

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.576 & 577/SRT/2024**

(AYs:2014-15 & 2015-16)

(Hybrid Hearing)

DCIT, Central Circle – 4, Surat	Vs.	M/s Ekkta Developers, B-702, Business Point, S. V. Road, Andheri (W), Mumbai - 400058
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFE5374R		
(Appellant)		(Respondent)

CO Nos.38 & 37/SRT/2024

(Arising out of ITA Nos.576 & 577/SRT/2024)

(AYs: 2014-15 & 2015-16)

M/s Ekkta Developers, B-702, Business Point, S. V. Road, Andheri (W), Mumbai - 400058	Vs.	DCIT, Central Circle – 4, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3969P		
(Appellant)		(Respondent)

Appellant by	Shri Ravi Kant Gupta, CIT-DR
Respondent by	Shri Ramesh Malpani, CA
Date of Hearing	30/07/2025
Date of Pronouncement	07/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These four cross-appeals emanate from the separate orders passed by the learned Commissioner of Income-tax (Appeals), Surat [in short “the CIT(A)”] for the assessment years (AYs) 2014-15 & 2015-16. Since the facts are common and grounds of appeal are almost identical except variance of amounts, with the consent of both parties, all these appeals were clubbed and

heard together and are decided by this consolidated order for sake of convenience and brevity.

2. The grounds of appeal raised by the revenue in ITA No.577/SRT/2024 (AY.2015-16) are as follows:

“1) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of 26,17,66,223/- made by the AO on account of on-money payment for purchase of land u/s 69B of the I.T. Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the survey proceedings.

2) In addition to the ground No. 1 above, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of ₹26,17,66,223/- made by the AO on account of on-money payment for purchase of land u/s 69B of the I.T. Act observing that in absence of any corroborative evidences or finding of actual payments of cash in land transaction, the addition made merely based on entry in excel sheet without any supporting evidences cannot be upheld without appreciating the fact that on the top of the excel-sheet image pasted on page no. 13 of the assessment order, name of Ekkta Developers is written and the AO has clearly established that the land cost recorded against sub-heading (B) '421506.86' (decoded as Rs.4,21,50,686/-) in the excel sheet matches with the actual cost of lands purchased as per the books of accounts of the assessee.

3) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of 3,11,04,349/- made by the AO on account of unaccounted expenditure u/s 69C of the I.T. Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the survey proceedings.

4) In addition to above grounds, on the facts and in the circumstances of the case and in law, the CIT(A) has granted relief dehorse provisions of section 292C of the Assessee.

5) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.

6) On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-4, Surat ought to have upheld the order of the Assessing Officer.

7) It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

8) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.”

3. ITA No.577/SRT/2024 for AY.2015-16 is taken as the **‘lead’** case. The facts of the case in brief are that the assessee filed its original return of income for AY.2015-16 on 27.08.2015, declaring total income at Rs. Nil/-. The return was processed u/s 143(1) of the Act. Subsequently, survey u/s 133A of the Act was conducted at the office premises of M/s Aadeshwar Enterprise on 06.08.2020. From the digital data impounded from the surveyed premises, image of an excel sheet containing transactions related to the appellant was found, which revealed that the appellant had paid on-money of Rs.26,17,66,223/- towards purchase of land. The amounts were written in code by hiding two digits (00). Accordingly, case was re-opened u/s 147 of the Act and notice u/s 148 was issued on 31.03.2021. In response thereto, the assessee filed return on 21.04.2021. The Assessing Officer (in short, ‘AO’) supplied the reasons for re-opening. Thereafter, various notices u/s 143(2) and 142(1) were issued to the assessee and the assessee filed replies / details to the AO. The assessee was supplied with copy of the excel sheet and the digital document found during the survey. The assessee submitted reply in respect of the said data, wherein it was submitted that the digital devices were found from the premises of M/s Aadeshwar Enterprises and the assessee was not aware of the details in such data. The contents may not be treated as official or authentic documents of the assessee. Further, the documents were

