

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Bijayananda Pruseth, Accountant Member**

**ITA Nos: 476 & 531/SRT/2023
Assessment Years: 2018-19**

Kishorkumar Dhirajlal Kathrotiya 20, Sardar Park, Surat, Parvat Patiya, Gujarat 395010 India PAN: AFIPK5281J	Vs	The DCIT Central Circle-4, Surat
The DCIT Central Circle-4, Surat (Appellant)		Kishorkumar Dhirajlal Kathrotiya 20, Sardar Park, Surat, Parvat Patiya, Gujarat 395010 India PAN: AFIPK5281J (Respondent)

**ITA No. 435/SRT/2023 for A.Y. 2016-17 &
IT(SS)A Nos: 125/SRT/2023 for A.Y. 2020-21**

The DCIT Central Circle-4, Surat (Appellant)	Vs	Kishorkumar Dhirajlal Kathrotiya 20, Sardar Park, Surat, Parvat Patiya, Gujarat 395010 India PAN: AFIPK5281J (Respondent)
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**Assessee Represented: Shri Rasesh Shah, CA
Revenue Represented: Shri Aashish Pophare, CIT-DR**

Date of hearing : 09-07-2025
Date of pronouncement : 08-09-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These appeals are filed by the Revenue and Assessee as against three appellate orders dated 02.05.2023 [for A.Y. 2018-19], 24.04.2023 [for A.Y. 2016-17] and 02.05.2023 [for A.Y. 2020-21] passed by the Commissioner of Income Tax (Appeals)-4, Surat arising out of the assessment orders passed under section 143(3) rws 153A and 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Since common issues are involved in these appeals the same are disposed of by this common order.

2. Asst. year 2018-19 is taken as the lead case. Brief facts of the case are that the assessee is an individual NRI and is engaged in the development of residential project namely Cassa Amorina on land at Block No.62, FP-11, TP-53, Parvat Patiya, Surat which is consisting of two towers having 48 flats. The assessee filed his Return of income for the Asst. Year 2018-19 on 16.10.2018 declaring total income of Rs. 32,54,100/-. The assessee firm was subjected to survey action u/s.133A of the Act on 06.02.2020 as part of Kuberji Group of cases and certain material was found and impounded from the project site. The assessee being NRI and he was not in India, when the survey was conducted therefore, the warrant of authorization of survey proceedings were not executed against the assessee. The assessee had given the administrative power to one Mr. Devang Malaviya on 20-05-2016 to look after the construction and development of the assessee's project. He had no power to sell any flats in the project. Whereas the assessee had

given registered Power of Attorney to his two sisters Ms. Bhanuben Dhirubhai Kathrotia on 17.10.2016 and Ms. Ushaben Dhirubhai Kathrotia on 17.04.2017 to sell the various units/flats constructed by the assessee.

2.1. In the course of the survey, Annexure A-23 was inventorised and during assessment proceedings, the AO proposed the addition of Rs.3,68,58,500/- on the basis of the page no. 84 of Annexure A-23 which is the sauda chitthi [bargaining slip] executed between Shri Devang Malaviya and Arjarnbhai Kotadia. The ld AO held that the impounded sauda chitthi is for sale of Flat Nos. B-901 and B-902 in the project Cassa Amonna, wherein, it is noted that the total price of these 2 flats is Rs.3,69,58,500/-(ie. 3,870 sqft. x Rate Rs.4,775 per sqft. x 2 flats). In response to the show cause notice, assessee filed a detailed reply however the AO was not satisfied with the reply of the assessee and made the addition of Rs.3,69,58,500/=. On appeal ld. CIT(A) has deleted the addition of Rs.1,35,00,000/- out of Rs.3,69,58,500/- being the amount recorded in the assessee's books of accounts for sale of impugned flats and confirmed balance amount of Rs.2,34,58,500/- partly allowed the appeal.

3. The AO observed that impounded page no. 11 to 13 of Annexure A-22, reflects details of goods sent by a supplier viz Khodaldhan Enterprise to the project Cassa Amonna and these loose papers contain notings of payments totalling to Rs.8,31,331/- in cash. Accordingly, AO made the addition of Rs.8,31,331/-by alleging unexplained expenditure u/s.69C of the Act. The assessee

preferred an appeal before the Id. CIT(A), who vide his impugned appellate order, upheld the addition as per his finding at para no. 14.2 (page no. 49 to 50).

4. During the assessment proceedings, the AO observed the impounded page no.177 & 178 and page no.186 to 190 of Annexure A-22, reflect details of goods sent by a supplier viz. Jogi Darshan to the project Cassa Amorina and these loose papers contain notings of payments totalling to Rs.1,83,60,000/- made in cash. Accordingly, the AO made the addition of Rs.1,83,60,000/- by alleging unexplained expenditure u/s.69C of the Act. The assessee preferred an appeal before the Ld. CIT(A) who vide his appellate order, observed that amounts totalling to Rs.55,00,000/- are duplicated on page no. 177 & 178, as also on page no. 189 & 190 and accordingly, the Id. CIT(A) deleted the impugned duplicate addition to the extent of Rs.55,00,000/-. Further, the Id CIT(A) also observed that an amount of Rs.2,00,000/- is dated 19.04.2018 and hence, the same is not pertaining to the year under consideration ie. A.Y. 2018-19 and accordingly, the Ld. CIT(A) also deleted the impugned addition to the extent of Rs.2,00,000/-. However, the Id. CIT(A) sustained the balance addition amounting to Rs. 1,26,60,000/- (ie. Rs.1,83,60,000 - 55,00,000 - Rs.2,00,000) as made by the Ld. AO by alleging unexplained expenditure u/s 69C of the Act.

5. Aggrieved against the appellate order, Assessee is in appeal before us raising the following Grounds of Appeal:

1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in confirming an addition of Rs. 2,33,58,500/-, out of the addition of Rs.3,68,58,500/-, as made by the AO u/s. 68 of the Act, towards alleged on-money receipts from sale of Flat No. B-901 & B-902, which is absolutely incorrect, erroneous, illegal and bad-in-law, requiring outright annulment.
2. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in confirming an addition of Rs.8,31,331/-, as made by the AO u/s. 69C of the Act, towards alleged unaccounted expenditure, which is absolutely incorrect, erroneous, illegal and bad-in-law, requiring outright annulment.
3. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in confirming an addition of Rs. 1,26,60,000/-, out of the addition of Rs. 1,83,60,000/-, as made by the AO u/s. 69C of the Act, towards alleged unaccounted expenditure, which is absolutely incorrect, erroneous, illegal and bad-in-law, requiring outright annulment.
4. The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.
6. Ld Counsel for the assessee Mr. Rasesh Shah submitted that the impounded sauda chitti has been executed and signed by Shri Devang Malaviya and not by the assessee. The same doesn't contain the name or the signature of the assessee. In reply to Q. No.8 on page no.9 of Shri Devang Malaviya in his statement recorded u/s.131 he stated that the signature belongs to him and the signature of the Purchaser is that of Shri Arjanbhai Kotadia. Further in the sauda chitti there is no mentioning of any token amount having been paid by the customer towards the purchase of the said flats.
- 6.1. The alleged Purchaser of the flats was not summoned and no inquiry was made by the Ld AO. Accordingly, there is no statement

of the customer against the assessee. The assessee being a non-resident was not present in India on the date on which the amounts noted in the impounded sauda-chitthi has been executed. Hence, there is no question of the assessee receiving any on-money.

6.2. Further on page no.12 of the assessment order, the Id AO erroneously held that Shri Devang Malaviya had administrative power for the project Cassa Amonna and hence, he had acted on behalf of the assessee in receiving on-money and therefore, the impounded material pertains to the assessee and addition in respect thereof also needs to be made in the hands of the assessee. Id. Counsel submitted that it is a fact on record that Shri Devang Malaviya did not had any authority to sell the flats in the project and he had only administrative authority to look after the construction and development of the project. Further, from the facts as submitted herein before, it gets evident that the impounded sauda-chitthi does not pertain to the assessee, but pertains to Shri Devang Malaviya, who has also accepted to have executed the said sauda-chitthi personally.

6.3. Further during the course of the survey, the materials were found indicating that Shri Devang Malaviya was also handling the interior design work of the flat purchasers for which he was quoting an all-inclusive rate of around Rs.4500 to 4775 per sqft that has been duly accepted by him in his statement. Therefore Ld counsel submitted that in consequence of the impounded material showing interior designing work carried out by Shri Devang Malaviya for the A.Y.2018-19 was reopened and additions of Rs. 69,65,885/- in

respect thereof has also been made in his hands thus making again in the hands of the assessee does not arise.

