आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी", अहमदाबाद ।

# IN THE INCOME TAX APPELLATE TRIBUNAL
# "B" BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री नरेन्द्र प्रसाद सिन्हा, लेखा सदस्य के समक्ष।

**Before Shri Sanjay Garg, Judicial Member And**
**Shri Narendra Prasad Sinha, Accountant Member**

| Sl. No(s) | आयकर अपील सं/ ITA No(s) | निर्धारण वर्ष/ Assess-ment Year(s) | Appeal(s) by : | |
|---|---|---|---|---|
| | | | अपीलार्थी / Appellant बनाम/vs. | प्रत्यर्थी / Respondent |
| 1. | ITA Nos. 1450/Ahd/2024 | 2015-16 | DCIT Central Circle-1(4) Ahmedabad-380 009 | Hindva Builders Survey No.495/3 Hindva Builders, Gangotri Bungalows- To SP Ring Road Nikol Ahmedabad – 382 330 **PAN: AAFFH 5284 A** (Assessee) |
| 2. | 1451/Ahd/2024 | 2016-17 | -Revenue- | -Assessee- |
| 3. | 1562/Ahd/2024 | 2017-18 | -Revenue- | -Assessee- |
| 4. | 1563/Ahd/2024 | 2017-18 | -Revenue- | -Assessee- |

| Assessee by : | Shri Tushar Hemani, Sr. Advocate & Shri Kushal Fofaria, AR |
|---|---|
| Revenue by : | Sl.Nos.1 & 2 - Shri R.P. Rastogi, CIT-DR<br>Sl.Nos.3 & 4 - Shri Abhijit, Sr.DR |

सुनवाई की तारीख/**Date of Hearing** : **09/10/2025**
घोषणा की तारीख /**Date of Pronouncement:** **01/01/2026**

**<u>आदेश/O R D E R</u>**

**<u>Per Sanjay Garg, Judicial Member:</u>**

The captioned appeals have been preferred by the Revenue are against separate orders dated 10/06/2024 & 11/07/2024 passed by the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as 'CIT(A)'], u/s. 250 of the Income Tax Act, 1961 ("the Act" for short) relevant to the Assessment Years (AYs) 2015-16 to 2017-18 & 2017-18 respectively. Since common issue involved in all these appeals pertains to the same assessee, therefore, these were heard together and are being disposed of by this common order. First, we take up the Revenue's appeal in ITA No.1450/Ahd/2024 for AY 2015-16.

**<u>ITA No.1450/Ahd/2024 for AY 2015-16</u>**

2. The Revenue, in this appeal, has taken following grounds of appeal:

> *"1) In the facts and on the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.8,52,10,308/- (Rs. 10,26,63,022-Rs. 1,74,52,714) u/5.69A r.w.s. 115BBE of the I.T.Act on account of receipt of on money in Dreamland and Sicilia Projects.*
>
> *2) In the facts and on the circumstances of the case and in law, the ld.CIT(A) has erred in giving the benefit of telescoping of income disclosed under IDS, 2016 against the confirmed addition of Rs. 1,74,52,714/-.*
>
> *3) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

3. At the outset, the Ld. Counsel for the assessee has raised the legal/jurisdictional issue that the impugned addition was made by the Assessing Officer (AO) by way of reopening of the assessment u/s.147/148 of the Act. That pursuant to the judgement of Hon'ble Supreme Court in the case of "**Union of India and Ors. vs. had Ashish Agrawal (2022) 444 ITR 01**

**(SC)"** notice issued u/s.148 between 01/04/2021 to 30/06/2021 for AY 2015-16 was deemed to be notice u/s.148A(b) of the Act as per the amended provisions (new regime) relating to the reopening of assessment which has come into operation w.e.f. 01/04/2021. That, thereafter, as per directions issued by the Hon'ble Supreme Court in the case of **"Ashish Agrawal (supra)"**, the notice u/s.148 of the Act, in this case, was issued on 30/08/2022. The Ld. Counsel has further submitted that this issue was also dealt with by the Hon'ble Supreme Court in the case of **"Union of India vs. Rajeev Bansal (2024) 469 ITR 46 (SC)"** and the Revenue therein, had conceded to the effect that so far as AY 2015-16 is concerned, the Revenue could not have issued the notices u/s.3(1) of "Taxation and other laws" (Relaxation of certain provisions) Ordinance, 2020 (in short, "TOLA") as considering the time period as prescribed u/s.149 of the Act, with effect from 01.04.2021, three years would be over on 31/03/2019, which is prior to coming into force of "TOLA" and six years would be completed on 31/03/2022 which is after operation of "TOLA". In such circumstances, notices for AY 2015-16 were held to be invalid by the Hon'ble Supreme Court in the case of **"Rajeev Bansal (supra)".** The Ld. Counsel has, therefore, submitted the reassessment notice issued u/s.148 of the Act for AY 2015-16, as per concession given by the Revenue before the Hon'ble Supreme Court, was invalid and, therefore, the notice issued u/s 148 of the Act for the assessment for AY 2015-16 after coming into operation of the provisions of section 147 of the Act under new regime, w.e.f. 01/04/2021, was invalid and, therefore, the very reopening of the assessment was bad in law.

3.1. The Ld. DR has also fairly conceded that as per the judgement of the Hon'ble Supreme Court in the case of **"Union of India vs. Rajeev Agrawal**

**(supra)"**, the reopening of the assessment for AY 2015-16 was bad in law being barred by limitation.

3.2. The Ld. Counsel, in this respect, has relied upon the decision of **Hon'ble Gujarat High Court dated 14/07/2025** with the lead case in **R/Special Civil Application No.17443/2022 along with various other petitions**, wherein, the Hon'ble Jurisdictional High Court on identical issue has made the following observation:

> *"11. During the course of hearing before the Hon'ble Apex Court, Revenue conceded to the effect that so far as Assessment Year 2015-2016 is concerned, Revenue could not have issued the notices under section 3(1) of TOLA as considering the time period as prescribed under section 149 of the Act with effect from 01.04.2021, three years would be over on 31.03.2019 which is prior to coming into force of TOLA and six years would be completed on 31.03.2022 which is after operation of TOLA. In such circumstances, notices for Assessment Year 2015-2016 are held to be invalid by Hon'ble Apex Court in case of Rajeev Bansal (supra).*
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> *12. The Hon'ble Apex Court followed the decision of Rajeev Bansal (supra) in case of Deepak Steel and Power Ltd vs. Central Board of Direct Taxes reported in [2025] 174 taxmann.com 144 (SC) and after recording the concession of the learned advocate for the department and in view of the concession given before the Apex Court by learned advocate appearing for the Revenue as recorded in para 19(f) of the judgment in case of Rajeev Bansal (supra), has quashed and set aside the notice issued after 31.03.2021 under TOLA for A.Y. 2015-16 as under:*
>
> > *"1. Leave granted.*
> >
> > *2. These appeals arise from the order passed by the High Court of Orissa at Cuttack in Writ Petition (C) Nos. 2446 of 2023, 2543 of 2023 dated 1.2.2023 and 2544 of 2023 dated 10.02.2023 respectively by which the High Court disposed of the original writ petitions in the following terms: -*
> >
> > > *"1. The memo of appearance filed by Mr. S. S. Mohapatra, learned Senior Standing Counsel Department for Revenue on behalf of Opposite Parties is taken on record.*
> > >
> > > *2. In view of the order passed by this Court on 1st December, 2022 in a batch of writ petitions of which W.P. (C) No.9191 of 2022 (Kailash Kedia v. Income Tax Officer) was a lead matter and the subsequent order dated 10th January, 2023 passed in W.P.(C) No.36314 of 2022*