unsigned and hence have no evidentially valid. The reply of the assessee was not accepted by the AO. He observed that the image of the transactions related to the appellant. The amount written are in coded form by hiding two digits (00). The excel sheet clearly establishes that Rs.29,61,96,998/- was paid as on-money by the appellant to the seller parties. This includes payment of Rs.3,44,30,775/- in FY 2013-14 (AY 2014-15) and Rs.26,17,66,223/- in AY 2015-16. These transactions are not reflected in the regular return of income. Further, an amount of Rs.3,11,04,349/- was shown as unaccounted expenses. The appellant had paid the amounts to 9 parties for purchase of land. The AO also observed that the Act has been amended to give legal recognition to books of account maintained on computer. The amendment also gives recognition to electronic record as admissible evidence at par with physical documents. The Department has also been empowered to seize electronic records. Regarding claim of the assessee that it was found from the premises of some other entity namely, M/s Aadeshwar Enterprises, the AO observed that M/s Ekta Developers, M/s Supreme Developers, M/s Legend Developers and M/s Aadeshwar Enterprises are having a common office at Emporia Market, Golden Point Gali, Nr. Surat Office. The authorization u/s 133A of the Act also was issued in the names of all the four firms. Further, Shri Manish, who is the accountant of M/s Ekkta Developers, in his statement of oath has admitted that details of the excel sheet seized belong to the appellant, M/s New Supreme and M/s Aadeshwar Enterprises, as the case may be. The AO has

extracted the excel sheet related to M/s Ekkta Developers, who was the developer of Ekkta Textile Market, Ring Road, Surat, which at page 13 of the assessment order. The accounted value of the land was Rs.4,21,50,686/-. The AO observed that the amount written against (B) are recorded in the books of account and the amounts written against (A) are unaccounted transactions. Since the value of land purchased was Rs.33,83,48,669/-, the on-money paid was Rs.29,61,97,983/- (33,83,48,669 – 4,21,50,686). He further noted that out of the 9 sellers of land, one document pertains to AY 2014-15 and the others are relevant to the AY 2015-16. Hence, Rs.3,44,30,775/- was the on-money paid for AY 2014-15 and Rs.26,17,66,223/- was the on-money payment for the subject AY 2015-16. The same was added u/s 69B r.w.s. 115BBE of the Act.

3.1 The AO also added Rs.3,11,04,349/- towards unaccounted expenses u/s 69B (correct section 69C) on the basis of entries in the same impounded documents and levied tax at enhanced rate u/s 115BBE of the Act.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The assessee challenged validity of re-opening u/s 147 of the Act as well as the merit of the additions. The CIT(A) upheld the action of AO in re-opening the assessment by holding that it was based on impounded document in the form of excel sheet containing the name of the assessee and various transactions. The material available with the AO was sufficient to form a reasonable belief about escapement of income. Hence, he dismissed the ground on validity of re-opening.

4.1 Regarding the addition made by the AO u/s 69B of the Act for Rs.26,17,66,223/-, the CIT(A) has reproduced the submission made by the appellant during the appellant proceedings, which is at pages 8 to 15 of the appellate order. The gist of the submission of the appellant is at para 7.3 of the appellate order. It was contended by the appellant that the impugned excel sheet is a rough sheet of comparative working of two different projects. It was not related to any actual transactions. The said excel sheet is not an output of any accounting record, program and data base and it is not supported that any transactional evidence such as bills, receipts, agreement etc. There was no finding of any unaccounted expenses or payments by the appellant. The loose paper or digital sheet has no evidentially value in absence of any corroborative evidence. The computer (laptop) from which the backup was taken belong to a part time accountant, Shri Manish, who was appointed from the year 2017. Therefore, this excel sheet could not contain entries pertaining to FYs 2013-14 and 2014-15 (AYs 2014-15 & 2015-16). Further, no other costs of expenses were incurred till 2014-15 for any development or construction work but the excel sheet contains details of various costs with prefix (A) as well as (B). It was also submitted that the cost of land for the project of the assessee's sister concern, M/s Aadeshwar Enterprises till 31.03.2018 was Rs.29,61,38,314/- as per its books of account, which is almost same as the figure of Rs.29,61,97,983/- with prefix (A) in the excel sheet. Hence, it was a comparative estimation of two projects of the appellant and M/s Aadeshwar