6.4. Ld counsel submitted that perusal of impounded sauda chitthi, it can be seen that the date of its execution is 05.04.2017 and the period of payment as mentioned therein is from 05.04.2017 to 31.03. 2018. It is most humbly reiterated that during the above period, the assessee was not in India, having permanently shifted to USA since 2016. Further Shir Devang Malaviya has himself admitted that he has executed the impounded sauda chitthi in his personal capacity. Therefore, the addition has been made on the basis of the loose papers recovered from the possession of the third party ie. Devang Malaviya, in such case no addition can be made in view of the decision of Hon'ble Supreme Court in case of Common Cause (A Registered Society) v/s. UOI-394 ITR 220 (SC).

6.5. The Ld AO has made the addition u/s.68 of the Act for alleged on money receipts determined on the basis of the sauda chitthi. In fact, Section 68 is applicable only when the credit entry appears in the books of accounts of the assessee. So, assessing officer has invoked wrong provision of IT Act.

6.6. Even otherwise, the addition cannot be made in the year under consideration as the registered sale deeds of the Flat No. B-901 & 902 have been executed on 03.05.2018 in the AY 2019-20 and therefore the addition in respect of on-money thereon cannot be made in the year under consideration of A.Y.2018-19. Reliance is placed on the judgement of the Jurisdictional Gujarat High Court in case of CIT -Vs.- Happy Home Corporation reported in 94

taxmann. com 22 (Guj) which has been confirmed by Hon'ble Supreme Court by dismissing the SLP filed by the Revenue and reported in 103 taxmann.com 22 (SC).

7. Next alternative arguments of the Ld Counsel was that there are only two evidences relating to the sale of the flats found during the course of the survey. The first evidence is relating to Flat No B-202 sold to Mr. Arvindkumar Dudhat and the second evidence is the alleged sauda chitti found and related to flat no. B-901 & 902. On the basis of these evidences and the statements of the certain Purchasers, ld AO extrapolated the addition for remaining flats and accordingly, he made the addition of Rs.12,73,78,000/-. This addition was deleted by CIT(A) as per the finding given at para no 18.3 to 18.5 (page no 72 to 75) of his order.

7.1. The Ld CIT(A) deleted the addition of extrapolation on the basis of the various case laws referred by him in the appellate order. Apart from the judgment of the Gujarat High Court relied by CIT(A) in case of CIT -Vs.- Amar Corporation in Appeal No.1252 to 1257, vide order dated 11- 07-2016 and other decisions mentioned at para no. 18.4 of his order, the assessee is relying on the decision of co-ordinate Surat Bench in case of Kush Corporation -Vs.- ACIT in ITA No. 93, 94 & 357/SRT/2022 & CO No. 1/SRT/2023. In this case, the Hon'ble Tribunal confined the addition only in respect of the seven flats for which the evidences were found. In respect of the seven flats, the addition @ 10% of on money receipts was only sustained.

7.2. Ld. Counsel drawn our attention that in the A.Y. 2017-18, the addition of Rs.16 lacs was made in regard to the Flat No. B-202. This addition was sustained by the CIT(A), however he allowed telescoping against Income Disclosure Scheme' 2016 (IDS) declared by the assessee of Rs.1.5 crores. Therefore, the assessee did not prefer appeal before this Tribunal as the addition was ultimately deleted on ground of allowing telescoping benefit. Even after allowing telescoping of Rs 16 lacs, there still remains unutilized amount of Rs.1.34 crores. It is therefore humbly submitted that in assessee's case also the addition @ 10% of the receipts of Rs 2,33,58,500/- should only be sustained if assessee's arguments on merits are not accepted. This addition should be telescoped against the IDS declaration made by the assessee of Rs. 1.5 crores made for undisclosed income. It is most humbly submitted that the said alleged unaccounted profit gets covered in the disclosure of "Net on-money profits for the entire project, as made under IDS-2016, which has been arrived at after netting off the cash on-money receipts and the cash expenses, worked out on receivable basis, for the entire project.

8. Ld. Counsel for the assessee submitted that the ld. CIT(A) has allowed the telescoping against the on-money receipts of Rs.8,31,331/- against the on-money receipts of Rs.2,33,58,500/- confirmed by him. In this connection it is submitted that the addition is required to be deleted on merits and even otherwise, if 10% of the on-money receipts is estimated as income of the assessee, no addition is required to be made. Further it is to be noted that the ld. CIT(A) confirmed the addition of Rs.8,31,331/-

and he allowed the telescoping benefit and thereby the addition stands deleted. In fact the amount of Rs.8,31,331/- should be deducted as expenditure against addition for on money receipts of Rs.2,33,58,500/-

8.1. In respect of the payment of Rs.1,26,60,000/- as reflected in the said impounded papers, Ld. Counsel submitted that an amount of Rs.85,00,000/- is reflected in the regular books of accounts of the appellant, in the name of supplier viz. Bajaj World, as shown in the following table:

Dates	Amount as per seized paper	Amount as per regular books of accounts	Cheque No.
27-06-2017	20,00,000	20,00,000	796
29-06-2017	25,00,000	25,00,000	800
16-10-2017	40,00,000	40,00,000	881
Total	85,00,000	85,00,000	

8.2. Thus, Ld Counsel pleaded that out of the total amount of Rs.1,26,60,000/- as reflected in impounded pages, an amount of Rs.85,00,000/- is fully reflected in regular books of accounts, leaving a balance amount of Rs.41,60,000/-. In respect of the balance amount of Rs.41,60,000/-, Ld Counsel submitted that the impounded pages reflect the entries of the total material sent by the supplier on the project site wherein, the material of Rs.85,00,000/- related to the project has been accounted for in the books for appellant and for which the payment has been made by account payee cheques whereas, Shri Devang Malaviya made clear statement that the balance amount of Rs.41,60,000 in the alleged impounded materials is in respect of the interior designing work as

can be verified from the reply in response to Q. No. 11 on page no. 30 of his statement.

8.3. Even otherwise, even if it is assumed that the expenses of Rs.41,60,000/- are relating to the assessee project, it should also be assumed that they have been incurred against the on-money receipts against three flats and therefore no separate addition is required to be made if net profit on "on-money receipts" is estimated. However, the Id. CIT(A) has given the telescoping of addition sustained of Rs.2,33,58,500/- against on money receipts. The assessee submits that the addition should be deleted on merits or if the net profit on "on-money" is estimated, the addition is required to be made.

8.4. Ld. Counsel further submitted that the Id. CIT(A) has allowed the telescoping against the on-money receipts of Rs.1,26,60,000/- against the on-money receipts of Rs.2,33,58,500/- confirmed by him. In this connection it is submitted that the addition is required to be deleted on merits as per our above submission and even otherwise, if 10% of the on-money receipts is estimated as income of the assessee, no addition is required to be made.

8.5. Further it is to be noted that the Id. CIT(A) confirmed the addition of Rs.1,26,60,000/- and he allowed the telescoping benefit and thereby the addition stands deleted. In fact the amount of Rs. 1,26,60,000/- should be deducted as expenditure against addition for on money receipts of Rs.2,33,58,500/-

9. The assessee has raised Additional Grounds of Appeal before us in regard to wrong invocation of Section 115BBE vide letter dated 26.06.2025. Ld Counsel submitted that in this case, the Ld AO has wrongly invoked the provisions of Section 115BBE for taxing the above additions made in the assessment order which is not correct. Assessee has earned income by way of business only through construction of residential project. Therefore, the addition if any sustained is required to be considered as business income only and there is no question of presuming to have any other source of income and hence provisions of section 115BBE cannot be attracted and reliance is placed on the following decisions of various courts:

J.K. Chokshi vs. ACIT-Tax Appeal 149 of 2003 (Guj)
Green Associates vs. PCIT-Tax Appeal No. 1199 of 2018 (Guj.)
DCIT v/s. Radhe Developers India Ltd-329 ITR 1 (Guj.)
CIT vs Mhaskar General Hospital in TA No.1474 of 2009 (Guj)

10. Per contra Ld CIT DR Shri Aashish Pophare appearing for the Revenue supported the orders passed by the lower authorities and requested to sustain the additions.

11. We have given our thoughtful consideration and perused the materials available on record including the submissions made by rival parties. Undisputed facts are that the assessee is an individual NRI and is engaged in the development of residential project namely Cassa Amorina at Surat which is consisting of two towers having 48 flats. The assessee firm was subjected to survey action u/s.133A of the Act on 06.02.2020 as part of Kuberji Group of cases and certain material was found and impounded from the

project site. The assessee being NRI and he was not in India, the warrant of authorization of survey proceedings were not executed against the assessee. The assessee had given the administrative power to one Mr. Devang Malaviya on 20-05-2016 by way of Notarized Power of Attorney to look after the construction and development of the assessee's residential project, but he had no power to sell any flats in the project. Whereas the assessee had given Registered Power of Attorney to his two sisters Ms. Bhanuben Dhirubhai Kathrotia on 17.10.2016 and Ms. Ushaben Dhirubhai Kathrotia on 17.04.2017 to sell the various units/flats constructed by the assessee. Thus, the impounded sauda chitti has been executed and signed by Shri Devang Malaviya and not by the assessee. The same doesn't contain the name or the signature of the assessee. Further in reply to Q. No. 8 in his statement recorded u/s.131, [available at page no. 9] Shri Devang Malaviya has stated that the signature belongs to him and the signature of the Purchaser is that of Shri Arjanbhai Kotadia. Further in the sauda chitti there is no mentioning of any token amount having being paid by the customer towards the purchase of the said flats. Further it is seen from the assessment order the alleged Purchaser of the flats was not summoned and no inquiry made by the Ld AO on the sauda chitti, hence there is no question of the assessee receiving any on-money.

11.1. Further Shri Devang Malaviya, who has also accepted to have executed the said sauda chitti personally. The materials were found indicating that Shri Devang Malaviya was also handling the interior design work of the flat purchasers, for which he was

quoting an all-inclusive rate of around Rs.4500 to 4775 per sqft that has been duly accepted by him in his statement. Based on this Shri Devang Malaviya's assessment for the A.Y. 2018-19 was reopened and addition of Rs.69,65,885/- made u/s.69A of the Act, in respect thereof has also been made in his hands, thus making addition again in the hands of the assessee does not arise.

12. After careful consideration of the rival submissions, material on record, and findings of the lower authorities, we hold that the impugned addition of Rs.2,33,58,500/- representing alleged "on-money" receipts cannot be sustained in full as it is based on loose papers found from a third party, without corroborative evidence. Even otherwise, the sale deeds were executed in the subsequent assessment year 2019-20. The Ld CIT(A) erred in confirming the gross amount of "on-money" receipts without allowing deduction of corresponding cash expenses reflected in seized documents. After adjusting unexplained expenditure of Rs.8,31,331/- and Rs.1,26,60,000/-, the net addition comes to Rs.98,67,169/-. The assessee's is reliance on the decision of co-ordinate Surat Bench in case of Kush Corporation -Vs.- ACIT [cited supra] wherein confined the addition only in respect of the seven flats for which the evidences were found and the addition @ 10% of on money receipts was only sustained. We therefore direct the to restrict the addition to the extent of 10% of on-money receipt and delete the other additions made by the AO. The other argument that the net addition is fully covered by the assessee's unutilized disclosure of Rs.1.34 crores under IDS, 2016; hence, no separate addition survives is found to be correct because the assessee made Income

Disclosure Scheme only for the residential project 'Cassa Amorina' as seen in Form No.1 and 4 under IDS 2016, therefore additions under sections 69C and 68 relating to cash expenses are telescoped against on-money receipts are directed to be deleted. Further the invocation of section 115BBE is also incorrect, as the additions are relate to business income arising from the real estate project. Thus the Grounds raised by the assessee are allowed.

13. In the result **the appeal filed by the assessee in ITA No. 476/SRT/2023 is allowed.**

ITA No.531/Ahd/2023 for A.Y. 2018-19

14. The Grounds of Appeal raised by the **Revenue** in ITA No.531/Ahd/2023 are as follows:

- 1) On the facts and circumstances in the case and in law, the Ld. CT(A) has erred in deleting of addition of Rs 55,000/- made by A.O u/s 69c of the IT Act, 1961 on account of unexplained expenditure despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings
- 2) In addition to the ground no I above, in the facts and circumstances in the case and in the low the LD CIT(A) has erred & contradicted himself by giving telescoping of unaccounted expenditure in cash incurred for whole project against the on-money received from two flats and of the same time deleting the on-money received for all flats by ignoring sufficient incriminating evidence brought on regard by AO.
- 3) On the facts and circumstances in the case and in the low, the Ld. CIT(A) has erred in deleting of addition of Rs. 44,00,000/- made by A.O. u/s 68 of the IT Act, 1961 on account of unexplained on-money receipts despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings
- 4) In addition to the ground no 3 above, on fact of facts of the circumstances. whether the Ld. CIT(A) has erred and contradicted himself in holding the receipt of 44 Lakhs in hands of Devang Malaviya as income from interior designing while at the same time acknowledging that Ashwini Dudhat deal never

materialized because it defies common sense that any customer would initiate interior designing work even before finalizing the purchase of property.

5) In addition to the ground no 3 & 4 above on the facts and circumstances in the case and in the law, the Ld. CIT(A) has erred in deleting the addition of hands of appellant by ascribing the same to Devange Malviya as income from interior designing without issuing direction u/s 251 to AO.

6) On the facts and circumstances in the case and in the law, the Ld. CIT(A) has erred in restricting the addition to Rs.2,33,58,500/- as against the addition of Rs. 3,69,53,500/- made by the AD on account of 'On Money' receipts u/s 68 of the IT Act despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings.

7) In addition to the ground no.6 above on the facts and circumstances in the case and in the law, the Ld. CIT(A) has erred in restricting the addition to Rs. 2,33,58,500/- as against the addition of Rs 3,69,58,500/- made by the AO on account of 'On Money receipts u/s 68 of the IT Act observing that the amount of Rs 1.36,00,000/- has been shown in the books of accounts despite the facts that during the course of the assessment proceedings the assessee has not submitted any evidences in respect of recording the transactions in his books of accounts

8) On the facts and circumstances in the case and in law, the Ld, CIT(A) has erred in deleting of addition of Rs 23,29,900 made by A O u/s 69A of the IT Act, 1961 on account of unexplained expenditure despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings

9) In addition of ground no 4 in above, on the facts and circumstances in the case and in low, the Ld CIT(A) has erred in deleting of addition on account of unexplained expenditure without decided in which hands the said amount le Rs 23,29,900/-, will be charged to tax

10) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 21 11 577/- made by A O u/s 69C of the IT Act 1961 on account of unexplained expenditure despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings

11) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 12 15.324/-made by AO u/s 69C of the IT Act. 1961 Act (inadvertently written by the AO as u/s 68 of the IT Act) on account of unexplained expenditure despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings

12) On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing to give telescopic effect of the addition of Rs.8,31,331/-

made by the Assessing Officer u/s 69C of the IT Act and confirmed by him against the sustained addition of Rs. 2,33,58,500/- despite of the facts that the assessee has never submitted any factual details as to how the amount of Rs 8.31331/ was covered in the amount of sustained addition of Rs 2,33,58.500/-

13) On the facts and circumstances in the case and in the law, the Ld CIT(A) has erred in restricting the addition to Rs 1 26 60,000/-as against the addition of Rs.2.33,58,500/-made by the AD on account of unexplained expenditure u/s 69C of the IT Act despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings.

14) In addition of ground no 13 above, on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing to give telescopic effect of the addition of Rs 1,26,60,000/- made by the Assessing Officer u/s 690 of the IT. Act and confirmed by him against the sustained addition of Rs 2.33 58,500/- despite of the facts that the assessee has never submitted any factual details as to how the amount of Rs.8,31,331/- was covered in the amount of sustained addition of Rs 2,33,58,500/-

15) Without prejudice to the ground No 13 & 14 above, on the facts and circumstances in the case and in the low, the Ld CIT(A) has erred in restricting the addition to Rs.1,26,50,000/- as against the addition of Rs 2,33,58,500/- made by the AO on account of unexplained expenditure u/s 69C of the IT. Act despite the facts that from the ledgers as shown on Pages No 177, 178, and 186 to 190 of Annexure A-22 of the seized material, it is seen that the sum of cash entries, le,, payment made to the M/s Jogi Darshans amounts to Rs 1.41.60.000/-

16) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 23.50 000/- made by A.O u/s 690 of the IT Act. 1961 on account of unexplained expenditure despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings

17) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs. 12.73.78,000/- made by A O u/s 68 of the IT Act, 1961 on account of on account of unexplained on-money receipts despite the facts that the addition was made on basis of Impounded material found during the course of survey proceedings 1

18) In addition of ground no 17 in above, the Ld CIT(A) has erred in deleting the addition despite the fact that the assessee has habituated to receive on money from 2015-16 to 2018-19 Further the Ld CIT(A) has erred in not considering Yusufali Abdul Ali case the theory of preponderance of human probability as pronounced by the Hon Apex Court in the cases of CIT v Durga Prasad More (1971) 82 ITR 540 and reiterated in Sumati Dayal v CIT (1995) 214 ITR 801 80 Taxman 89 (SC)

19) 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

20) 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

21) 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.

