, the argument of the appellant that these figures as projected were not actually adopted are not found to be acceptable.

It is argued that the rates of "Sanchi Enclave" project are duly supported with the sale agreement of relevant flats which cannot be discarded. However, it is also true that the cash transaction is not mentioned in the sale agreement. Evidence of cash transactions are found during the search. The appellant has not disproved these transactions. The evidences found during the search cannot be ignored because the amount of cash transaction is not reflected in the sale agreement.

(v) Payment of cash for purchase of flats is not an unusual practice but was very much of a usual practice. The transaction of cash takes place in secret and direct evidence about such transaction would be rarely available. In this case the search team could gather some direct evidence of cash transaction. An inference about cash transaction is to be drawn on the basis of the circumstances available on the record. On these papers transactions done through registered sale deed are not disputed by the appellant. On these documents evidences of cash transactions are also there which are to be considered as true.

(vi) The appellant is trying to disown the documents which are found from the premise of the Company. It is not disputed that regular books are also found from the computer. From the same computer details of transactions done in cash are found to be recorded. It is stated that the cash transactions does not matched with the system of recoding by the company. However, these documents are found from the premises of the Company, hence, the ownership of the documents cannot be denied. Further, with regard to transactions which are recorded in the books of accounts, the ownership is not denied. Only with regard to cash transactions, the assesseestatedthat these are not matching with the accounts. This is because; the cash transactions are not recorded in the regular books of accounts. In the absence of any contrary verifiable evidence furnished, the evidences cannot be discarded by mere averment that no such transactions of receipt of cash ever executed by the company.
The theoretical explanation that the broker keptcash amount for security purposes which they might have received till the final payment made by them through cheques to the builder is without any supporting evidence. No independent evidence or witnesses are produced in support of these arguments. Hence, the appellant has failed to discharge its onus to prove its arguments. The involvement of the company is evident from the fact that the evidences are collected from the premise where business of the company was being undertaken.

(vii) It is accepted by the assessee company that noting on such papers are computer generated ledger account of the persons who have purchased flats from the company but the transactions mentioned in this ledger accounts were not executed with the company. This is again avoiding tactics even when the assessee company has been caught with the evidences of cash transaction. There is cash transaction as recorded on these documents with the flat purchasers, which is proved from these documents. The assessee company has not furnished any valid evidence in support of the simple averment of denial in the reply. The evidentiary value of seized documents which prove cash transaction with flat buyers is undisputed fact. The appellant is just trying to avoid the liability which is not acceptable on the facts of the case.

(viii) In the search proceedings, the documents were found from the possession of the assessee which proves that cash was taken from the buyers of flat by the company. The assessee failed to disprove these documents. Hence, the onus was on the assessee to disprove these transactions. However, the assessee has not discharged the onus casted upon it. Without discharging the onus casted upon by it the assessee cannot be allowed to argue that no cross examination was provided by the AO from the buyers. The AO has not relied upon the statement of buyers. The AO has relied upon the documents found from the possession of the assessee. Hence, the onus was on the assessee to prove that the content of the documents is not correct.Without discharging the onus the onus do not shift to the AO. In these facts, the issue of cross examination of buyers is not relevant as the AO has not relied upon any evidence collected from the buyers. In these facts, the decision relied upon by the appellant is not found to be applicable in this case.

(ix) It is argued that Very High NP rate applied without invoking Sec. 145(3) or rejecting books of accounts as estimated the sale at Rs.1,26,65,229/- as against of Rs.81,94,403/- and made the trading addition of Rs.44,70,826/- in the year under consideration. The arguments are found to be without any merit as the AO has not made a trading addition. The AO has worked out the amount of cash received by the assessee from flat buyers. The AO has worked out the ratio of cash received based on seized documents. The assessee is accepting that these persons are flat buyers but cash was not received by the assessee. Facts recorded on the seized papers establish transaction of cash. Hence, the denial by the assessee is without any evidence and hence not acceptable. The ratio of cash is also established on the basis of seized documents. Hence, the argument that the NP rate is estimated is not found to be correct. This working is only made to show how much cash is received by the assessee company. The books of accounts are not required to be rejected when the profit is not estimated. The cash transactions were not recorded in the regular books of accounts and these transactions were outside the regular books of accounts. Hence, the AO was found to be justified in making the working based on the

seized documents. The arguments with regard to invoking of section 145 are not found to be relevant in the facts of this case. The AO has not disturbed the book results as the cash transactions are not part of regular books of accounts.

The ld CIT(A) has also tried to distinguish the decisions relied upon. Thus on the basis of above observations the ld. CIT(A) confirmed the additions.

6.5 Aggrieved by the order of the ld. CIT(A), the assessee has come in appeal before the Tribunal. During the course of hearing before us, the ld. A/R has relied upon the written submission filed before the ld. CIT(A) which is as under:-

" 1. Correct Facts and position: At the very outset we have to submit correct facts and position in the present case which have also been furnished before the ld. AO however the ld. AO did not consider the same in their true perspective and sense but ignored and proceeded his own guess work presumption and suspicion.

1.1In this respect, we have to submit that the position of seized material referred by the ld. AO in his query letter i.e. annexure "A", "B" & "C" have not been properly appreciated in their true perspective alongwith the other information and statements available in the same hard disc which are totally related to the referred annexure and the annexure are part and parcel of the final calculations in the process of finalization of accounts as well as return of income. Similarly the ld. AO has not appreciated position related to the issues involved from the seized material & records provided by the assessee during the assessment proceedings before concluding the observations related thereto. Further the ld. AO has not properly confronted the records to the assessee before issue of this notice, which is an admitted fact.

1.2As the complete records related to various issues raised by the ld. AO involved in the matter have not been appreciated, for that reason there is some confusion arose at the time of appraisal of the records at the end of the ld. AO with regards to the nature and purpose of calculation available in the referred statement of the Hard Disc by the ld. AO. Due to basic confusion of understanding the statement in their true perspective ultimately the department is arrived at wrong and arbitrary conclusions which are totally contrary to the real facts of the case. Such observations based on arbitrary calculation are uncalled for in the case of the assessee company if the complete records were considered in their

true perspective the position would be different or addition is not to be made. The main confusion in the mind of the ld. AO was the term used in the statement i.e. "Unbilled Sales". The term is being used after considering the term "Unbilled revenue" guided in the process of determination of income/revenue which is required to be recognized under the percentage of completion method (POC) applicable for finalization of accounts as well as recognition of revenue of Real Estate Business conducted by the assessee. In this respect, we are enclosing herewith {schedule -2 *–Guidance Note on Accounting for Real Estate Transactions (Revised 2012)}* for your ready reference. (PB….) Kindly refer *Clause(d) of sub-para 9.2. under the main head Disclosure para -9* duly highlighted. As the assessee company has adopted the POC method which is the only correct method for income tax purposes considering the various terms and conditions and facts of the case for such recognition of revenue. Hence the guide lines are binding on the company and properly complied with by the assessee company, which has also not been disputed by the ld. AO.

1.3 All most all observations of the ld. AO were based on the confusion of alleged unbilled sales or alleged underreporting sales/receipts referred at various statements of the company which is nothing but the unbilled revenue recognized for declaration of income though the flats were not sold and the project was under construction stage. It is an admitted fact that neither the construction was completed nor the flats have been sold at the time of preparation of the statements referred in the query letter of AO as Annexure A to C(PB).

1.4 Part Documents chosen and part ignored by the ld. AO:From the observation of the ld. AO, it is also clear that the seized documents referred by him as well also available in the same hard disc have not been properly considered in toto and the observations have been concluded just on pick and choose method applying on examination of part documents only which are incomplete in all respect for the purpose for which it was prepared and other documents which were final has been ignored. No correct inference can be drawn or any correct opinion can be framed on appreciation of such referred incomplete or part documents. It is also an admitted facts that the statements referred as Annexure A to C were never confronted after seizure of Hard disc either in the post search proceeding or in the current assessment proceedings before issue of query letter.The other relevant documents are already found place in the same hard disc and if the position is being appreciated alongwith such relevant statements the whole confusion arises in the mind of the ld. AO would be cleared all the issues in favour of the assessee without any doubt. However the ld.AO despite all these position calculated hisown estimated working for making arbitrary addition and it is the settled legal position that no addition can be made on the basis of estimation without any material and the material placed on record cannot be ignored. Thus the addition so made by the ld. AO on the basis of such an arbitrary calculation based on assumptions, presumptions, conjecture guess

work and surmises ignoring the true and correct fact of the case as well as the material evidences already available on records, liable to be deleted.

1.5 In order to clarify the position, we have explaining hereunder the correct position, nature of transactions and the preparation of above annexure A to C separately and treatment given in accounts as well as in the filing of return as under:

A. ANNEUXRE 'A':

A.1 From the face of the Annexure, it appears that it is related to the business of Ashiana Build Prop Pvt. Ltd. The annexure also reflects that it is related to calculation of estimated cost. No doubt the year is not appearing, but as per correct facts it is related to the financial year 2013-14.

A.2 In this respect we have to bring your kind notice that the return of income and declaration of income of the company in account is on the basis of Percentage of Completion Method considering the nature of business and the position of law with regards to recognition of income in real estate business. As per the method where advances have been taken for unfinished flat on the project which was under construction (Work-in-progress) the specific provisions related to application of percentage of completion method is applicable considering the position of law in this regards. As per law the percentage completion method is applied under following circumstances:

(a) Total project revenue can be estimated reliably.
(b) Project cost should be identifiable and measurable clearly;
(c)The duration of project is beyond 12 months and the project commencement date and project completion date should all in different accounting period.
(d) At least 25% of saleable project area is secured by contracts or agreements with buyers.
(e) At least 10% of the total revenue as per agreements of sale or any legally enforceable documents are realized at reporting date in respect of each of the contract.
(f) When the state of completion of the project reaches 25% or more (where construction of development cost is incurred 25% or more of the total cost apart from cost of land).

A.3 After proper appreciation of the facts and position of law the percentage completion method is applicable in the case of assessee for the financial year 2012-13 relevant to assessment year 2013-14 onwards. The return of income already submitted prior to the date of search on the basis of this method and such return has been accepted as such. The facts related to year wise position of receipt of advances against unfinished flats and the calculation of revenue to be recognized on the basis of percentage completion method has already been furnished to the ld. AO as well as is available alongwith the computation of total income of relevant year also.

A.4In order to comply with the above position of law with regards to declaration of income as per POC method considering Real Estate business the assessee company was required to prepare calculation charts. Originally chart were prepared by the staff of the

company which were later on verified by the auditor (CA) to represent the true and correct financial position for the period under consideration and the accounts have been finalized accordingly. After finalization of accounts computation of total income has been prepared and return of income has been submitted. This recognized method (POC) is being adopted for declaration of income or recognition of revenue as per "*Guidance Note on Accounting for Real Estate transactions (Revised -2012) issued by the Chartered Accountants of India"*duly considered by the Auditors also. The journal entries related to recognition of income (revenue) have been passed before finalization of accounts. The assessee company has recognized the revenue under the head "Unbilled sale". In order to pass such journal entries,which is required as per law, certain charts are being prepared for the purposes of calculation of income/revenue to be recognized on the basis of POC method. All the relevant calculations have been made and are required for such purpose and also found place in the same hard disc. The annexure "A' & "C" as referred by the ld. AO were part & parcel of such statements. Annexure A & C are required to be considered alongwith the other statements as mentioned herein above.

A.5 In this regards, we also like to draw your attention towards the example i.e. illustration on application of percentage completion method annexed with the above said guidance notes issued by the Institute of Chartered Accountants of India.

A.6 Based on the above submissions now with regards to Annexure "A" we have to place on records the submission on behalf of the assessee company that it is the requirement of law to calculate the estimated position of cost of construction and annexure "A" is nothing but part of requisite calculations for the period financial year 2013-14 related to assessment year 2014-15.

The position finally arrived at in this annexure has been duly utilized as such in the calculation of income or revenue recognition as per the POC method adopted by the assessee company for finalization of account as well as for declaration of income for the relevant period. Please note that, the information available in the Annexure "A" are duly matched and verifiable from the books of accounts, final accounts, return of income and other relevant records of the assessee which has not been rebutted by the ld.AO.

In this respect we have to further submit that all the relevant information related to finalization of accounts and computation of income on the basis of POC are available in the same seized hard disc from where AO has provided copy of Annexure "A". Considering each and every statement available in the hard disc as is referred in the beginning of this submission, it is crystal clear that there is nothing incriminating in the Annexure "A from which it can be inferred that the assessee company has escaped any income or suppressed sales or furnished wrong particulars. Hence the observation against Annexure "A" as incriminating documents made by the ld. AO was wrong or incorrect.

A.7 Based on the above facts and attending circumstances the estimated position of cost of the relevant financial year is being determined and revenue to be declared in account on recognized method of calculation prescribed under Percentage Completion Method. The amount of revenue which is calculated as per law for revenue recognition is declared in trading accounts under the head "Unbilled sale". The reason for accounting under the head *unbilled sale is that such sale is in fact not executed through registered sale deed or through bill but has to be recognized and declared for income tax purposes under the specific provisions related to revenue recognition as prescribed under the Act for Real Estate business*. The estimated cost has been revised at the end of every year based on factual position of cost. Accordingly the cost per sq ft fluctuates year to year at the time of calculation of income to be recognized according to percentage completion method.

A.8 Considering all relevant records and the submission made herein above it is clear that the Annexure "A" was prepared and found place in the Hard Disc is not an incriminating document as alleged by the ld. AO. In fact it is part and parcel of documents prepared for the purpose of declaration of income as per POC. The assessee company has utilized all the information available in this annexure in the computation of revenue to be recognized for the relevant period. Outcome of this annexure as well as each and everyinformation available in this annexure was duly considered at the time of finalization of accounts, preparation audit report and in computation of total income for the purpose of filing of income tax returns of the company for the assessment year 2014-15. The calculations and offer of income is fully verifiable from the above annexure. The assessee has asked to the ld. AO to verify it from the statement of the calculation of POC method for financial year 2013-14 (Assessment year 2014-15) already provided and placed on record before the ld. AO. The statement is once again furnished herewith Schedule–3 (PB) calculation of revenue recognition. The cost of construction appearing at Annexure-B. Rs.13,08,75,000/- already considered at the time of filing of return of income and such amount was based on the calculation made as per above annexure "A' only. Hence the annexure "A" was as part of documents instead of treating the same as incriminating documents by the ld. AO.

B. ANNEXURE 'B'

B.1 Annexure "B" is related to projected estimates of "Sahil Enclave" which was the original name of the project on the land of company which was originally decided to be marketed through Shri Bharat Manwani (Sahil group). Bharat Manwani was engaged in Real Estate Brokerage business. Sahil is name of son of Shri Bharat Manwani and accordingly he has insisted to launch the project in the name of "Sahil Enclave" for which the company agreed. As per arrangement with Shri Bharat Manwani the Sahil

group has to sale all flats in the capacity as a sole selling marketing agent for the whole project under the name and style of "Sahil Enclave"

B.2 As per arrangement certain projected calculations have been made and statements have been prepared. All such statements are projected statements containing projected sales amounts to be offered or installments to be received from time to time against the projected constructions as well as projected amenities proposed to be provided under the project. Such statements were projected statements only having no evidentiary value in the eye of law, with regards to the actual transactions executed by the Company.

