IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.581/Rjt/2024
Assessment Year: (2016-17)
&
ITA Nos.545 to 547/Rjt/2024
Assessment Years: (2017-18 to 2019-20)
(HybridHearing)

Mukesh Manekchand Sheth, B-1, Ground Floor, B-Tower, Silver Heights,Nana Mava Circle, 150 Feet Ring Road,Rajkot-360004	Vs.	The DCIT/ACIT, Central Circle-2,Rajkot, Amruta Estate, Near Girnar Cinema, M.G. Road, Rajkot-360 001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: **AFUPS1512C**		
(Assessee)		**(Respondent)**

ITA Nos.723 & 724/Rjt/2024
Assessment Years: (2016-17 & 2017-18)
(Hybrid Hearing)

The DCIT,Central Circle-2, Rajkot, Amruta Estate, Near Girnar Cinema, M.G. Road, Rajkot-360 001	Vs.	Mukesh Manekchand Sheth, B-1, Ground Floor, B-Tower, Silver Heights,Nana Mava Circle, 150 Feet Ring Road,Rajkot-360004.
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: **AFUPS1512C**		
(Assessee)		**(Respondent)**

Assessee by	: Shri D.M Rindani, Ld. A.R.
Respondent by	: Shri Sanjay Punglia, Ld.CIT (DR)
Date of Hearing	: 27/03/2025
Date of Pronouncement	: 10/06/2025

आदेश /O R D E R

Per, Dr. A.L Saini, AM

This is bunch of six appeals, out of that four appeals filed by the Assessee and two cross-appeals filed by the Revenue, pertaining to assessment years 2016-17to

2019-20, are directed against the separate orders passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad, which in turn arise out of separate assessment orders, passed by the assessing officer, under sections 147r.w.s. 143(3) of the Income Tax Act, 1961,(hereinafter referred to as "the Act").

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.581/Rjt/2024 for assessment Year (A.Y.) 2016-17, have been taken into consideration for deciding the above appeals *en masse*.

3. Although, these appeals filed by the Assessee and Cross- Appeals, filed by the Revenue, contain multiple ground of appeals. However, at the time of hearing, we have carefully perused all the grounds raised by the Revenue as well as cross objections raised by the Assessee. Most of the grounds raised by the Revenue as well as Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee, as follows:

> *1.Ground No.1. The Ld.CIT(A) erred in holding that proceedings u/s 148 culminating into order u/s 147 of the Act were valid and thus erred in dismissing assessee's grounds of appeal challenging the action u/s 148 of the Act and subsequent proceedings in law.*
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> [This is g*round No.1 in assessee's appeal in ITA No.545/Rjt/24 A.Y.2017-18, Ground No.1 in assessee's appeal in ITA No. 546/Rjt/2024 A.Y.2018-19, Ground No.1 in assessee's appeal ITA No.547/Rjt/2024 A.Y. 2019-20, Ground No.1 in assessee's appeal in ITA No.581/Rjt/2024 A.Y. 2016-17]*
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> *2.Ground No.2.The Ld.CIT(A) erred in confirming the order of the Assessing Officer in treating Rs.9,80,00,000/-, as on-money in assessee's hands alleged to be arising from material found from a third party and thus erred in upholding rejection of books of account u/s 145(3) of the Act, based on which the Assessing Officer treated 50% thereof being Rs.4,90,00,000/-, as estimated unaccounted profit of the assessee.*

[This is ground No.2 is in assessee's appeal in ITA No.545/Rjt/24 A.Y.2017-18, Ground No.2 in assessee's appeal in ITA No. 546/Rjt/2024 A.Y.2018-19, Ground No.2 in assessee's appeal ITA No.547/Rjt/2024 A.Y. 2019-20 , Ground No.2 in assessee's appeal in ITA No.581/Rjt/2024 A.Y. 2016-17]

[Revenue is in cross-appeal for A.Y 2016-17, vide ground No.1 and 2 in ITA No.723/Rjt/2024 A.Y.2016-17 – estimated profit from 50% to 18%, Revenue is in cross-appeal for A.Y. 2017-18, vide ground No.1 and 2 in ITA No.724/Rjt/2024 – estimated profit by Ld.CIT(A) from 50% to 18%]

Ground No.3 The Ld.CIT(A) erred in upholding the addition of unaccounted profit to the extent of 18% of alleged on-money receipts and also erred in upholding the reliance placed by the Assessing Officer upon data found from accountant of search party.

[This is ground No.3 & 4 in assessee's appeal in ITA No.545/Rjt/2024 A.Y.2017-18, Ground No.3& 4 in assessee's appeal in ITA No.546/Rjt/2024 A.Y.2018-19, Ground No.2 and 3 in ITA No.547/Rjt/2024 A.Y. 2019-20 of assessee's appeal, Ground No. 3 and 4 in assessee's appeal in ITA No.581/Rjt/2024 A.Y 2016-17]

Ground No.4.The Ld. CIT(A) erred in rejecting assessee's ground regarding non-providing of cross-examination of persons belonging to searched party.

[This is ground No.5 in assessee's appeal in ITA No.545/Rjt/2024 A.Y.2017-18, Ground No.5 in assessee's appeal in ITA No.546/Rjt/2024 A.Y.2018-19, Ground No.5 in assessee's appeal in ITA No.547/Rjt/2024 A.Y.2019-20 and Ground No.5 in assessee's appeal in ITA No.581/Rjt/2024 A.Y.2016-17]

Ground No.5 The Ld. CIT(A) erred in sustaining disallowance of claim of Rs.4,90,00,000/- by way of set off of brought forward unabsorbed depreciation.

[This is ground No.6 in ITA N0.546/Rjt/2024 A.Y.2018-19]

4. Now we shall take above, summarised and concise ground of appeals, of assessee and revenue, as follows.

5. The summarised and concise ground No.1, is reproduced below for ready reference.

"1.Ground No.1. The Ld.CIT(A) erred in holding that proceedings u/s 148 culminating into order u/s 147 of the Act were valid and thus erred in dismissing assessee's grounds of appeal challenging the action u/s 148 of the Act and subsequent proceedings in law.

[This is ground No.1 in assessee's appeal in ITA No.545/Rjt/24 A.Y.2017-18, Ground No.1 in assessee's appeal in ITA No. 546/Rjt/2024 A.Y.2018-19, Ground No.1 in assessee's appeal ITA No.547/Rjt/2024 A.Y. 2019-20 , Ground No.1 in assessee's appeal in ITA No.581/Rjt/2024 A.Y. 2016-17]"

6.Succinctly, the factual panorama of the case is that assessee before us is an Individual, and the Income-tax Return for assessment year(AY) 2016-17, has been filed on 14-10-2016, declaring total income of Rs. 28,39,970/-. A Search, Seizure and Survey action was carried out by the office of DDIT (Inv.), Unit-1, Rajkot in the case of leading real estate builders of Rajkot and their key associates, on 24.08.2021. The four different groups were covered inthe operation including, the R. K. Group of Rajkot. All the four groups are in the business of real estate and are mainly concentrated in and around Rajkot.A totalof forty-three (43) premises were covered,out of which 32 premises were covered under section 132 of the Income Tax Act 1961 and the other 11 premises were covered u/s 133A of the Income Tax Act 1961. The premises covered were a mix of residential and business premises of their related entities, their family members, key associates and employees. The RK Group is developing multiple projects in the nature of Commercial, Residential and Industrial plotting projects. The assessing officer observed that in the RK Group the main persons/partners are the Sonwani family members. Some projects of RK Group were developed with other groups also. The assessing officer observed that the group is involved in taking on-money/unaccounted cash on selling of units in its projects and giving on money on purchasing of the land. The data of on-money/unaccounted cash was being maintained in a very systematic manner in Miracle file. In Miracle files, mainly unaccounted transaction has been entered with some banking transaction as well. The premise of Shri Girish Vanjani was also covered during the search action. The assessing officer noted that Shri Girish Vanjani was maintaining the accounts of the R K Group (including parallel unaccounted

cash transactions) at the instruction of Shri Sarvanand Sonwani. The assessing officer, reproduced his statement in the assessment order page no.3.