15. Ground Nos. 1 & 2 - Addition of Rs.55,000/- u/s 69C as unexplained expenditure. The findings of Ld CIT[A] are as follows:

“... 8.2. I have gone through the assessment order and the submissions made by the AR of the appellant. As seen from the incriminating material tabulated by the AO on page 2 and 3 of the assessment order, it is seen that these are small expenses of labour and supervisor relating to plastering / POP etc. In reply to Q.No.11, Mr. Devang Malaviya has stated that the said expenditure in question was relating to interior designing work done by him on behalf of the purchasers of the flats, which is done in his individual capacity. In deciding the appeal of the appellant for AY 2017-18, I have already held that the incriminating material found in the Survey premises also included the receipts of interior work being undertaken by Mr. Devang Malaviya in his individual capacity which was different from the regular supervisory work he was doing for the appellant in the construction business. As Mr. Devang Malaviya has accepted this expenditure to be related to his business, the same should be considered in his individual assessment and hence, the addition made by the AO of Rs.55,000/- in the hands of the appellant cannot be sustained as the said expenditure is not pertaining to the appellant. Ground No.4 is allowed.”

15.1. Ld CIT DR could not contravene the findings of the Ld CIT[A] and also place any materials on record, thus the above grounds are devoid of merits and liable to be dismissed.

16. Ground Nos. 3 to 5 - Addition of Rs.44,00,000/- u/s 68 on account of on money receipts for flats B-202. The findings of Ld CIT[A] are as follows:

“ ... 9.2. I have already decided this issue in deciding Ground No.2 in the appellant's appeal for AY 2017-18. In the said AY, the first token of Rs. 16,00,000/- was held to be towards the flat and held to be taxed in the hands of the appellant. The balance receipts were held to be relating to interior work carried out by Mr. Devang Malaviya and profit therefrom was held to be taxable in the hands of Mr. Devang Malaviya. My decision relating to the said ground for AY 2017-18 is reproduced below for the sake of clarity:

7.4 I have gone through the assessment order and the submissions made by the AR of the appellant. As seen from the incriminating material reproduced by the AO on page 3 of the assessment order, it is clear that the amounts received as reflected in the diary impounded were towards Flat No.B-202 in the project Cassa Amorina developed by the appellant. All the receipts in the diary are acknowledged with signature by Mr. Devang L Malaviya which shows that Mr. Devang L Malaviya was looking after the project of the appellant in the absence of the appellant in India. This view is confirmed by one of the customers Mr. Suresh M Mistry who submitted in his statement that with reference to purchase of flat in the project of the appellant, he met several times Mr. Devang L Malaviya. These evidences are sufficient to prove that Mr. Devang Malaviya was looking after the project of the appellant being a civil engineer by profession. As Mr. Devang Malaviya was not present during the course of Survey, he was summoned subsequently and his statement was recorded u/s 131 of the Act on 21.02.2020.

7.5 During the course of statement, Mr. Devang Malaviya was asked about the contents of the pocket diary impounded as Annexure A-3 in the office premises of the appellant. In reply to Q.No. 11, Mr. Devang submitted that Flat No.B-202 in Cassa Amorina project was being sold to Mr. Arvindkumar Bhagwanbhai Dudhat at the rate of Rs.4545/- per sq.ft. which included the rate of interior design work also. Further, he has also confirmed the amounts received as payments from Mr. Arvindkumar Bhagwanbhai Dudhat as noted down on page 2 to 7 of the said diary which is written in coded form by omitting 3 zeros. For

instance, Rs. 16,00,000/- has been written as "1600". During the impugned AY, the total amount received from Mr. Arvindkumar Bhagwanbhai Dudhat was Rs.42,00,000/- which was added by the AO. The contention of the appellant before the AO and during the Appellate Proceedings was that the diary did not belong to the appellant since it did not contain his name, signature or handwriting and that flat in question was never sold even till date to Mr. Arvindkumar Bhagwanbhai Dudhat or any of his family members and hence, the contents of the said diary are not relevant in the assessment of the appellant. However, this contention is not acceptable for the simple reason that Mr. Devang Malaviya has categorically stated that the amounts mentioned in the diary which are received from Mr. Arvindkumar Bhagwanbhai Dudhat are relating to Flat No.B-202 which shows that the flat was identified and agreed to be sold to the said person. Even in the diary, on page 1, the flat number and the name of the customer has been mentioned. This proves that the flat in question was agreed to be sold to Mr. Arvindkumar Bhagwanbhai Dudhat and that is the reason, the said person had even paid Rs.86,00,000/- as evident from the diary to Mr. Devang Malaviya. As per the statement of Mr. Devang Malaviya, the price of Rs.4545/- per sq.ft. was the price of flat including the interiors which was to be done by Mr. Devang Malaviya. In the impounded material, there have been evidences of expenses incurred on interiors by Mr. Devang Malaviya in his individual capacity. The AR of the appellant produced the copy of assessment order in the case of Mr. Devang Malaviya for AY 2018-19, in which the AO has brought to tax the income of Mr. Devang Malaviya from the work executed relating to interiors in the project Cassa Amorina belonging to the appellant. This aspect has been specifically dealt by the AO of Mr. Devang Malaviya in para 4 of the order u/s 143(3) rws 147 of the Act dated 27.03-2023.

7.6 Thus, on the basis of statement of Mr. Devang Malaviya, the evidences of expenditure found during the course of Survey and the assessment made in the case of Mr. Devang Malaviya as referred above, it can be reasonably be held that the amounts received for Flat No.B-202 from Mr. Arvindkumar Bhagwanbhai Dudhat are partly for the flat and partly for the interior work undertaken by Mr. Devang Malaviya in the said flat. In absence of any bifurcation of the price of the flat and the price of the interiors, one needs to go on the basis of the receipts in the diary. On verification of the receipts in the diary impounded, it is seen that

the first payment dated 25.08.2016 which is the bigger payment as compared to the other payments is for the token of the flat being Rs. 16,00,000/-. All subsequent payments are small payments and many figures are odd figures which seem to be towards the material purchase for interior work. Thus, out of Rs.42,00,000/- received during the impugned AY, Rs. 16,00,000/- is held to be towards the unaccounted cash receipt of flat which was to be sold by the appellant and balance Rs. 26,00,000/- is held to be towards the interior work, which was to be undertaken by Mr. Devang Malaviya.

7.7 Now, the contention of the appellant is that the flat in question was never sold to Mr. Arvindkumar Bhagwanbhai Dudhat and the said flat is unsold even as on date. However, the contents of the diary show that the amount of Rs. 16,00,000/- towards the flat and Rs.26,00,000/- towards the interiors were received by Mr. Devang Malaviya during the impugned AY. This is also confirmed by Mr. Devang Malaviya in his statement. The subsequent development as to why the said flat was not finally purchased by Mr. Arvindkumar Bhagwanbhai Dudhat is not mentioned in the diary. The contention of the appellant that the sale transaction to Mr. Arvindkumar Bhagwanbhai Dudhat did not materialise and the amount was returned to him is not evident from the impounded material. The appellant has not been able to bring any confirmation from Mr. Arvindkumar Bhagwanbhai Dudhat to this effect. Hence, in absence of the actual sale not effected of the flat in question, the token amount received by the appellant of Rs. 16,00,000/- needs to be brought to tax in the hands of the appellant as the amount forfeited as the sale transaction did not materialise and no evidence of refund of the said amount was found. As regards the balance of Rs.26,00,000/- which I have held on the nature of the receipts as the receipts for the interior work, the profit therefrom should be assessed in the hands of Mr. Devang Malaviya. Accordingly, the addition of Rs. 16,00,000/- is confirmed in the hands of the appellant and the appellant gets relief of Rs. 26,00,000/-. Ground No.2 is partly allowed."

9.3 In view of my above decision, the receipts of Rs.44,00,000/- received in the impugned AY are held to be relating to interior designing work, the profit of which shall be taxed in the hands of Mr. Devang Malaviya. Hence, addition of Rs. 44,00,000/- is deleted in the hands of the appellant. Ground No.5 is allowed."

16.1. Ld CIT DR could not contravene the findings of the Ld CIT[A] and also place any materials on record and Revenue is not in appeal for the Asst. Year 2017-18 before us, thus the issue has attained finality, therefore Grounds 3 to 5 are devoid of merits and liable to be dismissed.

17. **Ground Nos. 6 & 7** - Addition of Rs.3,69,58,500/- u/s. 68 on account of on-money receipts for Flat B-901 & 902. This issue is already considered in detail in para 12 of this order in assessee's appeal ITA No. 476/Srt/2023, following the same this Ground raised by the Revenue is hereby dismissed.

18. **Ground No. 8 & 9** - Addition of Rs.23,29,900/- u/s. 69C for unexplained expenditure. The findings of Ld CIT[A] are as follows:

'... 11.2. I have gone through the assessment order and the submissions made by the AR of the appellant. As seen from the impounded vouchers which are having the names of different flat owners who have purchased the flats from the appellant and the amounts are small and in some cases are odd figures. These vouchers do not contain the name of the project in the title, they also do not mention the flat number for which the advance is received and there is also no signature of the appellant or Mr. Devang Malaviya acknowledging the receipt of the said amounts. These vouchers are the acknowledgments given by some supplier who had supplied the material to various flats in the project. Therefore, these receipts are not the receipts for the sale consideration of the flats as the title mentioned is the name of the flat owners and not the appellant or the appellant's project. The appellant's project's name is mentioned in the address which is obviously for the purpose of delivery of the material, Further, these amounts have been held by the AO of Mr. Devang Malaviya to be the cash receipts by Mr. Devang Malaviya towards interior work done by him for the flat owners, which is not accounted for in his individual books and for which addition has been made in his hands in the assessment order passed u/s 143 rws 147 of the Act on 27.03.2023 for the impugned AY. On page 5 and 6 of the said assessment order, the AO has made the addition towards cash receipts in the hands of Mr. Devang Malaviya relying upon

the same incriminating material being page 108 to 125 of Annexure A-20. Hence, the said addition cannot be made again in the hands of the appellant. In view of the same, the addition of Rs.23,29,900/- stands deleted. Ground No.7 is allowed.

18.1. Ground No.10 - Addition of Rs.21,11,577/- u/s. 68 on account of unexplained cash credits. The findings of Ld CIT[A] are as follows:

“ 12.2. I have gone through the assessment order and the submissions made by the AR of the appellant. The A.O. has treated all the 4 pages as separate ledgers and made the addition by adding the totals on each of the 4 pages. But actually these pages are of a single ledger account of Mr. Jagdish Rudani for Flat No.B-1102, Cassa Amorina. The cumulative total of the expenditure incurred as per all the 4 pages is Rs.7,18,120/- for the period from 03.05.2017 to 12.10.2017. However, the AO had made a mistake of treating each page separately and took the total of all the 4 pages and made the addition. But the fact is that the total expenditure incurred is only Rs.7,18,120/- and out of that the customer had paid Rs.4,00,000/- as evident from page 7. Thus, the addition if at all has to be made should have been restricted to Rs.7,18,120/- and not Rs.21,11,577/-.

12.3 Now, the question arises is whether this unexplained expenditure has to be added in the hands of the appellant, who is a builder or in the hands of the interior decorator Mr. Devang Malaviya. As seen from the ledger account, the details mentioned are relating to interior decoration of flat belonging to Mr. Jagdish Rudani. The ledger account also specifically mentions the name of Mr. Jagdish Rudani along with the flat number. During the post survey proceedings, the statement of Mr. Devang Malaviya was recorded u/s 131 of the Act. In reply to Q.No.11 on page 30 of the statement, Mr. Devang Malaviya has stated the incriminating material found in Annexure A-21 are relating to the interior consulting work in respect of the flats in the project Cassa Amorina, which he was doing on behalf of the flat owners. Therefore, the ledger found is not relating to the builder (the appellant) but is relating to the interior designer Mr. Devang Malaviya. The profit from the said interior work has to be taxed in the hands of Mr. Devang Malaviya and as the said work is not related to the appellant, no addition is warranted in the hands of the appellant. Accordingly, the addition of Rs.21,11,577/- as made by the AO is deleted. Ground No.8 is allowed.”

18.2. Ground Nos. 8 to 10 are taken together, Ld CIT DR could not contravene the findings of the Ld CIT[A] and also place any materials on record that the materials belong to various purchasers of flats and relating to their interior design work undertaken by Mr. Devang Malaviya who has offered to tax the respective income. Thus, the above Ground nos. 8 to 10 are devoid of merits and liable to be dismissed.

19. **Ground No. 11** - Addition of Rs.12,15,324/- u/s. 68 on account of unexplained cash credits. The findings of Ld CIT[A] are as follows:

“... 13.2 I have gone through the assessment order and the submissions made by the AR of the appellant. Now, the question arises is whether this unexplained expenditure has to be added in the hands of the appellant, who is a builder or in the hands of the interior decorator Mr. Devang Malaviya. As seen from the ledger account, the details mentioned are relating to interior decoration of flat belonging to Mr. Maganbhai Bhulabhai Patel and Mr. Mukeshbhai Savaliya. The ledger account also specifically mentions the names of Mr. Maganbhai Bhulabhai Patel and Mr. Mukeshbhai Savaliya. During the post survey proceedings, the statement of Mr. Devang Malaviya was recorded u/s 131 of the Act. In reply to QNo.11 on page 30 of the statement, Mr. Devang Malaviya has stated the incriminating material found in Annexure A-21 are relating to the interior consulting work in respect of the flats in the project Cassa Amorina, which he was doing on behalf of the flat owners. Further, it is seen that in the ledgers, the items purchased has been clearly mentioned as Burma Teak and Valsadi Teak which are items used for interior work. Therefore, the ledger found is not relating to the builder (the appellant) but is relating to the interior designer Mr. Devang Malaviya. The profit from the said interior work has to be taxed in the hands of Mr. Devang Malaviya and as the said work is not related to the appellant, no addition is warranted in the hands of the appellant. Accordingly, the addition of Rs. 12,15,324/- as made by the AO is deleted. Ground No.9 is allowed.”

19.1. Ld. CIT-DR could not contravert that the addition of Rs.12,13,324/- was taxed in the hand of Mr. Devang Malaviya towards interior work, therefore the same addition in the hands of the assessee is correctly deleted by Ld. CIT(A) which does not require any interference and Ground No. 11 is hereby dismissed.

20. **Ground No.12** - Addition of Rs. 8,31,331/- u/s. 69C on account of unexplained expenditure. The findings of Ld CIT[A] are as follows:

“... 14.2. I have gone through the assessment order and the submissions made by the AR of the appellant. The loose papers found are in respect of expenses of black sand and the challans are in the name of the project Cassa Amorina. The said pages clearly reflect cash payment of Rs.8,31,331/-, There is no name of the customer on the said pages nor there is any detail of the flat number and hence, the expenditure apparently is relating to the project Cassa Amorina executed by the appellant. Though Mr. Devang Malaviya has stated that the said expenditure mentioned in the incriminating material is relating to the interior work but he is not able to satisfactorily explain as to which flat or customer the said expenditure pertains to. There have been several incriminating material found which are specific to a particular customer or particular flat which have been treated as pertaining to the sad customers and relating to interior work. However, in this incriminating material, the title denotes that it is for the project and not specific to any customer or flat. Therefore, the evidence found in the form of incriminating material does not tally with the statement of Mr. Devang Malaviya. Hence, the expenditure on black sand as specified in the incriminating material is held to be incurred by the appellant for the project Cassa Amorina which is not accounted in the books. Accordingly, the addition made by the AO of Rs.8,31,331/- towards unexplained expenditure u/s 69C of the Act stands sustained.

14.3. The appellant has raised an alternative plea as part of this ground in the written submissions that if the addition of unexplained expenditure is sustained, the same should be telescoped against the addition if sustained for on-money receipts. In deciding Ground No.6 above, I have sustained the addition of on-money of Rs.2,33,58,500/-. The addition of unexplained

expenditure of Rs.8,31,331/- sustained as part of this Ground is directed to be telescoped against the on-money receipt of Rs.2,33,58,500/-. Accordingly, Ground No.10 is partly allowed.

21. Ld CIT DR could not contravene the findings of the Ld CIT[A] and also place any materials on record, thus the above ground no. 12 are devoid of merits and liable to be dismissed.

22. **Ground Nos. 13 to 15** the findings of Ld CIT[A] are as follows:

“... 16.3 As regards the balance addition of Rs.1,26,60,000/-, the AR of the appellant pleaded that out of the payment of Rs.1,26,60,000/-, payment of Rs.85,00,000/- is reflected in the regular books of accounts by account payee cheques and the date of payment and the amount in the incriminating material are fully reconciling with the books of accounts. However, on going through the books of accounts of the appellant, it is seen that the payment of Rs.85,00,000/- is reflected in the ledger account of M/s Bajaj World whereas the incriminating material is showing the payment made to Jogi Darshan. The AR pleaded that the delivery challans are issued in the name of Jogi Darshan and the final invoices are issued in the name of M/s Bajaj World. However, the sales reflected in the incriminating material found are not reconciled with the ledger of M/s Bajaj World accounted in the books of the appellant. Therefore, the payments made to M/s Bajaj World as per the books cannot be conclusively proved that they are same as paid to Jogi Darshan in the incriminating material. Accordingly, the payment of Rs. 1,26,60,000/- made to Jogi Darshan is considered to be payments made outside the books and hence, the addition made by the AO to that extent u/s 69C of the Act is sustained. The appellant gets total relief of Rs.57,00,000/- (Rs.55,00,000/- being duplicate and Rs.2,00,000/- being pertaining to AY 2019-20).

16.4. The appellant has raised an alternative plea as part of this ground in the written submissions that if the addition of unexplained expenditure is sustained, the same should be telescoped against the addition if sustained for on-money receipts. In deciding Ground No.6 above, I have sustained the addition of on-money of Rs.2,33,58,500/-. The addition of unexplained expenditure of Rs.1,26,60,000/- sustained as part of this Ground is directed to be telescoped against the on-money receipt of Rs.2,33,58,500/-. Accordingly, Ground No.12 is partly allowed.

22.1. Ld CIT DR could not contravene the findings of the Ld CIT[A] who has given partial relief to the assessee being duplicate entry and addition pertaining to subsequent Assessment Year. Thus the above ground nos. 13 to 15 are devoid of merits and liable to be dismissed in the absence of any material evidences.

23. **Ground No. 16** - Addition on account of Rs.23,50,000/- u/s. 69C on account of unexplained expenditure. The findings of Ld CIT[A] are as follows:

“... 17.2. I have gone through the assessment order and the submission made by the AR of the appellant. On going through the impounded page 90 of Annexure A-23, it is seen that in the title, the name of Mr. Devang Malaviya has been mentioned as architect. Thereafter, names of various customers such as Mr. Jagdishbhai Rudani, Mr. Maganbhai Bhulabhai Patel etc have been mentioned along with the amounts against their names totalling to Rs.37,86,841/- with the narration that the said expense is towards material. Below the said amount, cash payment has been mentioned at Rs.23,50,000/-. Thus, the impugned page clearly reflects that the same is pertaining to the architect Mr. Devang Malaviya and not to the appellant. Further, the said page also clearly reflects the amount of material pertaining to various flat holders amounting to Rs.37,86,841/-, out of which Rs.23,50,000/- has been mentioned as being paid in cash and 2 amounts of cheques of Rs.5,40,000/- in the name of Mr. Chaturbhai Rudani and Rs.2,30,000/- in the name of Mr. Jawanmal Purohit respectively, have been mentioned. The said cheques are not found reflected in the books of the appellant. Therefore, the incriminating material is found to be relating to interior work of different flats carried out by Mr. Devang Malaviya as the title suggests. There have been other incriminating material including the ledgers of different flat owners in the project which are held to be pertaining to the interior work carried on by Mr. Devang Malaviya and has nothing to do with the project of the appellant. In reply to Q.No.11, Mr. Devang Malaviya with reference to page 87 to 90 has admitted in his statement u/s 131 of the Act that the expenditure mentioned in the incriminating material is relating to interior work carried on by him. In fact, the AO in para 14 of the assessment order on page 24 has given a finding that the details of expenditure are

pertaining to material consumed for interior work in flats at Cassa Amorina. Therefore, the addition of Rs.23,50,000/- as made by the AO in the hands of the appellant towards unexplained expenditure u/s 69C of the Act cannot be sustained as the same is not pertaining to the appellant. The AO is at liberty to tax the profit on interior work undertaken by Mr. Devang Malaviya in his individual hands. Ground No. 13 is allowed.”

23.1. The addition of Rs.23,50,000/- made by the A.O. in the hands of the assessee towards unexplained expenditure u/s 69C of the Act is not sustainable since the same is not pertaining to the assessee but that of Mr. Devang Malaviya. In fact Ld. CIT(A) has given liberty to the A.O. to tax the profit on interior work undertaken by Mr. Devang Malaviya in his individual hands. Thus the deletion made by Ld. CIT(A) does not require any interference.

24. **Ground Nos.17 & 18** - Addition of Rs.12,73,78,000/- as extrapolated on money received without any evidence or impounded material. The findings of Ld CIT[A] are as follows:

“... 18.3. I have gone through the assessment order and the submission made by the AR of the appellant. There are only two evidences relating to sale of flats found during the course of Survey. The first evidence is relating to Flat No.B-202 agreed to be sold to Mr. Arvindkumar Bhagwanbhai Dudhat. This issue I have decided in deciding Ground No.2 of AY 2017-18. In deciding the said ground, it was found that the said buyer had agreed to pay Rs.4545/- per sq.ft along with the interiors of the flat. The interiors was to be done by Mr. Devang Malaviya and this fact was confirmed by Mr. Devang Malaviya in his statement recorded u/s 131 of the Act. The appellant received only Rs. 16,00,000/- as token amount for the said flat and the sale of the said flat finally did not materialize. The balance amount received as per the diary (Annexure A-3) was treated as paid by the customer towards interiors of the flat. Therefore, it was not conclusively proved that the rate of flat was Rs.4545/- which was payable to the builder. The second evidence is relating to sauda chithi found as page 84 of Annexure A-23 relating to Flat No.B-901 and 902. This sauda chithi is signed by Mr. Devang Malaviya on behalf of the appellant wherein the rate per sq.ft. is Rs.4775/-. This issue I have decided in

Ground No.6 of the impugned AY. In deciding the said ground, I have sustained the addition of on-money received by the appellant on the basis of the sauda chithi found. However, the sauda chithi found is only related to Flat No.B-901 and 902. In this sauda chithi, other than the rate, no other evidences relating to actual amount received or the cost of the flat paid by the customer is mentioned. However, the rate was confirmed by Mr. Devang Malaviya in his statement u/s 131 of the Act and hence, it was held that the evidence of on-money received by the appellant with reference to the said 2 flats was sufficient to tax the said on-money. The AO has referred to a third evidence being page 3 of Annexure A-2, however the AO did not take any cognizance of the said evidence as the contents of the diary showed that the amount received as token was refunded and no addition was made in respect of the said evidence. However, other than these evidences, there were no other evidences of on-money found especially with reference to 12 flats in question on which the AO has made the extrapolation. During the course of Survey, statements of 3 customers of Flat Nos. A-802, A-202 and A-201 were recorded and none of the customers stated that they have paid any on-money over and above the recorded consideration. Therefore, there is no set pattern of on-money receipt has been found during the course of Survey in the premises of the appellant.

18.4 Now, I come to extrapolation. What are the circumstances in which the AO can extrapolate the on-money receipts for all the flats in the project? The jurisdictional High Court in the case of CIT Vs Amar Corporation (Appeal No. 1252 to 1257, Order dated 11.07.2016) held that the AO ought to have confined himself in respect of sale transaction of one particular flat about which evidences of on-money were found and could not have calculated the addition for other flats. The addition of on-money made by the AO for the other flats was held to be on the basis of guess work and extrapolation. Thus, extrapolation is possible only when specific evidence is found regarding the actual receipt of on-money or there is set pattern found of accepting on-money for series of flats or shops. In absence of either of the two, the extrapolation cannot be made which is the gist of the decision of the Hon'ble Gujarat High Court (referred supra). Similar view has been taken by other judicial authorities in the following decisions:

- (i) DCIT, CC-1, Surat Vs M/s Surya Enclave Developers (ITA No.707/Ahd/2011)
- (ii) Fort Projects (P) Ltd. Vs DCIT (2012) 145 TTJ 0340 (Kolkata)
- (iii) ACIT Vs M/s Thakkar Popatlal Velji Sales Ltd. (ITA No.4812-3

- & 4845/M/2010 (Mumbai)
(iv) ACIT Vs B Srinivasa Rao (2014) 159 TTJ 0483 (Hyd.)
(v) Chattisgarh Steel Casting (P) Ltd. Vs ACIT (2008) 8 DTR 0014
(Bilaspur)

18.5 In view of the above judicial pronouncements and facts of the case, in my opinion, in absence of any set pattern of receipt of on-money or any evidence relating to the 12 flats in question, the AO should not have made the extrapolation of on-money receipt. The appellant has declared net profit of Rs.1,50,00,000/- in IDS 2016 covering the entire project of Cassa Amorina and no other evidences of any additional income earned by the appellant over and above the amount declared in IDS 2016 were found. Hence, the addition made by the AO of Rs. 12,73,78,000/- on the basis of extrapolation of on-money receipts relating to the 12 flats cannot be sustained and the same is deleted. Ground No.14 is allowed."

24.1. The findings arrived by the Ld CIT[A] does not require any interference since this issue is considered in detail in para 12 of this order in assessee's appeal ITA No. 476/SRT/2023 and also followed the decision of co-ordinate Surat Bench in case of Kush Corporation wherein confined the addition @ 10% of on-money receipts therefore the AO ought not have made the extrapolation of on-money receipt thus the above ground nos. 17 & 18 are devoid of merits and liable to be dismissed.

25. **Ground Nos. 19 to 21** – are general and consequential to the other grounds, which does not require separate adjudication and hence dismissed.

26. In the result **the appeal filed by the Revenue in ITA No. 531/SRT/2023 is dismissed.**

ITA No. 435/SRT/2023 for A.Y. 2016-17

27. The Grounds of Appeal raised by the **Revenue** in ITA No. 435/SRT/2023 are as follows:

- 1) On the facts and in the circumstances of the case and in law, the CIT (A) has erred in deleting addition of Rs 6,09,00,000/-made by the AO on account of unexplained investment by the assessee despite the facts that addition has been made on the basis of incriminating details/document recovered during the survey proceedings and information collated during the course of assessment proceedings.
- 2) In addition to the ground no 1 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting addition of Rs.6,09,00,000/-made by the AO on account of unexplained investment by the assessee observing that there are certain amounts written in figures but there are no details such as to whom those amount pertains etc and in absence of any such corroborative evidences or basic details, the option available with the AO was to accept the contention of the assessee that this is a dumb documents without appreciating the fact that the documents were found & impounded from the power of attorney holder of the assessee during the course of survey contains the chronological details of events and reflects period of interest received in respect of the amount advanced to others and the assessee has failed to explain the contents of the loose paper found during the course of search for which onus lies upon the assessee.
- 3) In addition to the ground no 1, on the facts and in the circumstances of the case and in law, the CIT (A) has erred in deleting addition of Rs.6,09,00,000/- made by the AO on account of unexplained investment by the assessee without appreciating the fact that the assessee has failed to explain as to why the diary in which the amount is mentioned in coded form has been maintained by the assessee if all the payments were made in cheque.
- 4) In addition to above grounds, on the facts and in the circumstances of the case and in low 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" ie 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 AD 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.

28. **Ground Nos. 1 to 3** – Deleting the addition of Rs.6.09 Crs on account of unaccounted investment. The findings of Ld CIT[A] are as follows:

“... 7.3. I have gone through the assessment order and the submissions made by the AR of the appellant. As seen from the incriminating material reproduced by the AR of the appellant in his written submissions as part of para 5.1. of his submissions, there are certain amounts written in figures but there are no details such as to whom those amounts pertain to. The AO has not brought any other corroborative evidence that the amounts mentioned in the paper were the investments made by the appellant or advances given by the appellant to any third party. The figures also do not reflect the on-money receipts for the reason that there are no details of flats or the persons from whom these amounts were received by the appellant. In absence of any such corroborative evidence or basic details that these amounts represent the investments made or the advances given by the appellant, the option available with the AO was to accept the contention of the appellant that this a dumb document. Further, the appellant is a Non Resident and was not present in India during the relevant time when the notings were made. The loose paper in question was found from the office of Mr. Devang Malaviya who was looking after the project of the appellant also did not specify the contents of the loose paper in his statement recorded u/s.131 of the Act. Whenever, an advance is given or investment is made, it is necessary to identify the person to whom the advance is given or the project or asset in which the investment is made. If these aspects are not identified, then addition cannot be made merely on presumption that the figures notes in the loose paper represent the advance given or unaccounted investment made by the appellant.

7.4. In view of the above finding, I am of the opinion that on the basis of the loose paper found during survey, it cannot be held that it is the advance given by the appellant to a third party or is unaccounted investment made by the appellant, which have not been identified. Therefore, the addition made by the AO towards unaccounted investment

cannot be sustained. The said addition of Rs.6,09,00,000/- is accordingly deleted. Ground No. 2 and 4 are allowed. “

28.1. Ld CIT DR could not contravene the findings of the Ld CIT[A] and also place any materials on record that any other corroborative evidence that the amounts mentioned in the paper were the investments made by the assessee or advances given by the assessee to any third party. The figures also do not reflect the on-money receipts for the reason that there are no details of flats or the persons from whom these amounts were received by the assessee. In absence of any such corroborative evidence or basic details that these amounts represent the investments made or the advances given by the assessee, therefore the Ld CIT[A] is correct in holding this as a dumb document, which does not require any interference and Ground Nos.1 to 3 filed by the Revenue are devoid of merits and liable to be dismissed.

29. **Ground No. 4** – addition of Rs.6.09 Crs without granting immunity of disclosure of ‘net income from the project’ as declared under IDS 2016. The findings of Ld CIT[A] are as follows:

“... 8. Ground No.3 is an alternative ground which has been raised in case addition is sustained in Ground No.2 and 4 above relating to declaration under the IDS 2016 Scheme. This ground does not need adjudication as the addition made by the AO which is adjudicated in Ground No.2 and 4 above has not been sustained and hence not adjudicated.”

29.1. Ld CIT[A] clearly held that it is an alternative ground in the event the addition of Rs.6.09 crs is sustained by him, however Ld CIT[A] having deleted the addition, it is correct on the part of Ld CIT[A] in not adjudicating this issue since it is consequential in

nature. Thus we do not find any infirmity in the order passed by Ld CIT[A] and therefore the Ground No.4 raised by the Revenue is hereby dismissed.

30. **Ground Nos. 5 to 8** – are general and consequential to the other grounds, which does not require separate adjudication and hence dismissed.

31. In the result **the appeal filed by the Revenue in ITA No. 435/SRT/2023 is dismissed.**

IT(SS)A No. 125/Ahd/2023 for A.Y. 2020-21

32. The Grounds of Appeal raised by the **Revenue in IT(SS)A No. 125/Ahd/2023** are as follows:

1) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 174,15,000/- made by AO on account of unexplained on-money receipts u/s 69A of the IT Act despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings.

2) In addition to the ground no I above, on the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 1,74,15,000/- made by A.O on account of unexplained on-money receipts u/s 69A of the I.T. Act observing that the extrapolation cannot be made despite the facts that during the course of the survey, two pieces of evidence relating sale of flats were discovered, which were sold at a rate of Rs 4545/-per sq ft and Rs.4775/- per sq feet and hence it is widely assumed that the rate of flats cannot vary significantly within the same society or residential project which is an evidence of set pattern of receipt of on-money.

3) In addition of ground no 1 above, the Ld. CIT(A) has erred in deleting the addition despite the fact that the assessee has habituated to receive on money from 2015-16 to 2018-19 & 2020-21 Further the Ld CIT(A) has erred in not considering Yüsufali Abdulali case the theory of preponderance of human probability as pronounced by the Hon Apex Court in the cases of CIT v. Durga Prasad More (1971) 82 ITR 540 and reiterated in Sumati Dayal v. CIT (1995) 214

ITR 801 80 Taxman 89 (SC) On the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs.2,88,88,000/- on account of unexplained expenditure u/s 69C of the I.T Act despite the facts that the addition was made on basis of impounded material found during the course of survey proceedings.

4) In addition to the ground no 3 above, on the facts and circumstances in the case and in law, the Ld. CIT(A) has erred in deleting of addition of Rs 2,88,88,000/- on account of unexplained expenditure u/s 69C of the I.T. Act observing that expenses as per notings were covered in the previous year prior to April 2018 despite the facts that under Section 292C of the Act, the contents of any books of account or documents seized during the search may be presumed to be true and if the assessee is not satisfied, it is his responsibility to show that the presumptions are false but the assessee has failed to do so

5) 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 2920 of the Assessee.

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, raised 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.

33. Ground Nos. 1 to 3 – Deleting the addition of Rs.1.74 Crs made u/s.69A on account of unaccounted on-money receipts. The findings of Ld CIT[A] are as follows:

“... 7.3. I have gone through the assessment order and the submissions made by the AR of the appellant. There are only 2 evidences relating to sale of flats found during the course of Survey. The first evidence is relating to Flat No.B-202 agreed to be sold to Mr. Arvindkumar Bhagwanbhai Dudhat. This issue I have decided in deciding Ground No.2 of AY 2017-18. In deciding the said ground, it was found that the said buyer had agreed to pay Rs.4545/- per sq.ft along with the interiors of the flat. The interiors was to be done by Mr. Devang Malaviya and this fact

was confirmed by Mr. Devang Malaviya in his statement recorded u/s 131 of the Act. The appellant received only Rs.16,00,000/- as token amount for the said flat and the sale of the said flat finally did not materialize. The balance amount received as per the diary (Annexure A-3) was treated as paid by the customer towards interiors of the flat. Therefore, it was not conclusively proved that the rate of flat was Rs.4545/- which was payable to the builder. The second evidence is relating to suda chiti found as page 84 of Annexure A-23 relating to Flat No. B-901 and 902, this Suda chiti is signed by Mr. Devang Malaviya on behalf of the appellant wherein the rate per sq.ft. is Rs.4775/-. This issue I have decided in Ground No.6 of AY 2018-19. In deciding the said ground, I have sustained the addition of on-money received by the appellant on the basis of the suda chiti found, However, the suda chiti found is only related to Flat No.B-901 and 902. In this suda chiti, other than the rate, no other evidences relating to actual amount received or the cost of the flat paid by the customer is mentioned. However, the rate was confirmed by Mr. Devang Malaviya in his statement u/s 131 of the Act and hence, it was held that the evidence of on-money received by the appellant with reference to the said 2 flats was sufficient to tax the said on-money. However, other than these evidences, there were no other evidences of on-money found especially with reference to the flat in question on which the AO has made the extrapolation. During the course of Survey, statements of 3 customers of Flat Nos.A-802, A-202 and A-201 were recorded and none of the customers stated that they have paid any on-money over and above the recorded consideration, The AO has referred to the statement of Dr. Subodh Madanlal Kabra, wherein the customer of Flat No.A-201 has stated that he has purchased the flat for Rs.80,00,000/-. The AO assumed that Rs.12,00,000/- has been paid by the said person in cash. However, as seen from the facts, Rs.12,00,000/- paid by the said customer beyond Rs,68,00,000/- of sale consideration is towards service tax of Rs.8,16,000/- and stamp duty and registration of Rs.4,08,000/- totalling to Rs.80,24,000/. Hence, there is no evidence of on-money paid by the said customer as seen from his statement. Moreover, no set pattern of on-money receipt has been found during the course of Survey in the premises of the appellant.

7.4. Now, I come to extrapolation. What are the circumstances in which the AO can extrapolate the on-money receipts for all the flats in the project ? The jurisdictional High Court in the case of CIT Vs Amar Corporation (Appeal No.1252 to 1257, Order dated 11.07.2016) held that the AO ought to have confined himself in respect of sale transaction of one particular flat about which evidences of on-money were found and could not have calculated the addition for other flats. The addition of on-money made by

the AO for the other flats was held to be on the basis of guess work and extrapolation. Thus, extrapolation is possible only when specific evidence is found regarding the actual receipt of on-money or there is ser pattern found of accepting on-money for series of flats or shops. In absence of either of the two, the extrapolation cannot be made which is the gist of the decision of the Hon'ble Gujarat High Court (referred supra). Similar view has been taken by other judicial authorities in the following decisions:

- (i) DCIT, CC-1, Surat Vs M/s Surya Enclave Developers (ITA No.707/Ahd/2011)
- (ii) Fort Projects (P) Ltd. Vs DCIT (2012) 145 TTJ 0340 (Kolkata)
- (iii) ACIT Vs M/s Thakkar Poparlal Velji Sales Ltd. (ITA No. 4812-3 4845/M/2010 (Mumbai)
- (iv) ACIT Vs B Srinivasa Rao (2014) 159 TTJ 0483 (Hyd)
- (v) Chattisgarh Steel Casting (P) Lid. Vs ACIT (2008) 8 DTR 0014 (Bilaspur)

7.5. In view of the above judicial pronouncements and facts of the case, in my opinion, in absence of any set pattern of receipt of on-money or any evidence relating to the said flat in question, the AO should not have made the extrapolation of on-money receipt. The appellant has declared net profit of Rs.1,50,00,000/- in IDS 2016 covering the entire project of Cassa Amorina and no other evidences of any additional income earned by the appellant over and above the amount declared in IDS 2016 were found. Hence, the addition made by the AO of Rs,1,74,15,000/- (which includes Rs.68,00,000/- of recorded consideration which as such cannot be added again) on the basis of extrapolation of on-money receipts relating to the said flat bearing No.B-702 cannot be sustained and the same is deleted. Ground No.2 and 3 are allowed.

33.1. Ld CIT DR could not contravent the findings of the Ld CIT[A] and also place any materials on record that any other corroborative evidence that on-money was received by the assessee. During the course of Survey, statements of three customers of Flat Nos. A-802, A-202 and A-201 were recorded and none of the customers stated that they have paid any on-money over and above the recorded consideration. Further the AO has referred to the statement of Dr.

Subodh Madanlal Kabra, wherein the customer of Flat No.A-201 has stated that he has purchased the flat for Rs.80,00,000/-. The AO assumed that Rs.12,00,000/- has been paid by the said person in cash. However, it seen from the facts and records that Rs.12,00,000/- paid by the said customer beyond Rs,68,00,000/- of sale consideration is towards service tax of Rs.8,16,000/- and stamp duty and registration of Rs.4,08,000/- totalling to Rs.80,24,000/. Hence, there is no evidence of on-money paid by the said customer as seen from his statement. Moreover, no set pattern of on-money receipt has been found during the course of Survey in the premises of the appellant. In the absence of any such corroborative evidence or basic details that these amounts represent the unexplained on-money receipts is unsustainable in law and the factual findings arrived by the Ld CIT[A] does not require any interference, consequently Ground Nos.1 to 3 filed by the Revenue are devoid of merits and liable to be dismissed.

34. **Ground Nos. 4** – deleting the addition of Rs.2.88 crs. u/s.69C on account of unexplained expenditure. The findings of Ld CIT[A] are as follows:

“... 8. Ground No.4 is relating to addition of Rs.2,88,88,600/- as made by the AO u/s 69C of the Act towards unexplained expenditure on the basis of rough notepad impounded as Annexure A-13. According to the AO, during the course of Survey at the office premises of the project, a notepad was found and impounded as Annexure A-13. The AO observed that on being confronted with the contents of the pages of Annexure A-13, Mr. Devang Malaviya in his statement recorded u/s 131 of the Act had deposed that in this notepad some miscellaneous expense, petty expense details, rough calculation, etc are written. The AO has scanned the relevant pages of this Annexure on page 21 to 23 of the assessment order and has tabulated the page-wise amount as mentioned in the said

Annexure on page 24 of the assessment order. The AO has held that it appears that these expenses are being incurred by the appellant (builder) and payment for the same has been made in cash as no mode of payment has been mentioned in the said Annexure. Accordingly, the AO concluded that the total expenses of Rs.2,88,88,600/- as mentioned in the said notepad have been made by the appellant in cash which are not recorded in the books of accounts and accordingly has added the same u/s 69C of the Act.

... ..

8.2. I have gone through the assessment order and the submissions made by the AR of the appellant. I have also perused the notepad which is relied by the AO for making this addition. As seen from the initial pages of the notepad, they contain various tasks to be completed on day today basis and the drawings and sketches of the interior work. Mr. Devang Malaviya had admitted in his statement that the notepad was used to make rough notings, rough calculations and some miscellaneous expenses have also been noted therein. However, the notings pertain to which year are not very clear as the year is not mentioned. There are no other basic details mentioned like name of the party, bill number, mode of payment, nature of transaction etc, No supporting delivery challans or bills or invoices with reference to these notings were found in the Survey premises. Therefore, whether these notings relating to expenses are for the impugned AY or earlier AYs is not very clear. The AR submits that the Building Completion Certificate for both the towers was received in April 2018 and thereafter, there was no worthwhile expenditure on construction incurred by the appellant. In the years prior to April 2018, the appellant has incurred the year-wise expenditure much more than the notings in the notepad. Therefore, the rough notings in the notepad which are not specific to the impugned AY and which are without the basic details cannot be treated as unexplained expenditure of the impugned AY as the circumstantial evidences also do not suggest that the expenditure in question is relating to the impugned AY. No other evidence that the notings are relating to cash expenditure are also found. Hence, the addition made by the AO treating the notings as expenditure of Rs.2,88,88,600/- outside the books of accounts cannot be sustained and the same is deleted. Ground No.4 is allowed.

34.1. Ld CIT[A] clearly held that Mr. Devang Malaviya had admitted in his statement that the notepad was used to make rough notings, rough calculations and some miscellaneous

expenses have also been noted therein. However, the notings pertain to which year are not very clear as the year is not mentioned in the scribbles. There are no other basic details mentioned like name of the party, bill number, mode of payment, nature of transaction, etc. No supporting delivery challans or bills or invoices with reference to these notings were found in the Survey premises. Therefore, whether these notings relating to expenses are for the impugned Asst Year or earlier Asst Years is not very clear. Ld CIT[A] further held that the Building Completion Certificate for both the towers was received in April 2018 and thereafter, there was no worthwhile expenditure on construction incurred by the assessee. Whereas in the years prior to April 2018, the assessee has incurred the year-wise expenditure much more than the notings in the notepad. Therefore, the rough notings in the notepad which are not specific to the impugned Asst Year and which are without the basic details cannot be treated as unexplained expenditure of the Asst Year 2020-21 as the circumstantial evidences also do not suggest that the expenditure in question is relating to the impugned Asst. Year. No other evidence that the notings are relating to cash expenditure are also found. Hence, the addition made by the AO treating the notings as expenditure of Rs.2,88,88,600/- are outside the books of accounts cannot be sustained and the same is deleted. Thus, the findings arrived by the Ld CIT[A] does not require any interference and therefore the Ground No.4 raised by the Revenue is hereby dismissed.

35. **Ground Nos. 5 to 8** – are general and consequential to the other grounds, which does not require separate adjudication and hence dismissed.

36. In the result **the appeal filed by the Revenue in ITA No. 125/SRT/2023 is dismissed.**

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 08-09-2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER
Ahmedabad :
Dated 08/09/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

//TRUE COPY//

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
सूरत