> *(Shiv Mettalicks Pvt. Ltd., Rourkela v. Principal Commissioner of Income Tax, Sambalpur), the Court declines to entertain the present writ petition, but leaves it open to the Petitioner to raise all grounds available to the Petitioner in accordance with law including the in grounds urged the present petition at the appropriate stage as explained by the Court in those orders.*
>
> *3. The writ petition is disposed of in the above terms."*

*3. We heard Mr. Saswat Kumar Acharya, the learned counsel appearing appellants(assessee) and Mr. Chandrashekhar, the learned counsel appearing for the revenue.*

*4. The learned counsel appearing for the revenue with his usual fairness invited the attention of this Court to a three judge bench decision of this Court in Union of India and Ors. v. Rajeev Bansal, reported in 2024 SCC OnLine SC 2693, more particularly, paragraph 19(f) which reads thus:-*

> *"19. (f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020."*

*5. As the revenue made a concession in the aforesaid decision that is for the assessment year 2015-2016, all notices issued on or after 1st April, 2021 will have to be dropped as they would not fall completion during the prescribed under the taxation and other period laws (Relaxation and Amendment of certain Provisions Act, 2020). Nothing further is required to be adjudicated in this matter as the notices so far as the present litigation 25.6.2021. is concerned is dated 25.6.2021.*

*6. In view of the aforesaid, in such circumstances referred to above the original writ petition nos.2446 of 2023, 2543 of of 2023 and 2544 of 2023 respectively filed before the High Court of Orissa at Cuttack stands allowed.*

*7. The impugned notice therein stands quashed and set aside."*

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*"19. In view of above, for the foregoing reasons, these petitions are also allowed. The impugned notices issued under section 148 of the Act for the Assessment Year 2015-*

*16 are held to be invalid as same were issued during the extended period from 01/04/2021 to 30/06/2021 under TOLA."*

4. In view of the above stated legal position, since notice issued u/s.148 of the Act for AY 2015-16 has been held to be not valid being barred by limitation, therefore, the very reopening of the assessment in the year under consideration is also bad in law and the same is hereby quashed. Accordingly, the impugned assessment order is not legally sustainable and hence, the same is quashed. Therefore, without going into the merits of the case, the appeal of the revenue (ITA No.1450/Ahd/2024 for AY 2015-16) is hereby dismissed on this legal ground itself.

**ITA No.1451/Ahd/2024 for AY 2016-17**

5. The Revenue, in this appeal, has taken following grounds of appeal:

*"1) In the facts and on the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.7,43,00,420/-(Rs.8,95,18,578-Rs.1,52,18,158) u/s.69A r.w.s.115BBE of the L.T.Act on account of receipt of on money in Dreamland and Sicilia Projects.*

*2) In the facts and on the circumstances of the case and in law, the Id. CIT(A) has erred in giving the benefit of telescoping of income disclosed under IDS, 2016 against the confirmed addition of Rs. 1,52,18,158/-.*

*3) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

5.1. Whereas, the Ld. Counsel for the assessee has raised the legal objection that the re-opening of the assessment u/s.147 of the Act, in itself, was bad law.

6. The brief facts of the case, as extracted from the impugned order of the Ld. CIT(A), are that during the year under consideration, the assessee, a builder, was engaged in the business of construction. The assessee had filed

original return of income u/s 139(1) of the Act on 30.09.2015 declaring total income at Rs.1,95,04,030/- Further, the Assessing Officer ( in short, "the AO") had received information from ACIT(Inv.), Unit-2, Surat vide letter dated 25.09.2018 that a survey action u/s. 133A of the Act, 1961 in the case of **Hindva Builders and M/s. Hindva Safe Deposit Vault LLP** was conducted on 17.11.2016. During the survey, it was found that the assessee was running two projects and involved in accepting cash for booking flats as well as receiving outstanding payment in its projects even after demonetization The assessee had accepted cash against the sale of the flats/shop. However, the sale proceedings in cash were not entered in the books of account of Hindva Builders. Based on the evidences of 71 diaries impounded during the survey action, it was noticed that the assessee had received on-money of Rs.8,95,18,578/- during the A.Y.2016-17 in Dreamland and Sicilia Projects.

7. The Assessing Officer (AO), therefore, was of the view that the income of the assessee for the year under consideration has escaped assessment. As per the decision of the Hon'ble Supreme Court in the case of UOI vs. Ashish Agrawal (supra), the earlier notice issued u/s. 148 of the Act was treated as notice issued under the newly added section (w.e.f. 1.4.2021) section 148A(b) of the Act. Further, the information and material relied upon by the Revenue which suggested that the income of the assessee for the year under consideration had escaped assessment, were supplied to the assessee vide notice dated 23/05/2022. The assessee submitted its reply on 09/06/2022, 22/07/2022 & 25/07/2022.

7.1. After considering the reply of the assessee, the AO passed order u/s.148A(d) of the Act on 22/08/2022 and notice u/s.148 of the Act was issued on the same date. In response to the said notice, the assessee filed its

return of income on 11/10/2022 declaring total income of Rs.2,66,14,510/- for the year under consideration. Subsequently, in the assessment carried out u/s.143(3) r.w.s.147 of the Act, the AO concluded that the assessee had accepted on-money, over and above the declared sale price relating to Dreamland and Sicilia Project. The AO rejected the contention of the assessee that the entire on-money received by the assessee cannot be considered as income of the assessee and that only profit element @ 15% of on-money received by the assessee can be treated as income of the assessee. He observed that the assessee had not produced the evidence that the assessee has actually incurred the unaccounted expenditure to the extent of 85% of the on-money received. He observed that the assessee had not submitted the cash book and cash flow chart which could establish that the cash payment to that extent had been made by the assessee out of the cash received by the assessee. He also rejected the contention of the assessee that the assessee may be given telescoping of the income declared by the assessee under IDS (Income Disclosure Scheme)-2016. He observed that the assessee had declared total undisclosed income amounting to Rs. 3 crores for the year under consideration under the head "Other". He, therefore, held that the aforesaid income of the assessee was not the business income of the assessee and that telescoping benefit cannot be given in relation to the on-money received by the assessee in the course of his business. He, further, observed that assessee had made declaration under IDS on 28/09/2016 and thereafter, nationwide demonetization was declared, whereby, the circulation of old currency/notes of Rs.500 and Rs.1000 was banned w.e.f. 08/11/2016. He observed that there was general message circulated in the market saying that Hindva Group was accepting cash in demonetization currency for booking of flats as well as receiving outstanding payments in its projects even after demonetization. He observed that the on-money received was received by

the assessee after the IDS declared by the assessee. He, accordingly, made the addition of entire amount of Rs.8,95,18,578/- as income of the assessee from on-money/unexplained sources.

8. Being aggrieved by the said order of the AO, the assessee preferred appeal before the Ld. CIT(A).

9. The Ld. CIT(A) upheld the validity of the reopening of the assessment. He also confirmed the findings of the AO to the extent that the assessee had received on-money on sale of flats. However, he accepted the contention of the assessee that the entire receipts could not be treated as income of the assessee. Though, the assessee had contended that only 15% of on-money receipt be treated as income of the assessee, the Ld. CIT(A), however, assessed it on a higher side @ 17% of the on-money receipts as income of the assessee and confirmed the addition at Rs.1,52,18,158/-. The Ld. CIT(A) further gave the assessee the benefit of the income declared under IDS and observed that the assessee had also made disclosure of Rs.3 crores under IDS-2016, which was more than the addition confirmed of Rs.1,52,18,158/-. He, therefore, directed the AO to give the benefit of telescoping of the income disclosed under IDS-2016 and set off/delete the addition accordingly.