Enterprises. The prefix (A) corresponds to M/s Aadeshwar Enterprises and not on-money payment of the appellant. It was also submitted that the land purchased was at fair market value (FMV) declared by the state government and there cannot be a case of making payment of such huge on-money as decided by the AO. As against the Jantri rate of Rs.36,157/- per square meter, the rate determined by the AO would be Rs.3,08,180/- per square meter, which is almost 9 times the FMV. The AO also did not verify with sellers of land regarding payment of on-money to them. Moreover, no evidence of unaccounted on-money payment or expense was found during the survey proceedings.

4.2 The CIT(A) accepted the argument of the assessee. He observed that no other material was brought on record by AO to support the finding that figures written against (A) represent unaccounted payment or expenses. Even in respect of amounts written against (B), there are no matching expenses / payments in the books of account of the appellant. The CIT(A) further found that except purchase of land, no other costs or expenses on construction or development of project had been incurred till the end of the year under consideration, i.e., 31.03.2015. Only on the basis of cost of land mentioned in the balance sheet, which matches with the "land purchase" in excel sheet, the AO held that the other figures recorded in the excel sheet are unaccounted cash payment. There was no other material found during the survey, which indicated the recording of such unaccounted transactions. The CIT(A) was

convinced about the contention of the appellant that the excel sheet was a rough comparative estimation of two projects by the appellant and M/s Aadeshwar Enterprises. It was so because the cost of land of M/s Aadeshwar Enterprises in the books was Rs.29,61,38,314/-, which almost matches with the decoded amount of Rs.29,61,97,983/- against (A) in the excel sheet. He further observed that the accountant, Shri Manish, stated that the details in excel sheet belong to the appellant and its other sister concerns. He also observed that the computer was used for all sister concerns the office at Emporia Market which was, being developed by M/s Aadeshwar Enterprises. Therefore, in absence of any corroborative evidence such as bills, receipt, accounting record, unaccounted payment etc., the CIT(A) held that the amounts written with sub-heading (A) would not represent unaccounted expenses/payments. He also observed that the assessee had purchased the land at FMV whereas the addition made by the AO was at an abnormally high cost, i.e., 9 times more than the Jantri value. In view of these facts and in absence of any supporting evidence, he deleted the addition made by the AO.

4.3 The CIT(A) also deleted the addition of Rs.3,11,04,349/- towards unaccounted expenses made by the AO on the basis of aforesaid excel sheet found from the premises of M/s Aadeshwar Enterprises. The reasons for the addition by AO were similar to the reasons for making addition of the on-money payment. The reply of the appellant was also similar. The CIT(A),

therefore, deleted the addition based on the reasons given for deletion of on-money payment at para 4.2 above.

5. Aggrieved by the order of CIT(A), both revenue and assessee have filed appeals before the Tribunal. The Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) for the revenue has filed a small paper book containing 27 pages, which includes the survey report by the Investigation Wing at the premises of the assessee at A-1 Ekkta Textile Market, Kamela Road, Purshottam Nagar, New Textile Market, Surat and the common office premises of M/s Aadeshwar Enterprises, M/s Legend Developers, M/s Ekkta Developers, M/s New Supreme Developers at Emporia Textile Market, Golden Point Lane, Near Surat. He submitted that the assessee also had an office at Emporia Textile Market and, therefore, the excel sheet from the backup data of the computer of the accountant, Shri Manish, cannot be said to be not belonging to the appellant. Further, the name of the appellant, Ekkta Developers is mentioned at the top of the excel sheet. The amount written under the sub-heading (B) of Rs.4,21,50,686/- matches with the cost of land recorded in the books of account for AY 2015-16. Hence, the amount under the sub-heading (A) of Rs.29,61,97,983/- was the on-money payment to the seller parties. He also relied on the order of AO and requested that the order of CIT(A) may be set aside.