7. The assessing officer noticed that Shri Girish Vanjani has categorically stated that he does the work of accounting as per the instructions of Shri Sarvanand Sonwani. Even Shri Sarvanand Sonwani has accepted (in his statements recorded u/s 131 of The Act at the residential premise of Girish Vanjani on 27.08.2021) that Shri Girish Vanjani does the work of accounting as per his instructions. A snapshot of the relevant portion of statement of Shri Sarvanand Sonwani is pasted by the assessing officer, in the assessment order, page no.3. During the course of search and seizure action at the residential premise of Shri Girish Vanjani, Pen Drives and Hard Discs were recovered. Forensic Mirror Imaging (Digital Data Backup) of these devices was taken and the same were seized. Thebackup contained key accounting files of the entire group in a systematic manner, like the accounts of (1) Sale of units (2) Cost of lands (3) Expenses incurred on various projects and other miscellaneous transactions made by R K Group members with various counter parties were maintained in accounting software known as MIRACLE. Details of sale of units maintained in various excel sheets were also found and seized from the premise of Shri GirishVanjani. From the seized miracle files, details of the flats purchased by Shri Sarvanand Sonwani and his family members in the project Silver Heights were found. As per these details, the Sonwani family members have paid in aggregate Rs. 22,81,00,000/- in cash to the Assessee, Shri Mukesh M Sheth (a proprietor of the firm namely “M/s. Silver Heights”). As details regarding unaccounted part of the aforementioned transactions pertaining to the assessee have been gathered from the seized material during the search operation, a notice under section 148 of the Act, has been issued on 23-02-2023, to the assessee. In response to the notice issued under section 148 of the Act, the assessee has filed an Income tax return on 27-02-2023, declaring total income of Rs. 28,39,970/-. Subsequently, a notice

u/s 143(2) of the Income-tax Act, has been issued on the e-filing portal of the Assessee. Subsequently, notices u/s 142(1) have been issued from time to time seeking primary as well as further details from the assessee for carrying out the assessment. In view of natural justice, the objections raised by the assessee against initiation of proceedings u/s 148 of the Act, have been disposed of and the images of original seized material pertaining to the assessee have been supplied and discussed in the notices issued u/s 142(1) of the Act from time to time.

8. The assessing officer observed from the seized miracle files, details of the flats purchased by Shri Sarvanand Sonwani and his family members in the project Silver Heights. The names of the ledgers are 'SH MM' and 'Silver Hight Flats'. The extracted contents of both the ledgers are pastedby the assessing officer in the assessment order. The ledgers, **'SH' is 'Silver Heights'. 'MM' and 'MUKESH BHAI' is Mukesh M Sheth**, the assessee who is the developer of the project Silver Heights. During the course of assessment proceedings, the Assessing Officer issued a show-cause notice to the assessee to explain the transaction contained in the seized materials.

9. In response, to the show cause notice of the assessing officer, the assessee submitted a detailed reply before the assessing officer along with documentary evidences. In his reply, the assessee submitted before the assessing officer that reopening of the assessment is itself bad in law, and the provisions of Section 148, 148A, 149 of the Act, have not been complied, before initiation of impugned re-assessment proceedings.It was submitted that the allegation in the entire Annexure (Reason) is that of unaccounted receipts by assessee from booking / sale of units in the project "Silver Heights". However, while justifying the reopening of case under the prescribed time-limit u/s 149 of the Act, it was alleged that income chargeable to tax in assessee`s case is represented in the form

of assets / expenditure. Therefore, there is clear contradiction between the allegation raised on the basis of so-called documents/data seized from the premises of third party and averment made in justification of compliance with the provision of Section 149(1)(b) of the Act. It was submitted that provisions of section 149(1)(b) of the Act, empowers an authority to issue notice u/s 148 of the Act, if the alleged income is represented by any asset or expenditure. It is apparent on the face of the show-cause notice(SCN), however, assessing officer is not certain, as to whether in assessee`s case, the alleged escaped income is represented by asset or expenditure, both these phrases have been issued in the show- cause notice (SCN). The reason and the belief as also the information leading to allegation of escapement of income must be clear and explicit at the initial stage itself prior to recording of the reasons and then issue of notice pursuant to the reasons. The SCN having used both the phrases at a time, it suffers from vagueness and demonstrates absence of initial judgment itself, as to whether the information represents assessee`s asset or expenditure. As a result, the notice becomes bad in law and assessment order deserves to be quashed.**The exercise of jurisdiction u/s the new sections 147 and 148 of the Act, is not meant to determine during reassessment, as to whether an item represents an asset or an expenditure or whether it exceeds the threshold of Rs. 50 lakhs. The said exercise is required to be carried out prior to or at the time of recording the satisfaction and the reasons and while obtaining the requisite approvals of higher authorities. Obviously, this has not been done and hence the notice suffers from an inherent jurisdictional lack of power.**

10. The assessee also submitted before the assessing officer that in the instant case, no 'asset' or 'expenditure' is identified in the entire Annexure (Reason) and hence, reopening of the case beyond the prescribed time-limit is patently illegal. The clause no. (b) of section 149(1) requires that the income chargeable to tax should be represented in the form of (i) an asset, (i) expenditure in respect of a

transaction or in relation to an event or occasion; or (ii) an entry or entries in the books of account. **The reasons provided for issue of notice u/s. 148 of the Act bears a solitary allegation of receipt of on money, but the money has not been quantified in the reasons recorded. However, its representation in the form of an asset or an expenditure or an entry in the books of account is nowhere recorded in the reason for reopening.** Hence, the notices u/s 148 of the Act issued by the assessing officer, does not sustain in the eyes of law and hence, the consequential proceedings too, become bad in law.

11. The assessee also submitted before the assessing officer that inthe para No.2 of the show cause notice(SCN) has stated that although there is no search action carried out in the case of the assessee (that is, assessee`s, notice can be issued u/s. 148 of the Act under clause (iv) of Explanation 2 to Section 148 of the Act. In this connection, it was submitted that copies of documents / data said to have been seized from the premise of Shri Girish Vanjani provided to the assessee (two ledger accounts) do not pertain to assessee and also, the information contained therein does not relate to assessee. It was submitted that nowhere in the impugned documents/data, it is specifically stated that the alleged cash has been paid to the assessee or that the entries in such seized data are related to purchase of residential units from the assessee. Therefore, merely on the basis of name "MM", "Silver Heights", "Mukeshbhai" etc. resembling with the name of the assessee, it cannot be presumed that such transactions are carried out with the assessee, much less the allegation of on money paid.In the show cause notice dated 13.03.2023, it is mentioned that the reopening proceedings are made as per clause (iv) of Explanation 2 to Section 148 of the Act, this, is in stark contradiction to the reasons mentioned in the very notice issued u/s. 148 dated 23.02.2023. In the said notice issued u/s 148 of the Act on 23.02.2023, it is mentioned that assessment is reopened on account of search initiated u/s 132 of the Act, in assessee`s case or in the case of the person in respect of which

assessee is assessable under the Act. This means that while reopening the proceedings, assessee had formed an opinion and a belief that, either search has been carried out in assessee`s case or that assessee`s representative or any other search person (In this case of R K Group). Thus, the very initiation of the reassessment proceedings is on a completely incorrect factual premises or belief and it is strongly objected to. Therefore, on this ground also, initiation of proceeding u/s. 147 of the Act is incurably and defective. In para-3 of SCN, it is stated that the provision of Section 149(1)(b) has been followed by taking approval from the specified authority. However, as submitted above, there is no mention of asset or expenditure represented by the alleged-escaped income and hence, the notice issued u/s. 148 of the Act is barred by the limitation period of time prescribed u/s. 149 of the Act.In view of the above, it was submitted that proceedings initiated u/s147 of the Act are wholly and ipso facto invalid and hence, reassessment proceedings may be quashed.

12. On merit, the assessee submitted before the assessing officer that sale of units made to the members of Sonwani Family is at the value, which is far higher (almost 1.50 to 2 times) than the valuation prescribed by State Government for levy of stamp duty, that is, Jantri Value / Circle Rate. In the seven units sold to the members of Sonwani family in FY 2018-19 and 2019-20, total sale consideration realized is Rs. 11,55,00,000/-, whereas, stamp duty valuation of such units is Rs. 7,34,65,350/-.Therefore, the sales declared by the assessee is higher than the stamp duty valuation by Rs. 4,20,34,650/- (Rs. 11,55,00,000- Rs. 7,34,65,350)that is, 57% higher. This also shows that there is no scope of alleged on-money receipts and hence, all the allegations in the impugned SCN are merely on the basis of assumptions and presumptions. It may be appreciated that even u/s 43CA of the Act, the stamp duty value is accepted as fair value for determination of business profits on transfer of stock-in-trade. In assessee`s case, the consideration received and disclosed is higher than the section 43CA-

prescribed value and there is therefore no warrant to hold that assessee charged more than the documented consideration amount. This aspect cannot be lost sight of.Furthermore, it was also submitted that even if for example, allegation of unaccounted receipts of Rs. 22,81,00,000/-, on sale of seven residential units would be considered then total receipts by the assessee on sale of seven units will work out at Rs. 34,36,00,000/- (11,55,00,000+ 22,81,00,000). Total carpet area of each residential unit is 334.77 Square Meters, which is equivalent to 3600 Square Feet and hence, carpet area of seven units works out at 25,200 Square Feet. On this basis, rate per square feet would be of Rs. 13,635/- per square feet, which is totally absurd, unreasonable and not at par with the prevailing rate. Therefore, there is no matching or correlation in the seized documents / data with the prevailing jantri /market rate and hence, cognizance taken on such data is misplaced.

13. On merit, the assessee also submitted that the regular assessment proceedings for assessment years, 2017-18 and 2018-19 have been completed u/s 143(3) of the Act and the jurisdictional assessing officers after thorough verification of the books of account and relevant supporting documents have accepted the book results. Also, statutory audit by the officers of service-tax department have also been undertaken for the period April 2013 to March 2017, wherein, books of account of the assessee have been accepted. Therefore, proposal to reject book results by invoking the provisions of section 145(3) of the Act and to estimate the profit on the alleged unaccounted receipts solely on the basis of third party data / documents would be completely unjustified.

14. On merit, the assessee also submitted before the assessing officer thatthe allegation of receipt of unaccounted cash is based on purported accounts statements, which are stated to have been recovered from the digital data seized from the possession of one Shri Girish Vanjani, an accountant of RK Group. In

this connection, it was submitted that the assessee has no relation/connection with Shri Girish Vanjani and therefore, any data / document found from his possession cannot be made binding to the assessee. Therefore, the person from whose possession impugned data is found should be responsible to explain entries in seized data and for his wrongdoing, the assessee should not be penalized. The assessee submitted that there is no statement or any other corroborative evidence, showing receipt of on money. It was also submitted that if the person searched have made any submission or comments adversely affecting to the assessee on the basis of given seized data then opportunity of cross-examination may be given to the assessee in the interest of natural justice.Therefore, in absence of any clarificationregarding the specific seized data from the persons searched and in absence of cross-examination allowed to the assessee of such person, cognizance taken by the Department is completely unjustified and in gross violation of principle of natural justice. Therefore, adverse inference proposed to be taken in the case of assessee is on conjectures and surmises, which was strongly objected. In this regard, the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE 281 CTR 241 (SC) and Hon'ble Apex Supreme Court in the case of Kishanchand Chellaram vs. CIT (1980) 125 ITR 713.

15. On merit, the assessee also submitted before the assessing officer thatthere is neither any evidence found at all from premises of RK Group nor any statement from it showing and stating that assessee had received on-money for sale of impugned apartments, there is no such acknowledgement/signature/even an indication from assessee or document showing as much. What may have been written by a third party is its own version and reason and hence does not inferentially too, pertain to assessee. The seized material does not belong to the assessee, and for that purpose, assessee submitted following arguments:

(i) It does not state the number /ID of the apartment in Silver Heights,

(ii) No specific buyer of Sonwani / RK Group who purchased the apartments have stated to have paid any on-money to assessee.

(iii)There is no signature of any party of the data; there has been no 'banakhat' or any other written document executed by assessee in their names,

(iv) There is no noting of any cheque amount paid to assessee; hence, there cannot be a corelation that both cheque and cash were paid to assessee for same purpose and by the same person.

(v) There is no specific admission or surrender by RK Group in assessee`s name; and in absence of admission of payment, a corresponding receipt by a receiver does not take place.

(vi) Even if there is a payer, who can be inferred (though there is none named on the data), a receiver cannot be inferred as the seller of the apartment; the so called payments could be for other purposes of the apartment at bestbut the seller does not become the beneficiary of the amounts stated thereon.

(vii) On the face of the seized data relied upon, there is no mention of actual transaction with assessee, hence such data does not implicate assessee, the relates to or 'pertains to cannot be viewed in isolation, it must have a visible, direct nexus with me on the face of it, which is missing here and hence cannot lead to undisclosed income on assessee`s part.

(viii) The amounts and dates noted on the seized data may be for anything but not for assessee.

16. However, assessing officer rejected the above contention of the assessee and observed that profit element embedded in the entire set of various kinds of unaccounted transactions that came to surface from the seized Miracle data, should be added in the hands of the assessee. The assessing officer noted that the seized digital data in the form of accounting entries on Miracle file is accurate, reliable and self-explanatory. Further, there is also no doubt thatthe accounts of the assessee where all the transactions are not reflected cannot be relied upon as they present incomplete and incorrect state of affairs of business of the assessee and requires to be disregarded invoking the provisions of section 145(3) of the Act. Accordingly, provisions of section 145(3) of the Act,were invoked by the assessing officer and the assessment of total income of the assessee was being estimated after taking into account all relevant material gathered during the search and the assessment proceedings.While estimating the profit, the assessing officer noticed that details of receipts and payments were recovered from the seized data, and it was noticed that the net surplus funds available with these projects were ranged from -237% to 51%. The reason for this vast gap between the upper and lower ends of this net surplus range was primarily attributable to the stage in which a particular project has reached since its inception. For example, if any project is just launched then its % of net surplus funds would be lower because most of the funds are spent / applied on inventories and the inflow of on-money has not started in full pace. Due to combined effect of these two aspects, the availability of surplus funds remains either on lower side or sometime in negative state. Thus, it is understood that taking reference from the net surplus / unaccounted profit of such 'just launched' project would not give true picture of the potential profitability of such projects. In order to estimate a reasonable rate of profit, it is taken that only those projects for which sufficient data is available from the seized material should be relied upon. At the same time, it is also ensured that the projects that almost reached its final stage (with

respect to construction activity and receipt of on-money both) should only be taken as reference for adoption of an appropriate rate of profit. After considering all the above aspects, the reasonable rates of profits have been arrived in a range of 35% to 45% for different category of projects i.e. Commercial and Residential respectively. The assessee relates to the same group of searched people / entities which were covered in a same search operation. Therefore, applying the rule of similarity the same rates of profits can be adopted across all the projects the data of which has been recovered from the same search operation.Moreover, in respect of the project under consideration, the material gathered during search operation indicated on-money receipts only. Under these circumstances, it would not be fair if the same benchmark rates adopted for other projects where receipts and payment both kinds of transactions are available are also applied to the project where only on-money receipts are available. At the same time, considering that the assessee is also in the same line of business with the same group of persons, the possibility of having incurred unaccounted expenses cannot be ruled out completely (No data is recovered during search does not necessarily mean no unaccounted expenses incurred).Further, various judgments discussed by the assessing officer, in the assessment order endorse the same preposition that only profit embedded in the gross unaccounted receipts should be taxed and not the entire unaccounted receipts. Apart from this, it is also necessary to keep in mind violation of various other provisions of the law which are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial presidents, if all the expenses / payments are disallowed than the ratio laid down by the various High Courts, regarding not taxing all the receipts would remain in papers only. Thus, with a view to strike a proper balance between the factual vis-à-vis the legal aspects it is decided to further enhance the average net profit rate to 50%.Accordingly, the net unaccounted profit for this particular project wasestimated at the rate of 50%. As far as the profit for the year under

consideration is concerned, the same was computed by assessing officer, as under:

Sr.No	Particulars	Amount
A	On–money receipts	11,25,00,000
B	Unaccountedprofitestimated(50%of A)	5,62,50,000

Thus, addition of Rs. 5,62,50,000/- being unaccounted profit embedded in the gross unaccounted receipts was made by the assessing officer, over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration. Consequently, total business income for the year under consideration was enhanced by Rs. 5,62,50,000/- for the year under consideration invoking provisions of section 145(3) of the Act.

17. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has reduced the estimated profit from 50% to 18% of on money receipts. The Ld.CIT(A) also rejected the assessee's technical ground for challenging the re-opening of the assessment u/s.147/148 of the Act. During the appellate proceedings, the assessee submitted that notice issued u/s 148 of the Act is not clear about the initiation of reassessment proceedings as a result of search initiated in the case of the assessee or the search initiated in the case of the third party and the procedure laid down in section 148A of the Act has not been followed. However, learned CIT(A) observed thatin the new regime/scheme of search assessment, the proceedings for search assessment of search party as well as third party are made u/s.147 of the Act, unlike in the earlier/old scheme of search assessment wherein the search assessment of searched party was made u/s.153A of the Act, whereas the assessment of third party was made u/s.153C of the Act. Since in the present reassessment proceedings both of the searched party, as well as third party

assessments are covered, and it was observed that the initiation of reassessment proceedings in the present case is valid in law. While passing the assessment order, the assessing officer has also observed that search was carried at the assessee's premises on 24-08-2021 and pursuant to the search, notice under Section 148 of the Act was issued in case of assessee. As search was carried out in the case of assessee after 01-04-2021 wherein provisions of Section 148 were amended and provides deemed satisfaction for three assessment years prior to the date of search and even on this ground, the assessing officer has validly issued notice under Section 148 of the Act. Therefore, this argument raised by the assessee was rejected by the learned, CIT(A).

18. The ld CIT(A), on merit, noted that when data are found from the premises of accountant, such data cannot be ignored simply stating that it was found from third party or such accountant had filed affidavit stating that he does not know anything about the correctness and authenticity of the data. Thus, the argument of the assessee was rejected. About the opportunity of cross examination, the ld CIT(A) noticed that assessee has claimed that the assessing officer has failed to provide opportunity to cross examine Shri Girish Vanjani to derive the truth about correctness of the data, however, the ld CIT(A) observed that the addition made by the assessing officer is not only based upon any statement of Shri Girish Vanjani but data found during the course of search revealed unaccounted activities carried out by RK group and its associates. The assessee has failed to rebut the contention of the assessing officer regarding corroboration of seized data with actual data. It is not the case that the assessing officer is relying upon altogether third-party statement which is unconnected with assessee group. Therefore, ld. CIT(A) stated that it was not necessary to provide the opportunity of cross- examination and therefore this contention of the assessee was also rejected by the ld. CIT(A).

19.The ld CIT(A), on merit, further observed that on-money receipts estimated by the assessing officer @50% is imaginary and arbitrary. If it would be assumed and considered that the assessee had received on-money receipts on sale of properties (though not at all accepted and agreed) however, without prejudice, corresponding estimated unaccounted expenditure to earn such receipts was required to be allowed as deduction. The assessee has contended before learned CIT(A) that in any case, if on-money is estimated it should be at considerably lower level, that is, 6% to 8%, considering various decisions of jurisdictional High Court as well as the Tribunal referred in assessee's submission. Thus, the assessee has relied on various case law in the submission in support of its claim. The ld. CIT(A) observed that it is well settled law which is also accepted by the assessing officer while passing the assessment order that only profit element embedded in the alleged on-money cash receipts as per the seized material should be taxed. However, while making the addition, the assessing officer has made addition of profit on on-money cash receipts @50% on the on-money cash receipts as per the seized material. The assessing officer himself has also observed that after considering all the aspects, the reasonable rates of profits have been arrived in a range of 35% to 45% for different category of projects i.e. commercial and Residential respectively. It was observed that the assessing officer even observed the net surplus in the assessee group concern was 35% to 45%, but has made addition of unaccounted income by estimating profit @50% on unaccounted receipt which clearly suggests that the assessing officer has not adopted any scientific basis for working out unaccounted income in the hands of the assessee. It was also observed from the assessee`s submission by ld CIT(A) that the assessee had itself shown Gross profit(GP) for the project @ 15.38% in the different assessment years wherein the addition of on-money was made by the assessing officer and requested to estimate profit @6% of on-money receipt. In view of the above facts and circumstances of the present case, the ld CIT(A) held that it would be appropriate to estimate the profit @18% in the case of

residential units of the projects, which would cover various irregularities and incomplete transactions. Therefore, learned CIT (A) directedthe assessing officer to re-compute addition of on-money profit @18% .

20.The ld CIT(A), on merit, further held that even if the addition on account of estimated profit, on alleged on-money/ cash receipts is made, the same should be made in the year of actual sale when the conveyance deed is executed in the favour of buyer when the significant risk and rewards are transferred. Therefore, learned CIT(A) directed, the assessing officer to estimate unaccounted profit @ 18%, on on-money receipt and tax such income in the year in which income is recognised in books of accounts.

21. Aggrieved by the order of the Ld.CIT(A), the Assessee, as well as,Revenue both are in appeal before us. The assessee is in appeal before us stating that the addition sustained by the Ld.CIT(A) @ 18%, on account of 'on money' may be deleted. However, the Revenue is in cross appeal before us stating that the addition made by the assessing officer, on estimated basis, at the rate of @50% of the 'on money' should be upheld.

22. Shri D.M Rindani, Learned Counsel for the assessee, submitted that the notice issued u/s.148 of the Act, is not valid and the satisfaction note prepared by the assessing officeralso does not bare the "Assessment Year ". Therefore, it is a complete non-application of mind, on the part of the revenue authorities to initiate the re-assessment proceedings. The Ld. Counsel for the assessee, took us through the assessee`s paper book, page no.12 and stated that approval of satisfaction note in the case of the assessee, which is at paper book page no.12 does not contain the term "Assessment year" that is, it is not clear that for which assessment year, the satisfaction note was being prepared by the assessing officer. The Ld.Counsel also took us through the paper book at page

no.13,wherein the approval was given by ld. PCIT and on that approval,the "Assessment Year" is missing. Therefore, the Ld.Counsel contended that when the assessment year is not mentioned in the primary documents then that documentsare defective in the sense that for which 'assessment year'the approval is being granted and therefore approval is in mechanical manner. Hence, reassessment proceedings may be quash on this score only.

23.The Ld.Counsel also took us through the paper book at page no.17, wherein notice u/s.148 of the Act, issued by the assessing officer, dated 23.02.2023, is placed, wherein it is stated as follows:

> *"I have information that a search was initiated under section 132 of the Act in your case or in the case of person in respect of which you are the assessable under the Act on the date 22/10/2021.*
>
> *The notice is being issued after obtaining the prior approval of the DGIT(INVESTIGATION) AHMEDABAD accorded on date 07/02/2023, vide reference no.DGIT(Inv.)/Ahd/148-Approval/MMS/2022-23/3101……."*

24. The Ld.Counsel for the assessee referring to the above notice u/s.148 of the Act, stated that in the notice u/s.148 of the Act, it is mentioned that "search was initiated u/s.132 of the Act in your Case" , however, real fact is that search was not initiated in assessee's case. In fact, a search and seizure action was carried out by the office of DDIT (Investigation), Rajkot, in the case of leading real estate builders of Rajkot and their associates on 24.08. 2021. Therefore, the actual date of search was 24.08.2021, whereas the date is mentioned in the notice under section 148 of the Act, is as on 22.10.2021, which is wrong, therefore, the notice issued u/s.148 is defective.

25. The Ld. Counsel further contended that the procedure mentioned in section 147, 148(A) and 149 of the Act, were not followed by the assessing officer as these sections were amended with effect from 01.04.2021,and the procedure laid down in these sectionswere not followed by the assessing officer, hence

reassessment proceedings are not valid. The Ld.Counsel also stated that the time limit, which is mentioned in section 149(1)(b) of the Act, to re-open the assessment, andthe quantum of addition in the assessee's case is less than Rs.50/- lakhs, therefore, assessing officer cannot reopen the assessment. The Ld.Counsel also stated that the transaction stated in the seized documents are not reflecting in the books of accounts of the assessee. Moreover, there is no quantum mentioned in the seized documents and therefore, in the seized documents, the quantum addition is less than Rs.50/- lakh, which does not give jurisdiction to the assessing officer to reopen the assessment.Therefore, the show-cause notice u/s.148 of the Income-tax Act 1961 is itself defective therefore on this technical ground, the assessee's appeal may be allowed and revenue`s appeal may be dismissed.