B.3 Based on such projected offers and plans Shri Bharat Manwani has commenced the marketing of the project and has received token money from about 41 (forty one flats) persons against 41 flats. As per system of the company the management has decided to book the flats only after receipt of booking amount from the customers and not on receiving token money by the agents or by Shri Bharat Manwani. The Bharat Manwani has not collected booking amount from most of the above 41 person from whom he has accepted the token money. However, whatever amount received as token money or as booking advance through Shri Bharat Manwani were later on adjusted in accounts as from some of the customers booking advance also received and that receipts have been duly accounted for in the books of the company. Out of the above 41 persons who have approached through Shri Bharat Manwani, all most all have cancel the booking but for some persons who have agreed to purchase under new scheme/project with amended terms & conditions.

B.4 In fact, unfortunately on account of adverse financial stringencies Shri Bharat Manwani could not arrange the booking amount of first installment from the related buyers. Not only this the financial position of Shri Bharat Manwani becomes critical in his personal business activities and due to this reason in the market rumors were there that he becomes bankrupt and accordingly he is not fulfilling his promise regarding payments in the market. On verification about the rumors the competent authority of company also observed that Shri Bharat Manwani has accepted the booking of the project of the company by offering false commitments about the project to the buyers. After knowing the correct situation and terms and conditions of the project from the company, all most all buyers approached the company expressing their desire to cancel their offer for booking and requested for refund of token money/booking money if any paid by them. Ultimately the company has decided to cancel the offered booking through Bharat Manwani considering the fact that he has misrepresented the terms and conditions to the buyers at the time of accepting their token money. Accordingly the said booking for which only token money was received have been cancelled and the company has abandoned the name of project as "Sahil Enclave" considering the situation, market reputation of Bharat Manwani at the time of cancellation in the interest of business

expediency and to continue the reputation of the Company in the Market for future growth.

B.5 After abandonment of the project under the name and style of Sahil Enclave many expected buyers approached the company to reconsider the project with reduction of prices by reducing the amenities which were originally offered. They have also made complaint about the goodwill/reputation of the company if the project remains uncompleted. Considering the good will of the company and reputation of the relevant Directors in the Real Estate Market the position of continuation of project with new name has been decided by the company. However looking the failure of existing original project the company has further decided to continue the project with certain modifications and under new name and style of Sanchi Enclave by offering competitive and reasonable prices with comparison to offer original prices. As under the new project "Sanchi Enclave" certain amenities were reduced considering the economic scenario and market requirement the company has offered sale price at reduced rate after considering the past experience of Sahil Enclave.

B.6 After abandonment of original project of "Sahil Enclave" and cancellation of arrangement with Shri Bharat Manwani, it comes to the notice of the Director that Shri Bharat Manwani found dead at Fatehsagar Udaipur under unnatural circumstances, which also support our above contentions.

B.7 The business activities continued by the company alongwith the new project name as Sanchi Enclave. Initially under new name Sanchi Enclave the company has booked the remaining flats only, considering the position that the settlement of old buyers was due against their booking through Shri Bharat Manwani. After regular negotiations with the old buyers, ultimately the old booking under the name Sahil Enclave were cancelled and advance money refunded after due verification.

The advance from new buyers and the cancellation amount refunded dully accounted for in the books of accounts of the company and the position was verifiable from same hard disc seized by the department during the course of search. However copy of ledger account of persons to whom amount refunded on account of cancellation of flats of Sahil Enclave are attached herewith for ready reference. This goes to prove that the acceptance and refund of token money related to old abated project Sahil Enclave was duly accounted for by the Company.

B.8 Thus noting of Annexure "B" have not been properly appreciated by the ld. AO along with the evidences related to subsequent act of the company. Whereas such relevant evidences were already available in the same hard disc, before alleging it as an incriminating documents related to Ashiana Build Prop Pvt. Ltd.

B.9 However, to clarify the position we have explained the noting in Annexure "B" to the ld. AO as under:

In fact, annexure "B" contains noting related to product originally offered under the old name "Shail Enclave" and the schedule of payments required alongwith certain information related to Sahil Enclave project. We have already explained herein above that ultimately the project Sahil Enclave not materialized. The Annexure "B' was prepared in the supervision of Shri Bharat Manwani(Sahil Group) containing product offered, schedule of payment, additional charges, other charges and standard terms &conditions.All these noting related to projected calculation of a project which was unfortunately abandoned and not materialized.

On the face of Annexure "B" it is clearly mentioned about product offered, payment schedule and additional charges etc. but at the same time it is also clearly mentioned at the bottom as under:

Standard Terms & conditions Apply:

- This is only an indicative chart and not an agreement.
- Promoter reserves the right to change any price as well as the payment schedule without assigning any reasons.
- Booking will be taken only with Rs.1,00,000/-
- All the payments should be made in favour of "ASHIANA BUILDPROP PRIVATE LIMITED(SANCHI GROUP) payable by cheque/DD only.

The various noting on the Annexure "B" itself clarifies that it is related to proposed project only in the name and style of "Sahil Enclave" which was not materialized at all and the ld. AO failed to establish the same with the help of any documentary evidences.Hence adverse inference drawn by the ld. AO for determination of income of the company on the basis of this Annexure was fully illegal or not valid.

Thus considering overall above position of facts and material evidences furnished before the ld. AO, in respect of the information available in Annexure "B". The observation regarding treatment of above documents as incriminating documents related to the business of M/s. Ashiana Build Prop Ltd. is uncalled for, contrary to the facts and attending circumstances as explained herein above, which has not been considered by the ld. AO in their true perspective in the interest of equity and justice.

C. ANNEXURE 'C' :

C.1 From the copy of Annexure "C" (PB…) it appears that it is a position calculated for the purposes of revenue recognition for the year ended 31/03/2014 by the staff of the assessee in which the position of the amount received as an advance from the customers and the position of unbilled revenue calculated for percentage completion method up to 31/03/2014 on the project which included the unbilled position of revenue for the financial year 2012-13 and 2013-14. This position is verifiable from the return of income of assessment year 2013-14(PB) and assessment year 2014-15(PB). Hence in the annexure the figures mentioned were correct.

C.2 Similarly the amount of unbilled sale (sale offered for taxation though sale not finalized technically it is unbilled revenue) all includes the revenue recognition for the financial year 2012-13 and 2013-14. However it appears that the amount of unbilled sale mentioned in this statement was not correct to the extent it was under preparation for 2013-14 but correct figure of financial year 2012-13 included in this amount. It appears that the statement was draft statement subject to audit by the CA and calculated on the basis of construction completion rate of 54.55%. At the time of audit all relevant documents, accounts have been verified and ultimate the construction completion rate arrived at 49.84%. Accordingly the statement referred in Annexure C was revised and the revised statement is also available in the same seized hard disc and placed at E:\Kamal pendrive\CA.Tejsingh\Ashina Buildprop Pvt. Ltd. (tejsingh)\POC Method 13-14 sheet revenue 2013-14. For sake of convenience copy of the same attached herewith. Please appreciate the fact that in the revised calculation the estimated cost of construction has been correctly considered as per statement referred as Annexure "A" in your query letter. It goes to prove that the statement referred as Annexure "C" was not final statement in the process of determination of income to be recognized on the basis of percentage completion method for the assessment year 2014-15. Further in the final calculation the only changed arrived at for the reason of application of percentage of completion of project considered at 49.84% instead of 50.55% considered in the statement prepared subject to audit referred as Annexure "C".

C.3 It is a common practice for finalization of accounts that the advice of the auditor based on material evidences is being accepted and revised statements are being prepared for finalization of accounts to represent true and correct position of financial state of affairs of the company according to standard principles of accounting. Please verify the position from the computation of total income attached alongwith the return of income for the assessment year 2013-14 and 2014-15 which are self explanatory in this regards and clearly speaks about the true and correct facts of this case.

C.4 Considering the other facts of the case and such calculation was revised prior to the finalization of accounts on advice of the Auditor (CA) and minor change appears in such calculation for declaration of true and correct position of state of financial affairs of the company in the year under consideration (The correct calculation was submitted to the ld. AO copy enclosed). On proper appreciation the mistake committed by the staff was nothing but they have not mentioned the correct estimated cost for determination of Percentage Completion of Project up to the date of balance sheet and hence the unbilled sale amount for recognition of revenue up to 31/03/2014 is being changed accordingly. However, considering the percentage completion method the change in amount of revenue has been declared in succeeding years as per the calculation of percentage of completion of project. The mistake committed by the staff is verifiable from the Annexure "A" considered herein above itself. Further the final position declared by the

assessee in the accounts, in audit report as well as in the return of income is fully verifiable from the material evidences and calculation placed on records.

C.5 Considering the above position of facts and material evidences already available on records, in respect of the information available in Annexure "C", the observation regarding incriminating documents with regards to annexure "C" related to the business of Ashiana Build Prop Ltd. is totally wrong observation being contrary to the facts and attending circumstances as explained herein above and it appears that the relevant records have not been appreciated in their true perspective. The annexure reflecting position prior to finalization of final accounts based on correct facts and material evidences available at the time of preparation of such statement. Such statement cannot be made base to draw any adverse opinion or any inference against the assessee that the unbilled amount referred in this Annexure "C" is related to the undisclosed or suppressed income or receipts of the assessee company as held by the ld. AO.

2. COMMENTS ON OBSERVATIONS OF THE LD. AO

In this respect, the relevant para wise observation and explanations as well as comments are being furnished hereunder:

2.1 The ld. AO has observed that the agreement of flats referred in the statement have been shown at DLC rate and the profit calculated on the sale of above flats have been shown in regular books of accounts according to the sale agreement rate only.

(a) In this respect we have to submit that the return of income has been furnished and the income has been declared on the basis of and by adopting the recognized method of "Percentage Completion Method" as per Guidance Note on Accounting for Real Estate transactions (Revised 2012) issued by the Institute of Chartered Accountants of India which is applicable in the case of the assessee. The method of calculation is fully described and illustration on application of such method also annexed in such guidance note.

(b) The correct facts of the case and the position of income declared by the company have not been properly appreciated by the ld. AO before making the adverse observations against the assessee company.

(c) The requirements of disclosure of revenue even though not realized on the percentage of completion of construction work in the case of Real Estate transactions also requires to compute the revenue which has been recognized for a particular period/year and in compliance thereto certain statements are being prepared as required to compute the estimated cost of construction as well as the revenue to be declared. Similarly the entries related thereto have to be passed in the books of accounts through journal entries and the ld. AO has failed to understand the same while passing the assessment.

(c) In the process of computing the revenue recognition as per percentage completion method it is defined that the estimated revenue has to be considered on the basis of

sale agreement only.There is no other base recognized or advised in the guide lines for estimating the revenue of the relevant period/year.

(d) As regards the estimation of market price the correct legal base for the same is the prevailing DLC rate of the property. The DLC rates are being prescribed by Government authority after considering all relevant standard factor and norms related to estimation of fair market value of immovable property, which is also being followed by the revenue where there was no rate or rate is below the DLC rate and department used to adopt or make the addition as per DLC rate u/s 50C.

(e) The assessee company has estimated the fair market price of the flats as there was no possibility to sale the flats over and above the DLC rate in the market. Further the ld. AO has failed to bring on record any evidence or comparable case where the market rate is more then to the declared or shown by the assessee company.

(f) Thus considering the overall above facts and the position of law the statement prepared by the assessee company was appears to be rightly prepared and there is no mistake at all as such statement was part and parcel of the procedure for computation of revenue to be recognized according to percentage completion method. Accordingly there is no difference in actual sale price or agreement rate in the present case as wrongly observed by the ld. AO and wrongly made addition.

2.2 The ld. AO has referred Excel sheet related to Sahil Enclave and made observation against such sheet. In this respect we have to explain the correct position as under:

(a) The observations of the ld. AO on excel sheet appears to be on assumptions and presumptions only as we had already explained to the ld. AO that such project was never materialized and the projected figures remains as projected because no such project under the name and style of “Sahil Enclave” was in fact abandoned and not executed for the various reasons already explained herein above by the assessee company.

(b) The relevant evidences and the evidences related to “Sanchi Enclave” were available in the same hard disc which was executed in lieu of and after abandonment of “Sahil Enclave”.

© There were certain differences in the project as proposed under “Sahil Enclave” with comparison to the project executed under “Sanchi Enclave” hence there was price difference also.

(d) The offered rate for “Sahil Enclave” cannot be applied for the project executed under the name and style of “Sanchi Enclave” the assessee company.

Under the above facts and circumstances, adverse inference drawn against the assessee in this assessment proceeding on the basis of referred statement are contrary to the real facts of the case.

2.3 The ld. AO has observed form the statement of Sahil Enclaves about the rate per sq ft. and proposed to apply such estimated rate per sq ft on the constructed area of Sanchi Enclaves. Further the total constructed area was also estimated as per projects Sahil Enclaves project

instead of actual project and area of Sanchi Enclaves. The whole calculations are based on irrelevant statement and accordingly the total gross turn over estimated and the computation of under reporting of receipts/sales is wrongly calculated by the ld. AO. And no addition can be made on the basis of such wrong calculation which is totally contrary to real facts of the case and not supported by any cogent material evidence. The assumptions and presumptions of the ld. AO in this regards were without considering the real facts related to project Sahil Enclave and the actual project Sanchi Enclave. We have already mentioned the correct fact in this regards hereinabove. We have to explain the position and have to submit in this regards as under:

(a) At the very outset we have to submit that the ld. AO has taken the rate for estimation of "Sanchi Enclave" project based on the projected offered rate of "Sahil Enclave" which is contrary to the real facts of the case. The rate of Sanchi Enclave were totally different and less than the projected offered rate of Sahil Enclave for the reasons that certain amenities were curtailed and considering the prevailing market situation it was decided to offer lower price considering business expediency. The company has already suffered losses to some extent by offering higher rates in Shail Enclave project which was abandoned later on.

(b) The rates agreed upon the "Sanchi Enclave" project are duly supported with the sale agreement of relevant flats Schedule –5. Copy of the sale agreements available with the assessee are enclosed herewith in support of sale price agreed with the buyers. The sale agreement is a registered documents and cannot be discarded, while the rough noting are not a registered documents those are only estimation which has been done for only estimation.InCIT v/s Supriya Enterprises 232 ITR 887(Ker). Where It has been held that the registered documents reflect the price of the land is a piece of evidence which cannot be discarded. The ordinary rule is that apparent state of affairs is real unless contrary is proved and the burden of proving the contrary lies on the person who assessed/alleged it Kindly refer Daulat Ram Rawat Mull 87 ITR 349 (SC).

© The agreed rates are the correct rates on which the flats have been sold and such rates are also based on DLC which is legal indicative fair market value.

(d) The assessee has company has not received any additional charge per flat under the project actually executed under the name and style of "Sanchi Enclaves" as has been appearing in the Annexure "B" which is projected position of abandoned project "Sahil Enclave". Please note that no adverse material available in the disc referred by your good self.

(e) As the very base considered for estimation of receipts is wrong the whole calculation based on such proposed projected rate that too of another project so the conclusions arrived at is baseless having no corroborative evidence in support of the actual transactions executed by the company under the name and style of Sanchi Enclave.

2.4 As regards the observations made and misunderstanding arrived by the ld. AO with regards to the provisions of POC method and accordingly on assumptions and presumption the ld. AO has stated that the assesses had suppressed sales/receipts. Similarly there was confusion with regards the column heading "Unbilled sale". The observations and the conclusions arrived at are not proper and contrary to the facts of the case as well as to the position of law with regards to computation of revenue recognition according to the provisions of POC method. In order to clarify the position we have to submit in this regards as under:

(a) That as per the provisions of the method of POC for revenue recognition chart of flats covered for such purposes has to be prepared which included only those flats on which the minimum requisite amount has been received as an advance.

(b)The chart placed at Annexure "C" by the ld. AO clearly reflects that the position up to 31/3/2014 of flat of Ashinia Build Prop. Pvt. Ltd. covered for revenue recognition has been prepared under this chart. As per law up to 31/03/2014 only 27 flats are eligible for revenue recognition according to the provisions of POC Method.

(c)It appears that some confusion arises in appreciating the said chart by the Ld. AO. No doubt total 63 flats were under construction but as per the position of business conducted up to 31/03/2014 for the purpose of finalization of accounts, the position has to be seen about how much advances received against each flats under construction and thereafter calculation of revenue recognition on POC method separate list of flats covered under POC method as per prescribed condition in which more than 10% of the agreed amount received as an advance up to 31/03/2014 is required to be prepared. As there was only 29 flats against which more than 10% amount received as an advance up to 31/03/2014(27 flats up to 31/3/2013 only) the staff of the assessee company has prepared the list of 29 flats mentioning flat number, name of customer, floor, area, rate as per agreement, cost of flat as per separate calculation, additional charges for additional work agreed upon if any, amount received as advance against booking during financial year 2012-13 and 2013-14, total amount received and the position of unbilled revenue which required to be recognized for taxation in the process of computation of revenue recognition for financial year 2013-14 (assessment year 2014-15) which is referred by ld. AO as annexure "C". This chart i.e. Annexure "C" is in fact list of 27 flats which are eligible for revenue recognition as per POC for the financial year 2013-14. The balance flats were not eligible to be included for computation of revenue recognition as per POC. The information is also bifurcated in this chart with regards to advance amount received against such flats during the financial year 2012-13 as well as in the financial year 2013-14. The unbilled amount mentioned in this chart is cumulative total of the revenue recognized against such flats for financial year 2012-13 and 2013-14. The assessee company had duly declared such unbilled amount as unbilled sale in the trading account under the main head sales. Hence there is no question of presuming that the unbilled

amount mentioned in the annexure "C" is unrecorded sale or undisclosed receipts as wrongly stated by the ld. AO. Please note that as per the POC method one of the conditions is that the assessee has recognized revenue in the cases where at least 10% of the total revenue as per the agreement of sale or any other legally enforceable agreement are realized at the reporting date. Accordingly revenue has to be recognized considering the amount of advances received against sale agreements as on 31/03/2014. As the advance money from the remaining flats received were less than prescribed limit or there was no agreement executed for such flats accordingly such flats are not required to be considered while preparing statement for revenue recognition. The whole confusion arose in the mind of the ld. AO was on account of misunderstanding the term unbilled in annexure "C". In order to remove the confusion about 27 flats or 29 flats we have to submit that the statement containing 27 flats was rough statement prior to finalization of accounts and correct statement was of 29 flats. We have already stated earlier that in order to recognize revenue the calculation are being checked by the auditors and correct position has been prepared on his advice. When both the statements were available in the seized Hard disc. In order to clarify the position and verify it from records we are enclosing herewith the computation of total income as well as relevant chart.

(d) Similarly the confusion regarding unbilled amount appearing in last column of Annexure "C" is also appears to be there at the end of the ld. AO. It seems that the department has presumed on the basis of supposition and surmises that this unbilled amount represents undisclosed receipt of the company instead of appreciating the correct fact that this unbilled amount is nothing but the calculation of income required to be recognized as revenue as per POC method. Further this unbilled amount is cumulative position of the revenue which is required to be recognized under POC method for the assessment year 2013-14 and 2014-15 of relevant flats. This position is duly verifiable from the statement attached alongwith the computation of total income of relevant years. The copies of such statements are attached herewith for your ready reference.

(e) Copy of journal vouchers according to which relevant journal entries passed in the books of accounts for revenue recognition according to POC method for both the years are enclosed herewith.As the basic position of records have not been properly appreciated so the conclusion arrived at is wrong and contrary to the facts as well as law. In fact after appreciation of correct position no inference can be drawn against the assessee by estimating suppressed sale on this account.

2.5The ld AO has prepared the statement of cash receipts prepared on the basis of seized material at Hotel Shree Nath and placed in Annexure "A" - containing pages 01 to 73. And the ld. AO has presumed the amount mentioned in statement referred alleged as cash receipts over and above the correct receipts credited in the regular books of accounts. However with regards to the presumption and action of the ld. AO on the basis of such

presumption we have to state on legally as well as on merit the allegations and the action in this regards as under:

1. That the assessee company has already challenged legally the procedure adopted during the course of search and seizure proceedings at the premises of Shree Nath Hotel. The search and seizure proceedings were commenced at the premises against common warrant in the name of four different companies and without following the legal procedure prescribed for the same under section 132 and as per income tax rules 112 for such proceedings. The search party has commenced the search action in absence of any competent person of any of the company mentioned in the search warrant and further search warrant was not signed by any of the competent person. The search warrant was not shown to any competent person before commencement or during the course of search. Similarly the search team has not called to respectable and independent residents as witnesses. The whole search proceedings were illegal. The seizure proceedings were also conducted in absence of any responsible or competent or relevant authority of any of the company. Common Panch Nama has been prepared. Even the statements were also not recorded under section 132(4) of the competent director of the company. Hence as per law the search conducted by the department is invalid search. If there is any illegality in the search warrant the same will invalidate the search assessment proceeding initiated under section 153A .

2. No addition on the basis of rough or estimated papers deaf and dump:Looking on the face of the above said loose papers, it is observed that such papers are not belonged to the assessee company. None of the person relevant or concerned with the company has ever seen before these papers. Further such papers have been seized behind the back of any of the competent person of the company. Even during the course of search nothing has been enquired about such papers from any of the competent person. The company totally disowns about all these papers and the company has never executed any transactions of such nature with the persons whose name is appearing in the relevant loose paper and such papers are not belonging to the assessee company. The company has recorded all transactions executed by it and received all most all consideration through cheques only. The loose papers found could not be considered as books of accounts for the purpose of assessment. Additions could not be made on the basis of certain noting on loose papers just based on purely on guess work without positive, cogent and corroborative evidence in support of as well as in the form of assets, jewellery or investments found outside the books of accounts during the course of search. Further the finding cannot be generalized without specific material evidence in support of such findings. In the present case there was no significant asset or alternate expenses found outside books of accounts during course of search.

3.However without prejudice to the above legal objection on merits also like to put on records the following submissions with regards to the presumptions against the assessee as under:

(i) That some of the papers are copy of ledger accounts of the relevant persons who have booked and purchased flats. All the transactions are verifiable from the records of the assessee company.

(ii) However the pages referred by ld. AO does not matched with the system of recoding by the company and further no such transactions of receipt of cash ever executed by the company. It appears that in this line of business the builders are being dependent upon certain Real Estate Brokers for marketing of flats and they are useful of keeping records related to the works executed by them. They collect copy of ledger account of person in the books of the builders, who has purchased flats through their efforts. Similarly they also kept for security purposes cash amount which they might have received till the final payment made by them through cheques to the builders. Normally in case where the purchaser booked flats with the expectation of obtaining loan from bank are used to handover certain cash amount to the broker as security and at the time of making payment through cheque to the builder after receiving payment against loan they received back their cash security amount from the broker. The company has no relevance for such transactions as the transactions not executed by the company.

4. As none of the director or any competent authority of the company has ever seen these papers prior to the date of search no specific comments with regards to the nature and execution of transactions etc. can be provided under such circumstances by the company.

5. It is observed from the noting on these loose papers that noting on such papers are computer generated ledger account of the persons who have no doubt purchase flats from the company but the transactions mentioned in this ledger accounts were not executed with the company. The noting on this paper was not in hand writing of director or authorized person and further the copy of ledger account is also not matched with copy of ledger account of the company already available in the same annexure. It also appears the papers are not signed by any of the competent authority of person. Accordingly the noting on such paper is not complete in all respect and even not signed or authenticated by any one on such noting. Further, the search has also not obtained signature on these papers. On proper appreciation of the noting on this loose paper, it can be easily termed by any one that such loose paper is technically, legally and factually a rough, deaf and dump paper on the part of the assessee company and thus have no evidentiary value in the eye of law against it. Under no circumstances, it can be utilized as evidence against any person, treating the same as legal documents. As per law, no rough draft recording can be treated as a transaction actually executed by someone else in absence of any corroborative evidence or signature of the effected parties. Further such noting on a

loose paper neither represents books of accounts nor documents hence no inference can be drawn just based on assumption and presumption ignoring the correct position of accounts duly appearing in seized records. It also appears that the noting on such loose paper are open to more than one possibility of interpretation and did not prove conclusively that the nothing appearing on the loose paper represent any transaction or transactions actually executed or not by anyone else or by the company under consideration. No material evidence available on record from which it can be inferred that the assessee company has in fact received alleged on money from the persons mentioned in the statement provided by the department.

6.The seized material and transaction noted on the loose paper reflects that there were rough estimated noting as admitted which are only rough estimated paper, on this paper neither any date, nor any signature nor any correlated entry found.

7.Thus no addition can be made on basis of dumb document kindly refer CIT v/s SM Aaggrawal 293 ITR 43(Del).

8.In CIT v/s Grish Choudhary 296 ITR 619(Del) held that Search and seizure—Block assessment—Undisclosed income—Before an addition of an undisclosed income can be made, the AO has to bring on record the material found as a result of search of show that there is an undisclosed income—AO treated Rs. 48 lakhs as assessee's undisclosed income on the basis of seizure of a document which showed certain unexplained entries totalling '48'—Not justified—There is no material on record to show as to an what basis the AO has reached the conclusion that the figure '48' is to be read as Rs. 48 lacs—Said document is a dumb document and leads to now here—Addition rightly deleted by the Tribunal—There is no error in the order of the Tribunal and it does not give rise to a question of law, much less a substantial question of law.

9.Here is the same position.

10. In CIT v/s Jai Pal Agrawal 91 DTR 327 (Del) held that Tribunal saw the seized paper as a "dumb document" which meant that nothing could be understood from it. There was no date or signature on the seized documents. Thus, it was held that the addition was without any basis.

11. ACIT v/s Rakesh Goyal 87 TTJ 151 (Del) held Search and seizure—Block assessment—Computation of undisclosed income—Addition on the basis of deaf and dumb documents without any positive corroborating evidence that assessee was dealing in money-lending business, was uncalled for.

12. In the case Pankaj Dahyabhai Patel (HUF)* vs. ACIT 63 TTJ 79(Ahd) held that AO was not justified in taking a higher sale consideration of land sold by assessee by relying

on paper, not in the handwriting of assessee, found at the residence of a third party and rejecting the figure shown by assessee when there is nothing in that paper to show that it was connected with the transaction made by assessee.

Considering the above facts, circumstances and position of law with regards to such loose papers found during the course of search, which rough, deaf and dump paper which does not allow any jurisdiction to take any adverse inference against the assessee company as above. Further such alleged loose papers cannot be treated as evidence found in support of alleged undisclosed income. As per law the AO cannot presumed that there must be some other material or evidence which is not found during the search and the assessee must have derived undisclosed income there from. Entries in loose papers as mentioned herein above are irrelevant and inadmissible as evidence under the evidence Act also.

Further, without prejudice to the above submissions and objections we have to also submit that the alleged evidence cannot be made base against each and every transactions of sale and for all the periods of the business under consideration. We have already stated that the AO cannot presumed that there must be some other material or evidence which is not found during the search and the assessee must have derived undisclosed income there from.Further the finding cannot be generalized without specific material evidence in support of such findings.
In the present case there was no significant asset or alternate expenses found outside books of accounts during course of search.

2.7 The ld. AO has estimated real sale consideration and undisclosed sale consideration on the basis of wrong observations. In this regards we have to submit that the observations itself are wrong and not properly appreciated from the material evidences available on records and just based on assumption and presumption by which confusion related to unbilled amount. For which we have already explained in earlier para herein above that the unbilled amount is nothing but the actual recognized income on the basis of POC method and duly appearing in accounts as well as duly declared in return of income. Hence such unbilled amount cannot be treated as undisclosed or suppressed receipt at all. No estimates can be made on such a wrong observation based on confusion at your end.

2.8 The ld. AO has observed about modus operandi of the assessee company in its business activities and doubted that about 1/3rd consideration is received in cash over and above the amount in books of account and are contrary to the real facts of the case, so the observations regarding modus operandi and 1/3rd amount received in cash is without any evidence. Thus we have to submit that no addition can be made without allowing the

assessee to cross examine the said concerned persons from whom assessee has received alleged cash amount or own money as the assessee company is denying to received any amount from them in excess to mentioned in the regular books of accounts and sale agreements and further disowning the documents relied upon by the department. Under the above facts and considering the overall positions from the relevant records, seized material, seized hard disc in toto and after proper appreciation of material and attending circumstances the estimation of undisclosed receipt was not at all justified. We have requested to the ld. AO during the course of assessment proceedings that" *If their remains any confusion in this regard even after this submission, we request your good self to allow proper opportunity to clarify the position by discussion in brief.* Vide para 2.10 page 18 of the assessment order.Despite the same the ld. AO has failed to provide the cross examination which against the natural justice. on this preposition kindly refer The Hon'ble Supreme Court in decision dated 02.09.2015) In the case of Andaman Timber Industries vs. COMMISSIONER OF CENTRAL EXCISE (2015) 281 CTR 0241 (SC) : (2015) 127 DTR 0241 (SC)Held *Principles of Natural justice—Cross examination of witness—Non-consideration of statements—Assessee was manufacturing ply-woods and related products in its factory—Some of those products were sold from factory premises only to certain buyers—However, major portion of products manufactured were sold to other dealers from their numerous depots situated at different places in country—Assessee filed its declaration u/s. 173C of Central Excise Rules showing price of goods at which they were sold ex-factory and delivery basis—Revenue found that there was lot of price difference between goods sold at ex-factory and delivery basis in comparison with goods which were sold to buyers from depots—Investigation was carried out and statements of two buyers were recorded, on basis of which Show Cause Notice was served upon Assessee—Adjudicating Authority passed order confirming demand in Show Cause Notice on ground that price at which goods were sold to customers from depots may not be basis for determining value for purpose of excise duty—Adjudicating Authority also took into consideration price list of Assessee maintained at its depots that was treated as price for purposes of levying excise duty—Assessee filed Appeal against order of Adjudicating Authority that was dismissed by CESTAT—Assessee submitted that it was not allowed to cross-examine dealers whose statements were relied upon by Adjudicating Authority in passing impugned orders—Held, not allowing Assessee to cross-examine witnesses by Adjudicating Authority though statements of those witnesses were made as basis of impugned order, amounted in serious flaw which make impugned order nullity as it amounted to violation of principles of natural justice—It was to be borne in mind that order of Commissioner was based upon statements given by two witnesses—Even when Assessee disputed correctness of statements and wanted to cross-examine witnesses, Adjudicating Authority did not grant opportunity to Assessee—In impugned order passed by Adjudicating Authority it was specifically mentioned that such*

opportunity was sought by Assessee, however, no such opportunity was granted—Assessee contested truthfulness of statements of two witnesses and wanted to discredit their testimony for which purpose opportunity of cross-examination was sought—It was not for Adjudicating Authority to presuppose as to what could be subject matter of cross-examination and deny prayer of Assessee—In case testimony of two witnesses was discredited, there would be no material with Department to justify its action, as statement of two witnesses was only basis of issuing Show Cause Notice—Impugned order as passed by CESTAT was set aside—Appeal allowe.

2.9The ld. AO on the basis of such table prepared by him vide assessment order has worked out or estimated the profit which is totally illegal, contrary to the facts of the case and against the principles of natural justice. When the assessee has already explained against each and every observations of the ld. AO with the support of material evidences already available on records. Such material evidences cannot be ignored and no assessment can be made just based on assumptions, presumptions, conjecture and surmises only or guess work. And looking to the record and assessment order it is very clear that the ld. AO has proceeded only suspicion, without any cogent material evidence. It is settled principle of law that an allegation remains a mere allegation unless proved. Suspicion cannot take the place of reality, are the settled principles kindly refer Dhakeshwari Cotton Mills 26 ITR 775 (SC) also refer R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag), Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).Also refer CIT v/s Kulwant Rai 291 ITR 36(Del). In CIT v/s Shalimar Buildwell Pvt Ltd 86 CCH 250(All) it has been held that the AO made the addition merely on suspicion which was not desirable in the eye of law.

2.10 The ld. AO has also added the alleged undisclosed additional charges received by the assesseecompany.In this regards we have to submit that here too the observations is based on confusion arrived at on account of projected position of “Sahil Enclave” instead of the actual project executed in the name and style of “Sanchi Enclave”. No additional charge received by the company under “Sanchi Enclave” project hence question of suppression of receipts to that extent does not arise in the present case. The whole addition is based on assumptions, presumptions, conjecture and surmises only. No cogent or corroborative material evidence in support of estimation has been brought by the ld. AO. Hence the presumption was on prima-facie appraisal of certain statement just pickup on pick and choose method from the seized material and cannot be termed as based on and after consideration of relevant cogent material already available on records. Such a presumption cannot be termed as conclusive, but it is a rebuttable presumption for which on behalf of the company we have produced evidences alongwith explanations tending to clarify that the real fact is not as presumed by the ld. AO. As we have duly explained the correct facts and position the purpose is over after such explanation. In the present case all the above facts are known and duly verifiable from available records so

the application of presumption not arises at all. It is an admitted fact that the proposed projected building of "Sahil Enclave" not materialized and hence the offered rates of such project cannot be applied against the new project "Sanchi Enclave" which was actually materialized by the company with certain amendments and modifications in terms and conditions as well as in providing various amenities to the customers. This confusion can be removed by verification of correct facts of the case from the various information,evidences and explanation available in the seized records itself.

3.1 Very Higher NP rate applied without invoking Sec. 145(3) or rejecting books of accounts:

In this matter, we have to further submit that, as in the above matter the ld. AO has estimated the sale at Rs.1,26,65,229/- as against of Rs.81,94,403/- and made the trading addition of Rs.44,70,826/- in the year under consideration. While making the addition the ld. AO has stated or drawn the inference that the assessee has shown in the books of account the sale consideration @64.70% and received the cash out of books @35.30%. Thus he added profit of Rs.44,70,826/- in the profit of Rs.7,47,826/- declared by the assessee and worked out total profit of Rs.52,18,626/-. As the assessee has declared profit of Rs. 7,47,800/- which gives the NP rate of 9.12% as against 52,18,626/- estimated by the ld. AO which gives NP rate of 63.68% which is not possible in this line of business in the tough cut throat competition market. The ld. AO has nowhere provide any comparable case of such huge profitin this line of business in the area of assessee. Further as the ld. AO has made trading addition and such trading addition has been made by the ld. AO without rejecting the books of accounts nor invoked the provisions of Sec. 145(3). Because the ld. AO has increased the sale and the sale is the part of trading account so he has disturbed the trading account which is deemed as rejected the trading account submitted by the assessee.

3.2 Without invoking S.145 no trading addition:

As stated above the ld. AO has estimated the profit @ 63.68% admittedly the assessee is trader and trading addition has been made and it is the legally settled position that unless sec. 145 is invoked or a clear and categorical finding is recorded, the results as declared by the assessee as per the method of accounting regularly employed by it, has to be accepted. In absence of any such finding, the revenue does not get any jurisdiction to make any trading addition whatsoever. For this proposition, kindly refer –

I. CIT vs. Maharaja Shree Umaid Mills Ltd. 192 ITR 565 (Raj.)
"The Tribunal was justified in holding that since the books of account had not been rejected the mere fact that there had been a fall in the gross profit rate would not lead to the inference that the expenditure had been inflated. No question of law arose from the order of the Tribunal."

II. DCIT v. Mewar Textile Mills Ltd. 21 Tax World 821 (JP)

"The AO has nowhere invoked the provisions of section 145(1) and if the provisions are not invoked then the estimate of profit is not possible in the eyes of law. No defect of any kind was pointed out by the AO"

III. Mohd. Umer v. CIT 101 ITR 525 (Pat) (Page 528)
"No finding was recorded by the departmental authorities as to the unacceptability of the method and irregularity of the account kept by the assessee. It is well settled that in the absence of such a finding recorded by the authorities, the book results cannot be ignored or brushed aside." "In the absence of any such finding, there being no reason germane to the unacceptability of the book results....."

IV. Ajanta Constructions (P.)Ltd. Vs. ACIT XXII TW 606 (ITAT Jaipur) "The maintenance of books of accounts in the normal course of business activities have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable."

V. DCIT vs. Associated Stone Industries (Kota) Ltd. XXII TW 155 (JP)
".....No additions can be sustained on this account. Books of accounts of the assessee was not rejected and no defect of any kind was found by the AO or by the CIT (A)."

VI. Ghewarchand Vs. ITO - XXI TW 571
"Therefore we hold that books of account maintained by the assessee were the books of account maintained in the regular course of business. Therefore the income should be deduced on the basis of books of account maintained by the assessee."

VII. Siddheshwari Cotton Mills P. Ltd. V CIT 117 ITR 953 at 957 (Cal)
Minor irregularities cannot be made a basis of the rejection of the books of account or of trading addition.

VIII. In this respect we also like to invite your attention towards the following judgments on the related issue:
(a) Padampath Ramgopal 76 ITR 719 (SC).
(b) ACIT VS M/S MOUNT MALT BRU LTD 34 TW 246 (Jp).
(c) Manohar Lal V. ITO (2000) 68 TTJ 27 (JD) &
(d) Shri Gautam Textile V. ITO (2001) 72 TTJ 169 (JD)
(e) M/s Bansilal AbirchandSpg. &Wvg. Mills 75 ITR 260 (Bom) (Page 261)

4. Tax can be charged on real income not on notional income or notional profit:

Against the addition we have also submit that the Ld. AO made addition on the basis of notional profit worked out by him on the basis of rough, projected, estimated or notional estimation on the rough documents, However the working was purely notional, because no such profit has been earned or cash received in excess by the assessee till date. He altogether ignored the nature and practices of business and details. He blindly made the addition of notional profit. He did not try to know whether any such higher profit or

income is received or not or will be received or not. He made the addition of one type of notional income or profit and it is legally settled position that no tax can be charged on the notional interest or income. The Hon'ble Supreme Court has long back propounded this principle in the case of CIT v. ShoorjiVallabhdas& Co.46 ITR 144 (SC), which has been repeated time and again and has been followed by Apex Court in the case of Godhara Electric Co.225 ITR 746 (SC). It has also been held that making or non making entries does not make any sense and what is to be seen is that in substance some income has resulted or not. The income under the IT Act can be taxed only on two occasion's i.e. either on receipt or on its accrual. In the present case, however, there was admittedly no receipt of income. Also there was no accrual of income in favour of the appellant in as much as it was not to receive any income. Kindly refer M/s Gopichand Gangabishan v/s AO 30 TW 213(JP) where it has been held that the AO nowhere stated or bring any evidence on record that any such interest was received by the appellant refer In CIT v/s Govind Agencies (P) Ltd 295 ITR 290(All). And here the reality was that no profit or land had been received by the assessee or not proved by the AO. Also refer Brahamputra Capital & Financial Services Ltd v/s ITO(Supra), CIT v/s Govind Agencies(P) Ltd. 295 ITR 290(All).

In the case of CIT vs. Jaipur Golden Transport Co. (Regd.)(2009) 183 TAXMAN 0480(Del)held that *As noted by the Tribunal nothing has been brought on record to show that the franchisee agreement with JG Transport Co. under which the assessee was conducting the business of transportation for the States of Delhi, Uttar Pradesh, Madhya Pradesh and Rajasthan had not been curtailed w.e.f. 1st April, 2000. There is no evidence to show, once again, as found by the authorities below, that post 1st April, 2000 the assessee has been earning income except by way of commission, from bookings made with respect to Delhi and Uttar Pradesh. It is also found as a fact that insofar as the income from commission earned from bookings made in Delhi and Uttar Pradesh are concerned the assessee has offered the same for taxation. There is nothing brought on record to show that insofar as the JG Transport Co. is concerned there has been any addition made on account of suppression of income for the same assessment year, that is, asst. yr. 2001-02. In view of the aforesaid findings returned by the authorities below the AO could not have made the addition based on what he thought the assessee would have earned had the business of transportation with respect to Delhi and Uttar Pradesh not been 'transferred' to the JG Transport Co. Such a conclusion is erroneous for two reasons : (i) it was not for the assessee to decide as to whether it should or should not give up the business of transportation with respect to Delhi and Uttar Pradesh, the decision was as found by the authorities below taken by the JG Transport Co.; (ii) unless it was demonstrated that this was a case of concealment of income there could not have been any addition made on a supposition that the assessee ought to have earned the*

income as quantified by the AO. The AO cannot determine what is expedient for the purposes of the conduct of business. No question of law, much less a substantial question of law arises for consideration of this Court.

Also refer ShivnandanBuildconPvt. Ltd. vs. CIT & ANR 233 Taxman 297(Del.), CIT v/s Arihant Avenue Credit 217 Taxman 105(Guj.),

5. On the issue of additional charges assessee filed following WS before CIT(A):

5.2.1 At the very outset we have to submit the correct fact and position in this regard which have also been furnished before the Ld. AO but the Ld.AO has not appreciated /considered the same in their true perspective simply stating not found convincing and proceeded on his own guess work, presumption and suspicion for making addition. In this respect the submission placed on records in response to query No.18 of the query letter at para 2.13 of the reply of the assessee is reproduced for consideration in this appellate proceeding as under:

"In para No.18 your good self has again proposed further addition on the basis of alleged undisclosed additional charges received by the assessee company. In this regards we have to submit that here too the observations is based on confusion arrived or on account of projected position of "Sahil Enclave" instead of the actual project executed in the name and style of "Sanchi Enclave". No additional charge received by the company under Sanchi Enclave project hence question of suppression of receipts to that extent does not arise in the present case. The whole addition proposed by your good self in this regard is based on assumption, presumptions, conjecture and surmises only. No cogent or corroborative material in support of estimation is available on records. Since the presumption at your end is appears to be on prima-facie appraisal of certain statement just pickup and pick and choose method from the seized material and cannot be termed as based on and after consideration of relevant cogent material already available on records. Such a presumption cannot termed as conclusive, but it is a rebuttable presumption for which on behalf of the company we have produce evidences along with explanations tending to clarify that the real fact is not as presumed by your good self. As we have duly explained the correct facts and position the purpose is over after such explanation. In the present case all the facts a known and verifiable from records the application of presumption nor arises. We request your good self to please clarify the position from the records itself. As the proposed projected building of "Sahil Enclave" not materialized the offered rates of such project cannot be applied against the project actually materialized by the company with certain modifications. This confusion may please be removed after verification of correct facts of the case from the various information and position available in the seized records itself. Hence we request your good self to please drop the proposed addition on this account as the material evidences

cannot be ignored and no assessment can be made just based on assumptions, presumptions, conjecture and surmises only."

5.2.2 The ld. AO erred at law and on facts in making addition on this account alleging undisclosed additional charges received by the assessee company. In this regards we have to submit that here too the observations is based on confusion arrived at on account of projected position of "Sahil Enclave" instead of the actual project executed in the name and style of "Sanchi Enclave". No additional charge received by the company under "Sanchi Enclave" project hence question of suppression of receipts to that extent does not arise in the present case. The whole addition is based on assumptions, presumptions, conjecture and surmises only. No cogent or corroborative material evidence in support of estimation has been brought by the ld. AO. Hence the presumption was on prima-facie appraisal of certain statement just pickup on pick and choose method from the seized material and cannot be termed as based on and after consideration of relevant cogent material already available on records. Such a presumption cannot be termed as conclusive, but it is a rebuttable presumption for which on behalf of the company the assessee has produced evidences along with explanations in order to clarify that the real fact is not as presumed by the ld. AO. The assessee has duly explained the correct facts and position and such facts are known and duly verifiable from available records so the application of presumption not arises at all. It is an admitted fact that the proposed projected building of "Sahil Enclave" not materialized and hence the offered rates of such project cannot be applied against the new project "Sanchi Enclave" which was actually materialized by the company with certain amendments and modifications in terms and conditions as well as in providing various amenities to the customers. The assessee has also stated in his submission that this confusion can be removed by verification of correct facts of the case from the various information, evidences and explanation available in the seized records itself. In addition to the above the assessee also requested in his submission to the ld. AO during the course of assessment proceedings that" *If their remains any confusion in this regard even after this submission, we request your good self to allow proper opportunity to clarify the position by discussion in brief.* Vide para 2.10 page 18 of the assessment order. Despite the same the ld. AO has failed to provide the further opportunities which are against the natural justice.

5.2.3 As the addition is based on projected data of the proposed projected building of "Sahil Enclave" which was never executed by the company for the reasons already explained herein above, so the offered rates of such project cannot be applied against the another project actually executed by the company. The material evidences available on records clearly speaks about this fact that whatever rates appearing in the noting are related to abated project "Sahil Enclave" and not related to the actual project executed in the name of "Sanchi Enclave".

5.2.4 The ld. AO on the basis of suspicion worked out the additional charges on the project and alleged that the company has received the same, which is totally illegal, contrary to the facts of the case and against the principles of natural justice. The Ld. AO erred at law as well as on fact in not considering the submission and explanation in their true perspective wherein the assessee has clarified and explained against each and every observations of the ld. AO with the support of material evidences already available on records. Such material evidences cannot be ignored and no assessment can be made just based on assumptions, presumptions, conjecture and surmises only or guess work. And looking to the record and assessment order it is very clear that the ld. AO has framed his opinion only on suspicion, without any cogent material evidence and without removing the confusion specifically pointed out by the assessee in his submission. It is settled principle of law that an allegation remains a mere allegation unless proved. Suspicion cannot take the place of reality, are the settled principles kindly refer Dhakeshwari Cotton Mills 26 ITR 775 (SC) also refer R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag), Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).Also refer CIT v/s Kulwant Rai 291 ITR 36(Del). In CIT v/s Shalimar Buildwell Pvt. Ltd 86 CCH 250(All) it has been held that the AO made the addition merely on suspicion which was not desirable in the eye of law.
5.2.5 In this respect we also rely on the other argument related to rejection of books of accounts as well as taxation of notional income already submitted in para 2.2.11 and 2.2.12 of this reply against this addition also.

6. Also relied upon the Add. Common WS filed before ld. CIT(A) which is as under:

2. On unbilled sales/under reporting of sales:

2.1. For understatement of sales No evidence of receiving Excess sale consideration: Further the ld. AO has not brought on record that the assessee has received more consideration than to actual sale consideration mentioned in sale deed except loose rough papers, which have no value unless there is no direct nexus . The AO made additions only by making the arbitrary calculation on the basis of assumption without bringing any positive, corroborative evidence on records in support he has proceeded on his own imagination, assumptions , presumptions or guesse work.

On going through to sale agreement of flats executed wherein the built area as well as total sale consideration has been mentioned clearly. When all these explanation, documents were before the Assessing. He must bring on record any contrary evidence, he must have made the inquiry from the purchasers when the data or details of the purchasers were before him, before making the addition on account of understatement of sales/unreported sales. The Assessing Officer has not brought on record any contrary evidence except these loos papers. The Notarized sales agreements cannot be discarded

in front of loos rough estimated papers, without bringing any contrary evidences to rebut the same.

Directly Covered Matter: Recently the Honble ITAT Jodhpur Bench Jodhpur in the same Group case under the same facts and circumstances has considered all these ratio and judgments deleted the additions in the case of DCIT v/s M/s Ankit Chirag Developers Pvt. Ltd in ITA No. 180 & 295/Jodh/2016 dt. 15.09.2021. Copy is enclosed. And the Department has also filed the appeal before the Honble Rajasthan High Court which has been dismissed vide order in DBIT No. 04/2022 dt. 14.12.2023. Copy of order is enclosed.

On this preposition also kindly refer following decisions:

The Honble MP High court CIT v/s Dolphin Builders (P) Ltd 356 ITR 420 held that *Department had not examined any purchaser or flat owner to verify correctness of noting that some higher amount was paid by said purchaser to "B" Builders or fact that actual price was much higher to price which was recorded in account books. The Tribunal had also found that if any amount was collected in excess to the agreed price then "B" could have been liable for that and not the assessee. Aforesaid reasoning of the Tribunal was reasonable. Though there might be some doubt about the price of the flats but until and unless it could have been proved by some evidence, aforesaid doubt could not take place of proof. Until and unless such noting was corroborated by some material evidence, the AO erred in making addition in the income*

Further if in the beginning any customers or buyer has come to look or for purchase of any flats and the marketing persons tell some calculation of flats area, size, or estimation of rate on the rough papers. As in the case of flat sale/purchase or real estate business, there are so many criteria or angles to convince the customers. And after bargaining amount is being reduced on the basis of payment, construction, finishing etc. Thus it means not that the rough noting or estimation is the final.

Further there was no inquiry or evidence on record has been done by the ld. AO that whether any excess or own money has been received by the assessee from the purchasers over and above the amount mentioned in such agreements or books. The actual amount received are appearing in the registered sale. In this regard the Honble Jurisdictional Rajasthan High Court in the case CIT v/s K.K. Enterprises 178 Taxman 187(Raj.)/13 DTR 289 wherein it has been held that *" AO determined the sale price of the plots by adopting the rate of Rs. 40 per sq.ft. on the basis of rate taken by sub registrar and made addition to assessee's income not justified. Apparently, there was no reliable material on record before the assessing authority to assume sale of plots at Rs. 40 per sq. ft.. In the absence of any evidence on record, it cannot be presumed hat land has been sold by the*

assessee at a higher price than the consideration shown in the registered sale deeds-Rates of property fixed by the Stamp valuation Authority for registration purpose cannot be applied to arrive at the price for which the property might have been sold".

Again the Honble Jurisdictional Rajasthan High Court In the case of CIT vs. KhandelwalShringi& Co.: (2017) 398 ITR 0420 (Raj) it has been held that *Income from undisclosed sources—Unexplained investments—Purchase of agricultural land—Deletion of addition—Tribunal deleted addition made by AO on account of unexplained investment in purchase of agricultural land on basis of sale agreement and other documents found and impounded during course of survey u/s 133 in which sale consideration was specified amount—Held, while computing undisclosed income, rates of property fixed by Stamp Valuation Authority for purposes of registration of sale deeds, could not be taken to be price for which property was purchased—In absence of evidence on record, higher price for sale of land could not be presumed from consideration shown in registered sale deeds and rates of property fixed by Stamp Valuation Authority for registration purposes could not be taken to be price for which property might had been sold—There was no justification for AO to estimate selling price of land at Rs. 40 per sq.ft. instead of Rs. 20 per sq.ft. and for CIT(A) to presume selling price at 22 per sq.ft—Tribunal committed no error in allowing appeal of assessee—Revenue's appeal dismissed.*

The Honble Supreme Court in the case of CIT vs. Shivakami co. (P) Ltd. 159 ITR 0071(SC) held that *Capital gains—Applicability of first proviso to s. 12B of 1922 Act—Proviso to s. 12B not attracted unless there is evidence that more consideration than what was stated in the document of transfer was received—Onus in this regard is on Revenue—Emphasis in those provisions is on consideration declared or disclosed by the assessee as distinguished from the consideration actually received by the assessee—Capital gains is intended to tax the gains of the assessee and not what the assessee might have gained—Shares sold by the assessee to related parties at lower value allegedly for safeguarding the shares from being taken over by Government in settlement of tax dues—No evidence that consideration actually received was more than what was disclosed or declared by the assessee—There was thus no understatement of full value of consideration—No capital gains under the first proviso to s. 12B was, therefore, leviable*

In the case of InderLokHotels(P) Ltd v/s ITO 122 TTJ 145(Mum). Here also the position is very same because here assessee purchases a land and after conversion and developing in to plotting the same have been sold after making some profit. The lower authority nowhere alleged that the assets were sold in loss and he neither made any inquiry nor brought any evidence on record that the land sold on higher price than shown

in sale deed. If he was having any doubt about the sale price of lands he could have made independent inquiry. The assessee has discharged onus lie upon him by producing the copies of sale deed. Now the onus was lies upon the revenue to disprove the same.

ACIT v/s Excellent Land Developers (P) Ltd. 1 ITR (Trib.) 563

In CIT V/S ChandniBhuchar 34 DTR 137(P&H)-It has been held that valuation done by the any State Agency for The purpose of the stamp duty would not ipso fact substitute the actual sale consideration as being passed on the seller by the purchaser in the absence of any admissible evidence value taken by the stamp duty authority could not be taken as actual sale consideration and value shown in the sale deed had to be accepted. Also refer CIT v/s Smt. Raj KumariVimla Devi (2005) 279 ITR 360(All). CIT v/s ShwetaBuchar 192 Taxman 67(P&H) Also refer Hussain Ali Bohara in ITA No. 564 & 578/JDH/2011 dt.

These above judgments have also been considered in the case M/s Ankit Chirag Developers Pvt.(Supra)

The ratio of above judgments is also applicable in the present case and may kindly be considered.

3. On no incriminating documents :

In the group cases of the assessee the HonbleI ITAT Jodhpur Bench Jodhpur in the case of ChhogaLalJain (Maroo), Leela Devi Jain (Maroo) and Vijay Jain v/s DCIt Central Circle-1 Udaipur in ITA No. 128,129,130,131,132/Jodh//2019 dt. 28.11.2019 the HonbleITAT has held that

*"*We have heard the rival contentions of both the parties and perused the material placed on record and the orders passed by the revenue authorities and the judgment cited by the parties. From the facts we notedthat the additions have been made by the A.O. and sustained by the ld.CIT(A) U/s 153A of the Act whereas neither any documentary evidence norany incriminating material has been referred to as according to the assessee,no such documentary evidence or any incriminating material was found as aresult of search. In this respect, the ld AR relied upon the decision of theHonble Jurisdictional High Court in the case of PT.CIT vs. Smt. Daksha JainW/o ShrlVirendraModi, Adarsh Nagar, Sirohi in DB Income Tax Appeal No.125/2017 dated O4/O7/2019 wherein the Hon'ble High Court has held asunder:

'1. Various questions of law with respect to disallowance and additions made in the course of re-assessment proceedings are urged by the Revenue in its appeal under Section 260A of the income Tax Act, 1961 (for short, 'the Act').

2.The search under Section 132 of the Act was conducted in the assessee's premises on 10.2.2010. This resulted in notices under Section 153A which culminated in search assessment orders for block period between assessment A.Y. 2OO4-05 to 2O1O-11. The additions made were on identical grounds i.e. business loss, claim for disallowance of interest of substantial amount, additions made on account of unexplained cash entries in the bankaccounts, etc.the ITAT noticed inter alia that all the additions were not based upon anyfresh materials seized during the course of search. That was the first groundfor setting aside the order; the lTAT also considered and decided in fovouroftheassessee on the merits of the additions.

The approach of the ITAT for setting Aside the search Assessment on theground that no fresh material was seized or discerned in the course ofsearch is correct and confirm to the view taken by the Delhi High Court inthe case of Commissioner of Tax (Central)-III vs. Kabul Chawla reported in380 ITR 573. That judgment has been followed by various High Courtsincluding this Court. Consequently, no question of law arises. The presentappeaI is accordingly dismissed."

After having gone through the facts of the present case and also the decisionto by the assessee we found that no fresh material was seized or discerned in the course of search, thus, no additions could not have been made by the A.O. in view of the decision of the Hon'ble Delhi High court in the case of CIT(Central)-III Vs Kabul Chawla 380 ITR 573 and the said decision has also been followed by the HonbleRajathan High Court in the case of Pr. CIT Vs Smt. Dakash Jain (supra). The ld. CIT-Dr appearing on behalf of the revenue could not point out that the additions were made on the basis of any fresh material seized or discerned in the course of search. Thus, by taking into consideration, facts and circumstances and the legal position as enumerated above, we set aside the additions made by the AO and confirmed by the ld. CIT(A). Thus, we allow this ground d appeal raise by the assessee.
Copy of order is enclosed.

In case no incriminating material have been found addition cannot be made in an unabated assessment as held by Hon’ble Apex Court held in the Civil Appeal No. 6580 OF 2021 in the case of Principal Commissioner of Income Tax, Central-3 Versus AbhisarBuildwell P. Ltd as under-
“14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AOassumes the jurisdiction for block assessment under section 153A;
ii) all pending assessments/reassessments shall stand abated;
iii) in case any incriminating material is found/unearthed, even, in case of unabated/ completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declaredin the returns;
and

iv) in case no incriminating material is unearthed during the search, the AO cannotassess or reassess taking into consideration the other material in respect ofcompleted assessments/unabated assessments. Meaning thereby, in respect ofcompleted/unabated assessments, no addition can be made by the AO in absence ofanyincriminating material found during the course of search under Section 132 orrequisition under Section 132A of the Act, 1961.

In the case ofRathiRathi Steel Ltd. &ANR. vs. ACIT&ANR. 31st May, 2019 (2019) 56 CCH 0102 DelTribIt has been held that *Search and seizure—New scheme of assessment in search cases—Assessee filed return of income—AO completed assessment u/s 143(3) making an addition towards fees paid to RoC for increase in authorized share capital—Thereafter, a search and seizure action u/s 132 was conducted in business and residential premises of R group of cases wherein, assessee was also covered—During search operation, various incriminating documents were found and seized—In response to notice u/s 153A, assessee filed its return of income for relevant AY—During assessment proceedings, AO noted from assessee's balance sheet that assessee had raised share capital including share premium from three companies—Further, companies which invested in assessee's shares at such a high rate were hardly having any business activities of their own—AO made inquiries by issuing summons through DIT(Inv.)—AO noted that provisions of s. 68 were amended by Finance Act, 2012 w.e.f. 01.04.2013 whereby onus was on assessee to prove source of source in case of receipt of share subscription to satisfaction of AO—AO held that assessee failed to prove genuineness of transactions as well as credit worthiness of the investing companies as well as investors of investing companies—Accordingly, AO made addition u/s 68—CIT(A), after considering remand report of AO and rejoinder of the assessee to such remand report, upheld AO's action—Held,addition made by AO on account of increase in share capital/share premium was based on balance sheet filed by assessee during course of assessment proceedings and nowhere from assessment order or of order of CIT(A) it came out that said addition was based on incriminating material found during course of*

search—Even DR also could not point out that addition was based on any incriminating material—Since addition in instant case was not based on any incriminating material found during course of search, but, on basis of balance sheet filed by assessee in return of income, therefore, addition made by AO u/s 68 on account of increase in share capital which was upheld by CIT(A) was not justified

In the case of Pr. CIT. Dharampal Premchand Ltd.(2018) 408 ITR 0170 (Delhi)*Held Search and seizure—Addition—Revenue filed appeal claiming that, tribunal fell into error in holding that additions made in course of proceedings u/s 153A/143(3) were not warranted—Held, tribunal took it upon itself to analyze seized material in great detail—There had to be incriminating material to justify assumption to jurisdiction u/s 153A qua each of AYs for which assessment was sought to be reopened—Tribunal had analyzed material seized and in fact found it to be not incriminating even for FY 2010-11—That being position, further question as to whether such material could constitute incriminating material with respect to other AYs simply did not arise—There was no incriminating material seized qua each of AYs assessments for which were sought to be reopened—Consequently, court perceived no conflict in these decisions that warranted reference of issue to larger Bench—Question framed answered in negative i.e. against Revenue and in favour of Assessee—Revenue's appeals dismissed.*

*4.1*JAYANTI LAL PATEL vs. ACIT & ORS. (1998) 233 ITR 588 (RAJ.) held:

During search at the residence of Dr. Tomar, THE DEPARTMANTE official found a slip containing some figures. This piece of paper claimed to have been recovered at the time of SEARCH contains figures under tow columns. In one column, the total of these figures comes to Rs.17,25,000 from 31st May,1989, to 8th Dec., 1989, and in the other column, the total of these figures comes to Rs. 22,12,500. An addition of Rs. 22,12,500 on the basis of figures on a small piece of paper in respect of purchase of plot no. B-4, Govind Marg Jaipur was made by the AO. This plot no B-4, Govind, Marg Jaipur has been purchased jointly by Dr. Tomar Dr.Mrs. Tomar and B.S TOMAR, HUF.

Held that no addition on account of entries on a piece of paper which is claimed to have been found at the time of search, can be made, treating the figures as investment for purchase of plot no.B-4, Govind Marg Jaipur in the hands of Dr.Tomar, Dr.Mrs. Tomar and B.S Tomar HUF.33.

4.2 Mahaan Foods Ltd.Vs. DCIT (2010) 123 ITD 590 (DELHI C BENCH): held that although the contents of the relevant seized document show that the amounts mentioned therein relate to same expenditure, in the absence of any other evidence found during the course of search or brought on record by the AO to show that said expenditure was

actually incurred by the assessee, the came cannot be added to the undisclosed income of the assessee by invoking the provisions of s. 69C—Assessee explained that the said entries represented estimates made by its employees in respect of proposed expenditure—There is no evidence on record to rebut/controvert the said explanation- additions not sustainable.

4.3ACIT vs. Satyapal Wassan (2008) 5 DTR (JAB) (TRIB) 202

Held that the document was a dumb document containing no signature, no, date, no unit like rupee ton,kilogram,centimeter etc. full names of the parties ware also not given, not showing whether it was position of assets or liabilities, receipts or payments, sale or purchase or advances made or loans received—AO did not carry out any enquiry whatsoever to find out the nature and period of transactions—the assessee had explained by way of affidavit that the document belonged to his brother 'D'—there was also an affidavit filed by window of 'D' according to which the document belonged to her husband—even if the affidavits are ignored as fresh evidence wrongly admitted by CIT(A), what is left behind is the dumb document bereft of any details without.

There being any enquiry by the AO to correlate the same with other documents seized, regular books of accounts, records kept by outside agencies or statements of concerned parties—the four essential components of s. 4, viz., the taxable event, the person chargeable, the assessment year in which charge is leviable and the total income are absent in the case. (page-25)

Entertained by the hon'ble Allahabad high court in CIT vs Dayachandjainvaidya (1975) 98 ITR 280 (ALL). The addition so made, therefore, is directed to be deleted.
(page-26)

4.5Also refer CIT V/s Dayachand Jain Vaidya (1975) 98 ITR 280(All)

4.6 Jagdamba Rice Millsvs. ACIT (2000) 67 TTJ (CHD) 838

Held that document seized during search not being clear as to whether items were payments or receipts or some other calculations, no addition could be made on the basis of such a dumb documents.

4.7 ACIT vs. Ashok Kumar Vig (2007) 106 TTJ (Ranchi) 422 Held:

The AO has made the additions of rs.67,01,380 and rs.77,02,747 for the asst. yr. 2001-02 and 2002-03 on the basis of a diary marked 'PKC-60', seized from the office of the assessee in the premises of MDSS, a propriety concern of the assessee's sister-in-law. The assessee has explained to AO that the diary belonged to his employee, who was working in the office located in the said service station and the record of transactions in

the said diary was in the nature of worksheets only where the transactions were completed and subsequently were taken to the books account. The AO has also confirmed that cheques were received and were found recorded in the books of account of the assessee or that of sister-concern, as was the case. In PKC-60, where these transactions have appeared there is no indication that this account relates to the assessee or to the sister – concern. The employees was recording transaction relating to both of them. For the financial year 2000-01, there are four parties, against which name, rate, amount, payment received and balance are duly recorded. And for the subsequent year, apart from these four, one KSI appeared. On perusal of these transaction one has to agree with the authorized representative that these were working sheets maintained by the employee and those transaction maturing, have been duly recorded in the books of account. The CIT (A) has taken a clear cut view that the AO did not verify these so-called balances with the parties whose names were found mentioned. Therefore, he deleted the additions. Further the transactions appeared in the diary marked 'PKC-60' do not reveal that they are party wise account as there is no mention of any bill having been raised against the said transactions. The amounts mentioned therein appeared to be a consolidated figure but date on which these amounts are shown as outstanding is not mentioned. In both the years there are only one instance of payment received appears but the date and mode of receipt are not mentioned. The AO has also noted that cheques received as per this diary are duly recorded in the books of account. These accounts cannot be treated as reliable and properly maintained for another reason also. The next year's accounts give no indication regarding movement of amount. The parties show drastic reduction in the balances but how the payments were accounted for is not forthcoming from these entries. The authorized representative has invited attention to the fact that the AO did make enquiry, which the assessee has not disputed. However, the AO has not brought on record the result of such an enquiry. The only plausible conclusion, under these circumstances, would be that the findings of such an exercise was favourable to the assessee. Comings to the applicability of provisions of s. 132(4a), the assessee has explained the circumstances under which his employee maintained these documents in the premises of MDSS. Thus, the ownership is not disputed. However, there is no presumption about the earning of income. The assessment is made under chapter XIV-B. the AO cannot make addition on basis of incomplete entries. The onus rests on the revenue to establish that the assessee was in receipt of money then the onus would automatically be shifted to the assessee to prove that the money has been disclosed in the account or the same is not liable to tax. In the present case in hand, the AO has not been able to demonstrate with adequate evidence that the assessee received the amounts in two years as alleged. These entries as recorded in 'PKC-60'' do not clearly reveal that the assessee has earned income. The assessment of undisclosed income is under chapter XIV-B and there is no scope of assumption or presumption while making assessment under this chapter. They are dumb documents on

which reliance cannot be placed, unless they are corroborated with other evidences. There is no infirmity in the order of CIT(A) in deleting the additions.

4.8 This point in issue, more or less finally settled in favour of the assessee by the various high court of the country and the point in issue also decided by the Hon'ble High Court of Rajasthan in case of Jai Steel India, 259 CTR 281 and recently two decisions of honbleITAT ,jaipur bench, Jodhpur. The decisions of ITAT, Jodhpur and Jaipur benches are binding in nature and assessing authority is bound to follow as per the law laid down on the point in issue i.e. binding nature of tribunal decisions by the lower authority and in this regard reference can be made to the decision reported in 95 ITD 01. This decision speaks about the theory of abatement in detail particularly the recent tow decisions of ITAT Jaipur bench and Jodhpur bench, wherein bench has taken into consideration the decision of Delhi high court in case of Kabul Chawla and Meeta gutgutia.

5. Sec. 153A(1)

Proviso -4 ©: the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation-1. For the purposes of this sub-section, the expression ''relevant assessment year'' shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later then ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation-2. For the purpose of the fourth proviso, ''asset'' shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the principal commissioner or commissioner:

6.1The decision of ITAT Jaipur bench in the case of Rajasthan Fort and Palace Private Limited vs. DCIT (Jp-Trib) 2018 ITL 2220 wherein it has been held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because a assessment under section 153A of the fact in pursuance of search or requisition is required to be made. ''accordingly, in the facts and circumstances of the case when the

reassessment completed u/s153A without any reference to the incriminating material as well as binding precedents as sited above the addition made by the AO u/s 40(a) (va) are not sustainable, the same are deleted. When the point in issue which is the subject matter of present assessment year has duly been covered in favour of the assessee by the decision of the Hon'ble ITAT Jaipur bench, wherein Jaipur Bench, also taken the decision of hon'ble high court of Rajasthan in case of Jai Steel India v ACIT 259 CTR

7. Therefore in all fairness and having regard to the principal laid down by the various decision of hon'ble supreme court, the decision is binding in nature and the same is not required to be discarded only on the ground that against the decision the department will go to the high court of Rajasthan and in this regard it is respectfully submitted that this proposition of law is also laid down by the ITAT, jodhpur bench, in the case of M/s Chetak Enterprises Limited, 95 ITR 1.

M/s Ideal Appliances Co. Pvt .Ltd., Mumbai, vs. DCIT, central circle-44, Mumbai, ITAT, ''I'' bench, Mumbai, assessment years 2005-06, 2006-07,2007-08, 2008-09& 2009-10 dated 31-12-2015. (page no. 7,summary of legal position:

8.1 CIT v/s. Ved Prakash Choudhary (2008) 305 ITR 245 (Del), wherein it is held that in the absence of corroborative material, the additions made one the basis of sketchy documents which were unproved cannot be sustained in law. Reliance was also placed of the decision in CIT v. Vivek Aggarwal 231 Taxman 392 wherein it is held that unless the amounts stated in the documents were actually paid, it cannot be presumed that the amount mention in the sale deed was not correct.

8.2 Reliance is also placed on the decision in CIT v Ravi Kant Jain (2001) 250 ITR 141 (Del), wherein it is held that the purpose of invoking section 158BC was to bring to tax undisclosed income which was detected as a result of the search. There was no incriminating evidence to show that the assessee had sold an average rate of rs. 2151/- per sq.ft. on super built-up area and other charges of rs. 2,50,000/- per flat as parking, club membership and development charges of against the actual sale consideration received and declared in regular books of account and returns of income filed originally. There was no basis for the AO to have adopted the unit rate of an average rate of rs. 2151/- per sq.ft. on super built-up area and other charges of rs. 2,50,000/- per flat as parking, club membership and development charges for determining the actual sale consideration in respect of the flats. Reliance is placed on the decisions in CIT v. Kantilal Prabhudas Patel (2008) 296 ITR 568 (MP) and CIT v. Manish Buildwell (p) ltd. (2011) 245 CTR 397 (del) to underscore the point that the additions cannot be made on guess work or estimates.

9.No proper verification of regular books of account vis-à-vis so called incriminating documents.

10. The search action was initiated in the early morning and departmental official has collected the documents, loose papers, books etc. at their mercy and convenience from the various rooms of premises where various companies situated and doing their activities but nothing has been noted down, from which chamber or in whose possession the impugned document has been found. At the time of preparation of inventory, the authorized officer had not indicated that from whose possession or in which chambers, particulars paper/document/book was found and latter on seized. Further, the authorized officer had not prepared any inventory of documents/papers/books etc. were found and lying at the particular rooms which are the supporting papers of some of documents seized. Further, there is no any attempt by the authorized officer of search to take any statement of relevant director in whose possession/chambers the particular paper found. Most of the loose/ rough papers seized during search has no relevance as these pertains to rough working, working related to some work assigned to concerned officials, estimated working of target allocated to them, market surveys, day to day affair of concerned o0fficial which are either related to themselves or partially related to various companies doing their activities in the same premises. Thus, most of the papers have no relevance except for follow up at various stages during day to day working by staff members. Further, the entries appeared on most of papers are not written by the main persons of the assessee company and other companies situated there, thus, they have no cognizance and having no financial implication.

11. The ld.AO relied upon the third party statement which cannot be used as device to making addition in the hands of assessee company.

The rejecting of Opportunity of cross examination of third party and any adverse action taken only on the basis of statement as recorded u/s 132(4) of the Act, cannot be sole basis of any addition it has been propounded in a landmark Judgment by the Honorable Jurisdictional HC (Rajasthan) in the matter of PCIT, Jaipur-2, Jaipur Vs. Shri Sanjay Chhabra, ITA NO. 22/2021 (06/04/2022) has held;

"The Tribunal by impugned order has categorically held that the material information received by the Assessing Officer from the investigation wing alongwith certain statements recorded by DBIT Investigation, Calcutta could not be taken into consideration as that material was not disclosed nor an opportunity was accorded for cross-examination of the Assessee. This finding recorded by the Tribunal cannot be said to be perversed or suffering from any patent illegality. Learned counsel for the Revenue could not satisfy us with reference to any judgment on this aspect that even without disclosing any material to the Assessee and without allowing him proper

crossexamination, such undisclosed and unverified material could be taken into consideration for the purposes of addition. The Tribunal's findings are based on material placed on record. The aspect of human probability, in the present case, only goes against the Revenue because in the present case, a raid was conductedand in that process, statement is said to have been recorded under Section 132(4) of the I.T. Act, which was, later on, retracted by the Assessee. In a situation like this, where the office premises are sealed for many days and during that period, a statement is said to have been recorded under Section 132 (4) of the I.T. Act, the Tribunal's view that only the basis of such retracted statement, addition could not be justified without any other material admissible in evidence, warrants no interference as it is not a substantial question of law.

In the case of Commissioner of Income Tax Versus Harjeev Aggarwal reported in (2016) 290 CTR (Del) 263 and KailashbenManharlal Chokshi Versus Commissioner of Income Tax reported in (2010) 328 ITR 411 (Guj) various High Courts have held that addition based solely on statement later on retracted, without anything more, could not be justified in law. Thus, the view taken by the Tribunal cannot be faulted.

In view of the above consideration, we are of the view that this appeal does not involve any substantial question of law and is, therefore, dismissed."

This Judgment has also been considered in Jai Singh Yadav vs DCIT, Central Circle-3, Jaipur ITA 168/JP/2022, dated; 15/06/2022.

Recently Hon'ble Supreme Court in its order dated 21-08- 2019 in the case of Odeon Builders Private Limited Vs. CIT-7, New Delhi (civil appeal no. 9604-9605/2019) has held that no addition can be sustained if it is done purely on the basis of information received from Investigation Wing without giving an opportunity of cross examination to the Assessee.

12. The ld.AO has not given any finding about method of accounting i.e.percentage of completion method as adopted by the assessee company, however, the ld.AO has not disturbed the method of account adopted by the assessee company i.e. the Ld.AO ACCEPTED the method of account i.e. percentage of completion method.

A.Y	Sale declared by the assessee	sale estimated	Profit worked by the AO	Profit declared by the assessee	NP rate declared by the assessee	NP rate worked out by the AO

2013-14	8194403	12665229	5258070	787244/-	9.60	64.16
2014-15	108462664	167639357	60526443	1349750	1.24	55.80
2015-16	30132525	46572682	20527670	4087513	13.56	68.12
2016-17	21058758	32548312	14323982	2834428	13.45	68.01

From the above chart, it is miraculous to define that the Ld.AO give NP rate of 65.80 % to 68.01 % for years under consideration which is not possible in this line of business in the tough cut throat competition market. The ld. AO has nowhere provide any comparable case of such huge profit in this line of business in the area of assessee. Further as the ld. AO has made trading addition and such trading addition has been made by the ld. AO without rejecting the books of accounts nor invoked the provisions of sec. 145(3). Because the ld. AO has increased the sale and the sale is the part of trading account. Thus he disturbed the trading account or rejected the trading account whereas the ld. AO has accepted the revenue recognition of percentage completion method adopted by the assessee.

13. Also refer ShivnandanBuildconPvt. Vs. CIT & ANR 233 Taxman 297(del), CIT v/s Arihant avenue credit 217 taxman 105(Guj.).It is relevant to mention here the documents found physically and extract from hard disk has categorically been explained in preceding para of this submission. There is nothing which is out of books. The receipts and expenditure etc. have duly been account for Regarding unbilled receivables, the assessee company has duly been explained in the audit report note to forming part point no. 7 unbilled receivables that.

7. There apart to above assessee has filled following Common Written Submissions before us/Bench which is as under:

"1.No provisions has been applied by the ld. AO:At the very outset it is submitted that the ld. AO made all the additions *on account of alleged underreporting sales on estimate basis and alleged extra business receipts on account of charges as treating undisclosed business income on estimate basis. However while making the additions*he has not invoked or applied any provisions of law while making the addition. The ld. AO has not stated under what provision of law he has made the addition and under what head whether, under business or trading income, agriculture income, capital gain or u/s 48, 56 or u/s 68 or 69. Thus the addition so made without any provision of act is also against the

law and liable to be deleted on this ground alone. When the ld. AO has not invoked any provision of Act/law then also how the ld.AO can make the addition. When in the law and in the Act for each and every offence specific provisions are given to held any person as victim defaulter, then without applying any provision for that a person cannot be taxed and penalized. When the ld. AO himself has not stated that under what provision the assessee liable to be taxed or penalized or under what provision his offence falls then how the addition can be made.

on this preposition we also would like to draw your kind attention toward the recent decision of this Honble ITAT in the case of Arvind Kumar Nehra V/s ITO Ward 7(1), Jaipur 32/Jp/2024 dt 10.04.2024 where it has been held

"It is also noteworthy to mention from the entire conspectus of the case that the AO has also not invoked any provisions of IT Act while making the lump Sum addition of Rs.50,00,000/- for cash deposits in the bank account during the Demonetization Period, Unsecured Loan & capital introduced. Hence, in our view lump-sum addition cannot be made under these accounts. The AO must have referred the specific amount with specific details and documents which he has not provided and as to what basis lump sum addition has been made and also failed to mention that on which account and as to what amount of addition consists of. It is also noted that the AO has not stated under which provisions or section he has made the lump-sum addition either u/s 68 or 69 or 69A or trading or u/s 56 i.e. other sources. It may be worthwhile to mention that when in the Act for every additions, the provisions or section has been provided by the legislature, otherwise there shall be no meaning of the Act. Hence the addition is wrongly made against the Act . (vide page 21-22 of the order)."

The same has also been held recently in the case of Rajendra Kumar Meena v/s ITO Swaimodhopur in ITA No.516/Jp/2024 dt. 2507.2024.

In the case of M/S. Pasari Casting And Rolling Mills ... vs Income-Tax Department Through Its ... on 25 January, 2024 in W.P. (T) No. 1850/2022 dt. 25.01.2024 where it has been held that " Furthermore, the recorded reason is also silent under which provision of the Act the additions are sought to be made i.e. whether Section 68, Section 69A, Section 69B, Section 69C or any other provisions of the Act. It is not the case of the Revenue that the Petitioner has paid any cash to the so-called accommodation entry provider to obtain the accommodation entry to plough back own funds, hence, there is no ground/material to form reasonable belief of any accommodation entry. (Refer PCIT Vs. Meenakshi Overseas P. Ltd. reported in [2017] 395 ITR 677 (Del).

In the case of Oryx Fisheries Pvt. Ltd. Vs. UOI reported in (2010) 13 SCC 427, it is held by the Hon'ble Supreme Court that the show cause notice should give the noticee a reasonable opportunity of making objections against proposed charges indicated in the notice and the person proceeded against must be told the charges against him so that he can make his defense and prove his innocence. In the entire course of the proceeding, at no stage the Petitioner is made aware of the provisions of law which have been contravened and/or under which the additions are sought to be made which is in gross violation of the principles of natural justice and the procedure adopted by the Department is not fair or proper.

In the case of New Delhi Television Ltd. Vs. DCIT reported in [2020] 424 ITR 607 (SC), it is held by the Hon'ble Apex Court that the Assessee must be put to notice of all the provisions on which the Department relies.

Recently the same has also been laid down by this honble ITAT in the case of M/s Kajari Mineral Pvt. Ltd v/s DCIT Central Circle-1 Udaipur in ITA No. 217 and 218/Jodh/2024 dt.21.11.2024 and also in Smt. Prabhati Devi v/s ITO Ward Dausa in ITA No. 1031/Jp/2024 dt. 01.10.2024. Copy is enclosed.

Hence the additions so made by the ld. AO is illegal, invalid bad in law and liable to be deleted in full.

2. The ld. CIT(A) has confirmed the addition and action of the ld. AO only on the basis of observations made by the ld. AO, the ld. CIT(A) has failed to controvert our WS and legal position of law.

2.1 The ld. CIT(A) also of the view of as of the AO that the assesseehas booked 64.70% of actual sale in its regular books of account and remaining 35.30% sale is not recorded in the books of account as well as not offered for taxation, Unbilled sale/on money is received in cash and out of books. The ld. CIT(A) has further stated that the arguments

are theoretical explanation without explaining the facts of the case. The AO has clearly noted that none of the cash transactions as reported in the seized pages match with receipts shown in the books of account of the assessee company. No plausible explanation is furnished by the assessee in this regard. Before the AO the AR of the assessee refused to accept the ledger copy of the parties whom flats were sold and cash receipts have been shown is belong to the assessee company. Now in the appellate proceedings, the assessee is accepting that the documents are belonging to the company but the conclusions drawn by the AO especially with regard to receipt of 'on- money' are not correct. The explanation that unbilled sale is sale not executed through registered sale deed or through bill but has to be recognized and declared for income tax purposes under the specific provisions related to revenue recognition as prescribed under the Act for Real Estate business is not matching with the actual figures of the books of accounts of the assessee. Hence, the explanation is not found to be acceptable.

:-In this regard it is submitted that both the lower authorities have proceeded on is own assumption, presumption when it is the clear facts that the transaction mentioned in loose papers are projected, estimated andworking by and also brought other facts or reasons had been brought on record during the course of assessment and search, which have not been rebutted with the help of any documentary evidences by the lower authorities.

2.2 The ld. CIT(A) has stated that the arguments that the figures in the sheet were projected figures are not supported by any independent verifiable evidence. In the absence of any verifiable evidence, the figures mentioned in the seized documents are to be treated as actual figures. The appellant has not furnished any evidence before the AO in the form ofany independent witness who can support the arguments of the appellant. It is admitted fact that statement of Mr. Bharat Manwani could not be provided as he was no more. However, the purchasers could have been produced before the AO to prove the facts as per arguments. In the absence of any independent evidence, the arguments of the appellant that these figures are projected are not found to be acceptable.

The AO noted that on examination of the seized documents, it is quite clearthat ledger copy of all the parties whose name appearing in these papers are theactual owner of the flats. Hence, the argument that the bookings were cancelled isnot found to be acceptable. The AO also recorded that even the flat numbers are alsomentioned therein. In these ledger copies the date of receipt of cash is alsomentioned. Thus the facts are very much apparent that these parties have paid cashto the assessee company which is not recorded in the regular books of the assesseecompany. Therefore, the assessee cannot refuse that no payment has been receivedfrom these parties. The appellant has not controverted these findings of theappellant. The date of receipt of cash from the flat owners is clearly noted

on theseized papers. The appellant has given theoretical explanation but the facts of thereceipt of cash as On Money is not proved to be incorrect. Hence, the argument ofthe appellant that these are only projections is not found to be acceptable.

:- In this regard it is submitted that the facts of project to be marketed by the Late Sh. Bharat Manwani has never been denied by the lower authorities, and when Bharat Manwani has expired, then it was the duty of the ld. AO to cross verify our contentions by calling purchasers from whom alleged cash on money received to know whether they had given any cash or own money over to the amount mentioned in the sale deed, when the assessee had filed the sale deeds and details. And the ld. AO has failed to call a single persons to support his allegations. But they failed to do so, further when we had already taken the arguments of the cross examination of the purchasers or other before the ld. CIT(A), vide our WS (PB313-314), as assessee has not power to use muscle pressure to produce and the AO was having power u/s 131 or 133(6), which have not been used by the lower authorities, hence the observations of the ld. CIT(A) is wrong and incorrect and liable to be ignored.

2.3 The ld. CIT(A) stated that the argument of the appellant is that
unbilled sale is the difference because of following percentage completion method as per accounting standard. If this is true, then the appellant should have shown that the total amount of sale is Rs.25,94,25,580/- over the years from the project and because of following the percentage completion method there are differences in the figures of sale booked in different years. However, it is evident that the appellant has not made any effort in this regard. In the absence of complete reconciliation, the claim of the appellant was rightly rejected by the AO.It is also observed that the AO has not disturbed the method of accountingfollowed by the assessee. The sales as declared by the assessee are increased inthe ratio of cash received as per the detection made during the search proceedings.No fault is pointed out by the assessee in this regard.

In view of these facts, the explanation of the assessee with respect to method ofaccounting is not found to be acceptable as the explanation is not matching with thebooks of accounts of the assessee.

:- In the this regard it is submitted that the observation of the ld. CIT(A) is based on conjecture and surmises, the assessee filed the calculation of POC method vide (PB125-127), which have been ignored by both the lower authorities despite available on record.

2.4 The ld., CIT(A) has stated that the arguments of the appellant are considered but not found acceptable. It is incorrect to say that there was material difference because of

change of name of the project. The project remained same and only the name was changed. The AO has applied the rate per square feet as per the seized documents. Hence, even if there isminor change in area of the flat as claimed by the assessee, the rate per square feet will not change. The area of flat is taken by the AO as per actual area sold. No discrepancy is pointed out by the assessee in this regard.

:- In the this regard it is submitted that again the observation of the ld. CIT(A) is based on conjecture and surmises, as the lower authorities have not denied the facts regarding the projected earlier given to Bharat Manwani in the name of Sahil Enclave and in the broachers this name is coming vide (PB128-132) it and due to some unfortunate and unavoidable circumstances the same could not be materialized. This facts have never been disproved. And the market position and modus operandi can be realized only by the businessmen not by the ld. AO or revenue who were not technical persons of this line. This also not the case of the revenue that the assessee has received the less amount to the DLC rate. How the ld. CIT(A) can say there is no material difference in the name. It is well known facts that there is value of Brand Name in the market. And in adverse situation and in the competition market and to stand its reputation/gooddwillsome time a business has to scarifies its profit/margin. Hence the observation of the ld. CIT(A) is baseless and far from the practical position of the market.

2.5: Regarding the alleged cash transaction mentioned in alleged seized documents we have already stated that the same has been done by the Bharat Manwani and reason of the same also been stated and also stated that why the same have been mentioned and also refunded with reason. However all these been ignored without verifying the same from the concerned buyers, if the ld. AO was having any doubt he could have made in depended inquiry to rebut the contention of the assessee, but he failed to do so rather made wrongt allegation on the assessee, which is not permissible in law.

2.6The ld. CIT(A) has stated that Payment of cash for purchase of flats is not an unusual practice but was very much of a usual practice. The transaction of cash takes place in secret and direct evidence about such transaction would be rarely available.

:- In the this regard it is submitted that again the observation of the ld. CIT(A) is based on assumption , presumption, conjecture and surmises, when the assessee has explained the same by filling the reply and details, after receiving the reply and details the ld. AO has not rebutted the same and not confronted the allegation or not brought on record and materials evidence in his support.

2.7 The ld. CIT(A) at page 81-82 of his order discussed about the books of accounts and was of the view that the entries in seized documents are also the part of the books of account. In this regard it is submitted that when the assessee has filed the return with audited accounts on the basis of regular books of account and as per the ld. CIT(A) these are defective and not correct, then why the books of account have not been rejected by the lower authorities.

2.8 Further the allegations/observation of the ld. CIT(A) that the assessee has not provided any explanation regarding the seized documents/ alleged cash transactions is absolutely incorrect on perusal of the reply of the assesseee vide (PB50-102) and WS vide (PB283-338).

2.9 The ld. CIT(A) has stated that the assessee has not discharged the onus casted upon it. Without discharging the onus casted upon by it the assessee cannot be allowed to argue that no cross examination was provided by the AO from the buyers. The AO has not relied upon the statement of buyers. The AO has relied upon the documents found from the possession of the assessee.

:- In this regard it is submitted that when in the search documents and alleged transaction were found and on being the explanation of the same, the assessee filed the reply, explanation and details by explaining all the things and matter and the reasons of entries, meaning thereof and other details and discharged its onus. Thereafter if the ld. AO was having any doubt regarding the above then it was the duty of the ld. AO to bring other documentary evidence or examination of the person and in that situation in the present case either the ld. AO accept the contention of the assessee or called the person here buyer to rebut the contentions of the assessee, if there were any adverse in the contentions of the assessee and buyer then the ld. AO was required to provide the cross examination, which have not been done by the lower authorities.

2.10 The ld. CIT(A) has not considered the judgments relied upon by the assessee in their true perspective and sense and rather tried to distingue in wrong interpretation which is not applicable.

Hence in view of the facts, submissions and legal position the additions so made by the ld. AO and confirmed by the ld. CIT(A) may kindly be deleted in full."

7. In this regard, the submissions made by the ld. DR has been reproduced in the earlier paragraph herein above.

8. We have heard the rival submissions, perused the material on record and gone through the orders of the lower authorities. Upon consideration of the facts and material available on record, we are in agreement with the contentions of the ld. AR that while making the additions, the Assessing Officer has not invoked any provisions of the Act, which is clearly apparent from the assessment order itself, as also from the Show Cause Notice dated 24.11.2017 available at PB 59-70 and the ld. D/R has also admitted the same that is why he has filed the Written submission on this. In support of his case, the ld. A/R has drawn our attention to the various judgments of Honble Supreme Court, High Courts and the coordinate benches of the Tribunal, Jodhpur and Jaipur as under :-

i) **Arvind Kumar Nehra V/s ITO Ward 7(1), Jaipur 32/Jp/2024 dt 10.04.2024**

ii) **Rajendra Kumar Meena v/s ITO Swaimodhopur in ITA No.516/Jp/2024 dt. 2507.2024.**

iii) M/S. Pasari Casting And Rolling Mills ... vs Income-Tax Department Through Its ... on 25 January, 2024 in W.P. (T) No. 1850/2022 dt. 25.01.2024

iv) **Oryx Fisheries Pvt. Ltd. Vs. UOI reported in (2010) 13 SCC 427, it is held by the Hon'ble Supreme Court.**

v) New Delhi Television Ltd. Vs. DCIT reported in [2020] 424 ITR 607 (SC)

vi) M/s Kajari Mineral Pvt. Ltd v/s DCIT Central Circle-1 Udaipur in ITA No. 217 and 218/Jodh/2024 dt.21.11.2024 and also in Smt. Prabhati Devi v/s ITO Ward Dausa in ITA No. 1031/Jp/2024 dt. 01.10.2024.

Further, the case laws referred by the ld. D/R is not applicable in the present case and are fully distinguishable, the mater cannot be sent back to the AO for fresh assessment where there is legal issue involved, the same may be sent if the assessment has been made ex-party and if any additional evidence is filed on the merit and facts were not before the AO, as on the legality, there is no requirement to examine the facts when no new material and evidence filed and how for invoking the provisions an assessment can be sent for fresh assessment, the Tribunal cannot rectify the legal mistake committed by the AO and cannot give fresh innings only to invoke the provision for making the addition and rectify the legally which is committed by him.

9. Taking into consideration the judicial pronouncements mentioned herein above, we are of the view that additions cannot be made without invoking any provisions of the Act. The AO should have referred or stated under which provisions or section he has made the addition either u/s 68 or 69 or 69A or trading

or u/s 56 i.e. other sources. It may be worthwhile to mention that when in the Act for every addition, the provisions or section has been provided by the legislature, otherwise there shall be no meaning of the Act. Hence the addition is wrongly made against the Act. Thus the additions made are deleted.

9.1 Further when during the course of search various documents seized and various working, charts, calculations were found and referred as per various annexure as above. However it is also observed that the lower authorities have based their decision only some calculations or one or two annexure i.e Annexure – C , Part of Annexure-B, and at the same time ignored other Annexure's i.e Annexure –A, Full Annexure- B, full Excel Sheet vide page 3-5 of assessment orders, found at the same time and same premises and when assessee filed explanation thereon, the same have not been considered. The lower authorities have based their decision Annexure –C, Part of Annexure-B.

9.2 On perusal of the Annexure B it is found the lower authorities has taken only one part of this annexure and not considered or read other part and contentions of the same. The Annexure are as under :

ASHIANA BUILDPROP PRIVATE LIMITED (SANCHI GROUP)
SAHIL ENCLAVE - CONSTRUCTION LINKED PAYMENT SCHEDULE

Product Offered:

Type	Saleable Area (Sq ft)	Saleable Area (Sq ft)	Price (INR)*
2 BHK (Standard)	**1485**	**2151/-**	**31,94,235**
3 BHK (Standard)	**1790**	**2151/-**	**38,50,290**
3 BHK (Standard)	**1958**	**2151/-**	**42,11,658**
3 BHK (Standard)	**2022**	**2151/-**	**43,49,322**
3 BHK (Standard)	**2040**	**2151/-**	**43,88,040**
3 BHK (Standard)	**2060**	**2151/-**	**44,31,060**

Particulars	Percentage	Other Charges	Amount	Date	Milestones
Booking Amount	10% of Basic Cost		100000		On Booking
On Allotment	10% of Basic Cost				(10 %- Booking Amount)
On Completion ofnth Level	10% of Basic Cost				
On Completion of 1st Slab	10% of Basic Cost				
On Completion of 2nd Slab	10% of Basic Cost				
On Completion of 3rd Slab	7% of Basic Cost	50% of Dev. Charge + 50% of Club House			

On Completion of 4th Slab	7% of Basic Cost				
On Completion of 5th Slab	7% of Basic Cost				
On Completion of 6th Slab	7% of Basic Cost				
On Completion of 7th Slab	7% of Basic Cost				
On Completion of 8th Slab	5% of Basic Cost				
On Completion of 9th Slab	5% of Basic Cost	50% of Dev. Charge + 50% of Club House			
On Completion of 10th Slab	5% of Basic Cost	50% of Parking			
On Completion of Finishing	5% of Basic Cost				
On Possession	5% of Basic Cost				Registration / Possession

Addition Charges:

S.No.	Charge Type	Amount
1	Development Charge (One Time)	50000
2	Club Membership	50000
3	Covered Parking (One Time) OR	150000
	Open Parking (One Time)	125000
	Other Charges if any	

Other
Charges
1. Registration & Stamp
Duty extra as applicable

2. Service tax extra as applicable.

Standard Terms & Conditions Apply :-

**** This is only an indicative chart & not an agreement.***

**** Promoter reserves the right to change any price as well as the payment schedule without assigning any reasons.***
**** Booking will be taken only with Rs. 1,00,000/-***

**** All payments should be made in favour of "ASHIANA BUILDPROP PRIVATE LIMITED (SACHI GROUP)" payable by Cheque / DD Only.***

As on perusal of this annexure and as per assessee it is found that the Project was of the Assessee Company but originally the same was to be Marketed by Sh. Bahrat Manwani under the name of **"Sahil Enclave"** on the land of Assessee company as Sh. Bharat Manwani was engaged in Real Estate Brokerage business. **Sahil is name of son** of Shri Bharat Manwani. As per arrangement with Shri Bharat Manwani, the Sahil group has to sellall flats in the capacity as a Sole selling marketing agent for the whole project under the name and style of **"Sahil Enclave".** For that certain projected calculations and statements have been prepared, which containing projected sales amounts to be offered or installments to

be received from time to time against the projected constructions as well as projected amenities proposed to be provided under the project, which is done in this line of business. On the basis of such projected offers and plans Shri Bharat Manwani has commenced the marketing of the project and has received token money from about 41 (forty one flats) persons against 41 flats.

On the face of Annexure "B" it is clearly mentioned about product offered, payment schedule and additional charges etc. but at the same time it is also clearly mentioned at the bottom as under:

Standard Terms & conditions Apply:

- **This is only an indicative chart and not an agreement**.
- **Promoter reserves the right to change any price as well as the payment schedule without assigning any reasons.**
- Booking will be taken only with Rs.1,00,000/-
- All the payments should be made in favour of "ASHIANA BUILDPROP PRIVATE LIMITED(SANCHI GROUP) payable by cheque/DD only.

Looking to above it is admitted facts that the proposed project was earlier in the name and style of **"Sahil Enclave"** and it is also admitted facts this was not materialized due to sudden death of Sh. Bharat Manwani as found dead at Fatehsagar Udaipur under unnatural circumstances. As no proof in this regard has

been brought on record by the AO to deny the same. Hence on the basis of choosen part of the Annexure no addition can be made. The assessee has also brought the facts on record that unfortunately on account of adverse financial stringencies Shri Bharat Manwani could not arrange the booking amount of first installment from the related buyers also the financial position of Shri Bharat Manwani becomes critical in his personal business activities and due to this reason in the market rumors were there that he becomes bankrupt and accordingly he is not fulfilling his promise regarding payments in the market. The competent authority of company also verified that Shri Bharat Manwani has accepted the booking of the project of the company by offering false commitments about the project to the buyers. However after knowing the correct situation and terms and conditions of the project from the company, all most all buyers directly approached the company expressing their desire to cancel their offer for booking and requested for refund of token money/booking money if any paid by them. Ultimately the company has decided to cancel the offered booking through Bharat Manwani considering the fact that he has misrepresented the terms and conditions to the buyers at the time of accepting their token money. Accordingly the said booking for which only token money was received have been cancelled and the company has abandoned the name of project as **"Sahil Enclave"** considering the situation, market reputation of Bharat Manwani at the time of cancellation in the interest of business expediency

and to continue the reputation of the Company in the Market for future growth. In our opinion it is generally happened in this line of business. The above contentions of the assessee regarding the change of name of Project also supported from the marketing broachers as available from the paper Book 128-134 which was in the name of "Sahil Enclave Group " and while the Paper Book 135-148 which was in the name "Sanchi Group" i.e by assessee in the new name and this have not been disputed by the lower authorities. The business activities continued by the company alongwiththe new project name as Sanchi Enclave. Initially under new name Sanchi Enclave the company has booked the remaining flats only, considering the position that the settlement of old buyers was due against their booking through Shri Bharat Manwani. After regular negotiations with the old buyers, ultimately the old booking under the name Sahil Enclave were cancelled and advance money refunded after due verification , which dully accounted for in the books of accounts of the company and the position was verifiable from same hard disc seized by the department during the course of search. In support assessee filed copy of ledger account of persons to whom amount refunded on account of cancellation of flats of Sahil Enclave. The ld. DR in WS dt.02.04.2025 submitted "brochures are mere after thought as these are bound to have been prepared after the search and seizure action as there is no reference to any specific seizure annexure by the assessee in this regard and also no specific submission before the

assessing officer in this regard has been highlighted in these pages." As The ld. lower authorities have neither asked nor commented on these and it is not necessary that all the documents are seized it may be not seized or may be laying other places. Hence on suspicion and presumption cannot be drawn.

Thus the , annexure "B" relied upon by the lower authorities related to product originally offered under the old name "Shail Enclave" which was not materialized and cannot be used for making the addition without other material evidences.

9.3 Further the AO referred ANNEXURE 'C' by taking the word of unbilled sales which clarified by the assessee during the course of assessment proceedings by stating that it is a position calculated for the purposes of revenue recognition for the year ended 31/03/2014 by the staff of the assessee in which the position of the amount received as an advance from the customers and the position of unbilled revenue calculated for percentage completion method up to 31/03/2014 on the project which included the unbilled position of revenue for the financial year 2012-13 and 2013-14. He stated that the amount of unbilled sale (sale offered for taxation though sale not finalized technically it is unbilled revenue) all includes the revenue recognition for the financial year 2012-13 and 2013-14 and the amount of unbilled sale mentioned in this statement was not correct to the extent it was under preparation for 2013-14 but correct figure of financial year 2012-13 included in this amount and the statement was draft statement subject to

audit by the CA and calculated on the basis of construction completion rate of 54.55%. At the time of audit all relevant documents, accounts have been verified and ultimate the construction completion rate arrived at 49.84%. Accordingly the statement referred in Annexure C was revised and the revised statement is also available in the same seized hard disc and placed at **E:\Kamal pendrive\CA.Tejsingh\Ashina Buildprop Pvt. Ltd. (tejsingh)\POC Method** 13-14 sheet revenue 2013-14. And in the revised calculation the estimated cost of construction has been correctly considered as per statement referred as Annexure "A". hence the statement referred as Annexure "C" was not final statement in the process of determination of income to be recognized on the basis of percentage completion method for the assessment year 2014-15. In support this we drawn our inference from the PB 22 which is Schedule of Profit & Loss A/c where the Revenue Recognized As per Guidance Note Unbilled Sales As GN Rs.81,94,403/- shown according to the calculation of POC Method which is available at PB 125-127. Thus the Annexure-C reflecting position prior to finalization of final accounts . The lower authorities has not disproved that the working of the assessee as Per Revenue Recognized Guidance Note and POC wrong.

9.4 At the same time when an excel sheet named POC method/total estimated cost has been found at **new folder/newfolder/work/other desktop &excel last** where average construction cost per sq. ft on salable area has been shown to be

calculated at Rs.1092.13 as per Annexure-A, and another excel sheet named *"as Book1 kajari/DLC at E Drive backup dt. 25.04.2015/ backup/ Desktop/ extra "*which contains accounted details of all the 63 flats of "Sanchi Enclave of M/s Ashiana Build Prop Pvt. Ltd. given vide the above table of which is reproduced at page 3-5 of the assessment order were also found and the same have been ignored by the lower authorities, when the same support the contentions of the assessee. Hence all the seized annexure and details should be read in whole not in part when assessee has filed the explanation which have not been discarded by the lower authorities by brining other material evidences. It is also notable that when in Annexure-C there are details only of 27 Flats than how the same can be used for all of 63 Flats. It is also notable that the rate of all Flats also cannot be same as in a complex there are so many factors for deciding the rate. On perusal of the paper book it is also notable that the assessee filed the detailed explanations on the seized annexure through the letter which is also reproduced in the assessment order there apart assessee filed various documents as also available in the paper book, hence the observation of the ld. CIT(A) and DR is incorrect that no explanation is filed by the assessee.

9.5 As the lower authorities have also alleged of receiving the own money or unbilled money. As from the record it is found that the assessee had produced the details of the buyers, sale deed , agreements etc. When the lower authorities was

having all the details of the buyers/customers then to prove their contention of receiving the on Money or Excess money by the assessee over to amount mentioned in the sale deed/agreement and to disprove the contention of the assessee of not receiving the On Money or Excess money over to amount mentioned in the sale deed/agreement , he should have made the necessary inquiry or verification from the respective buyers/customers in absence of the same no addition can be made. We also found from the record that the AO has neither made any inquiry or verifications from the persons i.e buyers/customers nor provided cross examinations of the same in case if he was having any proof or evidence that any On-Money were paid by them to the assessee and in our view the observations of the ld. CIT(A) that Without discharging the onus casted upon by it the assessee cannot be allowed to argue that no cross examination was provided by the AO from the buyers" is not correct when there are so many Judgments of Honble Supreme Courts, Honble High Courts, Tribunal that no addition can be made without providing the cross examination when an allegation has been made which is wrong as per the assessee and when the assessee wants the cross examination then it was the duty of the AO to provide the same, without providing the same no addition can be made We refer judgment of the **The Hon'ble Supreme Court in decision dated 02.09.2015** in the case of **Andaman Timber Industries vs. COMMISSIONER OF CENTRAL EXCISE (2015) 281 CTR 0241 (SC) :**

(2015) 127 DTR 0241 (SC)(Supra), ***Honorable Jurisdictional HC (Rajasthan) in the matter of PCIT, Jaipur-2, Jaipur Vs. Shri Sanjay Chhabra, ITA NO. 22/2021 (06/04/2022),*** **Commissioner of Income Tax Versus Harjeev Aggarwal reported in (2016) 290 CTR (Del) 263** and **KailashbenManharlal Chokshi Versus Commissioner of Income Tax reported in (2010) 328 ITR 411 (Guj).Thus it is against principal of natural justice and additions are wrong.**

9.6 Further we also of the view that when the AO and CIT(A) was of the view that the assessee has received On-Money or Undisclosed income from the buyers/customers, then he should have also taken action in the hands of the respective buyers/customers for paying the On-Money but he did not do so then how the addition can be made in the hands of assessee(Seller). The observations of the ld. CIT(A) that "It is admitted fact that statement of Mr. Bharat Manwani could not be provided as he was no more. However, the purchasers could have been produced before the AO to prove the facts as per arguments. No efforts have been made by the assessee to prove his arguments." It is also incorrect because as per record after issuing the show cause notice assessee explained all the facts and produced the details thereafter he has not asked any things to the assessee , if he was having any adverse view regarding the details explanations he should have asked to the assessee again and he could have called the purchaser when the AO

has not asked to assessee to produce the purchasers then how it can be expect for the same and in act when powers have been given to the AO , he should have do so. Hence also the observations of the lower authorities isbaseless. Regarding the entries in the ledger accounts AO has not verified the entries from the respective buyers and not read in whole.

As the Honble MP High court CIT v/s Dolphin Builders (P) Ltd 356 ITR 420 held that *Department had not examined any purchaser or flat owner to verify correctness of noting that some higher amount was paid by said purchaser to "B" Builders or fact that actual price was much higher to price which was recorded in account books. The Tribunal had also found that if any amount was collected in excess to the agreed price then "B" could have been liable for that and not the assessee. Aforesaid reasoning of the Tribunal was reasonable. Though there might be some doubt about the price of the flats but until and unless it could have been proved by some evidence, aforesaid doubt could not take place of proof. Until and unless such noting was corroborated by some material evidence, the AO erred in making addition in the income*

We also found support from the judgments of this Bench **in DCIT v/s M/s Ankit Chirag Developers Pvt. Ltd in ITA No. 180 & 295/Jodh/2016 dt. 15.09.2021 where it has been held that:**

> "13. Further if in the beginning, any customer or buyer has come to look or for purchase of any flats and the marketing persons tell some calculation of flats area, size, or estimation of rate on the rough papers' As in the case of

flat sale/purchase or real estate business, there are so many criteria orangles to convince the customers and after bargaining amount is beingreduced on the basis of payment, construction, finishing etc' Thus it means not that the rough noting or estimation is the final Further we would also like to say that there was no inquiry or evidence on record that whether any excess or own money has been received by the assessee from the purchasers over and above the amount mentioned in such agreements. The actual amounts received are appearing in the registered sale". Hence the observation of the ld. CIT(A) is incorrect. In this case the judgments of **CIT v/s K.K. Enterprises 178 Taxman 187(Raj.)/13 DTR 289, CIT vs. Khandelwal Shringi& Co.: (2017) 398 ITR 0420 (Raj). Have been followed.**

As it is also not the case of the Revenue that the assessee has sold the Flats on the Lower rate than to the DLC rate. When the sale made on more then to the DLC rate or market rate, then additions should not have been made on assumption, presumption and suspicion. As the AO has made the additions only on the basis of some part of seized annexure, ignoring the other seized annexure, books of accounts, method of accounting in this line of business, sale deed, details and explanations furnished which have not been rebutted by brining any other documentary evidences or without making or examining the inquiry from the purchasers/customers.

9.7 It is also found that after making the additions the Net profit is worked out as under :

A.Y	NP rate worked out by the AO	Profit declared by the assessee
2013-14	64.16	9.60
2014-15	55.80	1.24
2015-16	68.12	13.56
2016-17	68.01	13.45

From the above table we find that the net profit arrived at by the AO in comparison to profit declared by the assessee is very higher and even when the books and audited accounts have been produced and the same were also part of search and AO has not rejected the same or not invoked the provisions of Sec. 145(3), in absence of which such additions is invalid, in support assessee relied upon various judgments and the ld. DR. has also in his WS dt.25.03.2025 submitted that the rejection of the books of accounts is not mandatory as it is seen from the number of judgments regarding the bogus purchase issue wherein the additions have been upheld in principle even when the books of accounts have not been rejected. Case referred Shree Krishan Kripa Feeds v/s CIT, Karnal 101 Taxman.com 132 (Puj. & Har.). As this case is not applicable in the present case and distinguishable. In

the case of assessee there is neither bogus purchase nor bogus sales . In the case of assessee the sales amount as well as Net profit have been increased by the AO.

Therefore, in view of the above, the additions made by the AO are hereby deleted and the Ground No. 3 for A.Y. 2013-14 to 2016-17 and Ground Nos. 3&4 for A.Y. 2015-16 to 2016-17 are allowed.

10. In the result, appeals of the assessee are partly allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

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Sd/-	Sd/-
(Dr. Mitha Lal Meena)	**(DR. S. Seethalakshmi)**
Accountant Member	**Judicial Member**

Dated 26/05/2025
Santosh- Sr. P.S
Copy of the order forwarded to:

(1)The Appellant

(2) The Respondent

(3) The CIT

(4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy
By order