6. On the other hand, the learned Authorized Representative (Id. AR) of the assessee supported the order of CIT(A). He has filed a paper book

containing the written submission before the CIT(A), reasons for re-opening, copied of audited financial statements for AYs 2014-15 & 2015-16, copy of balance sheet of M/s Aadeshwar Enterprises and same decisions in favour of assessee. The Id. AR reiterated the submission made before the CIT(A). He submitted that the land was purchased in the previous year relevant to AYs 2014-15 and 2015-16. The office premises at Emporia Textile Market, where the impugned excel sheet was found, belongs to M/s Aadeshwar Enterprises and not the appellant. The office of the appellant is at Ekkta Textile Market, where no incriminating documents were found. He also submitted that the excel sheet recovered from the accountant, Shri Manish, pertain to some rough notings by him and do not contain actual transactions of the appellant. Moreover, Shri Manish was appointed from the year 2017 and he could not have made the entries of FYs 2013-14 and 2014-15 (AYs 2014-15 & 2015-16). The excel sheet was in fact prepared after 31.03.2018. Further, except item at 1(B), no other items are matching with any amounts in the regular books of the assessee. Shri Manish also stated that the excel sheet belongs to three firms and not the appellant alone. The Id. AR also relied on the following decisions and contended that loose sheet / diaries found during search, containing typed entries, which are not reflected in the books of account, could not constitute material evidence to make addition: (i) DCIT vs. Sunil Sharma, (2024) 159 taxmann.com 179 (Kar.), (ii) DCIT vs. Sunil Kumar Sharma, (2024) 165 taxmann.com 846 (SC), (iii) CIT vs. Maulikkumar K. Shah, (2008) 307

ITR 137 (Guj.), (iv) Smt. Harmohinder Kaur vs. DCIT, (2021) 124 taxmann.com 68 (Amritsar – Trib.) and (v) DCIT vs. Mahalaxmi Infracontract Ltd., (2025) 173 taxmann.com 399 (Ahd – Trib.).

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by both sides. Survey u/s 133A of the Act was conducted at the office premises of M/s Ekkta Developers (appellant) and M/s New Supreme Developers at A1 Ekkta Textile Market, Surat. Another survey u/s 133A of the Act was also conducted in the cases of M/s Aadeshwar Enterprises, Legend Developers, Ekkta Developers and New Supreme Developers at Emporia Textile Market, Surat. From the premises at Emporia Textile Market, backup the digital devices was taken. On an analysis of the digital data, an image of an excel sheet was found where figures are written in coded form by hiding two digits (00). The AO has stated that it pertains to M/s Ekkta Developers, the appellant herein, because its name was mentioned in the said excel sheet. According to AO, the figures under the sub-heading (B) are the payments recorded in the books of account and the payments under sub-heading (A) are unaccounted transactions. Item 1 of the said excel sheet was for “land purchases”. Under sub-head (B), the amount noted was Rs.4,21,50,686/- (after adding two zeros), which was value of the land of the appellant as shown in the books of the assessee. Therefore, the AO held that the amount under the sub-heading (A) after adding two zeros (00), i.e., Rs.29,61,97,983/- is the on-money paid for purchase of the land. Since the

above amount was paid in two years, Rs.26,17,66,223/- was added u/s 69B of the Act towards on-money payments in the subject AY 2015-16 and the remaining amount of Rs.3,44,30,775/- was added in AY 2014-15. The CIT(A) deleted the addition by observing that no other material was brought on record to support the findings that figures written against (A) represent unaccounted payment or expenses. We have perused the profit and loss account and balance sheet of the appellant for the year under consideration and find that the purported expenses/payments of the impugned excel sheet are not matching with any figures in the books of account. Apart from the land cost, in Item 1(B), no other item is found reflected in the books of account. It may be mentioned that there are 17 items in the excel sheet with prefix of either (A) and (B) or (A) or (B). According to the AO, amounts written against (B) are recorded in the books of accounts. However, the amounts recorded against (B), viz., Item No.9, 10, 17 are neither matching nor reflected in the books of account. Therefore, the finding of the AO that the amount of Rs.29,61,97,983/- appearing in 1(A) of the excel sheet is on-money payment is not supported by the facts on record. The appellant, on the other hand, has contended that the said amount actually pertains to the cost of land of M/s Aadeshwar Enterprises as on 31.03.2018. The Id. AR submitted balance sheet of M/s Aadeshwar Enterprises as on 31.03.2018 wherein cost of the purchase of land almost matches with the figure mentioned in the impounded excel sheet. The CIT(A) has given such a finding, which could not be rebutted by