26. On merit, the Ld.Counsel for the assessee submitted that assessee has sold seven residential flats vide paper book at page no.57 and these are personal and individual capacity. The Ld.Counsel for the assessee, took us through the paper book at page no.63 and 64, which are the seized documents, and stated that in the seized documents theabbreviation "SH" and "MM" are written and this abbreviation does not relate to the assessee. Even in these seized documents there is no signature of the assessee, no name of payer is mentioned in the heading of the documents. Neither the Assessee's name nor the co-relation of amount given in the books of accounts were found and seized and these documents are not in the handwriting of the assessee. The Ld.Counsel also submitted that abbreviation "SH" and "MM" was not confirmed by the buyer and no PAN was given in the seized documents. However, statement of person were relied on by the assessing officer but after 3 days an affidavit was filed which is placed on paper book 118. In the said affidavit, the assessee has stated as follows:

" That on prima-facie verification of the documents and digital data seized including rough projections / estimates, accounting data under various heads in Miracle software, day-books etc., it appears that such documents/ data are not correct and complete, but there are apparent errors, contradictions, overlapping, duplications, incompleteness in such documents /data.

14. That name and nomenclature of the different ledger accounts, group etc. in the digital data cannot be matched or reconciled with the actual name and the figures under various transactions are also not comparable, correlated with actual transaction that has taken place. Therefore, there are all possibility that merely on the basis of face-value of the transactions some presumption or guess work may be made, however, such presumption or estimate would lead to unnecessary hardship to the assessee and third parties as the intrinsic nature of the transaction remained unidentified. The digital data found in miracle software is not genuine and not correct, therefore by this affidavit I clarify that no reliance should be made on the digital data which has no authenticity."

27.Therefore, the Ld.Counsel stated that no corroborative evidence is available against the seized documents. Hence, seized documents are merely a dump documents and no addition should be made, based on these dump documents, for that ld. Counsel for the assessee, relied on several judgements of High Courts and Supreme Court, which were furnished before the Bench, and we have gone through the same.

28.About cross examination, the Ld.Counsel submitted that assessee had demanded, the cross examination, during the assessment proceedings that assessing officer should provide opportunity of cross examination. During the assessment proceedings, the assessee has demanded the opportunity for cross examination and the same has not been provided to the assessee. The relevant letter is mentioned in page no.80 of the assessee's paper book, wherein the assessee has requested in writing, before the assessing officer, that he should be provided opportunity of cross examination, which is reproduced below (relevant para), as follows:

"3.5 Furthermore, it is also submitted that if the person searched have made any submission or comments adversely affecting to the assessee on the basis of given seized data then opportunity of cross-examination may kindly be given to the assessee in the interest of natural justice. Therefore, in absence of any clarification regarding the

specific seized data from the persons searched and in absence of cross-examination allowed to the assessee to such person, cognizance taken by the Department is completely misplaced, uncalled for, unjustified and in gross violation of principle of natural justice. Therefore, adverse inference proposed to be taken in the case of assessee is on conjectures & surmises, which is strongly objected. Reliance placed on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE 281 CTR 241(SC) and Hon'ble Apex Supreme Court in the case of KishanchandChellaram Vs. CIT (1980) 125 ITR 713."

However, neither the assessing officer nor the Ld.CIT(A) had provided an opportunity of cross examination, therefore without providing an opportunity of cross examination, the addition made by the assessing officer, is not sustainable in the eye of law.

29. The Ld. Counsel for the assessee, alternatively submitted that the 18% profit margin re-estimated by the Ld.CIT(A), is too high, because assessee has shown sale value higher than the stamp duty valuation authority, therefore, higher amount has been shown *suo-moto*, therefore, the percentage of profit is very higher side, which should be reduced to a reasonable extent.

30. On the other hand, the Ld.DR for the Revenue submitted that the letter of approval for issue of notice u/s.148 of the Act, which is written by DGIT (Investigation) to the PCIT -(Central Circle), contains the term "Assessment Year" which is placed at paper book page no.15. The letter address by the ITO on behalf of the PCIT, dated 07.02.2023 also contains the term "Assessment Year" however, the primary document do not contain the term "Assessment Year", therefore, it does not invalidate the re-assessment proceedings. The Ld.DR also submitted that the procedure followed in issuing notice u/s.148 of the Act and the satisfaction recorded by the assessing officer are valid in the eye of law. The Ld.DR also submitted that as per the provisions of section 149(1)(b) of the Act, the total asset can be computed based on the cash on hand and based on "on money" mentioned in the seized documents, however, assessing officer

forgot to state in the notice, and for this small mistake committed by the assessing officer, the reassessment proceedings should not be treated invalid.

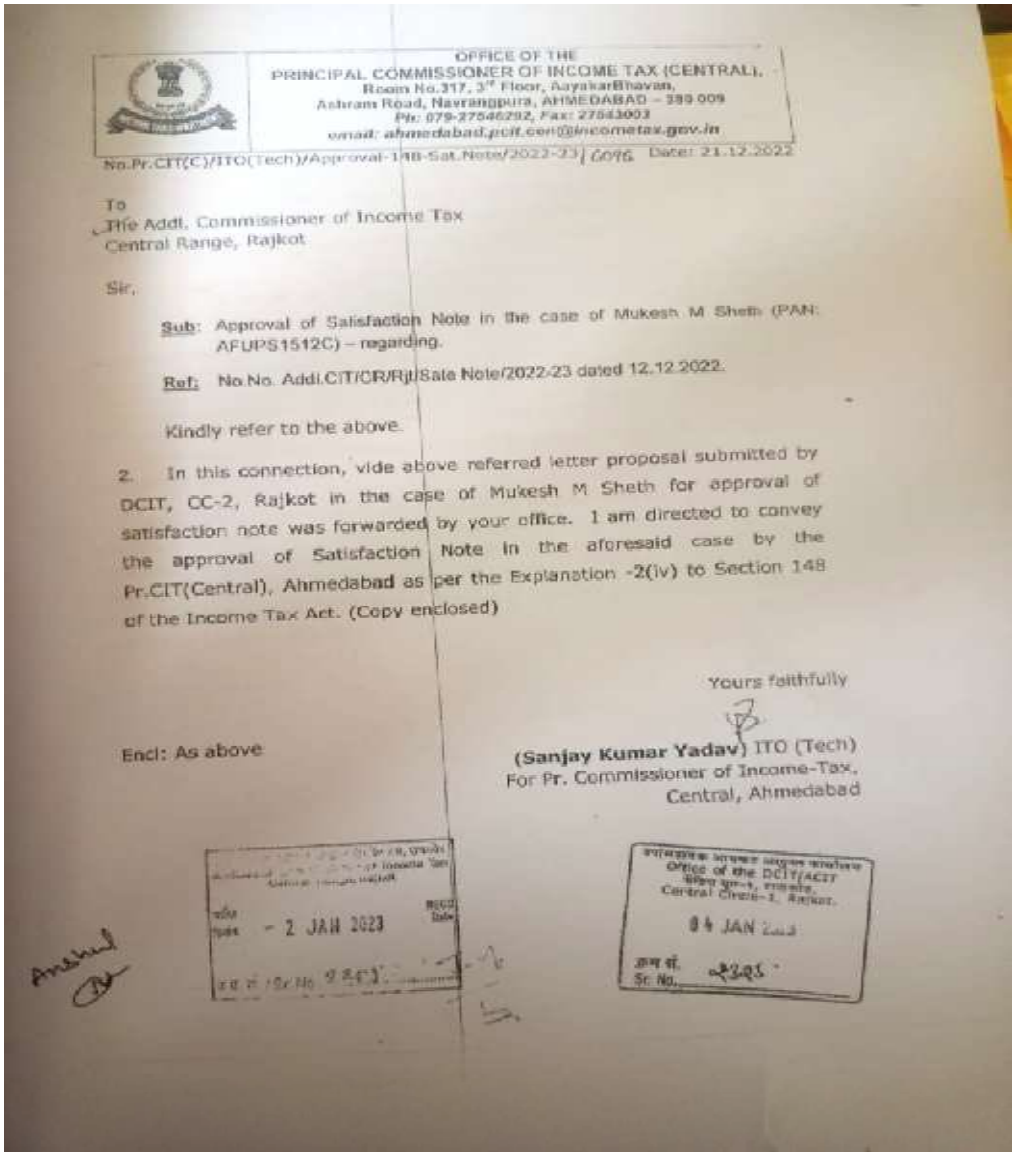
31.On merits, the Ld.DR for the Revenue submitted that there was search in the R.K Group and the main family member Shri Sonwani has instructed the accountant to make the entry in the telesoftware and miracle file 7 flats were purchased in that particular period and thus there is a clear incriminating material found during the search in the computer of the other person, which relates and pertains to the assessee, therefore addition should be made in the hands of the assessee.