10. Being aggrieved by the said order of the Ld. CIT(A), the Revenue has come in appeal before us.

11. We note that identical issue was there before the Ld. CIT(A) in relation to AY 2015-16 and the Ld. CIT(A) has made discussion on merits as well as on the legal issue while adjudicating upon the appeal of the assessee for AY 2015-16. So far as legal issue relating to the validity of the reopening of the

assessment/issue of notice u/s.148 of the Act is concerned, the Ld. CIT(A) in paragraph Nos. 4.1 to 4.3. of the impugned order has observed as under:

> *"4.1 I have carefully perused the reassessment order and submission filed by the appellant. In this case, it is necessary to discuss the brief facts of the case.*
>
> *The facts as enumerated from the assessment order are that during the year under consideration, the appellant was a builder and engaged in the business of construction. The appellant had filed original return of income u/s. 139(1) of the Act on 30.09.2015 declaring total income at Rs.1,95,04,030/-. Further, the AO had received an information from ACIT(Inv.), Unit-2, Surat vide letter dated 25.09.2018 that a survey action u/s.133A of the Act, 1961 in the case of Hindva Builder and M/s. Hindva Safe Deposit Vault LLP was conducted on 17.11.2016. During the survey, it was found that the assessee was running two projects and involved in accepting cash for booking flats as well as receiving outstanding payment in its projects even after demonetization. The assessee had accepted cash against the sale of the flats/shop. However, the sale proceedings in cash were not entered in the books of account of Hindva Builders. Based on the evidences of 71 diaries impounded during the survey action, it was noticed that the assessee had received on-money of Rs.10,26,63,022/- during the A.Y.2015-16 in Dreamland and Sicilia Projects.*
>
> *4.1.1 Further, in compliances to the judgement of Hon'ble Supreme Court dated 04.05.2022 in the case of Union of India & others Vs. Shri Ashish Agarwal & others in Civil Appeal No. 30.05.2022 and the CBDT's Instruction No. 01/2022 dated 11.05.2022 issued vide F. No. 279/Misc./M-51/2022-ITJ, the information and material relied upon by the Revenue, which suggest that income has escaped assessment in case of assessee, within the meaning of the provisions of section 147 of the Act had been provided to the assessee vide notice dated 09.03.2022, in which the assessee was requested to submit its reply. In response the assessee had submitted reply on 08.06.2022, 12.06.2022, 22.07.2022 and 25.07.2022. After considering the reply of the assessee, the AO had passed order u/s.148A(d) of the Act on 30.08.2022. Accordingly, as per the provision of section 147 of the Act, the AO had reopened the case of the appellant by issuing notice u/s.148 of the Act dated 30.08.2022 with a request to file the return of income. I find from the reassessment order and the material on record that the A0 had reasons to believe that income had escaped assessment and the reopening was done after proper application of mind. In the case of Navratna Developers and Organisers Pvt. Ltd. for A.Y.2000-01, the Hon'ble jurisdictional ITAT in its order ITA No 2143/Ahd/09 and CO No. 1451A/09 dated 27.10.2010, upheld reopening proceedings, holding that it is settled law that at the stage of issue of notice u/s.148, the only question is whether there was relevant material on the basis of which a reasonable person could have formed the requisite belief. Whether that material would conclusively prove escapement of income is not the concern at that stage. It is a settled law that at the time of issuing notice u/s 148 of the Act, the AO simply has to be satisfied and should have "reasons to believe" that income has escaped assessment. The investigation of whether it has actually escaped assessment or not can only be done once the assessment proceedings are*

*reopened. Further, I have also gone through the record and find that the AO has followed due procedure while reopening the assessment proceedings. It is further observed that in response to notice u/s.148 of the Act, the assessee had filed return of income on 11.10.2022 declaring total income of Rs.1,95,04,030/- for the year under consideration. Further, the AO had also issued notice u/s.143(2) of the Act on 12.01.2023. The AO had also offered opportunities of being heard to the appellant by issuing various statutory notices, as is narrated in the re-assessment order. It is also relevant to mention here that during the course of reassessment proceedings, the assessee had filed detailed objection against the reopening and taken various contentions, which was disposed off by the AO by giving detailed findings in para 5.3 of the assessment order. Therefore, for the sake of repetition, the same is not discussed again herein. On the similar set of facts the Hon'ble Gujarat High Court in the case of Nishant Vilas kumar Parekh [2021] 129 taxmann.com 110 {Gujarat} held as under:-*

> *"23. In view of the settled principles of law as propounded by the Apex Court as well as by this court and considering the contention of the reasons recorded for reopening and further clarification of the information made by the revenue, we are of the view that, if the Assessing Officer himself was satisfied with regard to the information and other materials on record, he formed an opinion that, the income with regard to transactions of Penny stock entered into by the assessee with the Karma Ispat Ltd., and the Assessing Officer had applied his independent mind to the information and upon due satisfaction, led to form an opinion that, the amount of claim of LTCG claimed by the assessee is chargeable to tax has escaped assessment, which facts suggests that, circumstances, we are satisfied that, there was enough material before the Assessing Officer to initiate proceedings under section 147 of the Act."*

*4.2 Further, reliance is also placed on the following judgement of Hon'ble Jurisdictional High court of Gujarat which have been delivered on similar set of facts:-*

*(i) Kaushaliya Shampatlal Dudani - 129 taxmann.com 48 {2021} (Guj)*
*(ii) Vilas Vrajlal Parekh HUF - 129 taxmann.com 68 (2021) (Guj)*
*(iii) Bhanuben Mansukhlal Khimasthria - 119 taxmann.com 229 {2021} (Guj)*
*(iv) Sameer Gulabchand Shah HUF - 131 taxmann.com 42 {2021} (Guj.)*

*4.3. In view of these facts, I find no infirmity in the action of the AO in issue of notice u/s.148 is upheld. Thus, the ground of appeal no. 1 is dismissed."*

12. After hearing the Ld. Representatives of the parties, we do not find any infirmity in the order of the Ld. CIT(A) in respect of the above issue. Therefore, there is no merit in the legal issue raised by the Ld. AR regarding the validity of the reopening of the assessment.

12.1. So far as the addition on merits is concerned, the Ld. CIT(A) while considering the case of the assessee for AY 2015-16, has observed as under:

*"5. The ground of appeal no. 2 to 4 are interlinked, hence dealt together, are against the action of the AO in making addition of Rs. 10,26,63,022/- on account of Unexplained money u/s.69A of the Act by ignoring the claim of the appellant for taxing the net income only and by not allowing deduction of Rs. 3,00,00,000/- from on-money considered as income on account of income already declared by the appellant under the Income Disclosure Scheme, 2016 for A.Y.2015-16.*

*5.1 I have considered the facts of the case and the legal submissions of the appellant carefully. The brief facts of the case has already been discussed in para no. 4 of this order. Based on the evidences of 71 diaries impounded during the survey action, it was noticed that the assessee had received on-money of Rs. 10,26,63,022/- on sale of the flats/shop, during the A.Y.2015-16 in Dreamland and Sicilia Projects. During the course of reassessment proceedings, the assessee had claimed that the total receipt of on-money cannot be considered as income and the income has to be considered at 15% of on-money receipt and it had declared more cash than such computed income in the IDS 2016 scheme and requested for telescoping of unaccounted cash expenses incurred by the assessee. However, the AO had not accepted the submission of the assessee and held that the assessee had failed in submitted the evidences of the cash expenditure to the extent of around 85% of on money made by the assessee during the year under consideration The AO had further stated that the assessee had failed to establish that the unaccounted payment was made out of the unaccounted cash receipt by the assessee. Therefore, the AO had made addition of Rs. 10,26,63,022/- being unexplained money u/s 69A of the Act while passing the assessment order u/s. 143(3) r.w.s. 147 of the Act 30.05.2023.*

*5.2 During the course of appellate proceedings, the appellant has filed written submission (reproduced supra) and taken various contentions, which is being dealt in the following paras. The main contention of the appellant are as under:-*

*(1) As per evidences, it was found that on money amounting to Rs.6,49,14,850/- has been taken on sale of shops during F.Y.2014-15 in dreamland project and Rs 3,77,48,172/ has been taken on sale of shops during FY 2014-15 in Sicilia project. However, the sale proceeds in cash totaling Rs. 10,26,63,022/- was not entered in the books of account of Hindva builders. It was also found that that the appellant had made cash expenditure during F.Y.2014-15 relevant to A.Y.2015-16, which was also unaccounted. The details of expenditure incurred in cash was found in the diaries and other records found and impounded during survey operations.*

*(ii) The appellant had made a disclosure of Rs.3,00,00,000/- (three crores) under the Income Disclosure Scheme, 2016 for A.Y.2015-16 and had paid tax thereon. Based on the information received from ACIT (Inv), Surat, the proceedings for reopening were started and the case of the appellant was reopened. Finally ignoring all the submissions of the*

*appellant and judicial pronouncements, the AO had made addition of the entire (gross) on money received by the appellant amounting to Rs. 10,26,63,022/ as unexplained money u/s.69A of the Income Tax Act. The appellant also submits that the AO had totally ignored the settled law that when an addition in respect of on-money is made, the entire receipt cannot be charged to tax, but only the profit element is to be charged.*

*iii) Without prejudice to above, the appellant further submits that it is evident that the evidence of incurring of expenses were available in the seized documents/material. Even otherwise assuming that the details of expenses was not furnished, then also from various judicial pronouncements relied upon by the appellant the ratio comes out is that the gross receipts should not be the income but a reasonable net profit based on past records of the assessee or industry average should be considered as income. The appellant has relied on recent judgment of the* ***Hon'ble Jurisdictional ITAT, Ahmedabad*** *in the case of* ***JCIT v. Narayan land Estate reported in 2022 Tax Pub(DT) 4075 (Ahd-Trib).*** *The relevant para/observation of ITAT is reproduced hereunder-*

> *"8.5 The decisions of the jurisdictional ITAT and High Court are binding on the Commissioner (Appeals). However, the appellant in its submission has not given the working of profit on such on-money and has not given the justification as to how the profit of 15% (as mentioned in the submission during the appeal proceedings) is adequate and fair. No doubt, one approach is that where the seized/impounded document bear the testimony of on-maney being charged and collected and the same pages or similar group pages also contain entries related to unaccounted expenses on in relation to the projects undertaken and in such a case, such expenses are to be necessary allowed for the holistic interpretation of the documents seized/impounded. The other approach is to take cognizance of the market/realty sector that while it is the practice of the real estate market that whereas cash (over and above the consideration in cheque) are collected from the customers, the developers have to incur various unaccounted expenses also in relation to procurement of land and approval of the projects by various authorities & etc and therefore, there is rational/ justification in charging/bringing to tax only an estimated profit on on-money/premium amount collected from the customers instead of adding the gross amount of on-money/premium to the total income."*

***From the above, it becomes clear that there is no necessity to provide details of every expense. In such cases, the income is to be estimated on some rational basis.***

*(iv) The appellant further submitted that the total receipt of on-money can never be considered as income. The documents found in the survey also contained the details of expenses incurred for the housing schemes like payments made for land, material, and labour. In the case of the builder where on money was found to be collected and certain expenses in relation thereto were also found to be incurred out of books, only net income can be subjected to tax, and the same is required to be estimated reasonably as has been held by various judicial pronouncements as below-*

*(a) **CIT vs. President Industries, 258 CTR 654 (Guj)**, wherein it has been held that unaccounted sales, when there is unaccounted sales the only profit can be added in the sales not entire sales*

*(b) The similar view has confirmed in IT(SS)A Nos 262,263 & 264/Ahd/2010 A Y 2003-04,04-05 & 06-07 Page No 5 ACIT vs. Jignesh V. Koralwala by the **Hon'ble Jurisdictional High Court of Gujarat** in the case of **CIT vs. Gurubachhan Singh J Juneja, reported in 215 CTR (Guj) 509.***

*(c) **Kishor Telwala vs. ACIT 64 TTJ 543 (Ahd.)** in which following was held by the Hon'ble Jurisdictional ITAT, Ahmedabad that Entire 'on money' receipts in relation to booking or sale of flats could not be treated as undisclosed income, but under section 158BC, a reasonable amount of profit which assesse could have earned by charging 'on money' in relation to flats booked and sold by him and the same would be either 8 per cent on gross receipts under section 44AD or any figure admitted by the assesse if it was higher than 8 per cent, hence assessing officer was not justified in charging entire 'on money' receipts as assessee's undisclosed income.*

*(d) Abhishek Corporation 63 TTJ 651 (Ahd.)*

*(e) Calcutta Co. Ltd 37 ITR 1 (SC)*

*(f) Unreported decision of the Hon'ble Jurisdictional Ahmedabad Bench of ITAT in the case of **ITO vs. Anand Builders**, wherein the Hon'ble Tribunal held that only 8% of gross receipt could be taxed in the case of a builder out of the on-money. Reference to the Hon'ble High Court was rejected and **SLP against such rejection was also turned down as reported in 265 ITR 37 (St.)***

*(g) **M/s. Adinath construction vs. DCIT (unreported judgment of Hon'ble Ahmedabad tribunal) ITA NO.1975 & 1786/AHD/99 AND ITA NO.2167 & 2168/AHD/99** in which the Hon'ble ITAT held that entire on-money did not represent the recipient's income but only to the extent of 15% thereof can be taxed.*

*(h) On 5th May,2021 the Mumbai bench of ITAT in case of Hema Haresh Mehta, vs DCIT Cc 8(4), Mumbai the ITAT held as under para 10.1 of the order*

> *"10.1. Considering the facts in totality, in our considered opinion, a reasonable profit should be taxed which is embedded in the total unaccounted gross receipts and therefore 85% should meet the end of justice We, accordingly, direct the AO to recompute the undisclosed income by taking 8% as net profit ratio on total unaccounted receipts. Since we have directed to estimate the profit at 8%, all the expenditures are deomed to be allowed"*

*(i) **Ekta Housing Pvt. Ltd Vs. DCIT (ITAT Mumbai)**, the Hon'ble ITAT held "Thus, the net income element embedded in the on-money receipts could safely be taken in the case of the captioned assessee 15% of the amount of the on-money receipts, and the same were in the*

*nature of "business receipts" which were inseparable from the assessee's business of a builder and developer.*

*(j) Recently ITAT Ahmedabad in the case of JCIT v. Narayan land Estate reported in 2022 Tax Pub(DT) 4075 the Hon'ble ITAT held as under:-*

> *"It is a practice of the real estate market that cash over and above the consideration in cheques are collected from the customers but the developers have to incur various unaccounted expenses in regard to the procurement of land and approval of the projects by various authorities too and therefore, the estimated profit of on-money/premium amount collected from customers is to be brought to tax, instead of adding the gross amount of on-money/premium to the total income. CIT(A) carefully took into consideration this particular aspect of the matter and profit at 30% of the gross amount of on-money receipt was treated as unaccounted income by him and the same was rightly added in the computation of total income of assessee which just and proper. The appeal filed by revenue was, therefore, dismissed."*

*(k) The appellant further submits that they had submitted that the last three year's average GP margin is around 12.13% as per working as under:-*

| A.Y. | Turnover | Expenses | GP | %GP |
|---|---|---|---|---|
| 2013-14 | 39,40,58,761/- | 33,94,12,121/- | 5,46,46,640 | 13.87% |
| 2014-15 | 38,81,40,644/- | 32,36,85,617/- | 6,44,55,027 | 16.61% |
| 2015-16 | 80,80,34,419/- | 73,42,79,957/- | 7,37,54,462 | 9.13% |

*In view of the above settled judicial rulings, in the case of the appellant maximum of 15% of gross receipt Rs. 10,26,63,022/- which comes to Rs. 1,53.99.454/- could be considered as income that was not accounted in the books of account.*

*(1) It is further submitted that the appellant had made a disclosure under IDS, 2016 of Rs 10 crores out of which disclosure for A.Y. 2015-16 is Rs.3,00,00,000/ (Rupees three crores) which is far more than Rs. 1,53,99,454/ Therefore, the unaccounted income comprised in the on money received during AY 2015-16 is fully taxed. In view of these facts, there was no income chargeable to tax that has escaped assessment within the meaning of section 147/148 of the Act. In support of the same copy of Form no 4 issued by the PCIT was annexed with paper book.*

*(m) In view of the above facts, the appellant has requested to delete the addition made.*

*5.3 In this regard, it is observed that the appellant with regards to the taxation of unexplained receipts being On-Money from Real Estate Business submitted that the said On-Money which is mainly received on account of operating Sale of flats/shop of Dreamland and Silicia project, partakes the character of business income and thus is required to be taxed as business income. The said contention has also been accepted by various judicial*

*pronouncements. Further, the appellant has contended that only a percentage of the receipts be estimated as income.*

*5.4 From the facts of the case, it has been observed that the appellant has received unaccounted on-money from its Real Estate business. In examining any transaction and situation as compared to the facts of the case of the appellant, it is a settled position of the law, that the taxes have to be levied on the REAL INCOME and no taxes can be levied in arbitrary manner. As per the settled provisions of the law, the request of the appellant that the alleged On-money needs to be brought to tax as per the method of accounting regularly followed by the appellant is well valid and accepted principle under the law. Further, what has been referred to as amounts received by the appellant being unaccounted in nature and same is referred to as On Money receipts, the same then partakes the character of Business Income and accordingly the same should be brought to tax as per the method of accounting as regularly employed. Further once the said amounts are sought to be brought to tax, there cannot be two accounting methods to bring to tax the amounts arising from the same set of transactions, le one accounted and one unaccounted. It is a long-settled issue that entries in books of accounts are not conclusive for taxation purposes. Reliance is duly placed in the* ***decision of Apex court Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income-tax (82 ITR 363):*** *"Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. The assessee who was maintaining accounts on the mercantile system was fully justified in claiming deduction of the amount of sales tax which it was liable under the law to pay during the relevant accounting year. The liability remained intact even after the assessee had taken appeals to higher authorities or courts which failed. The appeal was consequently allowed and the judgment of the High Court was set aside.*

*5.4.1 The above said contention is also supported by judgement of* ***Jay Builder v. Assistant Commissioner of Income-tax, Circle 6 (2) [2013] 33 taxmann.com 62 (Gujarat) (HC):***

> *"Section 253, read with section 69A, of the Income-tax Act, 1961 - Appellate Tribunal Appealable orders [Aggrieved party Assessee, a builder, received on money while selling properties constructed by it - Assessing Officer taxed entire on money received by assessee - Assessee contended before Tribunal that not entire on money received but only profit element could be taxed in its hands - Tribunal substantially accepted contention and sustained addition at rate of 15 per cent of on money received by assessee -Whether when assessee's sole contention before Tribunal was substantially accepted, appeal of assessee did not survive - Held, yes [Para 3] [In favour of revenue]"*

*5.5 The above said contention is also supported by various other judicial pronouncements. The head note of the decisions are as under:-*

***(i) Commissioner of Income-tax v. President Industries [2002] 124 TAXMAN 654 (GUJ. (HC):***

*"Section 698, read with section 256 of the Income-fax Act. 1961 Undisclosed investments Assessment year 1994-95-Whether amount of sales by itself cannot represent the income of the assessee who has not diaclosed the sales-Held yes During survey it was found that assessee had not disclosed certain sales in books of account-Whether Tribunal was justified in holding that unless there was a finding that investment by way of incurring cost in acquiring goods which had been sold, had been made by assessee and that had also not been disclosed, only net profits embedded sales, and not wholesale proceeds itself, would be treated as undisclosed income of assessee-Held, yes"*

***(ii) Commissioner of Income-tax II v. Leo Formulations (P.)Ltd. [2014] 48 taxmann.com 328 (Gujarat) (HC);***

*"Section 698 of the Income-tax Act, 1961 Undisclosed investments (Unaccounted sales) Assessment years 2007-08 and 2008-09 Assessing Officer having found that assessee had not recorded consumption of different raw materials correctly in books of account and had suppressed production, estimated unaccounted sales of assessee at 40 per cent of turnover - Whether contention of revenue that entire excess consumption should be added to income could not be accepted as Assessing Officer himself had recorded in assessment order that there had been unaccounted purchases which needed to be considered against unaccounted sales and further excess consumption of raw material would not automatically result into matching value of excess sale of finished product-Heid, yes Whether, therefore Commissioner (Appeals) rightly reduced excess sales to 20 per cent of turnover by applying gross profit rate of 35 per cent - Held yes (Paras 8 & 9] [in favour of assessee)*

***(iii) Commissioner of Income-tax vs. Samir Synthetics Mill [2010] 326 ITR 410 (Gujarat) (HC):***

*"Section 143 of the Income-tax Act, 1961 Assessment Addition to income-Where assessee could not even be able to reconcile production, sales and closing stock although specific opportunity was provided by Assessing Officer, addition was justified on account of suppression of sale consideration but only to the extent of profit [in favour of assessee)".*

***(iv) V. R. Textiles v. Joint Commissioner of Income-tax [2012] 20 taxmann.com 154 (Ahmedabad) (ITAT):***

*"Held that the excise authorities have noted that the assessee had made unaccounted sales of Rs. 3,86,14,825 (Rs. 58,85,530 plus Rs. 3,27,29,295). The Assessing Officer without any basis presumed higher sales made outside the books of account. The Commissioner (Appeals) was, therefore, justified in taking*

*the figure of unaccounted sales computed by the excise authorities as against the figure taken by the Assessing Officer. Since the Assessing Officer himself had not made any addition on account of excess stock of Rs. 25,98,924 as the telescoping effect was given to the assessee, therefore, such material could not be used against the assessee for the purpose of enhancing the unaccounted sales it is settled low that the entire undisclosed sales could not be Ireated as profit of the assessee"*

***(v) The Commissioner of Income Tax8 vs. Shri Hariram Bhambhani INCOME TAX APPEAL NO.313 OF 2013 (BOM)(HC):***

*"In any view of the matter, the CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales ore unaccounted. Thus, in the above view, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. The view taken by the authorities is a reasonable and a possible view. Thus, no substantial question of law arises for our consideration"*

***(vi) The ACIT Central Circle-3, Jaipur Vs Shri Nawal Kishore Soni: ITA No. 1256, 1257, & 1258/JP/2019 [ITAT] [Jaipur):***

*"23.4 It is settled law that not only from the illegal business but also the unaccounted transaction of purchase and sale only profit/ income on sales could be assessed as undisclosed income and could be subjected to tax. Case laws to the point are as under: 1. Dr. T.A. Quereshi (157 taxmann.com 514) (Supreme Court) 2. Piara Singh (124 ITR 40) (Supreme Court) 3. S.C. Kothan (82 ITR 794 (Supreme Court) 23.5 The appellant admitted such profit at Rs. 45,00,000/- and disclosed that on said transactions income in PMGKY, 2016 and paird due tax thereon. The copy of certificate issued by PCIT is placed on record. Thus when that transactions are of unrecorded purchase and sale of gold, which Ld AO also admits in assessment order, then simply that name & address of purchasers are not provided the entire amount of sale cannot in law be treated as undisclosed income, only profit earned from said transactions which has been admitted by appellant at Rs. 45,00,000/- can only be assessed to tax more so when the appellant has disclosed in PMGKY the said undisclosed income of Rs 45,00,000/- and paid tax in accordance with scheme and received certificate there for from Pr. Commissioner of Income Tax, hence the same disclosed income cannot be included as income is assessment as per Section 199-1 of PMKGY. However Ld. A.O. has allowed credit of amount of disclosed income in PMKGY from total income as so the addition on this account is restricted to Rs.45,00,000/-and balance is deleted. The appellant thus gets relief of Rs. 3,02,00,000-45,00,000 Rs. 2,57,00,000/-*

***(vii) Greenfield Reality P. Ltd IT(SS) A No. 320,321 and 322/Ahd/2018 & 329/Ahd/2018:***

*"16. We have duly considered rival submissions and gone through the record carefully. On an analysis of the record, it would reveal that during the course of search not only details of on-money received by the assessee on booking of flats and shops in "Vesu Project" was found, but details of certain expenditure, which are not recorded in the also found. This included cash payment for purchase of land Therefore, the Ld. CITTA) has rightly observed that the grass on-money noticed on the seized paper cannot be considered as income of the assessee There are certain expenditures which were not recorded in the books. Those expenditure must have been made from this on-money Therefore, after going through the well reasoned order of the Ld CIT(A), IT(SS)A No 289 /Ahd/2018 (7 Others) Greenfield Reality P. Ld Vs. DCIT and in the light of judgment of Hon'ble jurisdictional High Court in the case of Panna Corporation (supra) as well as Kishor Mohantal Telwale (supra), <u>we are of by the assessee for booking of flats/shops in "Vesu Project" is required to the view that only element of income embedded in the on-money received be assessed in its band in all these years.</u> 17. Next question arose, what is the element of income involved in this on-money. On one hand, the assessee is showing income at 8%, on the other hand, the id CIT(A) is estimating it at 20% It is pertinent to observe that section 144 of the Income Tax Act provides discretion in the AO to pass best judgment when an assessee failed to appear before him, and to submit requisite details. In other words, it provides power in the AO to estimate an income of the assessee. We deem it appropriate to take note the relevant part of this section. It reads as under:*

*"24. We have considered rival submissions and gone through the record carefully. There is no dispute that during the course of search certain materiel/loose papers were found exhibiting the fact that the assessee has received cash, over and above, the amounts stated in the booking register. This cash was not accounted for in the books. It has been treated as on-money for sale of flats/shops. Simultaneously certain loose papers were found disclosing the fact that the expenditure were incurred in cash and accounted in the books. The Ld.CIT(A) made an analysis of this, and then held that the moment assessee's income is being assessed at C% of the gross on-money, then the remaining amount 92% could take care of unexplained expenditure. It can be explained by a simple, viz. an assessee has received Rs. 100/- in cash for sale of fiat. Out c' that, element of income embedded in this Rs. 100/-has been determined by us at Rs.8/-. Remaining Rs.92/- must have been incurred by the assessee for developing that flat. Thus, in other words, the expenditure whose details were found being incurred in cash could be construed as coming out of these Rs.92/- Thus, there cannot be any separate addition of unexplained expenditure. The Ld.CIT(A) has rightly deleted the addition."*

***(viii) In the case of ITAT, Ahmedabad Bench in the case of Kishor Mohanlal Telwala, 64 TTJ 543/107 taxman 86 (Ahd)*** *the Tribunal has observed that 8% profit offered by the assessee on the alleged gross receipts of on-money received in cash is fair and reasonable. This figure was construed as fair and reasonable by taking guidance from section 44AD of the Act, wherein it was provided by the Legislature that in case an assessee is engaged in civil construction, and if gross receipts remains under a particular*

*slab, then such assessee needs not to maintain books of accounts, and its profit can be assumed at 8%. Though this special provision is not applicable in the present case, because gross receipts exceeded the turnover provided under section44AD, but againwe are required to find out a reasonable percentage of income which could have been alleged as earned by the assessee out of such gross receipts.*

*(ix) The Hon'ble ITAT, Ahmedabad in the case of* ***ITO Vs. Anand Builders*** *whereby it has been held that in such circumstance, 8% of the unaccounted on money could be taxed in place of the entire unaccounted on money receipts. It is needless to mention that the entire on money receipts cannot be taxed for the reason that against the unaccounted receipts there is always the unaccounted payments. Therefore, certain part of such unaccounted receipts only remains in the hands of appellant and the same can only be taxed. Subsequently, the above decision of the Hon'ble ITAT was upheld by the* ***Hon'ble Gujarat High Court and the SLP filed against the judgment of Hon'ble Gujarat High Court was dismissed as reported in 265 ITR 37.*** *For ready reference, the relevant para of the Hon'ble Apex Court's decision is reproduced as under:*

> *"dismissed the special leave petition filed by the Department against the judgement dated January 21, 2002 of the Gujarat High Court in ITA No. 52 of 20-02 whereby the High Court dismissed the Department's appeal on the ground that no substantial question of law arose The question of law raised in the appeal before the High Court was whether the Appellate Tribunal's finding while directing the Assessing Officer to tax only 8 per cent of the unaccounted on money receipt instead of fully taxing it, in the absence of any evidence of expenditure, could not be stated to be perversed: ITO VS. Anand Builders: SLP (C) No. 14166 of 2003."*

*5.6 It is also observed that in view of the various decision of the Hon'ble Jurisdictional High Court of Gujarat and other Hon'ble High Court and the Hon'ble Jurisdictional ITAT, Ahmedabad, the appellant has requested to adopt profit margin @ 15% of total unaccounted cash receipt.*

*5.7 Is also a fact that the appellant 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.*

*5.8 Hence,* ***looking to the nature of various business, various discrepancies found during the survey 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 appellant, the net income on account of the grounds of appeal relating to Real Estate business is taken at 17% which comes to Rs. 1,74,52,714/-[17% of Rs. 10,26,63,022/-] is confirmed.***

*5,9 In view of the above factual discussion and legal matrix of the case, **the AO is directed to consider the confirmed addition of Rs. 1,74.52.714/- out of total addition of Rs. 10.26.03.022/-, Remaining addition stands deleted.***

***5.10 Further, it is also fact revealed that the appellant had made disclosure of Rs.3,00,00,000/- under IDS, 2016, which is more than the confirmed addition of Rs. 1,74,52,714/-. Therefore, the AO is directed to give the benefit of telescoping of income disclosed under IDS, 2016 as per law and delete the addition accordingly. Thus, the grounds of appeal no. 2 to 4 are allowed."***

13. After considering the rival submissions of the Ld. Representatives of the parties, we do not find any infirmity in the order of the Ld. CIT(A) on this issue also. In this case, it is not disputed that the assessee had also incurred cash expenditure out of the on-money receipts. The observation of the AO that the assessee had not furnished proof that the assessee had incurred 85% expenditure of the on-money receipts, in our view, is not justified as the assessee has not maintained the record in the shape of cash book/cash flow relating to the unaccounted expenditure incurred by the assessee. The Ld. CIT(A) has estimated the profit element over and above the average profit declared by the assessee in the last three years. After considering the overall facts and circumstances of the case, the CIT(A) has estimated the income/profit element @ 17% of the receipts, which, in our view, is justified.

13.1. Further, the Ld. CIT(A) has given the benefit of the IDS-2016. So far as the observation by the AO that there was a general message circulated that Hindva Group was accepted the demonetization currency is concerned, in our view, that cannot be said to be reliable evidence to deny the telescopic benefit of the income declared by the assessee under IDS-2016, which was immediate before the declaration of demonetization Scheme. No reliable evidence has been referred to by the AO that the assessee had accepted demonetized currency after declaring its income under IDS-2016. The

assessee just before the announcement of demonetization scheme has voluntarily declared the income of Rs.3 crores under IDS-2016. It is also pertinent to mention here that for declaration of any income under IDS, the source/nature of income was not required to be mentioned as the tax was charged at the fixed rate under the IDS. Therefore, it is immaterial that the assessee had mentioned "Other" while declaring the income under IDS-Scheme. Under the facts and circumstances of the case, the Ld. CIT(A) has rightly given the benefit of telescoping of the income declared under IDS-2016. In view of the above discussion, we do not find any infirmity in the order of the Ld. CIT(A) on this issue also. Therefore, there is no merit in the appeal of the Revenue (in ITA No.1451/Ahd/2024 for AY 2016-17) and the same is, accordingly, dismissed.

**ITA No.1562/Ahd/2024 for AY 2017-18**

14. This appeal is relating to the original assessment framed u/s.143(3) of the Act. The Revenue, in this appeal, has taken following grounds of appeal:

> *"1) On the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in directing to estimate the profit arising on account of on-money received at 17% of entire on money receipt ignoring the facts of the case that assessee failed to furnish the evidence of the expenses incurred and also failed to disclose the facts that the said expenses have not been recorded in the books of account.*
>
> *2) In the facts and on the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 40,50,000/- on account of unsecured loans and corresponding interest of Rs. 1,84,110/- without appreciating the fact that the returned income of the persons advancing the unsecured loans to the assessee were quite low as compared to the unsecured loans advanced by them.*
>
> *3) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

15. Ground No.1 is relating to the estimation of profits by the Ld. CIT(A) @17% out of the total on-money received by the assessee on sale of flats, etc.

This issue is identical to that has been discussed above for AY 2016-17. The Ld. CIT(A) has also given his finding for the year under consideration on the basis of his adjudication on this issue for AY 2015-16. In view of the discussion made above, our finding given above will *mutatis mutandis* apply on this issue for the year under consideration also. The ground No.1 of the Revenue's appeal is, accordingly, dismissed.

16. Ground No.2:- So far as ground No.2 is concerned, the Revenue is aggrieved by the action of the ld. CIT(A) in deleting the addition of Rs.40,50,000/- on account of unsecured loan received by the assessee from three parties and also of corresponding payment of interest of Rs.1,84,110/- on the aforesaid loan.

17. During the assessment proceedings, the AO noted that the assessee had received unsecured loans totaling Rs.40,50,000/- from three parties as detailed below:

1. Hetvi Enterprise :Rs. 5,50,000/-
2. Prakash K. Patel :Rs.10,00,000/-
3. Ghanshyam D. Isamalia :Rs.25,00,000/-

17.1. The AO observed that the assessee had failed to prove the identity and creditworthiness of the creditors and genuineness of the transaction. He, therefore, treated the entire loan amount of Rs.40,50,000/-as income of the assessee on account of unexplained credits. He, also made the addition of corresponding interest expenditure of Rs.1,84,110/-.

18. In appeal, the Ld. CIT(A) deleted the addition so made by the AO observing that the assessee had furnished all relevant details and documents

to prove the identity and creditworthiness of the lenders and genuineness of the transaction.

18.1. The Ld. CIT(A) discussed about the identity and creditworthiness of each party. In respect of Hetvi Enterprise, the Ld. CIT(A) observed that the assessee had received unsecured loan of Rs.5,50,000/- from the said party during the year under consideration. The assessee had furnished the copy of confirmation from the said party, copy of ITR and computation of income for AY 2017-18 and copy of bank statement as well as copy of ledger account of the said party. He observed that the assessee had made the repayment of the entire loan along with interest by deducting TDS on it. He observed that the said unsecured loan was received through banking channel. He further observed that the said lender was also an income-tax assessee and had filed return of income declaring an income of Rs.3,25,090/- for the year under consideration. He further observed that on perusal of ledger account, it was clearly seen that the assessee had repaid the entire outstanding unsecured loan along with interest on 22/02/2022 to the lender party. He, in this respect, referred to the ledger account and copy of the bank statement. He observed that the assessee had duly furnished the relevant details to prove the identity and creditworthiness of the creditor and genuineness of the transaction.

18.2. So far as the next party, namely, Prakash K. Patel was concerned, the Ld. CIT(A) observed that the assessee during the year under consideration had received unsecured loan of Rs.10,00,000/- from the said party. However, the said loan was repaid by the assessee by way of two installments, i.e. Rs.8 lakhs on 23/03/2017 and Rs.2 lakhs on 07/06/2017. He further observed that the assessee had filed the relevant documents, such as, copy of confirmation,

copy of ITR and computation of income for AY 2017-18, copy of ledger account and copy of the balance-sheet of the lender. He observed that the unsecured loan was received through banking channel. He further observed that the lender had was an income-tax assessee and had filed income-tax return for the year under consideration and declared returned income of Rs.2,29,510/-. He further observed that on perusal of balance-sheet, it was seen that Prakash K. Patel had capital of Rs.31.53 lakhs which showed that there was sufficient balances available with him to lend the unsecured loan of Rs.10 lakhs. He, accordingly, deleted the addition in respect of loan received from Prakash K. Patel.

18.3. In respect of loan of Rs.25 lakhs from Ghanshyam D. Isamalia, the Ld. CIT(A) observed that the assessee had furnished copy of confirmation, copy of ITR and computation of income for AY 2017-18 and copy of bank statement as well as ledger account of the creditor. He further observed that the entire loan was repaid along with interest. He further observed that the entire loan was received through banking channel and that the lender was an income-tax assessee and had declared an income of Rs.4,01,050/- in the return of income for the year under consideration. That the entire amount was repaid and TDS was duly deducted on the interest payment. He, in this respect, relied upon the ledger account and bank statement.

18.4. The Ld. CIT(A) also referred to the various case-laws, wherein, under the similar circumstances, where loan has been accepted through banking channel, TDS duly deducted on interest and subsequently the loan has been repaid to the lender, the additions were deleted. He also deleted the corresponding disallowance of interest paid by the assessee.

19. We have heard the rival contentions of the Ld. Representatives of the parties and gone through the record. The Ld. DR has relied upon the finding of the AO. The Ld. AR, on the other hand, has submitted that the assessee had duly furnished all the documents to prove the identity and creditworthiness of the creditors and genuineness of the transactions. He has submitted that relevant documents, such as, confirmations from the lenders along with their PANs and addresses, bank statements, acknowledgement of ITR, ledger account, bank statement of the assessee showing the subsequent repayment of the loan through banking channel were duly furnished. He, therefore, submitted that all the three ingredients to prove the identity and creditworthiness of the creditors and genuineness of the transactions were duly proved. He, further submitted that the assessee was not supposed to prove the source of source. He has further submitted that all the loans have been repaid and the repayment has been accepted by the Revenue. He relied upon the following case-laws:

1.CIT vs Ayachi Chandrashekhar Narsangji-(2014) 221 Taxman 146 (Guj);
2. PCIT vs Ambe Tradecorp (P.) Ltd. (2022) 145 taxmann.com 27 (Guj);
3. M/s. White Willow vs. ITO-ITA 370/Srt/2022.

19.1. The ld. Counsel, therefore has submitted that it was settled law that when the Department has accepted repayment of loan in subsequent year, no addition is to be made in current year on account of cash credit. He has submitted that the Ld. CIT(A) has rightly deleted the addition so made by the AO.

20. Considering the rival submissions, we do not find any reason to interfere with the above well-reasoned order of the Ld. CIT(A). We, therefore, do not find any merit in the appeal of the Revenue (in ITA

No.1562/Ahd/2024 for AY 2017-18) and the same is , accordingly, hereby dismissed.

**ITA No.1563/Ahd/2024 for AY 2017-18**

21. The Revenue, in this appeal, has taken the following grounds of appeal:

> *"(1) On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in directing to estimate the profit arising on account of on-money received at 17% of entire on money only on the basis of assumption and not on the basis of any documentary evidences."*
>
> *(2) In the facts and on the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,00,83,000/- on account of unexplained cash credit u/s. 68 of the Income Tax Act ignoring the facts of the case that no copy of cash books was submitted by the assessee during the course of assessment proceedings."*
>
> *(3) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

22. This appeal is relating to the assessment framed after reopening of the assessment u/s.147 of the Act.

23. Ground No.1 is relating to the estimation of profit of 17% out of the on-money received by the assessee on sale of flats. This issue is identical to that has been discussed above for AY 2016-17. Our finding given above will *mutatis mutandis* apply on this issue for the year under consideration also. The ground No.1 of the Revenue's appeal is, accordingly, dismissed.

24. **Ground No.2:** Vide ground No.2, the Revenue has agitated the action of the Ld. CIT(A) in deleting the addition of Rs.1,00,83,000/- on account of unexplained cash credits u/s.68 of the Act.

25. The brief facts of the relevant issue are that the AO found that there was cash deposit in the bank account of the assessee aggregated to Rs.11,00,83,000/- He further noted that the assessee had declared income of Rs.10,00,00,000/- under IDS-2016. The AO made addition of the differential amount of Rs.1,00,83,000/- (i.e. Rs.11,00,83,000 – Rs.10 crores). In first appeal, the Ld. CIT(A) deleted the addition so made by the AO.

26. Before us, the Ld. AR of the assessee has submitted that the AO while calculating the differential amount has ignored the opening cash available with the assessee on 01/04/2016. He has submitted that the AO had wrongly observed that the assessee had not furnished the cash book which observation was factually incorrect. He has further submitted that the assessee had duly furnished the cash book. He, in this respect, has brought out attention to page No.10 of the assessment order, wherein, the AO has reproduced the submission of the assessee. The relevant part of which is reproduced as under:

> *"…….. . We would like to clarify that we have opening cash balance of Rs. 1, 61, 60.591/ as on 01.04 2016 and Rs. 10, 00, 00,000/- declared in IDS 2016. Out of this fund opening balance as on 08.11.2016 was Rs. 11, 12,69,609/-out of which we have deposited Rs. 11,00,83,000/- in bank in support of our contention* ***we have enclosed copy of balance sheet highlighting opening cash balance and cash book (Ahmedabad HO and Surat branch) with daily closing balance of Ahmedabad and Surat Branch confirming the opening balance as on 08.11.2016*** *From the above it is evident that during the month of October 2016 we had withdrawn cash amounting to Rs 69, 25,600/ from our Içici bank account at Sural branch. As on 8-11-2016 the opening cash balance of Surat branch was Rs 10,80,00,910 and of Ahmedabad HO was Rs 32,68,699/. Hence as per our cash book the total cash balance as on 8-11-2016 was Rs11,12,69,609/. Out of which we had deposited 11, 00, 83,000/ in our bank account."*

(emphasis supplied by us)

27. The Ld.AR has submitted that not only the cash book was furnished before the AO but it was duly explained that the assessee had opening cash

balance of Rs.1,61,60,591/- as on 01/04/2016 and Rs.10 crores were declared in IDS 2016. That out of this fund, the cash balance as on 08/11/2016 was of Rs.11,12,69,609/-, out of which the assessee had deposited a sum of Rs.11,00,83,000/- in the bank account. That copy of balance-sheet highlighting the opening cash balance and cash book of Ahmedabad Head Office and Surat Branch were also furnished. The ld. AR has submitted that the AO had made the impugned addition observing that the assessee had not furnished the cash book and cash flow statement, which was factually incorrect.

28. We note that the Ld. CIT(A) has referred to the relevant documents, including audited balance sheet and cash book of Ahmedabad Head Office and Surat Branch and observed that the assessee had opening the cash balance of Rs.1,61,60,591/- as on 01/04/2016. The Ld. CIT(A) has also reproduced the relevant part of the audited balance sheet of the assessee. He has further observed that the above facts were duly verified with the cash-flow book as well as cash flow statement submitted by the assessee. He had also observed that the assessee had closing balance of Rs.11,12,69,609/- on 07/11/2016. The Ld. CIT(A) has further observed that for AY 2016-17, the AO has not given any adverse finding relating to the closing cash balance given by the assessee for the said assessment year. He observed that the closing balance for AY 2016-17 was duly accepted by the AO. Therefore, there was no question for not accepting the opening balance for the same amount for AY 2017-18 as on 01/04/2016. He accordingly directed the AO to delete the addition on this issue.

29. We note that the Ld. CIT(A) has duly examined the cash book, audited balance sheet and cash flow statement and has given his factual finding after

duly verifying the facts on record. The Ld. DR could not point out any infirmity in the order of the Ld. CIT(A) regarding factual finding given by him. We, therefore, do not find any reason to interfere with the well-reasoned order of the Ld. CIT(A) on this issue. There is no merit in this ground of appeal of the Revenue and the same is, accordingly, dismissed.

30. In the result, all the four appeals of the Revenue are hereby dismissed.

**Order pronounced in the Open Court on 01/01/2026.**

| Sd/-<br>**( Narendra Prasad Sinha )**<br>**Accountant Member** | Sd/-<br>**( Sanjay Garg )**<br>**Judicial Member** |
|---|---|

अहमदाबाद/Ahmedabad, दिनांक/Dated 01/01/2026
*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,अहमदाबाद/DR,ITAT, Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
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