revenue. Accordingly, the Id. AR submitted that the amount added by the AO as on-money payment was in fact the cost of land of M/s Aadeshwar Enterprises, sister concern of the assessee, at whose premises the survey was conducted on 06.02.2020. Shri Manish, the accountant of the firms also replied in his statement of oath that the details of excel sheets belong to all firms, i.e., M/s Ekkta Developers, M/s New Supreme Developers and M/s Aadeshwar Enterprises. The CIT(A) has also held that the appellant had purchased the impugned land at Jantri value whereas the amount added by the appellant was almost 9 times the Jantri rate, which is not feasible. The findings of the CIT(A) have not been proved wrong by the revenue. The revenue has not brought any evidence on record to disprove the findings of the CIT(A). Out of 20 entries in the said excel sheet, the revenue has supported only the entry at 1(B) and the other entries are not at all supported by any corroborative and credible evidence. The decisions relied upon by the appellant are also directly on the issue. The Hon'ble Gujarat High Court in case of Maulikkumar K. Shah (supra) held that mere entries in the seized materials are not sufficient to prove that assessee has indulged in such a transaction in which on-money has been received. The Hon'ble Court held that the AO has not brought any corroborative material on record to prove the receipt of on-money outside the books of account. The AO had also not examined any purchaser to whom sale of shops were effected. In the instant case also, no corroborative material has been brought on record to prove payment of on-money. None of the sellers to

whom the alleged on-money was paid has been examined. The Hon'ble Supreme Court in case of Sunil Kumar Sharma (supra) has dismissed the SLP filed against decision of the Hon'ble Karnataka High Court, where it was held that loose sheets of paper / diaries found during the search containing typed entries, not shown to form part of the books of account regularly maintained by the assessee or his business entities, did not constitute material evidence. The ITAT, Ahmedabad in case of Mahalaxmi Infracontract Ltd. (supra) held that addition made solely on basis of impugned excel sheet recovered from the premises of third party without any further corroborative evidence was to be deleted. In the said case, addition was made solely based on an unsigned excel sheet. The facts of the present case are covered by the decisions cited supra. In the instant case also, the excel sheet is not signed and is also not supported by any corroborative evidence. In view of the above facts and the authoritative precedents, we do not find any infirmity in the order of CIT(A) and therefore ground Nos.1 and 2 of the revenue are dismissed.

8. Ground No.3 is regarding addition of Rs.3,11,04,349/- made by the AO towards unaccounted expenses u/s 69C of the Act. This issue is discussed at para 11 of the assessment order. The AO has referred to the excel sheet retrieved from the digital data found from the premises at Emporia Textile Market, Surat. The entries were made by ignoring two digits (00). On the same analogy of the "land purchase" discussed above under sub-heading (A), unaccounted expenditure of Rs.3,11,04,349/- was also found. The same was

added as unaccounted expenditure u/s 69B r.w.s. 115BBE of the Act. Unaccounted expenditure is deemed to be income of the assessee u/s 69C of the Act. Therefore, reference by AO to section 69B seems to be an inadvertent mistake. However, in the grounds of appeal reference to section 69C of the Act has been made. We shall, therefore, decide the issue by treating the addition as having been made u/s 69C of the Act. The CIT(A) has allowed relief at para 8.2 of the appellate order by observing that the addition on account of figure recorded against sub-heading (A) under the head "land purchase" in the said excel sheet was deleted by him. For the same reason, there is no basis that the appellant incurred any unaccounted expenses.