32.The Ld.DR about the cross examination, submitted that cross examination opportunity need not to be provided in the assessee's case, as the addition was made by the assessing officer, based on the seized material and not on the base of statement, therefore, the opportunity of cross examination was not required in the assessee's case under consideration.

33.The CIT. DR also submitted that in the assessee's case 'on money' was received, which should be taxable based on the percentage of completion method. The Ld DR also relied on the ICDS (Income Computation &Disclosure Standards) and stated that assessee is not following the ICDS and not following the percentage of completion method.As per the percentage of completion method, the revenue is recognized as per the activities progress, therefore, direction given by the ld. CIT(A) to the assessing officer, to the effect that the 'on money' should be taxable in the year in which income is recognised, is a wrong direction, as the assessee is following percentage of completion method. However, in the assessee`s case, the Revenue is not recognized, as per the activities in progress and assessee under consideration has not followedthe ICDS.

34. In re-joinder, the Ld.Counsel for the assessee submitted that ICDS are not applicable to the real- estate developers and the entry made in the computer by third party could not be relied onand the total asset found during the search and seizure proceedings do not exceeds to Rs.50lakhs. Moreover, the notice u/s.148 was itself wrong, that is, in issuing notice u/s.148, as well as in satisfaction note/ approval note, there is a complete non- application of mind by the assessing officer, as no any figure, in amount, is stated in the notice under section 148 of the Act and no any figure stated in the approval given by the higher authorities. That is, how much amount has escaped assessment should be necessarily stated in the reasons recorded by the assessing officer and notice under section 148 of the Act and also in the approval note of the higher authorities, therefore, it is a complete non-application of mind by the lower authorities as well as higher authorities of the Income Tax Department.

35.We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee with the able assistance of Shri D.M Rindani, representing the assessee and Shri Sanjay Punglia, Learned CIT(DR), representing the Revenue. We find that one key issue arises in summarised and concise ground no.1, for our apt adjudication in the instant lis, which is, whether the Ld.CIT(A) erred in holding that proceedings u/s 148 of the Act, culminating into order u/s 147 of the Act, were valid? and whether the ld CIT(A) has erred in dismissing assessee's grounds of appeal challenging the action u/s 148 of the Act. Let us, first examine the approval of satisfaction note given by the Principal Commissioner of Income Tax. (ld.PCIT),which is placed at paper book, page no. 12, of assessee`s paper book wherein approval of satisfaction note, in case of Mukesh M. Shah was given, which is reproduced below:



OFFICE OF THE
PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL),
Room No.317, 3rd Floor, AayakarBhavan,
Ashram Road, Navrangpura, AHMEDABAD – 380 009
Ph: 079-27546292, Fax: 27543003
email: ahmedabad.pcit.cen@incometax.gov.in

No.Pr.CIT(C)/ITO(Tech)/Approval-148-Sat.Note/2022-23/ 6096 Date: 21.12.2022

To
The Addl. Commissioner of Income Tax
Central Range, Rajkot

Sir,

Sub: Approval of Satisfaction Note in the case of Mukesh M Sheth (PAN: AFUPS1512C) – regarding.

Ref: No No. Addl.CIT/CR/Rjt/Sats Note/2022-23 dated 12.12.2022.

Kindly refer to the above.

2. In this connection, vide above referred letter proposal submitted by DCIT, CC-2, Rajkot in the case of Mukesh M Sheth for approval of satisfaction note was forwarded by your office. I am directed to convey the approval of Satisfaction Note in the aforesaid case by the Pr.CIT(Central), Ahmedabad as per the Explanation -2(iv) to Section 148 of the Income Tax Act. (Copy enclosed)

Yours faithfully

Encl: As above

(Sanjay Kumar Yadav) ITO (Tech)
For Pr. Commissioner of Income-Tax,
Central, Ahmedabad

- 2 JAN 2023

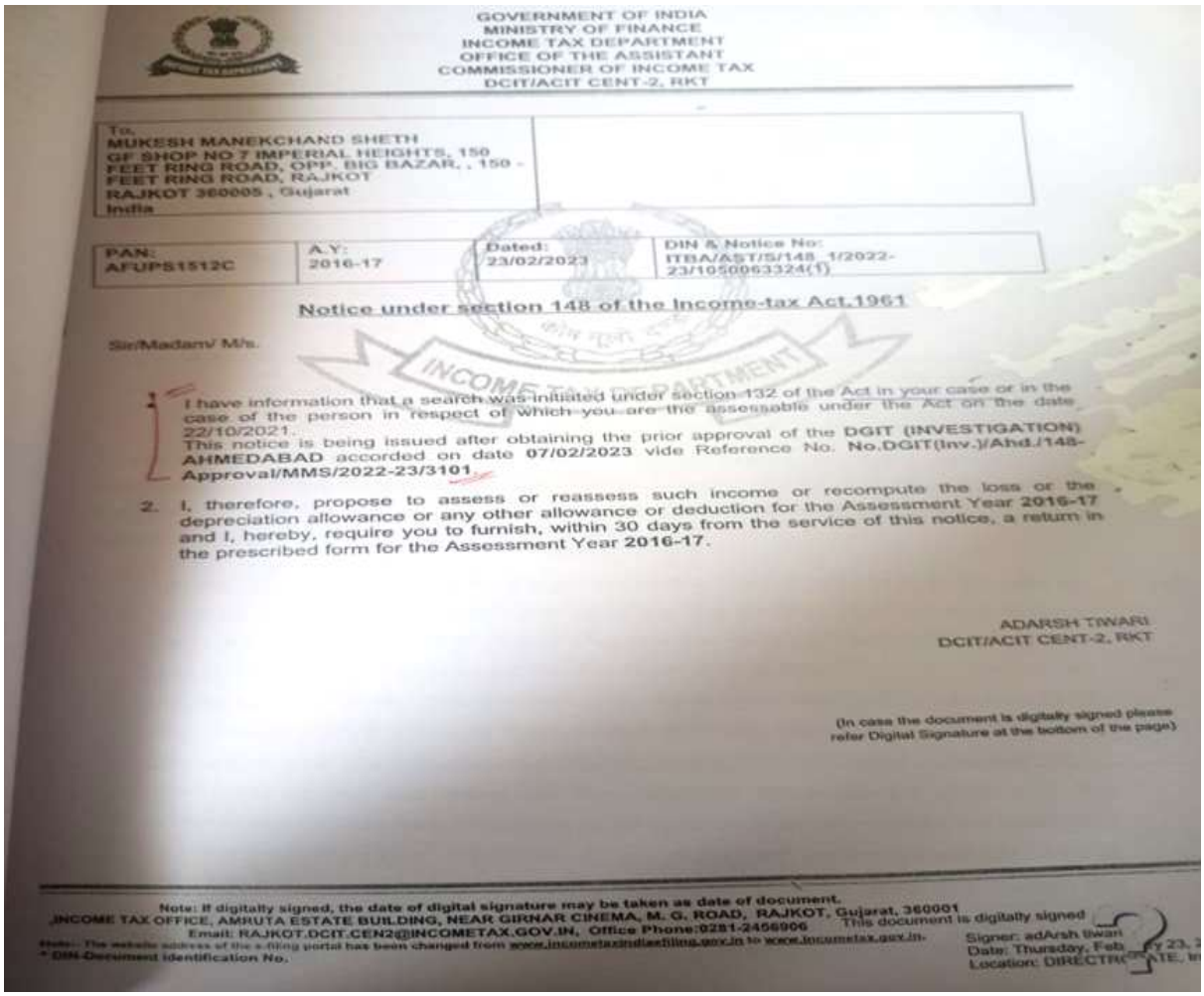
Office of the DCIT/ACIT
Central Circle-1, Rajkot.
04 JAN 2023
Sr No. 3295

It is a settled principle of law that correct income is to be assessed in the correct assessment year. However, in the above satisfaction note, there is no "assessment year" is mentioned at all. It means the department does not know for which "assessment year" they are going to assess the assessee. Therefore, the primary document for initiation of reassessment proceeding, does not contain the "assessment year", which is foundation to assess the income of the assessee, and therefore, we find that since there is no foundation, the superstructure cannot be built on that.Once, the foundation fails, the superstructure also fails,that is, no reassessment proceedings can be initiated against the assessee. In this regard, we

placed reliance on the legal maxim “Sublatofundamentocadit opus” (meaning thereby that foundation being removed, structure /work falls). Hence the initial action of the revenue itself is not in consonance with law, then all the subsequent and consequential proceedings would fail through for the reason that illegality strikes at the root of the order. Therefore, we find that it is a complete non-application of mind, on the part of the revenue authorities to initiate the re-assessment proceedings. It is not clear that for which “assessment year”, the satisfaction note was given.

36. We have also gone through the annexure of the letter, **“Approval of the Specified Authority”,** that is, approval given by Principal Commissioner of Income Tax (Ld.PCIT), vide paper book at page no.13, of the assessee, wherein the approval was given by ld. PCIT and on that approval, the “Assessment Year” is missing. Therefore, when the “assessment year” is not mentioned, then, the primary documentsof the Revenue, are defective in the sense that the approval is being granted in mechanical manner. That is, for which assessment year, the proceedings are initiated against the assessee, should be a mandatory requirement, to mention in the notice, which the revenue authorities have failed to do so.Hence, reassessment proceedings needs to be quashed.

37. Now coming to the notice under section 148 of the Income Tax Act 1961, we find that it contains the serious mistake, on the part of the revenue authorities, which is placed at paper book page no. 17 of the assessee`s paper book, and the same is reproduced below:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
DCIT/ACIT CENT-2, RKT

To,
MUKESH MANEKCHAND SHETH
GF SHOP NO 7 IMPERIAL HEIGHTS, 150 FEET RING ROAD, OPP. BIG BAZAR, , 150 - FEET RING ROAD, RAJKOT
RAJKOT 360005 , Gujarat
India

PAN:	A.Y:	Dated:	DIN & Notice No:
AFUPS1512C	2016-17	23/02/2023	ITBA/AST/S/148_1/2022-23/1050063324(1)

Notice under section 148 of the Income-tax Act,1961

Sir/Madam/ M/s.

1. I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are the assessable under the Act on the date 22/10/2021.
This notice is being issued after obtaining the prior approval of the DGIT (INVESTIGATION) AHMEDABAD accorded on date 07/02/2023 vide Reference No. No.DGIT(Inv.)/Ahd./148-Approval/MMS/2022-23/3101.

2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2016-17 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2016-17.

ADARSH TIWARI
DCIT/ACIT CENT-2, RKT

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.
INCOME TAX OFFICE, AMRUTA ESTATE BUILDING, NEAR GIRNAR CINEMA, M. G. ROAD, RAJKOT, Gujarat, 360001
Email: RAJKOT.DCIT.CEN2@INCOMETAX.GOV.IN, Office Phone:0281-2456906
This document is digitally signed
Signer: adArsh tiwari
Date: Thursday, Feb
Location: DIRECTR

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN-Document Identification No.

We have gone through above notice u/s. 148 of the Act and in the above notice, it is stated that the search was initiated in the assessee's case, however, in fact, no search was initiated in the assessee`s case. The search was initiated u/s. 132 of the Act, in case of other assessees. The above notice also mentioned that search was initiated on 22.10.2021, in case of other assessees, which is also wrongly stated in the notice under section 148 of the Act. The actual date of search is as on 24.08.2021, whereas in the notice it is mentioned as 22.10.2021, which shows, complete non-application of mind by the assessing officer. Hence, it is not a valid notice in the eye of law. Law is well settled that whenthe statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim

'Expressiouniusest exclusion alteris', meaning there by that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following of other course is not permissible. Hence, we find that the notice under section 148 of the Act is itself defective and it was issued by the assessing officer without application of mind, therefore, entire reassessment proceedings should be quashed.

38. Now coming to the procedure to be followed by the assessing officer under section 148A of the Act. We note that before us, assessee has submitted following documents and evidences relating to reassessment proceedings, which are reproduced below:

(i) Copy of acknowledgement and return of income filed by the appellant for AY 2016-17. (Paper book pg no. 1-11)

(ii) Copy of approval of satisfaction note by PCIT, central, Ahmedabad dated 21.12.2022. (Paper book pg no. 12-13)

(iii) Copy of approval for reopening of assessment dated 07.02.2023 issued by the PCIT, Central Cirlce-2, for AY 2016-17. (Paper book pg no. 14-16)

(iv)Copy of notice u/s. 148 of the Act dated 23.02.2023 issued by the DCIT/ACIT central Circle – 2, Rajkot for AY 2016-17. (Paper book pg no. 17)

(v) Copy of reply and preliminary objections raised dated 01.03.2023 filed by the appellant alongwith return of income filed in response to notice u/s. 148 of the Act dated 23.02.2023. (Paper book pg no. 18-19)

(vi) Copy acknowledgement and return of income for AY 2016-17 filed by the appellant in response to notice u/s. 148dated 23.02.2023(Paper book pg no. 20-30)

39.We have gone through the above basic documents submitted by the assessee in the paper book, which were also available before the lower authorities and we observe that assessing officer has not followed the procedure mentioned in section 148A of the Act, properly. While following the procedure, we find that there are lot of launches which is not curable.Itwas submitted that the allegation in the entire Annexure (Reason) is that of unaccounted receipts by assessee from booking / sale of units in the project "Silver Heights". However, while justifying the reopening of case under the prescribed time-limit u/s 149 of the Act, it was alleged that income chargeable to tax in assessee`s case is not represented in the form of assets / expenditure, that is, nowhere, it is mentioned that income chargeable to tax, which has escaped assessment amounts to Rs.50,00,000/- or more. Therefore, there is clear contradiction between the allegation raised on the basis of so-called documents/data seized from the premises of third party and averment made in justification of compliance with the provision of Section 149(1)(b) of the Act.For better understanding, the provisions ofSection 149(1)(b) of the Act, are reproduced below:

"Time limit for notices under sections 148 and 148A.

149. (1) No notice under section 148 shall be issued for the relevant assessment year-

(a) if three years and three months have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years and three months, but not more than five years and three months, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more.

(2) No notice to show cause under section 148A shall be issued for the relevant assessment year-

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than five years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to fifty lakh rupees or more.]"

**91.The above section Substituted by the Finance (No. 2) Act, 2024, w.e.f. 1-9-2024. Prior to its substitution, section 149, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, Finance Act, 2001, w.e.f. 1-6-2001, Finance Act, 2012, w.e.f. 1-7-2012, Finance Act, 2021, w.e.f. 1-4-2021, Finance Act, 2022, w.e.f. 1-4-2022/w.r.e.f. 1-4-2021 and Finance Act, 2023, w.e.f. 1-4-2023, read as under.*
'149. Time limit for notice- (1) No notice under section 148 shall be issued for the relevant assessment year,-

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

(i) an asset;
(ii) expenditure in respect of a transaction or in relation to an event or occasion, oƨ
(iii) an entry or entries in the books of account,
which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

***Provided** that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before Ist day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (h) of sub-section (1) of this section or section 153A or section 153C. as the case may be they stood immediately before the commencement of the Finance Act, 2021*

40. In the context of the above provisions of section 149(1)(b) of the Act vis-a-visnotice u/s 148 of the Act, it was submitted by ld Counsel that provisions of section 149(1)(b) of the Act, empowers an authority to issue notice u/s 148 of the Act, if the alleged income is represented by any asset or expenditure. It is apparent on the face of the show-cause notice(in brief "SCN"), that assessing officer is not certain, as to whether in assessee`s case, the alleged escaped income is represented by asset or expenditure, both these phrases have been issued in the

SCN. The reason and the belief as also the information leading to allegation of escapement of income must be clear and explicit at the initial stage itself prior to recording of the reasons and then issue of notice pursuant to the reasons. The show cause notice(SCN) having used both the phrases at a time, it suffers from vagueness and demonstrates absence of initial judgment itself, as to whether the information represents assessee`s asset or expenditure. As a result, the notice becomes bad in law and assessment order deserves to be quashed.**The exercise of jurisdiction u/s the new sections 147 and 148 of the Act, is not meant to determine during reassessment, as to whether an item represents an asset or an expenditure or whether it exceeds the threshold of Rs. 50 lakhs.** The said exercise is required to be carried out prior to or at the time of recording the satisfaction and the reasons and while obtaining the requisite approvals of higher authorities. Obviously, this has not been done and hence the notice suffers from an inherent jurisdictional lack of power. The assessee submitted before the assessing officer that in the assessee`s case, no 'asset' or 'expenditure' is identified in the entire Annexure (Reason) and hence, reopening of the case beyond the prescribed time-limit is patently illegal. The clause no. (b) of section 149(1) requires that the income chargeable to tax should be represented in the form of (i) an asset, (ii) expenditure in respect of a transaction or in relation to an event or occasion; or (iii) an entry or entries in the books of account. The reasons provided for issue of notice u/s 148 of the Act, bears a solitary allegation of receipt of ‘on money’, but the money has not been quantified in the reasons recorded. However, its representation in the form of an asset or anexpenditure or an entry in the books of account is nowhere recorded in the reason for reopening. Hence, the notices u/s 148 (especially for assessment year 2016-17, 2017-18 and 2018-19) of the Act, which are issued without fulfilling the conditions of section 149(1)(b) of the Act, do not sustain in the eyes of law and hence, the consequential proceedings too, become bad in law.

41.The assessee also submitted before the assessing officer that inthe para No.2 of the show cause notice(SCN) it has been stated that although there is no search action carried out in the case of the assessee, notice can be issued u/s. 148 of the Act, under clause (iv) of Explanation 2 to Section 148 of the Act. In this connection, it was submitted that copies of documents / data said to have been seized from the premise of Shri Girish Vanjani provided to the assessee (two ledger accounts) do not pertain to assessee and also, the information contained therein does not relate to assessee. It was submitted that nowhere in the impugned documents/data, it is specifically stated that the alleged cash has been paid to the assessee or that the entries in such seized data are related to purchase of residential units from the assessee. Therefore, merely on the basis of name "MM", "Silver Heights", "Mukeshbhai" etc. resembling with the name of the assessee, it cannot be presumed that such transactions are carried out with the assessee, much less the allegation of 'on money' paid.In this regard, it is pertinent to reproduce here, show cause notice issued by the assessing officer on 13.03.2023, during the assessment proceedings, which is as follows:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER
OF INCOME TAX
DCIT/ACIT CENT-2, RKT

To,
MUKESH MANEKCHAND SHETH
OF SHOP NO 7 IMPERIAL HEIGHTS, 150 FEET
RING ROAD, OPP. BIG BAZAR, ,150 - FEET
RING ROAD, RAJKOT
RAJKOT 360005 ,Gujarat
India

PAN:	AY:	DIN & Notice No:	Dated:	Hearing Date and Time:
AFUPS1512C	2016-17	ITBA/AST/F/147(SCN)/2022-23/1050708626(1)	13/03/2023	28/03/2023 11:00 AM

SHOW CAUSE NOTICE

This is in connection with the on-going assessment proceedings in your case for the captioned year in the notice. **It is noticed that, in response to the notice issued under section 148 of the Act, following objections are raised by the assessee -**

1. The notice does not contain any specific reasons for which the impugned assessment proceeding has been initiated.

A copy of reasons recorded for initiation of the proceedings for the year under consideration is attached herewith at ANNEXURE to this notice.

2. No any search action has been carried out in case of the assessee.

It is pertinent to mention that when any books of accounts or documents, seized under section 132 or 132A in case of any other person pertains to, or any information contained therein, relate to, the assessee then also notice under section 148 can be issued to such assessee. [Refer clause (iv) of Explanation 2 to section 148 of the Act].

3. Provisions of section 149(1)(a) or 149(1)(b) of the Act are not followed

Here, it is to state that both the clauses (a) and (b) of sub section (1) of section 149 are mutually exclusive. Further, the notice issued under section 148 specifically prescribes the name of specified authority granting sanction as per section 151 of the Act which can indicate the specific condition under which the approval is granted. i.e. if the notice u/s 148 is issued within three years from the end of the relevant assessment year, the specified authority granting sanction is PCIT and if more than three years have elapsed from the end of the relevant assessment year, the specified authority granting sanction is DGIT / CCIT. With analogy, it is becomes abundant clear

Note: If digitally signed, the date of digital signature may be taken as date of document.
INCOME TAX OFFICE, AMRUTA ESTATE BUILDING, NEAR GIRNAR CINEMA, M. G. ROAD, RAJKOT, Gujarat, 360001
Email: RAJKOT.DCIT.CEN2@INCOMETAX.GOV.IN, Office Phone:0281 2466906

42. In the above show cause notice dated 13.03.2023, it is mentioned that the reopening proceedings are made as per clause (iv) of Explanation 2 to Section 148 of the Act, this, is in stark contradiction to the reasons mentioned in the very notice issued u/s. 148 of the Act, dated 23.02.2023. In the said notice issued u/s 148 of the Act, on 23.02.2023, it is mentioned that assessment is reopened "**on account of search initiated u/s 132 of the Act, in your case or in the case of the person in respect of which youare assessable under the Act"**(vide para 37 of this order). This means that while reopening the proceedings, assessing officer had formed an opinion and a belief that, either search has been carried out in assessee`s case or that assessee`s representative of any other search person (In this case of R K Group). Thus, the very initiation of the reassessment proceedings is on a completely incorrect factual premises or belief and it was strongly objected by the assessee during the assessment proceedings. Therefore, on this ground also, initiation of proceeding u/s. 147 of the Act is incurably and defective.

43. We find that in para-3 of SCN(reproduced above), it is stated that the provision of Section 149(1)(b) has been followed by taking approval from the specified authority. However, as stated above, there is no mention of asset or expenditure represented by the alleged-escaped income and hence, the notice issued u/s. 148 of the Act is barred by the limitation period of time prescribed u/s. 149 of the Act.In view of the above, the proceedings initiated u/s147 of the Act are wholly and ipso facto invalid and hence, reassessment proceedings are hereby quashed.

44. In the result, the following grounds in various appeals are allowed:

(i).Ground No.1 in assessee's appeal in ITA No.545/Rjt/24 A.Y.2017-18,
(ii).Ground No.1 in assessee's appeal in ITA No. 546/Rjt/2024 A.Y.2018-19,
(iii)Ground No.1 in assessee's appeal ITA No.547/Rjt/2024 A.Y. 2019-20,

(iv)Ground No.1 in assessee's appeal in ITA No.581/Rjt/2024 A.Y. 2016-17]

45. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, approval of satisfaction note, notice under section 148 of the Act, and procedures under section148A and 149(1) (b) of the Act, were defective and not followed by the assessing officer, as per the provisions of the Act, and non-application of mind by the assessing officer in not quoting the 'assessment year' etc, as set out earlier, and the reasons recorded were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous, therefore, we do not adjudicate the other grounds raised by the assessee and raised by the revenue in its cross appeals and arguments, advanced by ld. Counsel for the assessee on merit, and arguments of ld. DR for the revenue on merit. Since the reassessment proceeding, itself is quashed,therefore, both appeals filed by the Revenue,(in ITA No.723 and 724), are also dismissed.

46. In the combined result, all assessee`s appeals ( In ITA Nos.ITA No.545/Rjt/24, ITA No. 546/Rjt/2024,ITA No.547/Rjt/2024, and ITA No.581/Rjt/2024), are allowed, whereas revenue`s appeals (In ITA Nos. 723 and 724/RJT/2024), are dismissed.

Order is pronounced on 10/06/2025 in the Open Court.

Sd/-	**Sd/-**
(DINESH MOHAN SINHA)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Rajkot **(True Copy)**

दिनांक/ Date: 10 /06/2025

Copy of the Order forwarded to:

1. The Assessee

2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot