

आयकर अपलीय अधकरण, राजकोट नयायपीठ, राजकोट।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

<b>Sr. No.</b>	<b>IT(SS)A No</b>	<b>Assessment Year</b>	<b>Assessee Name</b>	<b>Respondent Name</b>
1.	12/RJT/2024	2014-15	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, "Amruta Estate" 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Chetan Dhirajlal Rokad 1, Pearl Plaza, 150 FT Ring Road, Near G.T. School Rajkot-360 001 <b>PAN.:AFKPR4637P</b>
2.	13/RJT/2024	2014-15	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, "Amruta Estate" 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Nikhilbhai Jamnadas Patel P-1, Decora Highland, Avadh Main Road, Opp. Classic Party Plot Rajkot-360 005 <b>PAN No.: AGIPP 1294 K</b>
3.	17/RJT/2024	2013-14	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, "Amruta Estate" 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Dhirajlal Ravji Rokad 1, Pearl Plaza, 150 FT Ring Road, Near G.T. School Rajkot-360 001 <b>PANNo.:ABOPR5408A</b>
4.	19 & 20/RJT/2024	2017-18 & 2018-19	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, "Amruta Estate" 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Rohitkumar Maganlal Sanepara Kangshiyani Road, Opp. Sundaram Vidhyalaya, Dholra Chokdi, Kothariya, Rajkot-360 004 <b>PANNo.:AAOPP4848H</b>
5.	59-60/RJT/2023	2017-18 & 2018-19	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, "Amruta Estate" 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	M/s Maruti Enterprise Decora West Hills, Near Classic Party Plot, Opp. Kalawa Road, Rajkot-360 005 <b>PANNo.:ABDFM3140K</b>
6.	228/RJT/2023	2019-20	Deputy Commissioner of Income-tax, Central	M/s Maruti Enterprise



			Circle-1, Rajkot, “Amruta Estate” 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Decora West Hills, Near Classic Party Plot, Opp. Kalawa Road, Rajkot-360 005  <b>PANNo.:ABDFM3140K</b>
7.	58/RJT/2023	2016-17	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, “Amruta Estate” 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	M/s Shri Ram Enterprise 4-5, Silver Chamber, Tagore Marg, Opp. Atul Motors, Rajkot-360 002  <b>PAN No.:ACTFS9698D</b>
8.	61-62/RJT/2023	2015-16 & 2016-17	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, “Amruta Estate” 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	M/s Shubham Enterprise 4-5, Silver Chamber, Tagore Marg, Opp. Atul Motor, Rajkot-360 002  <b>PANNo.: ACKFS7019R</b>
9.	22/RJT/2024	2017-18	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, “Amruta Estate” 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Chirag Arvindbhai Patel 1001, Decora Highland, Avadh Road, Off Kalawa Road, Rajkot-360 005  <b>PANNo.:ALQPP3169A</b>
10.	15-16/RJT/2024	2013-14 & 2018-19	Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, “Amruta Estate” 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360 001	Shri Jamnadas Purshottam Patel P-1, Decora Highland, Avadh Main Road, Opp. Classic Party Plot, Rajkot- 360005  <b>PAN No.:AABPP6811F</b>
11.	ITA- 60/RJT/2025	2017-18	Shri Jamnadas Purshottam Patel P-1, Decora Highland, Avadh Main Road, Opp. Classic Party Plot, Rajkot-360005  <b>PAN No.:AABPP6811F</b>	The Assistant Commissioner of Income Tax Central, Circle-1, Income Tax Office, Amruta Estate Near Girnar Cinema, M.G.Road, Rajkot-360001

निर्धारिती की ओर से/Assessee by : Shri Om S. Modi, Id.AR  
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld.CIT-DR

सुनवाई की तारीख/Date of Hearing : 25/09/2025  
घोषणा की तारीख/Date of Pronouncement : 22/12/2025



**आदेश / ORDER**

**Per Bench:**

This is a bunch of fifteen appeals, consisting of appeals filed by the Revenue and Assessee, relating to the decora group, for assessment years (AYs) 2013-14 to 2019-20 (assessment year-wise), all these appeals are directed against the separate orders, under section 250 Income-tax Act, 1961 (hereinafter referred to as 'the Act'), passed by the Ld. Commissioner of Income-tax (Appeals)-11, Ahmedabad [in short 'Ld.CIT(A)'] on different dates, which in turn arise out of separate assessment orders passed by the Assessing Officer under sections 153A/ 153C/ 143(3)/ 144 of the Act.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order.

3. The revenue has filed the following appeals, which pertain to partnership - firms:

- (i). M/s Shubham Enterprises-A.Y. 2015-16- IT(ss)A No. 61/RJT/2023.
- (ii). M/s Shubham Enterprises-A.Y. 2016-17- IT(ss)A No. 62/RJT/2023.
- (iii). M/s Shree Ram Enterprises-A.Y.2016-17- IT(ss)A No. 58/RJT/2023.
- (iv). M/s Maruti Enterprises-A.Y.2017-18-IT(ss)A No.59/RJT/2023.
- (v). M/s Maruti Enterprises-A.Y.2018-19-IT(ss)A No.60/RJT/2023.
- (vi). M/s Maruti Enterprises-A.Y.2019-20-IT(ss)A No.228/RJT/2023.



4. The revenue/ assessee filed the following appeals, which pertain to partners of the above partnership-firms, and associated persons of the above firms/partners:

- (i). Dhirajlal Raviji Rokad, A.Y 2013-14, IT(ss)A No. 17/RJT/2024-Revenue appeal
- (ii). Chetan Dhirajlal Rokad, A.Y 2014-15, IT(ss)A No. 12/RJT/2024-Revenue appeal
- (iii). Rohit Kumar M Sanepara, A.Y. 2017-18, IT(ss)A No.19/RJT/2024-Revenue appeal
- (iv). Rohit Kumar M Sanepara, A.Y. 2018-19, IT(ss)A No.20/RJT/2024-Revenue appeal
- (v). Nikhilbhai J Patel, A.Y. 2018-19, IT(SS)A No.13/RJT/2024-Revenue appeal
- (vi). Chirag Arvindbhai Patel, A.Y. 2017-18, IT(ss)A No.22/RJT/2024-Revenue appeal
- (vii) Jamnadas Purshottam Patel, A.Y. 2013-14, IT(ss)A No.15/RJT/2024-Revenue appeal
- (viii). Jamnadas Purshottam Patel, A.Y. 2018-19, IT(ss)A No.16/RJT/2024-Revenue appeal
- (ix). Jamnadas Purshottam Patel, A.Y. 2017-18, IT(ss)A No.16/RJT/2024-Assessee`s appeal

5. First, we shall adjudicate the appeals, pertaining to partnership- firms, mentioned in para No.3 of this order. For the sake of convenience, the grounds as well as the facts narrated in IT(SS)A No.60/RJT/2023 for assessment year 2018-19, have been taken into consideration for deciding the above appeals of firms, *en masse*.



6. Grounds of appeal raised by the Revenue (in lead case) in IT(SS)A No.60/RJT/2023, are as follows:

*“1. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs.12,28,16,100/- in respect of unaccounted on-money receipts, ignoring the facts that during the course of search proceedings, various incriminating materials pertaining to “Decora Westhill Project” found and seized from the premise of Himanshu Raiyai (accountant of the assessee as well as group concerns of the DECORA group), which contained unaccounted investment for possession of land, unaccounted expenditure in development of the project and on-money receipts from sale and also certain excel sheets named as DWH.xls.*

*2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in adopting real estate business income @ 15% of unaccounted cash on-money receipts in place of @ 100% without appreciating the facts, evidences found and seized during the course of search and circumstances of the peculiar case.*

*3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in determining business income on account of receipts of on-money from the real estate business on accrual basis (i.e. in the year of transfer of title and possession of property) instead of year of receipts without appreciating the facts, evidences found and seized during the course of search and circumstances of the peculiar case.*

*4. In the facts and on the circumstances of the case and in law the ld. CIT(A) ought to have upheld the order of the A.O.”*

7. The relevant material facts, as culled out from the material on record, are as follows. The assessee has filed its original return under section 139 of the Act, on 31.05.2018, showing therein income of Rs.2,48,320/-. The assessee-firm was constituted on 06.07.2016 with the following partners:

1. M/s Decora Housing LLP – 60%
2. Shri Arvind Parshottambhai Patel – 5% stake
3. Shri Chirag Arvind Patel – 5% stake
4. Shri Ujash Janadas Vachhani – 5% stake
5. Shri Kaushik Popatlal Rathod – 5% stake
6. Shri Rohitkumar Maganlal Patel – 10% and
7. Shri Malay Bharatbhai Mehta – 10%

The partnership firm developed DECORA WEST HILL PROJECT, which is a luxurious type residential project, developed by the assessee- firm. This Project is having 7 Tower (A to G tower) each tower comprising of 12 storey and total



flats in the project is 162. This project is having 4 BHK residential flats. During the course of search at the residential premises of Shri Himanshu Raiyani (accountant and key person and cash handler of the group), various incriminating materials pertaining to DECORA WESTHILL PROJECT starting from unaccounted investment for possession of land to unaccounted expenditure in development of the project and on money receipts by suppressing the sale price (over and above the documented price) were found and seized. The incriminating data so found was in the form of EXCEL sheets named as DWH.xls. The concerned excel files consisted of 9 worksheets viz, Collection, Payment, July-16, AUG-16, land, WH WRK, NP-CP, CP FLAT and NP FLAT. The evidences revealed payments made towards possessing land to the tune of Rs. 49,59,08,110/-, in cash and unaccounted on- money receipts leading to suppressed sale to the tune of Rs.38,77,24,212/-.

8. The assessing officer noticed that during the course of post search proceedings, Shri Nikhil Patel (son of Jamanbhai Patel) had admitted that the digital data so found from the residential premises of Shri Himanshu Raiyani, related to Decora West Hill Projects developed by the assessee. The assessee has also admitted that in the page no.2, some transactions are reflected in the books of accounts and some transactions are not reflected in the books of accounts. The statement of Shri Nikhil Patel dated 06.03.2019, is reproduced by the assessing officer, on page No.3 and 4 of the assessment order. In the statement, the partners and accountant of the assessee admitted that transactions mentioned in the seized documents, pertains to the assessee-firm. Since the seized documents related to/pertained to/belonged to the assessee and as the same has been confirmed by Shri Himanshu Raiyani, from whose possession these documents were found and seized and also confirmed by Shri Nikhil J Patel, one of the key member of the major stake holder (M/s. DECORA HOUSING LLP), therefore, proceedings u/s. 153C was initiated, after recording satisfaction. The notice u/s. 153C was issued



on 19.11.2019. The assessee filed its return of income on 30.11.2019 showing therein income of Rs. 2,48,320/-. The notice u/s 143(2) was issued on 13.11.2020. Thereafter, due to change of incumbent, a notice u/s 142(1) r.w.s. 129 was sent on 09.11.2020. A detailed questionnaire was issued on 21.11.2020. Copies of seized documents and relevant statements and annexures were provided to the assessee vide DIN NO. ITBA/AST/F/12/2020-21/1029150102(1). A letter dated 04.01.2021 was issued to the assessee, requesting it to furnish the details called for vide the questionnaire issued by the assessing officer. Another notice u/s. 142(1) was issued on 17.01.2021. Another questionnaire and notice u/s 142(1) was issued on 28.01.2021. Thereafter, two detailed show cause notices were issued on 07.04.2021. The assessee -firm was furnished copy of satisfaction note as and when requested. In the present case, there are two issues. One is unaccounted investment in order to possess land to the tune of Rs. 49,59,08,110/- and another is unaccounted on money receipts on booking of flats to the tune of Rs. 38,77,24,212/-. The 'on money' receipt is also in cash and the unaccounted investments made in acquiring land, is also paid in cash.

9. The documents in the form of Digital Data found and seized from the residential premise of Shri Himanshu Raiyani, accountant and key person of Nikhil Patel (Decora Group) were inventoried as Annexure A-5. During the course of search proceedings, Shri Himanshu Raiyani has admitted that he is preparing the two types of accounts, that is, (1) Accounted for reflected in the books of accounts and (2) Unaccounted transactions in cash not reflected in the books of accounts. He also admitted that he is preparing the accounts as per the direction of Nikhil Patel, main person of Decora Group. The statement of Shri Himanshu Raiyani taken during the search proceedings is reproduced by the assessing officer on page No. 6 of the assessment order. The impugned incriminating soft data was extracted from the pen drive that contained unaccounted transaction. The digital data which is discussed by the assessing



officer is pasted on page no.7 of assessment order, which relates to Decora West Hill project developed by the assessee- firm. The project DECORA WESTHILL has been developed on a land situated at Village Munjka RS No. 37 Paiki 8 and 37 Paiki 9 TP Scheme NO. 9 admeasuring 8469.44 and 8257.44 sq meter. Relevant part of digital data seized from the residential premises Shri Himanshu Raiyani, the key person and accountant of the Decora group was printed and annexured into file. The file was later confronted to Shri Nikhil Patel during his post search proceedings, the said page No.2 of the said file is pasted in the assessment order, page No.7. From the said pasted file it can be seen that, the land in question has been purchased for a total consideration of Rs. 60,02,08,110/-. The payments have been made on Jan 2016 (Rs. 10,01,00,000); April 2016 (Rs. 8,00,00,000); Aug 2016 (Rs. 8,00,00,000/-) and October 2016 (Rs. 12,00,00,000/-). The second vertical column shows cash payment of Rs. 38,01,00,000/-. The second vertical column shows the registered value of the land viz., Rs. 10,43,00,000/- (Rs.5,75,00,000/- + Rs. 4,68,00,000/-). This matches with the actual registered document. From the said seized material, it is clear that the contents of page No. 2, shows Rs. 60,02,08,110/-. Out of this, cash component is Rs. 38,01,00,000/- and cheque component is Rs. 10,43,00,000/-. The total works out to Rs. 48,44,00,000/-. The balance sum of Rs. 11,58,08,110/- has been adjusted against the outstanding of one another land known as Bedi land.

10 Brief discussion of Bedi Land and why it has been referred in the above paper is that the land at Bedi was purchased by those persons who had sold land to the assessee. On the right hand side of the said page No 2, of seized paper, there is reference of the Bedi Land. This land at Bedi belonged to Jamanbhai Patel (father of Nikhil Patel and key founder of DECORA HOUSING LLP and Kuldeep Rathod) with equal share of 50% each. As per this data, there were two lands at Bedi, both valued at Rs. 6,50,63,700/- each totalling to Rs. 13,01,27,400/-. Out of this, cheque of Rs 2.00 crore was paid to the sellers. If this cheque amount is



reduced then the cash component of Bedi Land works out to Rs. 11,01,27,400/-. This is thus adjusted against the outstanding payment in respect to the DECORA WESTHILL land of Rs.11,58,08,110/-, and leaving behind balance of Rs.56,80,710/-. It is obvious that this cash of Rs.56,80,710/- has also been paid to the land owners as the final registered document has already been executed. The documents of Bedi Land sold by Shri Jamanbhai Patel and Kuldip Rathod was executed on 02/03/2017 and document price is Rs.2,00,00,000/- It is for this reason that there is mention of BEDI land in the paper seized from the residence of the accountant Shri Himanshu Raiyani. During the course of post search proceedings, Shri Nikhil Patel (son of Jamanbhai Patel) had admitted that the digital data so found from the residential premises of Shri Himanshu Raiyani, related to Decora West Hill Projects developed by Maruti Enterprise. He has also admitted that in the above page no.2, some transactions are reflected in the books of accounts and some transactions are not reflected in the books of accounts. It is further seen from Page No. 2 (supra) of the digital document that the contribution towards unexplained investment in cash, has been made by Shri CP (Chirag Patel), Shri UV (Shri Ujjas Vachhani), KPR (Shri Kaushik Popatlal Rathod), RS (Shri Rohit Maganlal Patel), JP (Shri Jamanbhai Patel). The share of Jaman Patel is further bifurcated amongst the Jaman Patel family and Kuldeep Rathod, wherein the stake of Kuldip Rathod is 10% at the inception of the project. Thereafter, the entire stake of Kuldeep Rathod was taken over by Shri Malay Mehta. If the second column is bifurcated as per the profit sharing ratios, then the following picture emerges.

- (i)Chirag Patel and his father Shri Arvind Patel, both together holding 10%
- (ii)Shri Ujjas Vachhani being 5%.
- (iii)Shri Kaushik Popatlal Rathod being 5%.
- (iv).Shri Rohit Maganlal Patel being 10%.
- (v)Shri Jamanbhai Patel being 60% (DECORA HOUSING LLP)
- (vi)Shri Malay Mehta being 10%.



11. The assessing officer noticed from the above, that the above stake matches with the partnership deed wherein the stake of each of the partners are in consonance with the above. Shri Kuldeep Rathod had stake in this land dealing because he had sold his Bedi land and the cash was settled with this deal. Therefore, it is very clear that at the time of purchase of land for DECORA WESTHILL, Shri Rathod had made his capital contribution of Rs. 6,00,20,811/- being 10%. Later on, Shri Malay Mehta took over as the partner with stake of 10% replacing Shri Kuldeep Rathod. This can be seen from the statement of Shri Nikhil Patel that Kuldeep Rathod is not the partner and his name appears only in the initial stages of planning for the project, subsequently he withdrew himself from the project and in his place Malay Mehta became partner. This is factually / partly correct. The relevant part of the statement of Sri Nikhil Patel is reproduced by the assessing officer on page No.9 of the assessment order. Further, from page No. 1-A of the said file which was confronted to Shri Nikhil Patel, this aspect is made very clear. The seized page clearly shows internal transactions between Malay Mehta and Kuldeep Rathod. Therefore, it is very clear that Shri Kuldeep Rathod had made initial investment. Thus, from the above seized documents, it is very clear that the assessee, had paid cash to possess the land in question. Hence, the assessee was asked to show cause as to why the unexplained cash investment made in acquiring the land should not be treated as unexplained cash.

12. In response to various show-cause notices, the assessee submitted its reply before the assessing officer which is reproduced by the assessing officer in the assessment order page Nos. 10 to 15. The assessee stated that no incriminating documents indicating any unaccounted investment were found in their possession. Therefore, notings and jottings in the excel sheet remain uncorroborated and unproved. The loose paper found in possession of the searched person has to be considered in accordance with the provisions of section 132(4A) and section 292C of the Act to be true in the hands of searched person



i.e. Shri Himanshu Raiyani in the present case and not in the case of third party. Presumption drawn against the assessee is not available to the Assessing Officer based on loose paper found from the possession of Shri Himanshu Raiyani because presumption u/s 132(4A) and u/s 292C is a rebuttable presumption.

13. However, the Assessing Officer rejected the above contention of the assessee and noticed that assessee had purchased one land and debited Rs. 10,43,00,000/- for such purchases. There are two parcels of land. The above seized documents reveals that the assessee -firm had spent Rs. 60,02,08,110/-, whereas, the value shown in its books is Rs. 10,43,00,000/-. The difference thus works out to Rs. 49,59,08,110/-, which represents unaccounted cash investment made by the assessee. The seized documents have been found and seized from the residential premises of Shri Himanshu Raiyani, who is the accountant of the assessee- firm. During the course of post search proceedings, Shri Himanshu Raiyani had admitted that he is maintaining two types of accounts viz., one that is, accounted in the regular books of accounts and another which is not accounted for in the regular books of accounts. He also admitted that all the entries are being made on instruction of Shri Nikhil Patel, key person of the Decora group. Shri Nikhil Patel is represented by a firm called DECORA HOLDING LLP, wherein the family members of Shri Jamanbhai Patel (father of Nikhil Patel), is controlling around 60% stake in the firm. Hence, there is sanctity in the statement of Shri Himanshu Raiyani that these entries are being made on instruction of Shri Nikhil Patel. Nowhere during the course of post search proceedings and during assessment proceedings, Shri Himanshu Raiyani has made any contrary statement to what he had already admitted and deposed. Shri Nikhil Patel was confronted with the above documents. He categorically admitted as under.

*Ans: 9-Sir, I have seen these pages thoroughly and according to my memory all these pages are related to land transactions. Details pertain to the land acquired for our project-Decora West Hill-managed by Maruti Enterprise-copy of partnership firm deed already furnished. The abbreviations like CP, UV, KPR, RS JP & KR/MALAY are the*



*names of partners of Maruti Enterprise. Among these-KR (Kuldip Rathod) is not the partner, his name appears only in the initial stages of planning for the project, subsequently he withdrew himself from the project and in his place MALAY(Malay Mehta) became partner. According to my memory out of the above transactions, certain are accounted in our regular books of accounts and certain are not recorded in our regular books of accounts which are made in cash. We are in the process of analysing the same between accounted and unaccounted transactions. We will furnish the details after quantification.*

14. Therefore, assessing officer noticed that it is clear that the seized documents pertained to the transactions carried out by the assessee. Again, nowhere during the course of post search proceedings and during assessment proceedings, Shri Nikhil Patel has made any contrary statement to what he had already admitted and deposed. The actual payment made towards land as per books, is shown at Rs.10,43,00,000/- This corroborates with the actual documents already executed. Hence, it is clear that the contents of the seized materials are totally true and correct. The bifurcation of the cash components matches with the actual partnership stakes held by the partners. The seized document clearly mentions transaction of another land viz., the Bedi Land. The persons who sold the DECORA WESTHILL LAND are the buyers of Bedi Land. This Bedi land originally belonged to one of the key partner of the firm, M/s. Maruti Enterprise viz., Shri Jarmanbhai Patel. The cash payable in the DECORA WESTHILL land has been adjusted against the cash receivable from the Bedi land. The relevant seized material is reproduced by the assessing officer, on page No.17 of the assessment order. On the seized documents, it is clearly mention of Rs. 2 Crores, cheque for Bedi land. It can be seen that bedi land was documented at Rs. 2 crores, therefore, the bedi land transaction is co- related to the land transactions, involving the land purchased by the assessee -firm.

**15. The assessing officer, thereafter, examined the assessee's submission, and rebutted the assessee's submission, as follows:**



“According to the assessee, any document without any corroboration is a dump document and cannot be considered in relied upon for the purpose of making addition and that too on assumptions and presumptions. This is demonstrated in following manner:

Ratio of partners as per loose paper and as per partnership is not matching:

Name(s) of Partners	Profit / Loss Sharing Ratios as per partnership deed	Ratio as per loose paper referred to in show cause
Decora Housing LLP	60	00

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ABDFM3140K- MARUTI ENTERPRISE  
A.Y. 2018-19  
ITBA/AST/S/153C/2021-22/1034216617(1)

ArvinbhaiParshottambhai Patel	05	00
ChiragbhaiArvinbhai Patel	05	10
UjasJamnadasVachhani	05	05
Kaushik Popatlal Rathod	05	05
RohitkumarMaganlal Patel	10	00
Malay Bharatbhai Mehta	10	00
Rohit Sonpara-RS	00	10
Jamnadas Patel	00	70
	100	100

12.1.1 This contention is lame because, the discrepancy in sharing ratio as per partnership deed and as per the loose paper is due to internal adjustments. For example, the ratio of DECORA HOUSING LLP is 60% as per the partnership deed, whereas, it is 0 as per the seized loose paper. This is because, DECORA HOUSING LLP is represented by the family members of Jamanbhai Patel and his son. They are holding 60% stake. Therefore, the share of Jamanbhai Patel as per loose sheet @ 70%



*is justified because, this 70% includes the stake of Malay Mehta(MM) / Kuldeep Rathod(KR) of 10%. If this 10% is excluded, then the share written of 60% matches with the actual partnership deed. Further, in the seized data, the cheque component written below Jamanbhai Patel is 60% only.*

*12.1.2 Similarly, Arvind Patel is the father of Chirag Patel and they are staying together. While making the entries, the cash was provided by Chirag Patel. The combined stake of father and son works out to 10%. Therefore, the seized paper and the actual partnership deed matches. Since there is mention of CP in the seized data, therefore it is clear that the cash has been contributed by Shri Chirag Patel in entirety.*

*12.2 The assessee further contends that, this sheet of document was prepared for the purpose of valuation of developed land including available FSI, goodwill of Decora Housing LLP etc. on account of proposed exit of Decora Housing LLP, Shri Arvind Parshottambhai Patel, Shri Rohit Maganbhai Patel and Shri Malay Bharatbhai Mehta; increase in share of Chiragbhai Arvindbhai Patel from 5% to 10% and proposed entry of new partners namely Shri Rohit Sonepara (RS) and Shri Jamnadas Patel. The sheet was prepared to negotiate contribution mainly from Shri Rohit Sonepara. In order to justify higher valuation, hypothetical notings and jottings were inserted in the excel sheet which does not carry any specific date of payment.*

*12.2.1 This theory is also hypothesis because, no evidence of such stake sale is noticeable from the seized documents. Besides, had this been a projection and had there been transfer of stakes, then this would have come in the statement of Shri Nikhil Patel, who had spontaneously stated about Kuldeep Rathod being replaced by Shri Malay Mehta.*

*12.3 It is further contended that, Differential amount of Rs. 11,58,08,110/- was claimed to be contributed by Shri Jamnadas Patel [who is a partner of Decora Housing LLP] and Shri Kuldip Rathod who sold their lands located at Bedi Village to the land owners and needed to be considered for valuation purposes in order to indicate as to how much amount is to be brought in by the incoming partners which in turn was to be passed on to the existing partners and outgoing partners in proportion to change in the partnership ratios.*

*12.3.1 This argument is also not acceptable because, if this paper is meant to work out the valuation and share contribution of incoming and outgoing partners, then what was the need to making noting of BEDI land. Since the cash of Bedi Land was adjusted here, therefore, this reference was mandatory.*

*12.3.2 Also, if contention of the assessee firm is considered true, then the share contribution of Shri Jamandas Patel and Shri Kuldip Rathod must have been written their names in the vertical column.*

*12.4 It is further contended that, during the course of search and seizure proceedings at the residence of Shri Himanshu Raiyani various systematic notings and jottings in relation to Maruti West Hill Project were found. These notings and jottings pertain to the period 04-04-02- 2016 to 28-10-2017. These notings contain minutest noting for Rs. 150/- and extreme noting for payment of Rs. 10,00,00,000/- towards settlement of dispute in the land. Therefore, if payments as appearing in the excel sheet referred to in the show cause notice been paid by your assessee, such payments would have certainly been appearing in the seized documents. Absence of any such noting establish the fact that excel noting does not indicate actual cash payments towards purchase of*



*land but indicate the circumstances in which said sheet was prepared as indicated in Para 3.3 above.*

*12.4.1 Here the assessee admits that meticulous entries are made from minutest of entry of Rs 150/- to a large entry of Rs. 10,00,00,000/-. By virtue of the above contention it becomes clear that the assessee agrees that payment of Rs. 10 crore has been made towards acquisition of land. The assessee has vide para no. 7.3 of his reply to show cause notice has accepted the said payment of Rs.10,00,00,000/- towards land dispute. Therefore, it is conclusively proved that there has been unaccounted investment for possession of land. Further, it is not necessary that the contents of each paper should be noted in all the papers. If the contents are not appearing in all the papers, that does not weaken the sanctity of the papers so found.*

*12.5 It is further contended that, Partners representing majority share in the firm including the partners of Decora Housing LLP as well as accountants of the firm were subjected to search and seizure proceedings and site of the firm was also covered u/s 133A and therefore, had alleged cash payments been made as per excel sheet such notings and jottings must have been found either in the possession of the partners of the firm or in possession of the accountants of the firm. No incriminating documents indicating any unaccounted investment were found in their possession. Therefore, notings and jottings in the excel sheet remain uncorroborated and unproved.*

*12.5.1 It is not necessary that the incriminating papers found at one place should also be corroborated with some evidence at the residence of the partners or their personal offices. In any case, the incriminating document has been seized from the residence of accountant of Decora group. This has been accepted by Shri Nikhil Patel himself and explanation for the same has been provided by him.*

*12.6 It is further contended that, Revenue authorities at the time of registration of sale deeds in respect of lands on which 'Decora West Hill' Project is executed and also in respect of 'Bedi' Lands have not charged any additional stamp duty which indicates that there was no suppression in disclosure of purchase consideration of lands so acquired from the original land owners and also sold to them i.e.Bedi Lands. Still if your honour intend to hold that there was unaccounted investment in purchase of lands, we request your honour to make necessary inquiries with the Revenue Authorities as well as sellers of the said land.*

*12.6.1 The stamp duty authorities are only concerned with the value of the property as per the prevailing Circle rate. Therefore, there is no mechanism legally available to arrive at the actual rate of land from the Sub-registrar. Further, the seized incriminating document is speaking in itself which proves that cash in addition to the value of and recorded in the books of accounts, have been invested for acquiring the land. Also, the need for cross examining the seller does not arise, as the addition is being made on the basis of independent document found and seized from the accountant of the assessee and admitted to be incriminating by Shri Nikhil Patel.*

*12.7 It is further submitted that, it is obligatory for the Assessing Officer to establish that the document pertains or belongs to the assessee and alleged unaccounted investment was made by the assessee by corroborating loose paper found with other seized material. From the show cause notice so issued no such correlation or substantiation is noticed.*



*12.7.1 Once when Shri Nikhil Patel, partner and key promoter of DECORA HOUSING LLP, having 60% stake in the firm Maruti Enterprise, admits that the papers so found and seized belongs to and pertains to the assessee, and that some of the entries are accounted and some are unaccounted, there is no further requirement to establish that the document pertains to or belongs to the assessee.*

*12.7.2 Hon'ble SC in the case of CIT vs. Best & Co. (P.) Ltd. [1966] 60 ITR 11/AIR 1966 SC 1325, observed that although the burden of proof that a receipt is income lies on the revenue, it is not always so. It was held that the doctrine of shifting onus is applicable to income-tax proceedings and when sufficient evidence, either direct or circumstantial, is disclosed by the revenue, adverse inference can be drawn against the assessee, if he as suppressed documents or evidence, for his failure to place before the department the material which is exclusively within his knowledge and keeping.*

*12.8 It is further contended that, Data found in possession of the searched person has to be considered in accordance with the provisions of section 132(4A) and section 292C of the Act to be true in the hands of searched person i.e. Shri Himanshu Raiyani in the present case and not in the case of third party. Presumption drawn against the assessee is not available to the Assessing Officer based on seized data found from the possession of Shri Himanshu Raiyani because presumption u/s 132(4A) and u/s 292C is a rebuttable presumption and which has been successfully rebutted by the assessee*

*12.8.1 This contention is on a weak footing because, Shri Himanshu Raiyani had discharged his onus, by stating that the same belonged to and pertained to the assessee. This is further corroborated by the statement of Shri Nikhil Patel. Albeit, the assessee has failed to discharge the onus, as to why the documents found are not belonging to or pertaining to the assessee.*

*12.9 It is further contended that, in dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind of the person which may take in place of proof. Suspicion, howsoever, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof.*

*12.9.1 The proceedings under the Income tax laws are civil proceedings and in the proceedings under Civil laws, reasonable element of doubt is sufficient. On the contrary in the present case, there is sufficient proof to establish that the seized loose papers corroborates with the regular books of accounts. The cost of land mentioned in the loose sheets is the actual payment made as per books, the share holding of the partners matches, there is mention of cash exchange by virtue of sale of BEDI land, etc. Hence, there is sufficient evidence to hold that the seized papers are true and correct and they represent the real nature of transactions.*

*13. From the above it is clear that the firm had paid cash towards possession of land. The land was purchased with a documented price of Rs. 10,43,00,000/- and the above seized documents reveals that the assessee had spent Rs. 60,02,08,110/-. The difference works out to Rs. 49,59,08,110/-. However, from the seized document it is seen that, the first two installments have been brought in by the partners. This is added in their individual hands of Partners. The relevant page is as under.*



(1-A)

Date	Land Payment	CP	UV	KPR	RS	JP	KR/MALAY
Value	600208110	60020811	30010405.5	30010405.5	60020811	420145677	60020811
Jan-16	100100000	10000000	5000000	5000000	10000000	70100000	
Apr-16	80000000	10000000	5000000	0	10000000	55000000	
Aug-16	80000000	10000000	5000000	5000000	10000000	50000000	
	From Dist	From Dist	From Dist	From Dist	From Dist	From Dist	From Dist
Oct-16	120000000	12000000	6000000	6000000	12000000	84000000	
	From Dist	From Dist	From Dist	From Dist	From Dist	From Dist	From Dist
Cash	380100000	42000000	21000000	16000000	42000000	259100000	0
Doc Value	104300000	10430000	5215000	5215000	10430000	73010000	6500000
Total	484400000	52430000	26215000	21215000	52430000	332110000	6500000

13.1 The remaining cash payment of Rs. 8 crore on Aug 2016 and Rs. 12 crore on Oct 2016 has been made by the firm out of distribution. The source of the same is the on money received in cash. Therefore, no separate addition of Rs. 20 crore is being made. The issue of on money receipt and its taxation is discussed below.

**16. After that the assessing officer examined the issue of unaccounted “on-money” receipt of Rs. 38,77,24,212/-, in the light of the submission made by the assessee, as follows:**

The assessing officer noticed that seized materials contains details of cash on money receipts on booking of units at DECORA WESTHILL, which is as under. These data was maintained in a file called DWH.xls. The extract from the seized digital data relevant to concerned year is as under.

DATE	PARTICULARS	RECEIPT	PAYMENT	BAL
21-04-2017	B1202 MAHESH KACHVALA	1100000		
24-04-2017	B1202 MAHESH KACHVALA	1500000		
02-04-2017	D1002 BHAVNABEN MAKADIA	91000		
30-04-2017	B1102 MANIBEN SHINGALA CP	1000000		
28-04-2017	NP		2600000	
	TOTAL		2600000	-2600000
	BALANCE CF.			
01-05-	B1202 MAHESH	900000		



2017	KACHVALA				
03-05-2017	B1102 MANIBEN SHINGALA CP	1000000			
02-05-2017	D1002 BHAVNABEN MAKADIA	1000000			
04-05-2017	D1002 BHAVNABEN MAKADIA	3000000			
04-05-2017	NP		3000000		
05-05-2017	NP		4400000		
10-05-2017	D1002 BHAVNABEN MAKADIA	800000			
11-05-2017	NP		1000000		
13-05-2017	B1202 MAHESH KACHVALA	500000			
13-05-2017	NP		4000000		
16-05-2017	B1202 MAHESH KACHVALA	100000			CQ IN WH
29-05-2017	C1202 ROHAN VAIDYA	500000			
	TOTAL		12400000	-12400000	



	BALANCE CF.				
03-06-2017	C1202 ROHAN VAIDYA	1200000			
03-06-2017	C1202 ROHAN VAIDYA	1800000			CQ IN WH
14-06-2017	A801 VIPUL GODHANI	500000			
14-06-2017	NP		500000		
15-06-2017	A801 VIPUL GODHANI	4000000			
16-06-2017	C1202 ROHAN VAIDYA	700000			
16-06-2017	C1202 ROHAN VAIDYA	1400000			
05-06-2017	C1202 ROHAN VAIDYA	400000			CQ IN WH
26-06-2017	G702 BHUPATBHAI RAHEKA CP	200000			
26-06-2017	B1202 MAHESH KACHVALA	970000			
	TOTAL		500000	-500000	
	BALANCE CF.				
05-07-	NP		4000000		



2017					
08-07-2017	D1002 BHAVNABEN MAKADIA	6840000			
08-07-2017	D1002 BHAVNABEN MAKADIA		695000		INT REBATE
13-07-2017	NP		2000000		
18-07-2017	NP		7500000		
19-07-2017	B1102 MANIBEN SHINGALA CP	1220000			
22-07-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
25-07-2017	B1202 MAHESH KACHVALA	500000			
25-07-2017	D201 DR ASHISH GANATRA CP	4160000			
28-07-2017	NP		6500000		
28-07-2017	D201 DR ASHISH GANATRA CP	2500000			CQ IN WH
	TOTAL		20695000	-20695000	
	BALANCE CF.				
06-08-	E901 PRASHANT	100000			



2017	KALAWADIA				
11-08-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
11-08-2017	NP		5000000		
	TOTAL	1100000	5000000	-3900000	
	BALANCE CF.				
09-09-2017	A801 VIPUL GODHANI	1000000			
09-09-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
08-09-2017	E901 PRASHANT KALAWADIA	1000000			
08-09-2017	NP		1000000		
25-09-2017	D1201 ATUL DOSHI	4500000			
21-09-2017	D101 HARISH MEHTA	111000			
21-09-2017	NP		111000		
29-09-2017	D1201 ATUL DOSHI	6230000			
29-09-2017	NP		6230000		



2017					
	TOTAL		7341000	-7341000	
	BALANCE CF.				
03-10-2017	NP		4500000		
08-10-2017	A801 VIPUL GODHANI	500000			
11-10-2017	E901 PRASHANT KALAWADIA	3000000			
03-10-2017	F502 HITESH RANPARIYA	5000000		CQ IN NP	
05-10-2017	F502 HITESH RANPARIYA	2455000			
24-08-2017	F502 HITESH RANPARIYA	2100000			
06-09-2017	F502 HITESH RANPARIYA	5000000			
24-08-2017	NP		2100000		BAL WITH NP
06-09-2017	NP		5000000		
05-10-2017	NP		7455000		24.55+50
10-10-	D101 HARISH MEHTA	700000		CQ IN NP	



2017					
11-10-2017	D101 HARISH MEHTA	1500000		CQ IN NP	
11-10-2017	NP		2200000		15+7
11-10-2017	NP		3000000		
05-09-2017	B1102 MANIBEN SHINGALA CP	1200000			
17-10-2017	C1202 ROHAN VAIDYA	100000		CQ IN WH	
12-08-2017	D201 DR ASHISH GANATRA CP	740000		CQ IN WH	
	TOTAL	22295000	24255000	-1960000	
	BALANCE CF.				
09-11-2017	B1102 MANIBEN SHINGALA CP	1200000			
09-11-2017	G702 BHUPATBHAI RAHEKA CP	2000000			
25-10-2017	D101 HARISH MEHTA	1500000			
26-10-2017	D101 HARISH MEHTA	400000			
26-10-2017	D101 HARISH MEHTA	460000		CQ IN	



2017				LLP	
28-11-2017	E901 PRASHANT KALAWADIA	3000000		CQ IN LLP	
26-11-2017	NP D101 15+4.6+4		2360000	CQ IN LLP	
28-11-2017	NP E-901		3000000		
	TOTAL		5360000	-5360000	
	BALANCE CF.				
12-12-2017	D1201 ATUL DOSHI	2500000		TOTAL 135	
12-12-2017	NP D1201		2500000		
17-12-2017	A801 VIPUL GODHANI	1000000			
	TOTAL	3500000	2500000	1000000	
	BALANCE CF.				
02-01-2018	D101 HARISH MEHTA	700000			
02-01-2018	NP D101 15+4.6+4		700000		
25-11-2017	C1202 ROHAN VAIDYA	61000			



	TOTAL	761000	700000	61000	
	BALANCE CF.				
07-02-2018	E901 PRASHANT KALAWADIA	2828000			
07-02-2018	NP E-901		2828000		
19-02-2018	B1202 MAHESH KACHVALA	5000000			
19-02-2018	NP B1202		5000000		
20-02-2018	A801 VIPUL GODHANI	4000000			
20-02-2018	NP A801		4000000		
24-02-2018	G702 BHUPATBHAI RAHEKA CP		5200000		
	TOTAL		17028000	-17028000	
	BALANCE CF.				
05-03-2018	C1202 ROHAN VAIDYA	4494100			
06-03-2018	NP C1202		4400000		
23-02-2018	E801 ATULBHAI SANTOKI	1000000			



23-02-2018	NP E801		1000000		
01-03-2018	E801 ATULBHAJ SANTOKI	1000000			
01-03-2018	NP E801		1000000		
16-03-2018	B1102 MANIBEN SHINGALA CP	1200000			
31-03-2018	CP PERSONAL		3681100		
	<b>TOTAL</b>		<b>10081100</b>	<b>-10081100</b>	
	<b>BALANCE CF.</b>				
26-03-2018	F502 HITESH RANPARIYA	1500000			H.HR/DP
27-03-2018	E801 ATULBHAJ SANTOKI	1500000			

During the course of search, the statement of Shri Himanshu Raiyani was recorded, who had admitted that he was maintaining accounting at the behest of Shri Nikhil Patel and that he was maintaining two different accounts, one for accounted transactions and another for unaccounted transactions. Therefore, it is proved beyond doubt that the group is maintaining parallel books of accounts. Further, during the course of post search proceedings, statement of Shri Nikhil Patel was recorded who had admitted as under:

**STATEMENT UNDER SECTION 131(1), ACT, 1961**  
 I, the undersigned, being a duly qualified Chartered Accountant, have examined the books of account of the taxpayer named above and certify that the same are correct and true to the best of my knowledge and belief and that the same are in accordance with the provisions of the Income Tax Act, 1961 and the Income Tax Rules, 1962 and the Income Tax (Amendment) Act, 1987 and the Income Tax (Amendment) Act, 1988 and the Income Tax (Amendment) Act, 1989 and the Income Tax (Amendment) Act, 1990 and the Income Tax (Amendment) Act, 1991 and the Income Tax (Amendment) Act, 1992 and the Income Tax (Amendment) Act, 1993 and the Income Tax (Amendment) Act, 1994 and the Income Tax (Amendment) Act, 1995 and the Income Tax (Amendment) Act, 1996 and the Income Tax (Amendment) Act, 1997 and the Income Tax (Amendment) Act, 1998 and the Income Tax (Amendment) Act, 1999 and the Income Tax (Amendment) Act, 2000 and the Income Tax (Amendment) Act, 2001 and the Income Tax (Amendment) Act, 2002 and the Income Tax (Amendment) Act, 2003 and the Income Tax (Amendment) Act, 2004 and the Income Tax (Amendment) Act, 2005 and the Income Tax (Amendment) Act, 2006 and the Income Tax (Amendment) Act, 2007 and the Income Tax (Amendment) Act, 2008 and the Income Tax (Amendment) Act, 2009 and the Income Tax (Amendment) Act, 2010 and the Income Tax (Amendment) Act, 2011 and the Income Tax (Amendment) Act, 2012 and the Income Tax (Amendment) Act, 2013 and the Income Tax (Amendment) Act, 2014 and the Income Tax (Amendment) Act, 2015 and the Income Tax (Amendment) Act, 2016 and the Income Tax (Amendment) Act, 2017 and the Income Tax (Amendment) Act, 2018 and the Income Tax (Amendment) Act, 2019 and the Income Tax (Amendment) Act, 2020 and the Income Tax (Amendment) Act, 2021 and the Income Tax (Amendment) Act, 2022 and the Income Tax (Amendment) Act, 2023.



The assessing officer noticed that it is clear that the above receipts are cash receipts towards booking advances and the same are not recorded in the regular books of accounts.

**17. The assessee, in response to the show cause notice, had filed the following reply, before the assessing officer:**

*“Unexplained ‘on money’ receipts-Rs. 23,13,62,112/-*

*8.1 This amount is proposed to be taxed vide Para 4 of the show cause notice. Your honour would appreciate that against Rs. 23,13,62,112/- on ‘on money’ receipts identified by your honour, your assessee has made efforts to verify and reconcile receipts as well as payments after going through the entire seized material by digging into each and every noting and jotting and also by analyzing the same with reference to transaction which has ultimately been culminated into actual transactions. Details of receipts and payments are as under:*

<i>Particulars-Debit and outflow of fund</i>	<i>Amount</i>	<i>Particulars-Credit and inflow of fund</i>	<i>Amount</i>
<i>Cash paid back due to cancellation of booking of flats. The 241524001 amounts were paid by respective partners who brought the booking and who had kept the booking amount in their hands which Shri Himanshu Raiyani was recording the same in 'Miracle' and other notings as distribution in order to keep control over cash in possession of the firm.</i>		<i>Cash received but paid back 241524001 due to cancellation of booking of flats by the customers</i>	
<i>Land Payment [i.e. amount paid for settlement of pending 100000000</i>		<i>Cash Receipts for booking 97374100</i>	



litigation in relation to the land]

of flats and handing over of  
fully furnished flat on  
turnkey basis

Expenses incurred by Ujasbhai

6000000 Cash receipts for 26558111  
customized extra work to be  
done simultaneously with  
construction as per the  
needs of the customer

Sintex Tank	23500
Show PSC Bill	42300
Shantikaka Salary	40000
Paper Bag Reverse	1300
Mapani Expenses	25000
Pagi Salary	12000
Old Computer	10000
Nirvana Contractor	50000
Misc Expenses	11200
Laxman Salary	56000
Ketan Architect	70000
HiteshbhaiRajdev	100000
Himanshu Salary	90000
Halogen Light	4000
Gadar Advertise Board	240000



Expenses for Plan	1262750
Diesel and Stay Expenses [Travelling Exp]	10800
Office Table	9500
Courier Expenses	200
Counting Machine	15000
Container	9000
Color Xerox	150
Cash shortage	3000
Bore	225000
Ashwinbhai Contractor	300000
Fire & Safety	90000
Site Office -Wooden	130000
Air Freshener	7500
Advocate Fees	20000
3D & Logo Eyecon	50000
Inflated amount paid in cash against Cheque receipts	2125000
Balance incurred between 24-08-18 till the date of search.	12899011
The amount was held in the name of 'SF'.	

**Total** **365456212 Total** **365456212**

*Out of the aforesaid expenses, an amount of Rs. 57,91,400/- has been incurred prior to formation of the firm and the same has been incurred by the key partners of Decora Housing LLP from the funds available in their possession. Breakup of expenses incurred of Rs. 57,91,400/- is given below:*



<b>Date</b>	<b>Description</b>	<b>Amount</b>
04-02-2016	Container	9000
17-02-2016	Sintex Tank	23500
20-02-2016	Pagi Salary	12000
24-02-2016	3D & Logo Eyecon, A'bad	50000
08-03-2016	Pakashbhai for Mapani	25000
17-03-2016	Bore	225000
22-03-2016	Expenses for Plan work-Sureshbhai	100000
22-03-2016	Nirvana Contractor	50000
02-04-2016	Expenses for Plan work-Sureshbhai	1162750
05-04-2016	Misc Expenses	11200
04-05-2016	Colour Xerox	150
24-05-2016	Ujasbhai for Expenses	1000000
09-06-2016	Ketan Atchitect	10000



15-06-2016	Ujasbhai for Expenses	600000
16-06-2016	Ujasbhai for Expenses	400000
18-06-2016	Ujasbhai for Expenses	500000
29-06-2016	Advocate fees haste Kiran Chhopia	20000
30-06-2016	Laxman Salary	42000
30-06-2016	Shantikaka Salary	30000
01-07-2016	Ketan Atchitect	10000
04-07-2016	Diesel and Stay Expenses	10800
04-07-2016	Ujasbhai for Expenses	500000
14-07-2016	Ujasbhai for Expenses	1000000
	<b>Total</b>	<b>5791400</b>

8.2 Breakup of Rs. 9,73,74,100/- received for purchase of flats as well as execution of interior on turnkey basis is as under:

Unit No.	Name of the Buyer in the project as per audited accounts	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount received as per seized material
		31-03-2017	31-03-2018	31-03-2019	



A-801	Dhaval & Vallabhbhai Godhani	0	400000	1300000	12100000
B-1202	Babita & Mahesh Kachhawah	0	1000000	3500000	11970000
C-1202	Rohan P Vaidya & Pooja R Vaidya	0	4594100	4594100	10555100
D-101	Meena H & Harishkumar K Mehta	0	700000	4384000	4495000
E-801	Atulbhai Santoki	0	0	1795000	10845000
E-802	Maya A & Ashokbhai R Patel C/o Dr Mori	0	0	5500000	5160000
E-901	Prashant Kalavadiya	0	0	6250000	6928000
D-1002	Bhavnaben Makadia				11036000
D-1201	Atul Doshi				13230000
F-502	Hitesh Ranpariya				11055000
	<b>Total</b>	<b>0</b>	<b>6694100</b>	<b>27323100</b>	<b>97374100</b>

*Income in respect of the aforesaid flats would accrue and become assessable in the year in which turnkey work is completed, sale deed is executed and possession of the flat with completed work is handed over to the buyer in terms of AS-9.*

*8.3 Breakup of Rs. 2,65,58,111/- received towards extra work to be done simultaneously with the progress and construction of the flat is as under:*

Unit No.	Name of the Buyer in the project	Amount as booked as per audited accounts	Amount as per audited	Amount as per audited	Amount as per audited	Amount received



per audited accounts		accounts as	accounts as	accounts as	as per seized material
		on 31-03-2017	on 31-03-2018	on 31-03-2019	
A-701	ChandubhaiLimbani	0	500000	4300000	951000
A-702	Darshan V and Falguni D Sureja	300000	1800000	1800000	775000
A-1001	NaynabenVashrambhaiFefar	0	0	1000000	2000000
B-301	RajeshbhaiManiyar	300000	300000	300000	100000
B-502	Ankit Doshi &Neshal A Doshi	0	1100000	5600000	1000000
B-801	Hitesh Ratilal Patel	0	0	2000000	2036000
B-901	Himanshu H Khant	0	0	3400000	1000000
B-1002	Bhavnaben Patel	0	0	1000000	3037000
C-101	Ushaben A Khandhar [Shifted from D-402 in previous year]	2000000	3000000	3500000	1011111
C-1002	Dhirendra N & Rashmi D Patel	400000	800000	2988000	100000
C-1102	Yogen H &Harshaben H Shingala	700000	3627000	3627000	3400000
D-201	BhavnabenAshishbhai Ganatra	0	3272400	3272400	7400000
D-401	Viral Patel [Shifted from C-501]	0	500000	500000	1100000
D-701	Uday BharatbhaiGarala [Shifted from D-701/ E-501]	0	300000	1800000	608000



D-702	Bhavin Mehta	0	0	151000	608000
D-802	Tejas Mehta	0	0	151000	608000
E-401	Hirenbhai C Doshi [Shifted from D-601/ E-501]	0	900000	1150000	824000
	<b>Total</b>	<b>3700000</b>	<b>16099400</b>	<b>36539400</b>	<b>26558111</b>

Income in respect of these flats would accrue at the time of execution of sale deeds in favour of the buyer because during intervening period buyer has right to cancel the booking of flat. However, if extra work is considered to be in the nature of contract then income would accrue on straight line basis over a period of tenure of the construction work and would be equally assessable in each of the year tenure of the contract through not written but is exceeding the period of 90 days considering its nature and, therefore, provisions of AS-7, ICDS-III and Section 43CB would apply. However, since this nature of work is executed on almost on cost to cost basis, your assessee does not earn any amount in these activities which are nothing but provided to the customer in order to get the booking in the project. Your assessee under such circumstances retains only administrative cost which ranges from 1%-3%. The assessable income during the contract period works out minimum at Rs. 2,65,581/- [i.e. 1% of Rs. 2,65,58,111/-] and maximum at Rs. 7,96,743/- [i.e. 3% of Rs. 2,65,58,111/-] and the same needs to be spread over on straight line basis in all the years and till completion of the project.

8.4 In respect of following flats, purchasers have opted not to avail services of additional work and have not sought any execution of additional work and therefore, no extra amount has been paid by them. One of the customer in order to inflate value of flat for the purpose of availing bank loan paid higher amount by cheque and taken back cash which is indicated below:

Unit No.	Name of the Buyer in the project as per audited accounts	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount paid back as per seized material



		31-03-17	31-03-18	31-03-19	
A-802	Harsh, Dinesh & Vishakha Bhalsod	0	2000000	2000000	0
B-101	Rajendra Thakkar	0	0	5200000	0
B-402	Mansi B & Bhavik B Ranpura	300000	1000000	1000000	0
B-501	Maheshkumar D & Hinaben M Vadaliya	2000000	3500000	6900000	(-)2125000
B-601	Krishna Shantilal Mori	0	1500000	1500000	0
B-602	Railaben J & Aadarsh H Patel	0	0	3281000	0
B-701	Mukesh Limbabbhai Kasundra	0	1100000	1100000	0
B-702	Mahadevbhai L & Tribhovanbhai L Patel	0	1000000	3500000	0
B-902	Ashaben & Nalinkumar Doshi	0	0	3900000	0
B-1001	Jyotiben Rajaguru & Umeshbhai Rajyaguru	0	0	3675000	0
C-301	Aarti D & Dineshbhai Mungalpara	1500000	2750000	2750000	0
C-501	Ankur Doshi	0	0	2000000	0
C-602	Dharmesh Kishanbhai Cholera	0	1100000	3640000	0
C-702	Mandakini M & Mansukhbhai N Gohel	6840000	6840000	6840000	0
C-801	Girishbhai & Sangitaben G Vadaliya	0	800000	3600000	0
C-802	Nayana Dipak Patel	0	3400000	3400000	0



C-901	Ankit Vachhani	0	1800000	2800000	0
C-1001	Shantilal&LabhubenKaneriya	0	0	6840000	0
C-1101	Nita Virpara	0	0	6840000	0
D-301	Jaydeep Thakkar &UjalaJaydip Thakkar	0	1640000	5540000	0
D-302	Vijay Aghera&KanchanbenAghera	0	2800000	3300000	0
D-1001	Swati Amit Mehta	0	0	500000	0
D-1101	Kamlesh ThakarshibhaiRupala	0	500000	4300000	0
E-301	Ankit, Jitendra & Manisha Bhalsod [Shifted from E-401 in previous year]	500000	3000000	3000000	0
E-402	Paresh Davda	0	600000	1800000	0
E-502	KishorkumarHaribhaiVishnav [Shifted from E-602 in previous year]	500000	500000	7850000	0
E-601	Bhavrajsinh J Jadeja	0	1250000	8750000	0
E-602	Krishnarajsinh J Jadeja	0	1250000	8750000	0
E-902	Binal& Hitesh Hansraj Patel [Shifted from E-1002 in earlier year]	1000000	2500000	6000000	0
E-1001	Hitesh M &Suketaben H Patel [Switched from E-1101 in previous year]	500000	500000	500000	0
E-1102	Chirag P Patel &Hemantika C Patel [Shifted from E-1202 in previous year]	50000	6550000	6550000	0
F-302	Deepak Dhingani [Shifted from F-402 in previous year]	500000	500000	500000	0



F-401	VastaramKesharbhai Patel	0	1000000	1000000	0
F-502	PareshkumarDhingani [Shifted from F-602 in previous year]	500000	500000	500000	0
F-701	Mehendra J Patel [Shifted from E-501 in previous year]	0	1600000	8000000	0
F-1001	Devang SureshbhaiKaneriya [Shifted from F-1101 in previous year]	1875000	4375000	7920000	0
F-1002	Chirag SureshbhaiKaneriya [Shifted from F-1102 in previous year]	1875000	4375000	7920000	0
G-602	Kiran R & RamnikGordhandas Kotecha	0	0	3000000	0
G-1101	Manoj M Finava	0	5910000	8710000	0
G-1102	HarsilBhaveshkumarVasani	0	450000	4500000	0
	<b>Total</b>	<b>17940000</b>	<b>66590000</b>	<b>169656000</b>	<b>(-)2125000</b>

8.5 In following cases, bookings have been cancelled by the respect persons and therefore, amounts received have been paid back as they have not retained any right in the property under development and therefore, these amounts cannot be brought to tax in the hands of your assessee. Income in respect of respective flats shall be offered to tax as and when these flats are booked and sold after execution of sale deed in favour of the purchaser of respective unit:

Unit booked per audited accounts	No. Name of the Buyer as per seized material	Amount received as paid back due to booking per seized material	Amount paid back specifically cancellation appearing in the Seized material as notings were found only upto 23-08-18 only
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A-1002	KishorbhaiSavsani	101001	0	101001
A-1102	PankajbhaiKalaria	3000000	0	3000000
A-1201	AmitbhaiSachade	1000000	0	1000000
A-1202	BhavikbhaiRanpara	7450000	0	7450000
A-401	RiteshbhaiHadvani	9048000	0	9048000
A-402	PareshbhaiDavda	27000	0	27000
A-501	Pravinbhai Patel	50000	0	50000
A-601	Ashwinbhai Patel	10239000	0	10239000
A-602	PareshbhaiDavda	2173000	0	2173000
A-802	Ajaybhai Patel	5000000	0	5000000
A-802	RameshbhaiDhingani	4292000	0	4292000
B-1001	Dr D M Sidpara	200000	200000	0
B-1002	RameshbhaiDhingani	6500000	0	6500000
B-1102	ManibenShigla	6820000	0	6820000
B-1201-02	Abhay Vachhani	1000000	0	1000000
B-401	RiteshbhaiHadvani	9048000	0	9048000
B-402	Ankit Bharvadia	1600000	0	1600000
B-501	SureshbhaiVachhani	700000	0	700000



B-701	Prabhubhai Patel	1500000	0	1500000
B-801	Ajaybhai Patel	7500000	0	7500000
B-802	Girishbhai Patel	1300000	0	1300000
B-902	Nishitbhai Jobaliya	1000000	0	1000000
C-101	Vijaybhai Bhimani	1300000	0	1300000
C-1201	Bharatbhai Borsadiya	2000000	0	2000000
C-202	Adv Madhav Dave	700000	0	700000
C-601	Bharatbhai Ghetia	1000000	0	1000000
C-602	Dharmeshbhai Cholera	537000	0	537000
C-602	Vithalbhai Garada	11000	11000	0
C-701	Rameshbhai Bhalodia	2250000	0	2250000
C-801	Bhaskarbhai Morbi	3495000	0	3495000
C-802	Vasantbhai Patel	1100000	0	1100000
C-901	Mayankbhai Patel	500000	500000	0
C-902	Ketanbhai Panchani	1994000	0	1994000
D-1101/301	Santoshbhai	1500000	0	1500000
D-1102	Bhavikbhai Ranpara	50000	0	50000
D-501	Vipulbhai Padaliya	2000000	0	2000000
D-502	Rajubhai Varmora	7500000	0	7500000



B-701	Prabhubhai Patel	1500000	0	1500000
B-801	Ajaybhai Patel	7500000	0	7500000
B-802	Girishbhai Patel	1300000	0	1300000
B-902	Nishitbhai Jobaliya	1000000	0	1000000
C-101	Vijaybhai Bhimani	1300000	0	1300000
C-1201	Bharatbhai Borsadiya	2000000	0	2000000
C-202	Adv Madhav Dave	700000	0	700000
C-601	Bharatbhai Ghetia	1000000	0	1000000
C-602	Dharmeshbhai Cholera	537000	0	537000
C-602	Vithalbhai Garada	11000	11000	0
C-701	Rameshbhai Bhalodia	2250000	0	2250000
C-801	Bhaskarbhai Morbi	3495000	0	3495000
C-802	Vasantbhai Patel	1100000	0	1100000
C-901	Mayankbhai Patel	500000	500000	0
C-902	Ketanbhai Panchani	1994000	0	1994000
D-1101/301	Santoshbhai	1500000	0	1500000
D-1102	Bhavikbhai Ranpara	50000	0	50000
D-501	Vipulbhai Padaliya	2000000	0	2000000
D-502	Rajubhai Varmora	7500000	0	7500000



D-602	Niharbhai Kotecha	900000	0	900000
D-801	NarendrabhaiBhalodia	200000	200000	0
D-901	Pravinbhai Patel	50000	0	50000
E-1101	HiteshbhaiKalawadia	9900000	0	9900000
E-1102	Manishbhai Kaneria	9485000	0	9485000
E-601	Manishbhai Morbi	5677000	0	5677000
E-601	Pravinbhai Patel	100000	0	100000
E-701-02	Narendrabhai Patel	10000000	0	10000000
E-801	HemalbhaiJasani	9000000	0	9000000
E-802	Govindbhai Morbi Holton	2500000	0	2500000
E-802	Manishbhai Kaneria	6000000	0	6000000
F-1002	BharatbhaiVarmora	9000000	0	9000000
F-1101	Chiragbhai Kaneria	8513000	0	8513000
F-1102	Devangbhai Kaneria	8513000	0	8513000
F-1201	MayurbhaiDetroja	1300000	0	1300000
F-1202	Shivlalbhai Angel Pump	15000000	0	15000000
F-501	ManishbhaiVachhani	1000000	0	1000000
F-601	Pravinbhai Patel	10000000	0	10000000
F-602	Arvindbhai	501000	0	501000
F-902	ViralbhaiThakar	5500000	0	5500000
G-602	Ramnimbhai Kotecha	6200000	6200000	0
G-702	BhupatbhaiRaheka	5200000	5200000	0
B-1001	JyotibenRajaguru&UmeshbhaiRajyaguru	11500000	11500000	0
	<b>Total</b>	<b>241524001</b>	<b>23811000</b>	<b>217713001</b>



*Your assessee, therefore, requests your honour to tax income in respect of the receipts referred to in Para 8.3 above and the manner indicated herein. The income of 3% is admitted in order to get the assessment completed in a peaceful and judicious manner.”*

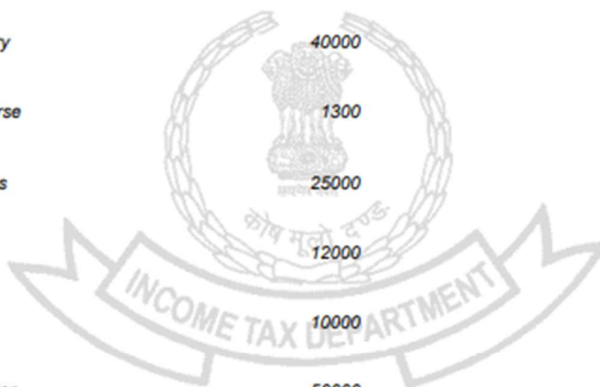
**18. The assessing officer, however, rejected the above reply of the assessee with corroborative evidences, and the conclusion reached by the assessing officer, in this regard, is as follows:**

*“17.1 The first contention of the assessee is that, against Rs. 23,13,62,112/- on ‘on money’ receipts identified by the department, the assessee has reconciled receipts as well as payments as under.*

<i>Particulars-Debit and outflow of fund</i>	<i>Amount</i>	<i>Particulars-Credit and inflow of fund</i>	<i>Amount</i>
<i>Cash paid back due to cancellation of booking of flats. The amounts were paid by respective partners who brought the booking and who had kept the booking amount in their hands which Shri Himanshu Raiyani was recording the same in 'Miracle' and other notings as distribution in order to keep control over cash in possession of the firm.</i>		<i>241524001 Cash received but paid back due to cancellation of booking of flats by the customers</i>	<i>241524001</i>
<i>Land Payment [i.e. amount paid for settlement of pending litigation in relation to</i>		<i>100000000 Cash Receipts for booking of flats and handing over of fully furnished flat on</i>	<i>97374100</i>



<i>the land]</i>	<i>turnkey basis</i>
<i>Expenses incurred by Ujasbhai</i>	<i>6000000 Cash receipts for customized extra 26558111 work to be done simultaneously with construction as per the needs of the customer</i>
<i>Sintex Tank</i>	<i>23500</i>
<i>Show PSC Bill</i>	<i>42300</i>
<i>Shantikaka Salary</i>	<i>40000</i>
<i>Paper Bag Reverse</i>	<i>1300</i>
<i>Mapani Expenses</i>	<i>25000</i>
<i>Pagi Salary</i>	<i>12000</i>
<i>Old Computer</i>	<i>10000</i>
<i>Nirvana Contractor</i>	<i>50000</i>
<i>Misc Expenses</i>	<i>11200</i>
<i>Laxman Salary</i>	<i>56000</i>
<i>Ketan Architect</i>	<i>70000</i>
<i>HiteshbhaiRajdev</i>	<i>100000</i>
<i>Himanshu Salary</i>	<i>90000</i>
<i>Halogen Light</i>	<i>4000</i>
<i>Gadar Advertise Board</i>	<i>240000</i>
<i>Expenses for Plan</i>	<i>1262750</i>





Diesel and Stay Expenses [Travelling Exp]	10800
Office Table	9500
Courier Expenses	200
Counting Machine	15000
Container	9000
Color Xerox	150
Cash shortage	3000
Bore	225000
Ashwinbhai Contractor	300000
Fire & Safety	90000
Site Office -Wooden	130000
Air Freshener	7500
Advocate Fees	20000
3D & Logo Eyecon	50000
Inflated amount paid in cash against Cheque receipts	2125000
Balance incurred between 24-08-18 till the date of search. The amount was held in the name of 'SF'.	12899011

<b>Total</b>	<b>365456212 Total</b>	<b>365456212</b>
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17.2 Here the right hand side shows inflow and the left hand side shows outflow. The total of the inflow, according to the assessee is Rs 36,54,56,212/-. Thus, the assessee admits that the total on money receipt is Rs 36,54,56,212/-. However, this figure is also not correct. The actual cash on money receipt is Rs 39,02,96,212/-. This is derived from the soft data contained in excel sheet known as DWH.xls and the details are as under:-



Gross inflow / receipts as per DWH.xls	40,75,07,212
Less: Refunds as appearing in DWH.xls	9,11,000
Less: Amount received in cheque and reflected in regular audited accounts	1,63,00,000
Net cash on money receipts as per DWH.xls	39,02,96,212

17.3 Now coming to the rebuttal of the above table, row wise rebuttal is made as under:-

Row-1 The assessee has stated as under:-

Cash paid back due to cancellation of booking of flats. The amounts were paid by respective partners who brought the booking and who had kept the booking amount in their hands which Shri Himanshu Raiyani was recording the same in 'Miracle' and other notings as distribution in order to keep control over cash in possession of the firm.	241524001	Cash received but paid back due to cancellation of booking of flats by the customers	241524001
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17.4 It can be seen from the first row that the assessee has shown cash on money receipt of Rs. 24,15,24,001/- on the right hand side, and in the same row on the left hand side there is cash refund / return of on money. Thus, according to the assessee, admittedly the on money has been received but it cannot be taxed in the hands of the assessee as the same has been refunded back. This contention is false and misleading and is contrary to what has been found in the DWH.xls data, which is reproduced hereunder.



NP/CP FLAT CASH BOOK

DATE	PARTICULARS	RECEIPT	PAYMENT	BAL	
21-04-2017	B1202 MAHESH KACHVALA	1100000			
24-04-2017	B1202 MAHESH KACHVALA	1500000			
02-04-2017	D1002 BHAVNABEN MAKADIA	91000			
30-04-2017	B1102 MANIBEN SHINGALA CP	1000000			
28-04-2017	NP		2600000		OK
	TOTAL	3691000	2600000	1091000	
	BALANCE CF.	1091000			
01-05-2017	B1202 MAHESH KACHVALA	900000			
03-05-2017	B1102 MANIBEN SHINGALA CP	1000000			
02-05-2017	D1002 BHAVNABEN MAKADIA	1000000			
04-05-2017	D1002 BHAVNABEN MAKADIA	3000000			
04-05-2017	NP		3000000		OK
05-05-2017	NP		4400000		OK
10-05-2017	D1002 BHAVNABEN MAKADIA	800000			
11-05-2017	NP		1000000		OK
13-05-2017	B1202 MAHESH KACHVALA	500000			
13-05-2017	NP		4000000		OK
16-05-2017	B1202 MAHESH KACHVALA	100000			CQ IN WH
29-05-2017	C1202 ROHAN VAIDYA	500000			
	TOTAL	8891000	12400000	-3509000	
	BALANCE CF.	-3509000			
03-06-2017	C1202 ROHAN VAIDYA	1200000			
03-06-2017	C1202 ROHAN VAIDYA	1800000			CQ IN WH
14-06-2017	A801 VIPUL GODHANI	500000			
14-06-2017	NP		500000		OK
15-06-2017	A801 VIPUL GODHANI	4000000			
16-06-2017	C1202 ROHAN VAIDYA	700000			
16-06-2017	C1202 ROHAN VAIDYA	1400000			
05-06-2017	C1202 ROHAN VAIDYA	400000			CQ IN WH
26-06-2017	G702 BHUPATBHAI RAHEKA CP	200000			
26-06-2017	B1202 MAHESH KACHVALA	970000			
	TOTAL	7661000	500000	7161000	
	BALANCE CF.	7161000			
05-07-2017	NP		4000000		OK
08-07-2017	D1002 BHAVNABEN MAKADIA	6840000			
08-07-2017	D1002 BHAVNABEN MAKADIA		695000		INT REBATE



13-07-2017	NP		2000000			OK
18-07-2017	NP		7500000			OK
19-07-2017	B1102 MANIBEN SHINGALA CP	1220000				
22-07-2017	G702 BHUPATBHAI RAHEKA CP	1000000				
25-07-2017	B1202 MAHESH KACHVALA	500000				
25-07-2017	D201 DR ASHISH GANATRA CP	4160000				
28-07-2017	NP		6500000			OK
28-07-2017	D201 DR ASHISH GANATRA CP	2500000			CQ IN WH	
	TOTAL	23381000	20695000	2686000		
	BALANCE CF.	2686000				
06-08-2017	E901 PRASHANT KALAWADIA	100000				
11-08-2017	G702 BHUPATBHAI RAHEKA CP	1000000				
11-08-2017	NP		5000000			OK
	TOTAL	3786000	5000000	-1214000		
	BALANCE CF.	-1214000				
09-09-2017	A801 VIPUL GODHANI	1000000				
09-09-2017	G702 BHUPATBHAI RAHEKA CP	1000000				
08-09-2017	E901 PRASHANT KALAWADIA	1000000				
08-09-2017	NP		1000000			OK
25-09-2017	D1201 ATUL DOSHI	4500000				
21-09-2017	D101 HARISH MEHTA	111000				
21-09-2017	NP		111000			OK
29-09-2017	D1201 ATUL DOSHI	6230000				
29-09-2017	NP		6230000			
	TOTAL	12627000	7341000	5286000		
	BALANCE CF.	5286000				
03-10-2017	NP		4500000			OK
08-10-2017	A801 VIPUL GODHANI	500000				
11-10-2017	E901 PRASHANT KALAWADIA	3000000				
03-10-2017	F502 HITESH RANPARIYA	5000000		CQ IN NP		
05-10-2017	F502 HITESH RANPARIYA	2455000				
24-08-2017	F502 HITESH RANPARIYA	2100000				
06-09-2017	F502 HITESH RANPARIYA	5000000				
24-08-2017	NP		2100000		BAL WITH NP	
06-09-2017	NP		5000000			OK
05-10-2017	NP		7455000		24.55+50	OK
10-10-2017	D101 HARISH MEHTA	700000		CQ IN NP		
11-10-2017	D101 HARISH MEHTA	1500000		CQ IN NP		
11-10-2017	NP		2200000		15+7	OK
11-10-2017	NP		3000000			OK
05-09-2017	B1102 MANIBEN SHINGALA CP	1200000				
17-10-2017	C1202 ROHAN VAIDYA	100000		CQ IN WH		



12-08-2017	D201 DR ASHISH GANATRA CP	740000		CQ IN WH	
	TOTAL	27581000	24255000	3326000	
	BALANCE CF.	3326000			
09-11-2017	B1102 MANIBEN SHINGALA CP	1200000			
09-11-2017	G702 BHUPATBHAI RAHEKA CP	2000000			
25-10-2017	D101 HARISH MEHTA	1500000			
26-10-2017	D101 HARISH MEHTA	400000			
26-10-2017	D101 HARISH MEHTA	460000		CQ IN LLP	
28-11-2017	E901 PRASHANT KALAWADIA	3000000		CQ IN LLP	
26-11-2017	NP D101 15+4.6+4		2360000	CQ IN LLP	
28-11-2017	NP E-901		3000000		
	TOTAL	11886000	5360000	6526000	
	BALANCE CF.	6526000			
12-12-2017	D1201 ATUL DOSHI	2500000		TOTAL 135	
12-12-2017	NP D1201		2500000		
17-12-2017	A801 VIPUL GODHANI	1000000			
	TOTAL	10026000	2500000	7526000	
	BALANCE CF.	7526000			
02-01-2018	D101 HARISH MEHTA	700000			
02-01-2018	NP D101 15+4.6+4		700000		
25-11-2017	C1202 ROHAN VAIDYA	61000			
	TOTAL	8287000	700000	7587000	
	BALANCE CF.	7587000			
07-02-2018	E901 PRASHANT KALAWADIA	2828000			
07-02-2018	NP E-901		2828000		
19-02-2018	B1202 MAHESH KACHVALA	5000000			
19-02-2018	NP B1202		5000000		
20-02-2018	A801 VIPUL GODHANI	4000000			
20-02-2018	NP A801		4000000		
24-02-2018	G702 BHUPATBHAI RAHEKA CP		5200000		
	TOTAL	19415000	17028000	2387000	
	BALANCE CF.	2387000			
05-03-2018	C1202 ROHAN VAIDYA	4494100			
06-03-2018	NP C1202		4400000		
23-02-2018	E801 ATULBHAI SANTOKI	1000000			
23-02-2018	NP E801		1000000		
01-03-2018	E801 ATULBHAI SANTOKI	1000000			
01-03-2018	NP E801		1000000		
16-03-2018	B1102 MANIBEN SHINGALA CP	1200000			
31-03-2018	CP PERSONAL		3681100		



	TOTAL	10081100	10081100	0	
	BALANCE CF.	0			
26-03-2018	F502 HITESH RANPARIYA	1500000			H.HR/DP
27-03-2018	E801 ATULBHAI SANTOKI	1500000			
06-04-2018	B1001 UMESHBHAI RAJYAGURU	2100000			
09-04-2018	B1001 UMESHBHAI RAJYAGURU	1000000			
12-04-2018	E801 ATULBHAI SANTOKI	5500000			
19-04-2018	E801 ATULBHAI SANTOKI	1000000			
17-05-2018	B1001 UMESHBHAI RAJYAGURU	2000000			
20-05-2018	E802 MAYABEN PATEL C/O DR MC	1000000			
29-05-2018	B1001 UMESHBHAI RAJYAGURU	2000000			
22-06-2018	B1001 UMESHBHAI RAJYAGURU	2000000			
26-06-2018	B1001 UMESHBHAI RAJYAGURU	2400000			
18-07-2018	E801 ATULBHAI SANTOKI	845000			
26-06-2018	G602 RAMNIKBHAI KOTECHA	1100000			
10-07-2018	G602 RAMNIKBHAI KOTECHA	5100000	29045000		COLL REC BY NP/HR
	CP LIST UPDATE ON 31/08/18				
26-04-2018	A801 VIPUL GODHANI	500000			
26-04-2018	B1202 MAHESH KACHVALA	500000			
24-05-2018	A801 VIPUL GODHANI	200000			
24-05-2018	E802 MAYABEN PATEL C/O DR MC	2300000			
18-07-2018	A801 VIPUL GODHANI	400000			
26-07-2018	D101 HARISH MEHTA	3684000			
11-07-2018	E802 MAYABEN PATEL C/O DR MC	910000			BAL REC FROM CP
05-08-2018	E802 MAYABEN PATEL C/O DR MC	300000		50	31.3.18
23-08-2018	E802 MAYABEN PATEL C/O DR MC	500000		50	25.6.18
23-08-2018	E802 MAYABEN PATEL C/O DR MC	690000		-11	K CHHAPIA
14-08-2018	B1202 MAHESH KACHVALA	1000000	10984000	20.84	31.8.18
	TOTAL	40029000	40029000	0	
	BALANCE CF.	0			

17.5 This is the cash book of NP/CP. NP stands for Nikhil Patel, key member of the partner M/s. DECORA HOUSING LLP. CP stands for Chirag Patel (cousin brother of Nikhil Patel) who is owning 10% stake along with his father Shri Arvind Patel. Thus, both NP and CP hold 70% stake in the firm and are key members who are handling cash. Here, any customers from whom cash is charged, is kept (taken home) by either NP or CP. The assessee contends that, the receipt is immediately shown as payment which means that the amount is refunded. However, this is not the real picture. The receipt is shown from the customers from whom cash is charged and the same is taken home by NP. One such example is as under.



DATE	PARTICULARS	RECEIPT	PAYMENT	BAL	
21-04-2017	B1202 MAHESH KACHVALA	1100000			
24-04-2017	B1202 MAHESH KACHVALA	1500000			
02-04-2017	D1002 BHAVNABEN MAKADIA	91000			
30-04-2017	B1102 MANIBEN SHINGALA CP	1000000			
28-04-2017	NP		2600000		OK
	TOTAL	3691000	2600000	1091000	

Therefore, by no stretch of imagination it can be said that this is refund of cash to the giver by NP.

17.6 Further, it is pertinent to mention that if the make believe story of the assessee firm is to be accepted, then several buyers have canceled the booking on the date of booking itself and received back the cash. This is unrealistic and not acceptable. Some of the examples are as under:-

07-02-2018	E901 PRASHANT KALAWADIA	2828000			
07-02-2018	NP E-901		2828000		
19-02-2018	B1202 MAHESH KACHVALA	5000000			
19-02-2018	NP B1202		5000000		
20-02-2018	A801 VIPUL GODHANI	4000000			
20-02-2018	NP A801		4000000		

Here, the cash is collected and on same date it goes to Nikhil Patel. But the assessee contends that, the cash is given and Nikhil is returning.

17.7 Additionally, if it is refund of cash, then the person who is cancelling the deal and claiming refund, will claim the entire refund. However, the same is not observed in several of the entries found in the seized digital data. One such example is as under.

02-04-2017	D1002 BHAVNABEN MAKADIA	91000			
30-04-2017	B1102 MANIBEN SHINGALA CP	1000000			
28-04-2017	NP		2600000		OK
	TOTAL	3691000	2600000	1091000	
	BALANCE CF.	1091000			
01-05-2017	B1202 MAHESH KACHVALA	900000			
03-05-2017	B1102 MANIBEN SHINGALA CP	1000000			
02-05-2017	D1002 BHAVNABEN MAKADIA	1000000			
04-05-2017	D1002 BHAVNABEN MAKADIA	3000000			
04-05-2017	NP		3000000		OK
05-05-2017	NP		4400000		OK
10-05-2017	D1002 BHAVNABEN MAKADIA	800000			
11-05-2017	NP		1000000		OK

On perusal of the above produced extract it can be inferred that one of the buyer Smt. Bhavnaben Makadia has paid booking amount in various transche. However, if the make believe story of the assessee is accepted then the buyer Smt. Bhavnaben Makadia has booked and then cancelled and then again booked and then again cancelled and then again booked and then again cancelled. Thus it is clear that, the claim of the assessee that mentioning of NP means that the cash so collected has been refunded back by NP, is not correct. Actually it is cash collected and given to NP and when NP collects such cash, there is mention of 'OK' in the cash book.

Row-2

17.8 The second row of the above table is as under.



Land Payment [i.e. amount paid for settlement of pending litigation in relation to the land]	100000000	Cash Receipts for booking of flats and handing over of fully furnished flat on turnkey basis	97374100
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17.8.1 Here on the outflow side (LHS) the assessee is admitting cash of Rs. 10,00,00,000 as payment made for settlement of pending litigation in relation to land. Thus the assessee is admitting payment of Rs. 10 crore. On the other hand, in the upper part of the assessment order, when there is discussion made of unaccounted cash paid for acquiring land, the assessee had vehemently denied each of the entries. Interestingly, for similar set of seized documents, the assessee is denying the same, and on the other hand is also admitting part of the same.

17.8.2 The RHS contains inflow of Rs. 9,73,74,100/-, for which the assessee admits cash receipts for handing over fully furnished flat on turnkey basis. The assessee contends as under. Income in respect of the aforesaid flats would accrue and become assessable in the year in which turnkey work is completed, sale deed is executed and possession of the flat with completed work is handed over to the buyer in terms of AS-9.

The assessee has given break up of this as under:

Unit No.	Name of the Buyer in the project as per audited accounts	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount as per audited accounts as on	Amount received as per seized material
		31-03-2017	31-03-2018	31-03-2019	
A-801	Dhaval & Vallabhbai Godhani	0	400000	1300000	12100000
B-1202	Babita & Mahesh Kachhawah	0	1000000	3500000	11970000
C-1202	Rohan P Vaidya & Pooja R Vaidya	0	4594100	4594100	10555100
D-101	Meena H & Harishkumar K Mehta	0	700000	4384000	4495000
E-801	Atulbhai Santoki	0	0	1795000	10845000
E-802	Maya A & Ashokbhai R Patel C/o Dr Mori	0	0	5500000	5160000
E-901	Prashant Kalavadiya	0	0	6250000	6928000
D-1002	Bhavnaven Makadia				11036000



D-1201	Atul Doshi				13230000
F-502	Hitesh Ranpariya				11055000
	<b>Total</b>	<b>0</b>	<b>6694100</b>	<b>27323100</b>	<b>97374100</b>

17.8.3 From the above chart it can be seen that, this is clear receipt of on money and it is to be taxed in the year of receipt. The assessee says that, this cash of Rs. 9,73,74,100/- is for turnkey completion including interiors. However, the cash portion is too large and higher than the cheque which is nothing but on money receipts, which otherwise would have remained suppressed, had there been no search. Interestingly, the brochure of the project reads as under.

## SPECIFICATIONS

### 4 & 5 BHK APARTMENTS



#### FLOORING

- Premium vitrified tiles flooring



#### DOOR

- Main Door Flush



#### WINDOWS

- UPVC / anodized aluminum with 5mm toughened glass



#### WASH AREA

- Floor : Rustic vitrified tiles
- Dedo : Ceramic or vitrified tiles
- Provision for RO plant, washing machine, dish washer & dryer



#### SECURITY

- Video door phone security system
- Entire campus covered under CCTV surveillance



#### KITCHEN & STORE

- Flooring : Vitrified tiles
- Platform : Natural granite
- Dedo : Premium ceramic tiles



#### BALCONY

- Rustic tiles



	<p><b>BALCONY</b></p> <ul style="list-style-type: none"> <li>• Rustic tiles</li> </ul>
	<p><b>ELECTRIFICATION</b></p> <ul style="list-style-type: none"> <li>• 3 phase power connection</li> <li>• Concealed ISI copper wiring with modular switches</li> <li>• MCB distribution panel</li> </ul>
	<p><b>RAILINGS</b></p> <ul style="list-style-type: none"> <li>• Metal / Glass railing</li> </ul>
	<p><b>PAINT</b></p> <ul style="list-style-type: none"> <li>• Inside : Putty finish</li> <li>• Outside : Acrylic paint / Texture</li> </ul>
	<p><b>TOILETS</b></p> <ul style="list-style-type: none"> <li>• Premium ceramic tiles upto lintel level</li> <li>• Granite</li> <li>• EWC-wall hung type</li> <li>• CP Brass fitting</li> </ul>

*The above features are the standard features. What remains is the interiors and furniture. The cash collected for such trivial work is far more than the cost of the entire flat. Besides, no agreements, details of such extra work, statement of the buyer who paid cash, what type of work is sought, etc have not been filed.*

Row-3

*17.9 The assessee justified the on money entries by virtue of the above table. The first two rows of the above table have been discussed supra. The third row is as under.*

Expenses incurred by Ujasbhai	6000000	Cash receipts for customized extra work to be done simultaneously with construction as per the needs of the customer	26558111
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*Here the LHS is expenses incurred by one of the partner. On the RHS there is cash receipt of Rs. 2,65,58,111/- for carrying out extra work. The assessee contends as under:-*

*Income in respect of these flats would accrue at the time of execution of sale deeds in favour of the buyer because during intervening period buyer has right to cancel the booking of flat. However, if extra work is considered to be in the nature of contract then income would accrue on straight line basis over a period of tenure of the construction work and would be equally assessable in each of the year tenure of the contract through not written but is exceeding the period of 90 days considering its nature and, therefore, provisions of AS-7, ICDS-III and Section 43CB would apply. However, since this nature of work is executed on almost on cost to cost basis, your assessee does not earn any amount in these activities which are nothing but provided to the customer in order to get the booking in the project. Your assessee under such circumstances retains only*



administrative cost which ranges from 1%-3%. The assessable income during the contract period works out minimum at Rs. 2,65,581/- [i.e. 1% of Rs. 2,65,58,111/-] and maximum at Rs. 7,96,743/- [i.e. 3% of Rs. 2,65,58,111/-] and the same needs to be spread over on straight line basis in all the years and till completion of the project.

17.9.1 Here it is interesting to note that, the firm came into existence on 6.7.2016 and the land for the said project has been purchased on 13.10.2016, whereas, the cash collection started as under.

No.	DATE	Amount	Name/Detail	Remark
19	09-06-2016	200000	A-1001 DAMJIBHAI FEBAR	
17	08-06-2016	6250000	A-401 RITESHBHAI HADVANI	
44	23-06-2016	27000	A-402 PARESHBHAI DAVDA	
25	13-06-2016	50000	A-501 PRAVINBHAI PATEL	
15	08-06-2016	6000000	A-601 ASHWINBHAI PATEL	
27	14-06-2016	1500000	A-601 ASHWINBHAI PATEL	75
35	18-06-2016	1792000	A-601 ASHWINBHAI PATEL	
45	26-06-2016	300000	A-701 CHANDUBHAI LIMBANI	
22	09-06-2016	5000000	A802 AJAYBHAI PATEL	
38	22-06-2016	4292000	A-802 RAMESHBHAI DHINAGANI	
33	17-06-2016	200000	B1001 DR.D.M SIDAPARA	
39	22-06-2016	3037000	B-1002 BABHUBHAI PATEL	
28	15-06-2016	6500000	B-1002 RAMESHBHAI DHINGI	
16	08-06-2016	6250000	B-401 RITESHBHAI HADVANI	
2	11-04-2016	1000000	B-402 ANKIT BHANVADIA	
26	14-06-2016	100000	B-501 SURESHBHAI VACHHANI	
13	29-05-2016	150000	B-601 HARISHBHAI SINGALA	
7	29-04-2016	100000	B-701 PRABHUBHAI PATEL	
21	09-06-2016	7500000	B-801 AJAYBHAI PATEL	
30	15-06-2016	2036000	B-801 HITESHBHAI FALDU	
3	20-04-2016	325000	B-802 GIRISHBHAI PATEL	
8	19-05-2016	325000	B-802 GIRISHBHAI PATEL	6.5
41	22-06-2016	325000	B-802 GIRISHBHAI PATEL	
43	23-06-2016	1300000	C-101 VIJAYBHAI BHIMANI	
1	16-04-2016	650000	C-202 ADV MADHAV DAVE	
6	15-04-2016	50000	C-202 ADV MADHAV DAVE	7
5	25-04-2016	11000	C-602 VITHALBHAI GARADA	
10	27-05-2016	1000000	C-701 RAMESHBHAI BHALODIA	10
4	20-04-2016	275000	C-802 VASANTBHAI PATEL	
9	19-05-2016	275000	C-802 VASANTBHAI PATEL	5.5
42	22-06-2016	275000	C-802 VASANTBHAI PATEL	
40	22-06-2016	500000	C-901 MAYANKBHAI PATEL	
11	26-05-2016	251000	CHANDUBHAI LIMBANI	
31	15-06-2016	1000000	D-501 VIPULBHAI PADALIA	
20	09-06-2016	200000	D-801 NARENDRABHAI BHALODIA	
23	13-06-2016	50000	D-901 PRAVINBHAI PATEL	

12	24-05-2016	1000000	E-1101 HITESHBHAI KALAWADIA	
14	01-06-2016	2500000	E-1101 HITESHBHAI KALAWADIA	35
18	09-06-2016	3000000	E-1101 HITESHBHAI KALAWADIA	65
29	14-06-2016	1600000	E-1101 HITESHBHAI KALAWADIA	
32	16-06-2016	1800000	E-1101 HITESHBHAI KALAWADIA	99
24	13-06-2016	100000	E-601 PRAVINBHAI PATEL	
34	18-06-2016	6000000	E-802 MANISHBHAI KANERIA	
36	22-06-2016	2798000	RITESHBHAI HADVANI	
37	22-06-2016	2798000	RITESHBHAI HADVANI	
				TOTAL

8,06,92,000.00

1	08-06-2016	11000	VITHALBHAI TOKEN RETURN	FLAT CANCEL
2	24-05-2016	1000000	UJASHBHAI	
3	15-06-2016	600000	UJASHBHAI	
4	16-06-2016	400000	UJASHBHAI	20
5	18-06-2016	500000	UJASHBHAI	25
6	30-06-2016	42000	LAXMAN SALARAY 1/4 TO 30/6	
7	30-06-2016	30000	SHANTIKAK SALARAY 1/4 TO 30/6	



*Now, the contention of the assessee implies that it was in receipt of payment for extra work, when even the partnership firm has not been constituted and the land for the said project has not been purchased. Again, as discussed supra, the only extra work as per the brochure would be interior and furniture. For this, huge cash has been collected. No details of such extra work, agreement, etc have been filed. Thus it is clear that this is not cash for extra work but cash on money.”*

**19. The assessing officer, about claim of refund of “on money”, concluded as follows:**

*“The assessee, in the present working, has claimed large amount as refund of on money receipts. Some of such entries are appearing in the seized excel sheet DWH.xls. Such entries are considered and the same is reduced from the gross on money receipts. However, for the remaining claim of refund of on money, which is not appearing in the seized document, is without any basis. No credit of the same is allowable as there is no evidence of such refund in the seized documents. It might be possible that the assessee might impress upon the buyers to register the final document in the name of some close family member, just to take the plea subsequently that, the on money is recorded in the name of X, whereas, the final sale deed is registered in the name of Y. Hence, this claim is rejected.*

*Treatment of claim of expenses as per seized document*

*On perusal of the seized DWH.xls file it can be seen that the said excel file consists of 9 worksheets viz; Collection, Payment, July-16, AUG-16, land, WH WRK, NP-CP, CP FLAT, NP FLAT. It is seen from the seized data contained in DWH.xls that, there are following cash expenses:*

Total Expense		Amount Rs.
Collection Sheet		25,72,000.00
Payment Sheet		15,28,600.00
July-16 Sheet		50,40,800.00
Aug-16 Sheet		10,18,57,000.00
WH-WRK		25,38,400.00
NP-CP Sheet		-
		<b>11,35,36,800.00</b>
Less. Cheque Amount		25,00,000.00
	<b>Total</b>	<b>11,10,36,800.00</b>

*The total of cash expenses works out to Rs. 11,10,36,800/- which includes land expenses of Rs. 10,00,00,000/-. Further, as per the discussion supra the assessee-firm has also made cash expenses for the possession of the land on which the project is developed. The total cash expense made in cash for the possession of the land by the assessee firm is Rs. 49,59,08,110/-. As, Rs.10,00,00,000/- expense on legal dispute has already been considered in the above discussion, therefore, remaining Rs.39,59,08,110/- expense in cash also has been incurred for the purpose of business. Therefore, the overall expenses incurred by the assessee firm as per seized material is as follows:*



Description	Amount
Land Expense	49,59,08,110
Other than Land Expense	1,10,36,800
<b>Total Expenses</b>	<b>50,69,44,910</b>

*Since these are forming part of the seized documents and as these are incurred for the business of the assessee, hence, the same are recognized as expenditure. These expenses are however made in cash which renders them liable for disallowance either u/s 37 or Section 40A(3) of the Income Tax Act, 1961. Furthermore, the onus is upon the assessee to prove the genuineness of the expenses and the assessee has failed to discharge this onus. To add to this, violation of provisions of section 40(a)(ia); 40A(2), etc also needs to be factored in. Besides loss of revenue due to evasion of tax by third parties viz., the contractors, unaccounted cash flow flowing due to cash loans, etc are also required to be factored in. Further, expenses pertaining to purchase of Land (other than Rs.10,00,00,000/-) has not been claimed by the assessee. Therefore, these expenses are not allowed.*

**20. Based on the above facts, the on money receipts during the year, was computed by the assessing officer based on the seized material, as under.**

*Appearing in DWH.xls file (Work sheet named CP-NP Flat)*



DATE	PARTICULARS	RECEIPT	PAYMENT	BAL	
21-04-2017	B1202 MAHESH KACHVALA	1100000			
24-04-2017	B1202 MAHESH KACHVALA	1500000			
02-04-2017	D1002 BHAVNABEN MAKADIA	91000			
30-04-2017	B1102 MANIBEN SHINGALA CP	1000000			
28-04-2017	NP		2600000		
	TOTAL		2600000	-2600000	
	BALANCE CF.				



01-05-2017	B1202 KACHVALA	MAHESH	900000			
03-05-2017	B1102 SHINGALA CP	MANIBEN	1000000			
02-05-2017	D1002 MAKADIA	BHAVNABEN	1000000			
04-05-2017	D1002 MAKADIA	BHAVNABEN	3000000			
04-05-2017	NP			3000000		
05-05-2017	NP			4400000		
10-05-2017	D1002 MAKADIA	BHAVNABEN	800000			
11-05-2017	NP			1000000		
13-05-2017	B1202 KACHVALA	MAHESH	500000			
13-05-2017	NP			4000000		
16-05-2017	B1202 KACHVALA	MAHESH	100000			CQ WH IN
29-05-2017	C1202	ROHAN VAIDYA	500000			



	TOTAL		12400000	-12400000	
	BALANCE CF.				
03-06-2017	C1202 ROHAN VAIDYA	1200000			
03-06-2017	C1202 ROHAN VAIDYA	1800000			CQ WH IN
14-06-2017	A801 VIPUL GODHANI	500000			
14-06-2017	NP		500000		
15-06-2017	A801 VIPUL GODHANI	4000000			
16-06-2017	C1202 ROHAN VAIDYA	700000			
16-06-2017	C1202 ROHAN VAIDYA	1400000			
05-06-2017	C1202 ROHAN VAIDYA	400000			CQ WH IN
26-06-2017	G702 BHUPATBHAI RAHEKA CP	200000			
26-06-2017	B1202 MAHESH KACHVALA	970000			
	TOTAL		500000	-500000	



		BALANCE CF.			
05-07-2017	NP		4000000		
08-07-2017	D1002 BHAVNABEN MAKADIA	6840000			
08-07-2017	D1002 BHAVNABEN MAKADIA		695000		INT REBATE
13-07-2017	NP		2000000		
18-07-2017	NP		7500000		
19-07-2017	B1102 MANIBEN SHINGALA CP	1220000			
22-07-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
25-07-2017	B1202 MAHESH KACHVALA	500000			
25-07-2017	D201 DR ASHISH GANATRA CP	4160000			
28-07-2017	NP		6500000		
28-07-2017	D201 DR ASHISH GANATRA CP	2500000			CQ IN WH
TOTAL			20695000	-20695000	



		BALANCE CF.			
06-08-2017	E901 PRASHANT KALAWADIA	100000			
11-08-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
11-08-2017	NP		5000000		
	TOTAL	1100000	5000000	-3900000	
		BALANCE CF.			
09-09-2017	A801 VIPUL GODHANI	1000000			
09-09-2017	G702 BHUPATBHAI RAHEKA CP	1000000			
08-09-2017	E901 PRASHANT KALAWADIA	1000000			
08-09-2017	NP		1000000		
25-09-2017	D1201 ATUL DOSHI	4500000			
21-09-2017	D101 HARISH MEHTA	111000			
21-09-2017	NP		111000		



29-09-2017	D1201 ATUL DOSHI		6230000		
29-09-2017	NP			6230000	
	TOTAL			7341000	-7341000
	BALANCE CF.				
03-10-2017	NP			4500000	
08-10-2017	A801 VIPUL GODHANI		500000		
11-10-2017	E901 PRASHANT KALAWADIA		3000000		
03-10-2017	F502 HITESH RANPARIYA		5000000		CQ IN NP
05-10-2017	F502 HITESH RANPARIYA		2455000		
24-08-2017	F502 HITESH RANPARIYA		2100000		
06-09-2017	F502 HITESH RANPARIYA		5000000		
24-08-2017	NP			2100000	BAL WITH NP
06-09-2017	NP			5000000	



05-10-2017	NP		7455000		24.55+50
10-10-2017	D101 HARISH MEHTA	700000		CQ IN NP	
11-10-2017	D101 HARISH MEHTA	1500000		CQ IN NP	
11-10-2017	NP		2200000		15+7
11-10-2017	NP		3000000		
05-09-2017	B1102 SHINGALA CP MANIBEN	1200000			
17-10-2017	C1202 ROHAN VAIDYA	100000		CQ IN WH	
12-08-2017	D201 DR ASHISH GANATRA CP	740000		CQ IN WH	
	TOTAL	22295000	24255000	-1960000	
	BALANCE CF.				
09-11-2017	B1102 SHINGALA CP MANIBEN	1200000			
09-11-2017	G702 RAHEKA CP BHUPATBHAI	2000000			
25-10-2017	D101 HARISH MEHTA	1500000			



26-10-2017	D101 HARISH MEHTA	400000			
26-10-2017	D101 HARISH MEHTA	460000		CQ LLP	IN
28-11-2017	E901 PRASHANT KALAWADIA	3000000		CQ LLP	IN
26-11-2017	NP D101 15+4.6+4		2360000	CQ LLP	IN
28-11-2017	NP E-901		3000000		
	TOTAL		5360000		-5360000
	BALANCE CF.				
12-12-2017	D1201 ATUL DOSHI	2500000		TOTAL 135	
12-12-2017	NP D1201		2500000		
17-12-2017	A801 VIPUL GODHANI	1000000			
	TOTAL	3500000	2500000	1000000	
	BALANCE CF.				
02-01-2018	D101 HARISH MEHTA	700000			
02-01-	NP D101 15+4.6+4		700000		



2018					
25-11-2017	C1202 ROHAN VAIDYA	61000			
	TOTAL	761000	700000	61000	
	BALANCE CF.				
07-02-2018	E901 PRASHANT KALAWADIA	2828000			
07-02-2018	NP E-901		2828000		
19-02-2018	B1202 MAHESH KACHVALA	5000000			
19-02-2018	NP B1202		5000000		
20-02-2018	A801 VIPUL GODHANI	4000000			
20-02-2018	NP A801		4000000		
24-02-2018	G702 BHUPATBHAI RAHEKA CP		5200000		
	TOTAL		17028000	17028000	
	BALANCE CF.				
05-03-2018	C1202 ROHAN VAIDYA	4494100			



06-03-2018	NP C1202		4400000		
23-02-2018	E801 ATULBHAI SANTOKI	1000000			
23-02-2018	NP E801		1000000		
01-03-2018	E801 ATULBHAI SANTOKI	1000000			
01-03-2018	NP E801		1000000		
16-03-2018	B1102 SHINGALA CP MANIBEN	1200000			
31-03-2018	CP PERSONAL		3681100		
	TOTAL		10081100	-10081100	
	BALANCE CF.				
26-03-2018	F502 RANPARIYA HITESH	1500000			H.HR/DP
27-03-2018	E801 ATULBHAI SANTOKI	1500000			



06-03-2018	NP C1202		4400000		
23-02-2018	E801 ATULBHAI SANTOKI	1000000			
23-02-2018	NP E801		1000000		
01-03-2018	E801 ATULBHAI SANTOKI	1000000			
01-03-2018	NP E801		1000000		
16-03-2018	B1102 MANIBEN SHINGALA CP	1200000			
31-03-2018	CP PERSONAL		3681100		
	TOTAL		10081100	-10081100	
	BALANCE CF.				
26-03-2018	F502 HITESH RANPARIYA	1500000			H.HR/DP
27-03-2018	E801 ATULBHAI SANTOKI	1500000			

2. The summary of the above three sheets are as under:-

3. SN	Work sheet details	Amount
1	CP-NP FLAT	13,91,16,100.00
	Gross on money collected	13,91,16,100.00
	Less	
	Cheque Received	1,63,00,000.00
	Net cash on money during the year	<b>12,28,16,100.00</b>



21. In view of the discussions made supra, an addition of Rs.12,28,16,100/- was made by the assessing officer, as business income of the assessee during the year, as per the summary of the above three sheets, as under:

SN	Work sheet details	Amount
1	CP-NP FLAT	13,1,16,100.00
	Gross On-money Collected	13,91,16,100.00
LESS		
	Cheque Received	1,63,00,000.00
	Net cash on-money during the year	12,28,16,100.00

an addition of Rs.12,28,16,000/- is and as business income of the assessee during the year.

22. Aggrieved by the addition of Rs.12,28,16,000/-, made by the Assessing Officer, the assessee carried the matter in appeal before Ld.CIT(A) who has partly allowed the appeal of the assessee. During the appellate proceedings, the assessee submitted new figures/ extrapolated figures, before the learned CIT( A), which the learned CIT(A) accepted, without calling the remand report from the assessing officer in respect of extrapolated figures, and reduced the addition from 100% to 15%, observing as follows:

*11.9 Hence, looking to the nature of various business, various discrepancies found during the search proceedings, various judicial pronouncements (supra), a settled issue that in case of unrecorded sales, the profit margin remains higher than the recorded sales, the lower profit margin shown in the books of account as compared to peers, the location and type of project taken by the assessee, the net income on account of the grounds of appeal relating to Real Estate business is taken at 15% which comes to Rs.14,71,73,145/- is confirmed. The year wise income under the head business is arrived accordingly and detailed hereunder:*



Assessment Year	Estimated extrapolated ON-money	On accrual and @ 15% as per unaccounted receipts
A.Y.2020-21	1,00,80,000	15,12,000
A.Y.2021-22	10,82,66,000	1,62,39,900
A.Y.2022-23	27,13,14,300	4,06,97,145
A.Y.2023-24	59,14,94,000	8,87,24,100
<b>Total</b>	<b>98,11,54,300</b>	<b>14,71,73,145</b>

11.9.1 . In a nutshell the addition confirmed vis-a-vis additions made on account of unaccounted receipts in respect of Real Estate business of the appellant is summarised as under:

Particulars	Cash on-money as per seized soft data	Amount of addition	Receipts brought to tax and extrapolated by appellant.	Addition confirmed in the hands of the appellant
2017-18	23,04,62,112	23,04,62,112	-	-
2018-19	12,30,64,420	12,30,64,420	-	-
2019-20	3,70,29,000	3,70,29,000	-	-
2020-21			1,00,80,000	15,12,000
2021-22			10,82,66,000	1,62,39,900
2022-23			27,13,14,300	4,06,97,145
2023-24			59,14,94,000	8,87,24,100
<b>Total</b>	<b>39,05,55,532</b>	<b>39,05,55,532</b>	<b>98,11,54,300</b>	<b>14,71,73,145</b>

11.10 Considering above facts, the AO is directed to tax undisclosed income as per tabular chart in para 11.9 & 11.9.1 herein above on year-to-year basis and also relief would be provided accordingly.

11.11 In view of the above discussion and factual matrix of the case, the AO is directed to delete the addition made for the year under consideration i.e. A.Y.2017-18. Thus, the grounds of appeal no. 12 to 25 are partly allowed.

23. Aggrieved by the order of Ld.CIT(A), the Revenue is in appeal before us.

24. Learned CIT-DR for the Revenue, submitted written submissions, and case law before the Bench, which we have gone through, and the same are not being reproduced here for the sake of brevity. Apart from written submissions, learned DR argued that during the appellate proceedings, the assessee submitted extrapolated figures/ new figures, which were not before the assessing officer, and learned CIT(A) accepted the extrapolated figures/ new figures furnished by



the assessee, without application of mind and reduced the 100% addition made by the assessing officer to 15% only, without providing an opportunity to the assessing officer to examine, the extrapolated figures/ new figures, so submitted by the assessee. Therefore, learned DR prayed the Bench, that matter may be remitted back to the file of the learned CIT(A) with the direction to the learned CIT(A) to call a proper remand report in respect of extrapolated figures/ new figures.

25. Without prejudice to the above, learned DR for the revenue submitted that assessing officer has made the addition based on the incriminating documents/ seized documents, and these incriminating, documents/ seized documents, have been clearly corroborated with statements of partners and accountant of the assessee, taken during the search proceedings and post search proceedings, therefore, 100% addition made by the assessing officer may be sustained.

26. Learned DR for the revenue further submitted that during the assessment proceedings, the assessing officer has followed the proper procedure mentioned in section 153A/ 153C etc, and recorded the proper satisfaction and taken the approval from proper authority.

27. Learned DR for the revenue also submitted that during the assessment proceedings, the assessing officer has made the addition based on the seized documents and evidences, and these documents and evidences, were corroborated with the statements taken by the search team and statement taken by the assessing officer in post search period, further, these documents and evidences were also corroborated with some of the entries, which were mentioned in the audited books of accounts of the assessee, which corroborates with the seized material, therefore, opportunity of cross examination need not be provided to the assessee, as the additions were made by the assessing officer, based on the documents and



evidences, which clearly speak about on- money and black money introduced by the partners in the partnership firm and on money taken by the assessee from its customers, on which, assessee has never paid the tax, therefore, 100% percent addition made by the assessing officer may be sustained, as the regular expenses had already been claimed by the assessee in the audited books of accounts.

28. On the other hand, Ld. Counsel for the assessee submitted written submission, and case law before the Bench, which we have gone through, and the same are not being reproduced here for the sake of brevity. The sum and substance of the written submissions of the assessee are that respondent is a partnership firm, Indian resident, constituted under the provisions of Indian Partnership Act, 1932 and engaged in the business of real estate construction. The respondent had developed one project known as "Decora West Hill" at Off Kalavad Road, Rajkot. The Land was purchased by the respondent firm. The project consists of Seven Towers, namely, Tower-A. Tower-B, Tower-C. Tower-D, Tower-E, Tower-F and Tower-G. Out of which Tower-A to Tower-D consists of 24 units each and Tower-E to Tower-G consists of 22 units each. Therefore, total number of Flats in the project is 162. A search and seizure action u/s 132 of the Income Tax Act 1961 was carried out at the various builders / financiers in and around Rajkot Region vide "Operation Star Alliance" on 26.09.2018. One such group was Decora group. The residential premises of Shri Himanshu Raiyani, one of the accountant(s) of the Decora Group was also searched. During the search one pen-drive was found and seized which contained backup of accounts for various projects allegedly including data of Decora West Hill. Since the documents were allegedly related to respondent, the proceedings u/s 153C were initiated. In response to the notice u/s 153C of the Act, the respondent filed its return of income without changing particulars of income. The captioned data seized by the search team is neither in the handwriting of the Partners of the respondent nor carry their signatures. The captioned data does not corroborate with the



documents found during search action at the premises of the partners of the respondent and survey action at the premises of the firm. Therefore, under no circumstances such third party document could be used against the respondent. Since the assessee has accepted the ownership of the documents and evidences found by the search team, and based on these documents, the assessee submitted extrapolated figures/ new figures before the Id CIT(A). These extrapolated figures/ new figures are based on future projection, therefore, addition sustained by the Id. CIT(A) at the rate of 15%, based on such extrapolated figures/ new figures, may be sustained in the hands of the assessee.

29. The Ld. Counsel for the assessee further submitted that an opportunity of cross examination, was not provided to the assessee, which violates the principle of natural justice.

30. The Ld. Counsel for the assessee also submitted that the assessing officer has not followed the procedure mentioned in section 153A/ 153C of the Act.

31. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. The Id.Counsel for the assessee has mentioned that in absence of the opportunity to cross examine of Shri Himanshu Raiyani, the additions made are bad in law. The Id.CIT(A) noticed that it is a fact of the case that Shri Himanshu Raiyani is the accountant of the one of the key persons of the assessee's group and the assessee is very well aware of the facts of the case. During the course of assessment proceedings, no document or evidence has been found to be used at the back of the assessee. The assessee during the course of assessment proceedings has duly offered the explanation on the seized material and by large in its submission has accepted that the documents



on the basis of which assessment have been framed pertain to the assessee. A mere disagreement in interpretation of documents cannot be a ground to state that there has been any violation of grounds of natural justice. The Id.CIT(A) also observed that entire addition has been made based upon investigation report/search report in case of search carried out in the case of Decora Group including the assessee's case from which it is revealed that the assessee had unaccounted cash transaction, which has bearing on the undisclosed income of the assessee. For this, Id. CIT(A) placed reliance on decision of Hon'ble Gujarat High court in the case of Amrapali Fincap Ltd. V/s Income Tax Settlement Commission [2016] 73 taxmann.com 97 wherein it is held that "Where Settlement Commission denied assessee for cross-examination of different witnesses, whose statements were recorded behind its back, and relying upon statements of these witnesses to some extent rejected application for settlement, since Settlement Commission had also taken into consideration other facts available on record, there was no scope for interference." It is pertinent to note that even jurisdictional ITAT and High court on identical facts have decided similar issue in favour of department. In this case, the assessee had requested the Settlement Commission for cross-examination of one Somish C. Shah(S), accommodation entry provider, whose statements had been relied upon by the Department. Hon'ble Settlement Commission had rejected application of assessee who filed a writ against order of Settlement Commission raising denial of cross-examination as one of the contentions. The Hon'ble Jurisdictional High Court held that since Settlement Commission, besides relying upon statements of 'S' and other witnesses, had also taken into consideration other facts available on record, there was no scope for interference in order of Settlement Commission." In this case, issue was also before Hon'ble High court that Hon'ble Settlement Petition has rejected contention of assessee for Cross examining Mr. Shirish Shah and such order was upheld by Hon'ble High court. Allahabad High Court in the case of Motilal Padampat Udyog Ltd. Vs. CIT 293 ITR 565 after considering the judgment of Supreme Court in the case of



Krishna Chand Chela Ram v CIT has held that right of cross examination from whom the AO has collected the evidence is not required under the income tax law and such assessment was valid under the Act. In the instant case, the copies of the rough cash books and the statements of the partners of 'V' which were recorded, had been provided to the assessee and, in fact the assessee had also submitted its reply. In the letter an opportunity to cross examine was asked for only in case the statements had not been recorded. As in the instant case, the assessee had proper opportunity to controvert the material gathered by the assessing authority and used against it, there had been compliance of the principle of natural justice.

32. The Id.CIT(A) also noticed that that Shri Nikhil Patel, Partner and key person the Decora group in his statement recorded during the post search proceedings on 06.03.2019 has admitted that the transaction recorded in the seized documents pertain to the assessee and some were recorded and some were not recorded in the books of account and notings in such seized material pertains to assessee, hence there is live nexus between statement recorded and seized documents found and seized from the residence of Shri Himanshu Raiyani (accountant). In these circumstances, the opportunity of cross examination is not needed.

33. During the course of hearing before the Bench, learned counsel for the assessee also argued that assessee has accepted the ownership of the documents and evidences found by the search team, however, the addition made by the learned CIT(A), on the basis of on-money, at the rate of 15% may be sustained in the hands of the assessee, as the addition sustained by the learned CIT(A) is reasonable and no further addition should be made in the hands of the assessee, based on the seized documents. This clearly proves that assessee is owner of all the documents and evidences, seized by the search team and these documents pertain to assessee. Therefore, based on these facts and circumstances, we uphold the order passed by the learned CIT(A) to the effect that since the additions were



made by the assessing officer based on the seized documents and after giving proper opportunity of explanation and hearing to the assessee, therefore, opportunity of cross examination is not required and hence we confirm the findings of the learned CIT(A) in this regard.

34. We also note that during the assessment proceedings, the assessing officer has followed the proper procedure mentioned in section 153A/ 153C etc, and recorded the proper satisfaction and taken the approval from proper authority.

35. On merit, we note that during the appellate proceedings, the assessee submitted before the learned CIT(A), following working, which was not filed before the assessing officer. The said working reads as under:

Assessment Year	%	Area Sq. Meter	Accounted Sale Receipts	Alleged On Money Receipts	Estimated Net Income @ 7% of On Money Receipt
2020-21	0.97	488	14940000	10080000	705600
2021-22	12.50	6305	221050000	108266000	7578620
2022-23	25.78	13002	436630000	271314300	18992001
2023-24 (Sale Deed executed)	16.25	8196	266536000	196919000	13784330
2023-24 (Booking)	35.84	18076	649534000	394575000	27620250
Kept by Partners	8.65	4364	0	0	0
<b>Total</b>	<b>100.00</b>	<b>50432</b>	<b>1588690000</b>	<b>981154300</b>	<b>68680801</b>

We note that there is no finding of the learned CIT( A) that the above said working submitted by the assessee is based on the seized documents or evidences. What are the sources of the data mentioned in the above working, has also not been



examined by the Id CIT(A). The data mentioned in the above working are from seized documents or evidences or from the third-party evidences or from the audited books of accounts of the assessee, there is no such findings of the Id. CIT(A) and therefore we find that Id. CIT(A) has accepted the above working blindly and without examination thereof. As per section 250(6) of the Income Tax Act, it is the duty of the CIT(A) that while writing order there should be points for determination, the decision, thereon and the reasons for the decision. Therefore, we find that order passed by the Ld. CIT(A) is not as per the mandate of the provisions of section 250(6) of the Act. The learned CIT (A) has not himself, examined the source data in the above working, with help of seized documents and evidences, nor given an opportunity to the assessing officer to examine the above working. Therefore, based on the above working, the addition reduced by the Id CIT(A) from 100% ( addition made by AO) to 15%, is not acceptable and therefore rejected.

36. Hence, we note that under the Income-tax Act, 1961, the powers of the CIT(A) are wide, but not arbitrary. There is duty to examine evidences and give reasons and as per section 250(6) of the Act, the order of CIT(A) must be a speaking order, stating: (i) the points for determination, (ii)the decision thereon, and the reasons for the decision. If the CIT(A) accepts a “working” submitted by the assessee, he must examine it and record reasons for accepting or rejecting it, wholly or partly. Merely accepting a working without examination and then making an ad-hoc estimation (15%) violates section 250(6) of the Act. There is also violation of principles of natural justice, as the working was not examined by CIT(A) himself, and no opportunity was given, (whether to the assessee to explain the basis, or to the AO to rebut it, if it amounted to fresh evidence etc has not be ascertained by Id.CIT(A).This amounts to violation of audi alteram partem (right to be heard),especially if the working was relied upon for granting relief, without giving opportunity to the assessing officer. Besides, Ad-hoc



estimation without basis is impermissible. While appellate authorities can resort to estimation, such estimation must be based on material on record, supported by reasoning or comparable cases, and not arbitrary or thumb-rule based. Ad-hoc reduction of additions without cogent reasoning is unsustainable in law. The action of the CIT(A) in reducing from 100% addition to 15%, purely on estimation, without examining the working himself and without giving proper opportunity, to AO, is not acceptable. Based on these facts, we should set aside the order of CIT(A), and restore the matter back to the file of CIT(A) for fresh adjudication.

37. We note that during the appellate proceedings, the assessee submitted extrapolated figures/ new figures, which were not before the assessing officer, and learned CIT(A) accepted the extrapolated figures/ new figures furnished by the assessee, without application of mind and reduced the 100% addition made by the assessing officer to 15% only, without providing an opportunity to the assessing officer to examine, the extrapolated figures/ new figures, so submitted by the assessee. The findings of the learned CIT(A) pertaining to extrapolated figures/ new figures, so submitted by the assessee, is reproduced below for ready reference:

*11.8.1 Against the said amount of on-money as per seized documents of Rs.39,05,55,532/-, the assessee has suo moto extrapolated the same and has adopted amount at Rs.98,11,54,300/- as reproduced supra. Considering the said higher value and it has been noticed that the profit ratio of the assessee as per its regular books of accounts are as under:-*

Assessment Year	Gross receipt as per books	Returned income
2020-21	1,49,40,000	69,77,160
2021-22	22,10,50,000	1,83,91,710
2022-23	4,36,63,000	3,81,69,290
Total	67,26,20,000	6,35,38,160

Which works out to be the Net income @ 9.45% of the Gross receipt as recorded in the Books of accounts.

*11.8.2 In view of the above, the average net profit comes 9.45% as per the books of account. However, it is also a fact that the assessee has made certain unaccounted*



expenses and unaccounted sale proceeds also which could not be denied. So, considering the unaccounted transactions and to pluck the leakage of revenue the books of accounts are rejected invoking the provisions of section 145 of the I.T. Act.

11.9 Hence, looking to the nature of various business, various discrepancies found during the search proceedings, various judicial pronouncements (supra), a settled issue that in case of unrecorded sales, the profit margin remains higher than the recorded sales, the lower profit margin shown in the books of account as compared to peers, the location and type of project taken by the assessee, the net income on account of the grounds of appeal relating to Real Estate business is taken at 15% which comes to Rs.14,71,73,145/- is confirmed. The year wise income under the head business is arrived accordingly and detailed hereunder:

Assessment Year	Estimated extrapolated ON-money	On accrual and @ 15% as per unaccounted receipts
A.Y.2020-21	1,00,80,000	15,12,000
A.Y.2021-22	10,82,66,000	1,62,39,900
A.Y.2022-23	27,13,14,300	4,06,97,145
A.Y.2023-24	59,14,94,000	8,87,24,100
<b>Total</b>	<b>98,11,54,300</b>	<b>14,71,73,145</b>

11.9.1 . In a nutshell the addition confirmed vis-a-vis additions made on account of unaccounted receipts in respect of Real Estate business of the appellant is summarised as under:

Particulars	Cash on-money as per seized soft data	Amount of addition	Receipts brought to tax and extrapolated by appellant.	Addition confirmed in the hands of the appellant
2017-18	23,04,62,112	23,04,62,112	-	-
2018-19	12,30,64,420	12,30,64,420	-	-
2019-20	3,70,29,000	3,70,29,000	-	-
2020-21			1,00,80,000	15,12,000
2021-22			10,82,66,000	1,62,39,900
2022-23			27,13,14,300	4,06,97,145
2023-24			59,14,94,000	8,87,24,100
<b>Total</b>	<b>39,05,55,532</b>	<b>39,05,55,532</b>	<b>98,11,54,300</b>	<b>14,71,73,145</b>

11.10 Considering above facts, the AO is directed to tax undisclosed income as per tabular chart in para 11.9 & 11.9.1 herein above on year-to-year basis and also relief would be provided accordingly.

11.11 In view of the above discussion and factual matrix of the case, the AO is directed to delete the addition made for the year under consideration i.e. A.Y.2017-18. Thus, the grounds of appeal no. 12 to 25 are partly allowed.”



38. From the above findings of the learned CIT(A), it is vivid that assessee had submitted during the appellate proceedings, **suo-moto**, ( not asked by ld.CIT(A) to submit the extrapolated figures/ new figures). These **suo-moto, extrapolated figures/ new figures, were neither examined by the assessing officer, during the assessment proceedings, nor ld.CIT(A) has himself examined the same. Whether these extrapolated figures/ new figures are taken from the seized documents or not, or these extrapolated figures/ new figures are taken from third-party data, have not been ascertained by the learned CIT (A), and there is no finding of learned CIT(A) to that effect in the appellate order hence no source of these extrapolated figures/ new figures have neither been examined by the ld.CIT(A) nor by assessing officer. Therefore, based on these extrapolated figures/ new figures, the findings given by the learned CIT(A) for reducing the addition made by the assessing officer from 100% to 15%, is not acceptable.**

39. As per the procedure mentioned in section 250 of the Act, the learned CIT(A), if he requires additional information and data from the assessee, then in that circumstances, the learned CIT(A) should issue the notice to the assessee to furnish the additional information and data. However, no notice has been issued by the learned CIT( A) to require the extrapolated figures/ new figures from the assessee for adjudication. It is clear from the findings of the learned CIT(A) that these extrapolated figures/ new figures were submitted by the assessee, suo-moto ( the assessee submitted these arbitrary extrapolated figures/ new figures from his side for his benefit), and learned ld CIT(A) nowhere asked the assessee to submit these arbitrary extrapolated figures/ new figures, for adjudication, as it is evident from the following para in the order of ld.CIT(A):

*“.....the assessee has suo moto extrapolated the same and has adopted amount at Rs.98,11,54,300/- as reproduced supra.....”*



From the above, it is clear that ***the assessee has suo moto extrapolated the same and has adopted amount at Rs.98,11,54,300/-***, which has been accepted by the learned CIT(A), without application of mind. This clearly shows non-application of mind by the learned CIT(A), hence, we find that there is a loss to the revenue because of non-application of mind by ld CIT(A), as the addition made by the assessing officer at the rate of 100%, was reduced by the learned CIT(A) to 15% without application of mind. Hence, findings of the learned CIT(A), on merit, is rejected, as amount adopted by assessee Rs.98,11,54,300/- was accepted by CIT(A), without examine the same.

40. We note that Shri Nikhil Patel (son of Jamanbhai Patel) had admitted that the digital data so found from the residential premises of Shri Himanshu Raiyani, related to Decora West Hill Projects developed by the assessee. The assessee has also admitted that in the page no.2, some transactions are reflected in the books of accounts and some transactions are not reflected in the books of accounts. The statement of Shri Nikhil Patel dated 06.03.2019, is reproduced by the assessing officer, on page No.3 and 4 of the assessment order. In the statement, the partners and accountant of the assessee admitted that transactions mentioned in the seized documents, pertains to the assessee-firm. Nowhere, during the course of post search proceedings and during assessment proceedings, Shri Himanshu Raiyani has made any contrary statement to what he had already admitted and deposed. Since the seized documents related to/pertained to/belonged to the assessee and as the same has been confirmed by Shri Himanshu Raiyani, from whose possession these documents were found and seized and also confirmed by Shri Nikhil J Patel, one of the key member of the major stake holder (M/s. DECORA HOUSING LLP), therefore, proceedings u/s. 153C was initiated, after recording satisfaction. The notice u/s. 153C was issued on 19.11.2019 and we find that assessing officer has followed the proper procedure mentioned in the Act. The 'on money' receipt is also in cash and the unaccounted investments made in



acquiring land, is also paid in cash. However, Learned CIT(A) did not examine the issue in the light of the findings given by the assessing officer and completely overlooked the findings of the assessing officer.

41. We also note that when real figure of on money/ black money is available before Id. CIT(A), the Id. CIT(A) should not have accepted the extrapolated figures/ new figures, furnished by the assessee, suo-moto. In the assessee`s case, the past history is also not reliable since the assessee is indulging in collecting huge on-money in cash and inflating expenditure by obtaining bill of purchase and collecting cash in lieu of cheque issued. Here, peer comparison is also not possible due to factoring of on-money receipts. Therefore, the best alternative to take basis of the cash receipt and cash expenditure as per the seized soft data to determine the taxable income of the assessee. We note that AO made addition on receipt basis of “on-money”, whereas Ld. CIT(A) made addition on **extrapolated** figures, which is neither based on accrual basis of accounting nor cash basis of accounting nor it falls in mixed accounting. When books of account were rejected then Ld. CIT(A) should have made the addition based on the receipt of “on money”, which the learned CIT(A) failed to do so. We also note that the elaborate findings of the assessing officer, which is there in the assessment order, has not been rebutted and rejected by the learned CIT(A). The Id.CIT(A) applied his own method of extrapolated figures, which is not acceptable, as these extrapolated figures is neither based on accrual system of accounting, nor based on cash system of accounting or mixed accounting. We are of the view that when books of accounts are rejected then “on-money” should be taxable on receipt basis. Hence, we are not inclined to accept the contention of the Id.CIT(A), in adopting extrapolated figures/ new figures in any manner. On a careful reading of the Ld.CIT(A) order and the findings thereon, we find valid reason to interfere with the decision and findings of the Ld.CIT(A), as noted above. Therefore, in the interest of justice, we set aside the order of Ld.CIT(A) and remit the matter



back to the file of CIT(A) with a direction to pass fresh order in accordance with law after granting adequate opportunity of hearing to assessee. In addition to the main issue, there are some small grounds of appeals raised by the revenue, such as receipt of cash in lieu of cheque Rs.1,14,22,121/-, reimbursement of expenses Rs.57,000/- and Satakhat expenses, vide appeals pertaining to M/s Shubham Enterprises, these grounds pertain to on-money, hence remitted back to the file of the Id.CIT(A) for fresh adjudication. The assessee is directed to be vigilant and to furnish all details and explanation as needed by Ld.CIT(A) and should not seek adjournment without valid reason. With this direction, the grounds of appeal raised by the Revenue are treated as allowed for statistical purposes.

42. In the result, following appeals of revenue, are allowed for statistical purpose:

- (i). M/s Shubham Enterprises-A.Y. 2015-16- IT(ss)A No. 61/RJT/2023.
- (ii). M/s Shubham Enterprises-A.Y. 2016-17- IT(ss)A No. 62/RJT/2023.
- (iii). M/s Shree Ram Enterprises-A.Y.2016-17- IT(ss)A No. 58/RJT/2023.
- (iv). M/s Maruti Enterprises-A.Y.2017-18-IT(ss)A No.59/RJT/2023.
- (v). M/s Maruti Enterprises-A.Y.2018-19-IT(ss)A No.60/RJT/2023.
- (vi). M/s Maruti Enterprises-A.Y.2019-20-IT(ss)A No.228/RJT/2023.

43. Now coming to the revenue`s appeals / assessee`s appeals, which pertain to partners of the above partnership-firms, and associated persons of the above firms/partners:

44. In case of Dhirajlal Raviji Rokad,A.Y 2013-14, IT(ss)A No. 17/RJT/2024- Revenue appeal, after hearing both the parties, we find that Ld.CIT(A) has deleted the addition of Rs. 2,66,80,000/- made, by assessing officer, on account of



unexplained cash investment in the firm M/s. Garden Enterprise for purchase of land. The learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was wrong in making the addition, whereas assessing officer has given the elaborate finding taking into account seized material and corroborative evidence, however, ld.CIT(A) failed to consider the same. Besides, since we have already remitted the case of M/s. Garden Enterprise, to the file of learned CIT(A) for fresh adjudication, and since the issue in this appeal is interconnected and mix, with the appeal of M/s. Garden Enterprise, therefore, this Revenue`s appeal is also remitted back to the file of the learned CIT(A) for fresh adjudication in accordance with Law. For statistical purposes, the appeal of the Revenue, in IT(ss)A No. 17/RJT/2024, is allowed.

45. In the case of M/s Chetan Dhirajlal Rokad, for A.Y 2014-15, in IT(ss)A No. 12/RJT/2024-Revenue appeal, we have heard both the parties and note that Ld.CIT(A) has deleted the addition of Rs. 1,94,95,000/-, made by assessing officer, on account of unexplained cash investment in the company M/s. Aryan Arcade Ltd. The learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was wrong in making the addition, whereas assessing officer has given the elaborate finding taking into account seized material and corroborative evidence, however, ld.CIT(A) failed to consider the same. Besides, since we have already remitted the case of M/s. Aryan Arcade Ltd, to the file of learned CIT(A) for fresh adjudication, and since the issue in this appeal is interconnected and mix, with the appeal of M/s. Aryan Arcade Ltd, therefore, this Revenue`s appeal is also remitted back to the file of the learned CIT(A) for fresh adjudication in accordance with Law. For statistical purposes, the appeal of the Revenue, in IT(ss)A No. 12/RJT/2024, is allowed.

46. In the case of Rohit Kumar M Sanepara, there are two appeals, viz for A.Y. 2017-18, in IT(ss)A No.19/RJT/2024-Revenue appeal and for A.Y. 2018-19, in



IT(ss)A No.20/RJT/2024-Revenue appeal. We have heard both the parties and noted that in assessment year 2018–19, the Ld.CIT(A) deleted cash investment of Rs.2,20,00,000/- for purchase of land. The assessing officer made addition u/s. 115BBE of the Act, and ld.CIT(A) did not consider the elaborate findings of the assessing officer mentioned in the assessment order. The assessing officer reached on the conclusion based on the seized documents, which were corroborated by the assessing officer with statements and other documents.

For assessment year 2017–18, we note that Ld.CIT(A) has deleted the unexplained cash investment of Rs. 100,00,000/- in the firm M/s Maruti Enterprise for purchase of land. The assessing officer made addition u/s. 69B r.w.s. 115BBE of the Act. However, we note that ld.CIT(A) ignored the fact that assessee and firm M/s. Maruti Enterprise as failed to discharge the onus. Besides, since we have already remitted the case of M/s. Maruti Enterprise, to the file of learned CIT(A) for fresh adjudication, and since the issue in this appeal is interconnected and mix, with the appeal of M/s. Maruti Enterprise, therefore, this Revenue's appeal is also remitted back to the file of the learned CIT(A) for fresh adjudication in accordance with Law. For statistical purposes, the appeal of the Revenue, in IT(ss)A No. 19/RJT/2024 and in IT(ss)A No. 20/RJT/2024, are allowed.

47. In the case of Nikhilbhai J. Patel, for A.Y. 2018-19, in IT(SS)A No.13/RJT/2024-Revenue appeal, we have heard both the parties and noted that ld.CIT(A) has deleted the addition of Rs.35,00,000/-, made by the assessing officer on account of unexplained cash investment in firm M/s. Friends Hospitality. The Ld.CIT(A) has also deleted the addition of Rs. 5,50,00,000/-, made by the assessing officer, on account of unexplained cash investment in land situated at Madhapar Rajkot. The learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was



wrong in making the addition, whereas assessing officer has given the elaborate finding taking into account seized material and corroborative evidence, however, Id.CIT(A) failed to consider the same. Since we have remitted the cases of the partnership- firms, to the file of the Id. CIT(A) for fresh adjudication, therefore, this issue is also restored back to the file of the learned CIT(A) for fresh adjudication, as the issue is interconnected and mix with partnership firms, referred above. For statistical purposes, the appeal of the Revenue, in IT(ss)A No. 13/RJT/2024, is allowed.

48. In the case of Shri Chirag Arvindbhai Patel, for A.Y. 2017-18, in IT(ss)A No.22/RJT/2024-Revenue appeal, we have heard both the parties and noted that Ld.CIT(A) deleted unexplained cash investment of Rs. 100,00,000/- for purchase of land. The assessing officer made addition u/s. 69A r.w.s. 115BBE of the Act. However, Id.CIT(A) ignored the fact that assessee and firm both have failed to discharge the onus. The learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was wrong in making the addition, whereas assessing officer has given the elaborate finding taking into account seized material and corroborative evidence, however, Id.CIT(A) failed to consider the same. Since we have remitted the cases of the partnership- firms, to the file of the Id. CIT(A) for fresh adjudication, therefore, this issue is also restored back to the file of the learned CIT(A) for fresh adjudication, as the issue is interconnected and mix with partnership firms, referred above. For statistical purposes, the appeal of the Revenue, in IT(ss)A No. 22/RJT/2024, is allowed.

49. In the case of Jamnadas Purshottam Patel, there are following appeals of revenue and assessee:

- (i) Jamnadas Purshottam Patel, A.Y. 2013-14, IT(ss)A No.15/RJT/2024-Revenue appeal



- (ii). Jamnadas Purshottam Patel, A.Y. 2018-19, IT(ss)A No.16/RJT/2024-Revenue appeal
- (iii). Jamnadas Purshottam Patel, A.Y. 2017-18, IT(ss)A No.60/RJT/2025-Assessee`s appeal

The appeal filed by the assessee in IT(ss)A No.60/RJT/2025 for Assessment Year 2017-18, is barred by limitation by 117 days. The assessee has moved a petition requesting the Bench to condone the delay. We have gone through the petition for condonation of delay, and the sufficient cause explained by the assessee, in the petition for condonation of delay. The learned Counsel adverted our attention to the reasons for condonation of delay before this Tribunal and urged for a benign view and sought condonation of delay of 117 days in filing the appeal before the Tribunal. On the other hand, learned DR for the revenue, opposed the prayer of the assessee for condonation of delay. A perusal of the reasons and sufficient cause explained by the Id. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the delay of 117 days is condoned in filing the appeal.

(a) On merit, we note that in assessee`s appeal in IT(ss)A No.60/RJT/2025 for Assessment Year 2017-18, the solitary grievance of the assessee is that the assessing officer has erred in making addition u/s. 48 of the Act for alleged land swapping of Bedi Land for purchase of project land of M/s Maruti Enterprise, in spite of the fact that the alleged land swapping had never actually happened, therefore, there can be no possibility of receipt of enhanced consideration by assessee for sale of Bedi Land. Accordingly, the assessee is not liable to any enhanced capital gains. Since the case of M/s Maruti Enterprise, has already been remitted back to the file of the learned CIT(A) for fresh adjudication, therefore, this issue is also restored back to the file of the learned CIT(A) for fresh



adjudication, as the issue is interconnected and mix with partnership firms, M/s Maruti Enterprise, referred above.

(b) In case of Revenue's appeal in Jamnadas Purshottam Patel, A.Y. 2013-14, IT(ss)A No.15/RJT/2024, the Ld.CIT(A) has deleted the addition of Rs.2,66,80,000/- made, by the assessing officer, on account of unexplained cash investment in firm M/s. Garden Enterprise for Purchase of land. The learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was wrong in making the addition, whereas assessing officer has given the elaborate findings taking into account seized material and corroborative evidence, however, ld.CIT(A) failed to consider the same. Besides, since we have already remitted the case of M/s. Garden Enterprise, to the file of learned CIT(A) for fresh adjudication, and since the issue in this appeal is interconnected and mix, with the appeal of M/s. Garden Enterprise, therefore, this Revenue's appeal is also remitted back to the file of the learned CIT(A) for fresh adjudication in accordance with Law.

(C) In case of Revenue's appeal in Jamnadas Purshottam Patel, A.Y. 2018-19, IT(ss)A No.16/RJT/2024, we note that the Ld.CIT(A) has deleted the addition of Rs.5,50,00,000/- made, by the assessing officer, on account of unexplained investment u/s. 68B r.w.s. 115BBE of the Act for purchase of land at Madhapar. We note that learned CIT (A) did not consider the findings of the assessing officer and did not mention that why the assessing officer was wrong in making the addition, whereas assessing officer has given the elaborate finding taking into account seized material and corroborative evidence, however, ld.CIT(A) failed to consider the same. Since we have remitted the cases of the partnership- firms, to the file of the ld. CIT(A) for fresh adjudication, therefore, this issue is also restored back to the file of the learned CIT(A) for fresh adjudication, as the issue is interconnected and mix with partnership firms, referred above. Therefore, this



Revenue's appeal is also remitted back to the file of the learned CIT(A) for fresh adjudication in accordance with Law.

For statistical purposes, the appeal of the assessee, and revenue pertaining to Jamnadas Purshottam Patel, are allowed.

50. In combined result, all appeals of revenue and assessee are allowed for statistical purpose in above terms.

**Order is pronounced in the open court on 22/12/2025.**

**Sd/-**

**(DINESH MOHAN SINHA)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट /Rajkot

**Sd/-**

**(DR.ARJUN LAL SAINI)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

//True Copy//

दिनांक/Date: 22/12/2025

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय आधिकरण ,राजकोट