9. Before us, Id. CIT-DR has relied on the order of AO whereas the Id. AR has relied on the order of CIT(A).

10. We have heard both parties and perused the materials available on record. The appellant has filed copies of profit and loss account and balance sheet for the year under appeal. It is evident therefrom that only land was purchased and no construction or other related expenses were incurred during the year. We have already confirmed the finding of CIT(A) deleting the addition of on-money payment towards purchase of the impugned land. For the same reason and due to fact that no expenses were incurred during the year, there is no justification for making addition u/s 69C of the Act. Hence, the deletion by CIT(A) is upheld and the ground is dismissed. Accordingly, ground No.3 raised by the revenue is dismissed.

11. Ground No.4 is regarding relief granted by CIT(A) de hors provisions of section 292C of the Act. In the present case, the impounded material in the form of excel sheet was retrieved from the backup data impounded from the common premises of M/s Aadeshwar Enterprises, M/s Ekkta Developers, M/s New Supreme Developers and M/s Legend Developers at Emporia Textile Market, Surat. As per provisions of section 292C of the Act, any books of account or other documents found in possession or control of any person in course of search or survey may be presumed to belong to such person and the contents thereof are true. This was the office premise of M/s Aadeshwar Enterprise but authorization was in the names of four related concerns, as stated above. The use of the word 'may' in the section means that the presumption is rebuttable. The appellant stated that the said data do not belong to the appellant. There was no evidence on record to support the entries of the said excel sheet. The revenue has also failed to bring any corroborative evidence to establish the veracity or accuracy of the figures of the excel sheet. Though the ground is raised, neither revenue nor the assessee has argued on the issue before the Tribunal. Considering all these facts, the ground No.4 is dismissed.

12. Ground No.5 is regarding applicability of the principles of human probability test and preponderance of probability, which are applicable to Income-tax proceedings. There is no dispute that technical rules of evidence and pleadings are not applicable to Income-tax proceedings and human

probabilities principle is a well-recognized standard of proof used in the income tax case. However, the revenue has not demonstrated as to how the said principle is applicable to the facts of the instant case. Further, no argument or written submission on this ground was made by any party before us. Hence, ground No.5 is dismissed.

13. Grounds No.6 to 8 are general in nature and do not require adjudication.

14. In the combined result, the appeal of the revenue is dismissed.

CO No.37/SRT/2024 (AY.2015-16):

15. The grounds of appeal by assessee in CO No.37/SRT/2024 (AY.2015-16) are as follows:

“1. That on the facts and in the circumstances of the case as well as in law, the learned CIT (A) has erred in upholding the validity of proceeding initiated u/s 147/148 of the I. T. Act, 1961 (the Act) in the case of appellant and consequent assessment order passed u/s 143(3) r.w.s. 147 of the Act, whereas these proceedings are clearly invalid, unjustified and beyond the law. Appellant prays for quashing the same.

2. Without prejudice to the contention of appellant that the additions made by Id. AO of Rs.26,17,66,223/- in the name of unaccounted investment for purchase of Land and of Rs.3,11,04,349/- in the name of unaccounted expenses are grossly wrong and unjustified and Hon'ble CIT (A) has rightly deleted the same, that these additions are also wrong and contrary to the settled law because the appellant firm had not commenced any business or income generating activity and had no capacity to generate any such income and, therefore, Hon'ble CIT (A) ought to have deleted these additions on this ground also. Appellant pleads that the additions made are wrong and contrary to the settled law on this ground also.”

16. Ground No.1 is regarding validity of re-opening u/s 147 of the Act by issue of notice u/s 148 of the Act dated 31.03.2021. The CIT(A) dismissed the ground by observing that digital data in the form of excel sheet was found

during the course of survey at the premises of M/s Aadeshwar Enterprises, the analysis of which revealed that the appellant had unaccounted transactions for payment of on-money of Rs.29,61,97,983/- for purchase of land and Rs.3,11,04,349/- towards unaccounted expenses. The AO recorded reasons for re-opening and obtained prior approval of the competent authority. The appellant submitted that survey was conducted at the premises of its sister concern and not at its premises. The AO recorded satisfaction by treating the figures as representing unaccounted cash payment without any corroborative evidence. The CIT(A) dismissed the ground by observing that the material available with the AO was sufficient to form a reasonable belief about escapement of income and. We do not find infirmity in the decision of CIT(A). At the stage of re-opening, the AO should have *prima facie* belief regarding escapement of income. The Hon'ble Supreme Court in case of ACIT vs. Rajesh Javeri Stock Brokers Pvt. Ltd., 291 ITR 500 (SC) held that the expression 'reason to believe' would mean cause or justification and cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. Whether material would conclusively prove escapement of income is not the concern at that stage. In view of the facts discussed above and respectfully following the decision of Hon'ble Supreme Court cited supra, the ground is dismissed.

17. Ground No.2 is that the CIT(A) should also have deleted the addition because the appellant had not commenced any business or income generating

activity and that the appellant had no capacity to generate any such income. The CIT(A) had deleted the addition in respect of on-money payment in cash as well as the unaccounted expenses after considering the submission of the assessee including the argument raised in the impugned ground. The Id. AR has not argued about the ground before the Tribunal. In any case, the appellant has already been allowed relief on both grounds. Therefore, the issue is academic in nature and do not require adjudication. Hence, this ground is dismissed.

18. In the result, the cross objection of the assessee is also dismissed.

ITA No.576/SRT/2024 & CO No.38/SRT/2024 (AY 2014-15):

19. The grounds of appeal by revenue in ITA No.576/SRT/2024 (AY.2014-15) are as follows:

“1) On the facts and in the circumstances of the case and in law the Ld CIT(A) erred in deleting the addition of Rs. 3,44,30,775/- made by the AO on account of on-money payment for purchase of land u/s 69B of the IT. Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the survey proceedings.

2) In addition to the ground No. 1 above, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs. 3,44,30,775/- made by the AO on account of on-money payment for purchase of land u/s 69B of the I.T. Act observing that in absence of any corroborative evidences or finding of actual payments of cash in land transaction, the addition made merely based on entry in excel sheet without any supporting evidences cannot be upheld without appreciating the fact that on the top of the excel-sheet image pasted on page no 13 of the assessment order, name of Ekkta Developers is written and the AO has clearly established that the land cost recorded against sub-heading (8) '421506.86' (decoded as Rs.4,21,50,686/-) in the excel sheet matches with the actual cost of lands purchased as per the books of accounts of the assessee.

3) In addition to above grounds, on the facts and in the circumstances of the case and in law, the CIT(A) has granted relief de horse provisions of section 292C of the Assessee.

4) *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.*

5) *On the facts and in the circumstances of the case and in law, the Ld CIT (A)-4, Surat ought to have upheld the order of the Assessing Officer.*

6) *It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.*

7) *The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made."*

20. The grounds of appeal by assessee in CO No.38/SRT/2024 (AY.2014-15)

are as follows:

"1. That on the facts and in the circumstances of the case as well as in law, the learned CIT (A) has erred in upholding the validity of proceeding initiated u/s 147/148 of the I. T. Act, 1961 (the Act) in the case of appellant and consequent assessment order passed u/s 143(3) r.w.s. 147 of the Act, whereas these proceedings are clearly invalid, unjustified and beyond the law. Appellant prays for quashing the same."

21. The grounds raised by the revenue and cross objection are similar to those in ITA No.577/SRT/2024 and CO No.37/SRT/2024 decided above. The facts are also similar. From the image of the excel sheet retrieved from the digital backup data, transactions of unaccounted payment of on-money for purchase of land was revealed. The same document contains entries for the subject AY 2014-15 as well as AY 2015-16. We have discussed the issue elaborately and dismissed both appeals. Following the same reason, both cross-appeals are dismissed.

22. In the result, both appeals are dismissed.

23. In the combined result, appeals filed by the revenue are dismissed and the cross objections filed by the assessee are also dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 07/08/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 07/08/2025

SAMANTA

Copy of the Order forwarded to:

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

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat