

IN THE INCOME-TAX APPELLATE TRIBUNAL“E” BENCH,
MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITANo.4444/MUM/2024
(A.Y.– 2020-21)

ITA No. 4445/MUM/2024
(A.Y. – 2018-19)

ITA No. 4448/MUM/2024
(A.Y. – 2017-18)

ITA No. 5779/MUM/2024
(A.Y. – 2019-20)

Assistant Commissioner of Income Tax, Central Circle-1(4) Room No. 902, Pratishtha Bhavan, M.K. Road, Churchgate, Mumbai – 400020, Maharashtra	v/s. बनाम	Kalyanee Fortune Constructions 3AA Edena, 3 rd Floor 97 M.K. Road, Churchgate, Mumbai – 400 020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALFK9451E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Neelkanth Khandelwal, AR
Revenue by :	Ms. Kavitha Kaushik, (Sr. DR)

Date of Hearing	10.10.2025
Date of Pronouncement	23.12.2025

आदेश / ORDER

PER BENCH :-

The above captioned appeals have been filed by the Revenue against the orders of even date as passed by the Learned Commissioner of Income-tax, Appeal, CIT(A)-47, Mumbai [hereinafter referred to as “CIT(A)”]



pertaining to the assessment orders passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the **Assessment Years [A.Y.] 2017-18, 2018-19, 2019-20 & 2020-21**. Since the issues are common and interlinked and also the fact that appeals were heard together, they are being taken up together for adjudication vide this composite order for the sake of brevity. **We take up ITA No. 4445/Mum/2024(A.Y 2018-19) as the ‘Lead case’**. Decision herein would apply *mutatis mutandis* to other appeals as well.

2. The grounds of the appeals are as under:-

ITA No. 4445/MUM/2024 (A.Y. – 2018-19)

1. *On the facts and in the circumstances of the case and in law the Ld CIT(A) allowed the appeal of the assessee as alleged “on money” received without considering that the incriminating materials proves that there is involvement of cash in the sale of flats and the same has not been accounted in the assessee’s books of accounts?”*
2. *“On the facts and in the circumstances of the case and in law the La CIT(A) allowed the appeal of the assessee on extrapolation of on money without considering the odds that if the assessee has accepted cash in sale of 1 flat the probability of accepting cash for the remaining flats cannot be denied”?*

3. Facts of the case as culled from the orders of the authorities below order are that the assessee is a firm engaged in the business activity as Builders and Developers of Real Estate under the name and style Kalyanee Fortune Constructions (“KFC”). It had filed return declaring total income at Rs.1,820/-. Assessment was completed u/s. 143(3) of the Act and at total income of Rs.4,08,50,690/- after making additions of Rs. 13,95,000/- and



Rs.3,94,53,865/- on account of on-money receipt. A search action u/s 132(1) of the Act was conducted on **Goel Ganga group of Pune on 10.01.2019**. **M/s. Ganraj Homes LLP('GHL')** was also covered as a part of group and **survey action u/s.133A of the Act was conducted at the project site of "Ganga Acropolis"** in which it was alleged that GHL was involved in selling the units of the projects at less than the prevailing market price and accepting the difference in cash as alleged on-money. **The assessee and GHL were having profit sharing ration of 44.64% and 55.36% respectively in the said project. Since the assessee was in joint development agreement of the property "Ganga Acropolis",** proportionate addition was made in its hands also. During the course of survey proceedings, certain jottings, loose papers and whatsapp messages were found which showed that the developers had accepted on-money in cash which was not disclosed as sale consideration of units. Statements u/s.131 of the Act were recorded during the course of survey action in case of four employees. On verification of the notings from the sale details submitted, the AO observed that the payments mentioned in the respective ledgers of the customers did not match with the notings. He further noted that most of the flats were sold below the quoting rates and in some cases 'Other charges' had also not been taken. Based on this, the AO concluded that these were taken in cash but not shown in the Books of accounts. The incriminating documents mentioned in



assessment order were confronted to four employees of GHIL and based on documents as well as the statements, he inferred that the developer had accepted cash amounting to Rs.31,25,000/- on the sale of flats in the project Ganga Acropolis. The proportionate amount was not shown in the books of accounts by the assessee. **Therefore, addition of Rs.13,95,000/-, being 44.64% of total on-money receipt was added to the total income of the assessee for the year under consideration on account of on-money against sale of flats, which was not disclosed in the books of accounts.**

3.1 Besides, according to the AO since evidences of on-money taken by developers were found in case of 14 flats and the same had not been shown in the books of accounts, extrapolation of on-money the probability of acceptance of on-money on other flats sold by the assessee and its partner could not be ruled out as it was not possible that assessee would accept the on-money in one flat and would not accept in the neighbouring flat. Reliance was placed by the AO on the decision of Hon'ble ITAT, Pune Bench, in the case of Golani Brothers (2000) 75 ITD 1, Overseas Chinese Cuisine vs. Asstt. CIT (1996) 55 TTJ (Bo304 (TM)); (1996) 56 ITD 67 (Bom) (TM) and judgement of the Bombay High Court in the case of Harish Textiles Engineers (2015) 128 DTR (Bom) 145, wherein the estimation of on-money was also upheld for the period prior to the period for which evidence was found. In this case, the AO observed



that on-money component was varying from 1% to 45%. The variation appeared mainly on account of floor rise, location of building etc. **Considering these factors, the AO of GHL had taken the stand that developers were accepting on-money to the tune of 20% of total consideration as mentioned in registered deed and addition has been made by the AO to the extent of 55.36% of on-money in the hands of GHL.** The on-money portion for the remaining 56 flats amounted to Rs.8,83,82,313/-. Therefore, 20% of total consideration as mentioned in registered deed worked out to Rs.8,83,82,313/- which was required to be taxed as on-money. The assessee and GHL were having profit sharing ration of 44.64% and 55.36% respectively in the said project. Therefore, assessee's share came to Rs.3,94,53,865/- (44.64% of Rs.8,83,82,313/-). Thus, the AO made addition of Rs.3,94,53,865/- on account of on-money received, which was stated to be not disclosed in the books of accounts.

4. In the subsequent appeal, both the above additions were agitated by the assessee before the ld.CIT(A). Based on the submissions of the assessee, it was noted by him that in respect of the addition of Rs 13,95,000/- being 44.64% of assessee's share in the alleged cash receipts found during survey proceedings on GHL, the assessee and GHL had entered into Joint Development Agreement for development of the land owned by assessee at



Village Sus, Tal Mulshi, Pune under the name 'GangaAcropolis'. The major features of said agreement with respect to responsibilities and revenue had been duly discussed in the appellate order which inter alia provided that assessee had to ensure that the title in land has to remain clear; free of any encumbrances and that the same should be marketable. The cost to ensure the above had to be borne by KFC and had to bear and pay all duty, rates, taxes or cesses w.r.t. the land e.g. land revenue, Municipal Taxes, sundry statutory charges. Post tendering of land for the project, KFC had no responsibility of securing any permission or clearances. It was only concerned with his share of consideration. GHL had to procure all permissions/clearances. appointment of Architects, Consultants etc and bearing all costs regarding development of buildings on the land and other incidental expenses w.r.t. the project. KFC was not a party to any deals or negotiations with prospective clients. It had no knowledge of the mode of receipt of consideration. It was merely concerned with its share of sale proceeds. GHL was solely responsible to market the flats in the building built on the land and responsible for incurring all incidental expenses. KFC was not liable to pay costs for any type of govt. approval cost and if there is any subsequent change or revision of the project plan. It was not liable to pay costs even in case of any unforeseen events. If there was any revision in the sanctioned development plan, the incremental costs would be solely borne by GHL. KFC has no contractual or civil liability w.r.t. the project.



In effect, GHL had agreed to indemnify KFC against all losses or damages etc. The proceeds received from sale of flats were to be deposited into an escrow account. There was no mutual interest or relationship between the two parties. Whereas, GHL was responsible for construction, sales and marketing, revenue was to be apportioned between them and proceeds of sale would be credited to an escrow account. During search and survey proceedings in the group based on certain loose papers found from the premises, the survey team recorded statements of employees who accepted/denied cash receipts. He observed that after going through the statements recorded and documents confronted with sales team during the survey, certain facts emerged i.e. all the employees were employed by the Goel Ganga group, the statements of Ms. Anjana Domkavle, Sh Deepak Tugave and Sh.Sujeet Pandey were general in nature where they denied the cash dealings in general and for specific customer insistence, the request was referred to one Mr Subhash Goel. No statement was recorded of Mr. Subhash Goel as appearing from assessment order. Based on above mentioned impounded loose sheets and whatsapp conversation a list of 14 buyers were prepared by the AO of GHL in their assessment proceedings. However, there were several infirmities. Further, survey u/s.133A of the Act was conducted on the assessee's premises on 31.01.2020. There was nothing on record which could link the loose papers found during survey proceedings on GHL on 10.01.2019 with appellant. Most of these jottings or loose papers



were rough notings or sales pitches but the crucial link between the loose paper jottings and the assessee was missing even after its premises was covered u/s.133A of the Act subsequent to proceedings on Goel Ganga Group. In the instant case, addition was made on the basis of certain loose papers found at the premises of GoelGanga Group and uncorroborated statements of certain employees of that group. The such addition could not be made unless transaction was found in the books maintained by the assessee. Placing reliance on various judicial decisions, he concluded that all inferences drawn by AO remained unsubstantiated and based on uncorroborated statements missing the live connection or link of any form with the assessee. The alleged transactions mentioned in the rough notings of a third party were not recorded by the assessee. The alleged transaction was not corroborated from the material found at survey in the appellant own case. He observed that it is settled law that the loose papers and documents cannot possibly be construed as books of account regularly kept in the course of business. Therefore, the AO would not be justified in resting its case on the loose papers, diary and documents found from third party if such documents contained narrations of transactions. Also the presumption u/s. 132(4A) of the Act was applicable to the person from whose possession or control the incriminating material is found and seized. Presumptions regarding correctness of contents of books of account etc. could not be raised against the third party. Further, even if the



loose sheets were considered to be admissible as evidence, the AO had failed to bring on record that the proceeds of on-money was shared with the assessee. In absence of any such evidence, the AO erred in appreciating the material on record correctly. The validity of loose papers / diary notings found in the course of search as well as the statement recorded in survey could not be accepted. Therefore, the addition made of Rs. 13,95,000/- could not be sustained and was deleted by the Id.CIT(A).

4.1 As regard the addition made on account of extrapolation of Rs.3,94,53,865/-,the Id.CIT(A) observed that as he had already concluded that addition of on-money could not be made in the hands of the assessee based on certain jottings, loose papers and whatsapp chats found in case of third party, no such addition could be sustained in this respect also. As far as extrapolation of on-money calculated by the AO, it was noted that AO had taken details of 15 flats as narrated in foregoing paragraphs and cash component found by him in these flats. Even on the same facts, one entry of Mr. Hingmire was a duplicate entry and in one case flat was not at all sold to Mr. Aditya Patil. Further, six buyers had confirmed during assessment proceedings that they had not indulged in cash transaction. The same had not be controverted by any fresh findings/investigation. This made the very basis of extrapolation inaccurate for the sake of statistics. Since the very basis of



preparation of this list had been questioned and the base addition itself had been deleted, the issue of extrapolating the same did not arise. He placed reliance on several case laws involving identical issue decided in favour of the assesses i.e. K. Raheja Corporate Services Pvt. Ltd. (ITA Nos.2521 to 2527/MUM/2021), D.N. Kamani (HUF) v. DCIT [1999] 70 ITD 77 (PAT.) (TM) etc. and deleted the addition.

5. Before us, in the course of hearing the ld.AR has placed reliance on the findings and decision by the ld.CIT(A) reiterating the same contentions. A summary of additions made in each of below assessment years is detailed as follows:

AY	Financial Year	Income declared in ITR	Total Income as per Assessment order	Demand as per Assessment	Addition @44.64% of 20% of cash Component as alleged
2016-17	2015-16	11,390	76,46,500	41,52,703	76,35,110
2017-18	2016-17	1,840	2,61,86,590	1,48,61,967	2,61,84,750
2018-19	2017-18	1,820	4,08,50,690	1,96,48,744	4,08,48,865
2019-20	2018-19	41,30,92,430	48,48,03,296	4,01,08,476	7,17,10,866
2020-21	2019-20	28,37,77,410	32,25,33,700	2,20,81,241	3,87,56,290



5.1 It was submitted that KFC and GHL were mere business Partners working on a 'principal-to-principal basis in fiduciary capacity. There was no other association or relation between the two parties. The assessee was totally unaware of any alleged acceptance of on-money. As per the Joint Development Agreement, GHL had the sole responsibility of developing the property and later marketing the flats and subsequent sales of the same. The assessee did not interfere or deal with any potential parties for sale. Further, it did not handle any aspect of receipt of sales consideration. Hence, there was no question of accepting any on-money in cash by it. In view of the Joint Development Agreement, the construction and marketing and sales activity were carried on by GHL. After the commencement of project since 2014, the first agreement for sale of flat was registered on 12 October. On verification and comparison of the data of sale agreement entered into, there was no sale of flat below the stamp duty rate, being market value of Flat/unit. The project was for the middle class group who were mostly salaried class, purchasing the flat by obtaining loans etc. All of the above showed that there was no possibility of any on-money being received in cash in respect of sale of the concerned flats.

5.2 It was further noted that during the course of the survey proceedings, statements were recorded on oath u/s 131 of the Act of the following sales representatives of Ganraj Homes namely Shri Deepak Tugave,



Sr. Sales Manager, Vinit Singh, Sr. Sales Manager, Smt. Anjana Domkavale. Sr. Sales Manager and Mr. Sujeet Pandey, General Sales Manager. It was pleaded that the assessee had no involvement with these employees, as the persons mentioned above were associated with Goel Ganga Group. It did not have any control on these persons nor was it responsible for any actions done by them. Further, their statements were self-explanatory, and reading of the same did not confirm to the receipt of any on money. None of the partners, who were actually responsible for the revenue from the Project, had admitted receipt of any cash as on-money. Moreover, the AO had relied upon statements recorded during survey proceedings of the above-mentioned sales representatives to hold that KFC and GHL had accepted on-money on sale of units and further estimated income in the hands of KFC though there was no reference to KFC whatsoever in any of the statements and particularly when those persons were neither employees of the assessee nor were required to report to it.

5.3 The Id.AR has submitted that in the case of GHL, the addition made by the AO confirmed by the Id.CIT(A) Pune has already been deleted fully. As such, there cannot be any basis for sustaining the addition in the hands of the assessee which was in any case not involved in sale/marketing etc but had a very limited role as stated in the preceding paras. The Id.AR has also



placed on record the said order passed by hon'ble ITAT, Pune Bench in the case of **Ganraj Homes LLP(GHL) in ITA No. 878/879/874/Pun/2024 (AYs 2017-18/2018-19/2019-20)dated 07.01.2025** wherein the entire addition made on the above lines have been deleted in toto.

5.4 The Id.DR has placed reliance on the assessment order.

6. We have carefully considered all the relevant facts of the case having perused the records and have heard the rival submissions. We have also gone through order passed by hon'ble ITAT, Pune bench(supra) in the case of GHL. Relevant parts of the said order are extracted as under for the sake of brevity and clarity:

“3. During the course of assessment proceedings, the Assessing Officer noted that the assessee LLP is a partnership firm (on conversion from Ganraj Homes Pvt. Ltd. w.e.f. 03.06.2016) wherein Smt. Kavita Goel, Pinky Garg, Sulochana Garg, Mahavir Agarwal and Agrim Goel are the partners. **The assessee firm is engaged in construction of residential and commercial projects and has executed a development agreement dated 10.10.2013 with M/s. Kalyanee Fortune Constructions, a partnership firm having its registered office at 3 AA, Edena Building, 97 Mk Road, Marine Lines, Mumbai** on principal to principal basis for development of a piece of land at S.No.41, village-Sus, Mulshi, Pune, on revenue sharing basis. The share of gross sales proceeds of the project on the said land are to be apportioned between M/s. Kalyani Fortune Construction and M/s. Ganraj Homes in profit sharing ratio of 44.64% and 55.36% respectively. **The assessee firm developed the said land with the project named as “Ganga Acropolis”**. Ganga Acropolis is one of the premium residential projects under M/s. Ganraj Homes LLP, which is a concern of Subhash Goel Group, whose office was covered u/s 132 of the Act. The site office of the Ganga Acropolis was covered under survey action u/s 133A of the Act at 41/1, 41,2/14, Vill-Sus, Tal-Mulshi, Pune.

4. The Assessing Officer noted that during the course of search action it was seen that the assessee is involved in selling the units of the project at less than the



prevailing market price which is more than the Ready Reckoner/Circle rate. Thus, the assessee was involved in receiving differential amount as on-money in sale consideration. He noted that during the course of survey proceedings at the project site office of the assessee, various incriminating documents were found. When these documents were correlated with entries found in other documents and Whats App chats, it becomes evident that the assessee firm is involved in accepting on-money in cash. After analyzing the various incriminating documents as well as evidences collected during the course of search and survey action, the Assessing Officer noted that the receipt of such on-money is clearly evident. He referred to the statements recorded of Shri Deepak Tugave, Smt. Anajana Domkavale and Vinit Singh who all are Sr. Sales Managers who have stated in their statements that the assessee has received on-money on account of sale of flats to different persons. However, the Assessing Officer noted that the assessee has not offered any on-money received in the ITRs filed. He, therefore, asked the assessee to file reply as to why the addition should not be made on account of receipt of on-money.

5. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of both sides. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs.2,42,12,902/- as on-money received by the assessee being 20% of the total consideration as mentioned in the registered deeds which works out to Rs.4,34,79,737/- for assessment year 2017-18 as per extrapolation since no evidence of receipt of any on-money was found but flats / shops have been sold during the year. Since as per the joint venture agreement the share of the assessee and M/s. Kalyanee Fortune Constructions having profit sharing ratio as 55.36% and 44.64%, respectively, he determined the share of the assessee at Rs.2,42,12,902/- which has been upheld by the Ld. CIT(A). The reasoning of the Ld. CIT(A) has already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the entire addition was made on the basis of certain loose papers found and the statements of some of the employees. However, not a single question was asked to Mr. Subhash Goel in the statement recorded u/s 132(4) either 12.01.2019 or 01.03.2019 when the prohibitory order was lifted. Further, the incriminating documents so found relate to one pent house which has not been sold. It is also his submission that the employee whose statement was recorded joined the service in 2018 whereas the addition has been made for a period prior to his joining the services. None of the employees in whose handwriting the diary maintained was found was either questioned or examined. It is also his submission that most of the sales have not been made to the persons whose names are appearing in the loose sheets, all the buyers are unrelated parties and no cash or other valuables were found or any entry or document relating to any expenditure out of such on-money received was found and the entire addition is made on the basis of surmises and guesswork.



.....

32. We find some force in the above arguments of the Ld. Counsel for the assessee. A perusal of the statement recorded of Shri Subhash Goel u/s 132(4) shows that not a single question has been asked by the search party on account of receipt of any on-money on the basis of the statements recorded u/s 131 of the senior sales managers. We further find none of the persons to whom the flats have been sold have ever been examined either by the search party during the course of search or post-search enquiries or by the Assessing Officer during the course of assessment proceedings. Further, a perusal of the details furnished by the assessee shows that most of the flats were sold to the persons other than the persons whose names are appearing in the seized documents. It is also an admitted fact that nothing is brought on record to show that any of the buyer to whom the flats have been sold are related to the assessee and the entire addition, in our opinion, has been made on certain guesswork on the basis of statements of the sales managers and some rough notings. Even the incriminating documents which relate to the pent house has not been sold. We, therefore, are of the considered opinion that the entire addition made by the Assessing Officer and sustained by the Ld. CIT(A) being on guesswork and surmises cannot be upheld.

33. We further find the Ld. CIT(A) in the case of the other partner of the joint venture M/s. Kalyanee Fortune Constructions having profit share of 44.64% in the project has deleted the addition on account of on-money received in the project Ganga Acropolis for assessment year 2019-20 by observing as under:

“8.1 Decision on ground no 5 & 6: These grounds are on the issue of addition of Rs.7,17,10,866/- on account of alleged on-money received. As both the grounds are inter-related, the decision on both is taken combined.

8.2 The AO, vide assessment order has mentioned that information was flagged on the insight portal regarding on-money receipt by the appellant and its partner on sale of flats/units in their project “Ganga Acropolis”, and during the survey on site office of the said project, evidences of on-money received by the appellant and its partner were found. Further, average 20% of stamp duty value was taken for estimating additions of on money in those flats where extrapolation was applied.

8.3 Moreover, the 10 found out that 20% of total consideration as mentioned in registered deed made during AY 2019-20 i.e. Rs. 16,06,42,620/- is on-money received by appellant firm and its partner during AY 2019-20 and the same had escaped assessment and was required to be taxed. Since, appellant ad its partner i.e. & M/s. Ganraj Homes LLP is having profit sharing ratio of 44.64% and 55.36% respectively; appellant’s share came to Rs.7,17,10,866/. In view of the same, a show-cause notice was issued to the appellant asking it as to why the amount received on account of on-money should not be added to its total income. In response, the



appellant furnished its reply and the same was duly considered by AO however not found acceptable. Consequently, the assessment was completed u/s. 147 on 02.03.2024 making an addition of Rs. 7,17,10,866/- on account of on-money receipt.

8.4 I have carefully considered the facts of the case, submissions of the appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. It is pertinent to mention here that vide this office order dated 03.06.2024 having appeal no CIT (A)-47, Mumbai/10247/2017-18, 10757/2015-16, 13034/2016-17, 10409/2019-20 for A.Y. 2018-19, 2016-17, 2017-18 & 2020-21 respectively, the appeals on the identical issue, i.e. addition on account of on-money receipt, in the appellant own case for A.Y. 2016-17, 2017-18, 2018-19 & 2020-21 have already been decided in favour of appellant. The relevant portion of the order is reproduced hereunder:

“I find that the view taken by Hon’ble Apex Court in the case of Common Cause (A Registered Society) v. UOI 245 taxman 214 (SC) that the entries in loose papers and electronic data from the premise of a third party which were not regularly kept during the course of business has no evidentiary value is also affirmed by the Hon’ble Karnataka High Court in the case of DC IT v. Sunil Kumar Sharma - [2024] 159 taxmann.com 179 (Karnataka). I find merit in the contention that on the basis of decision of the Hon’ble Apex Court (supra), entries in loose papers recovered at premise of third party have no evidentiary value. The alleged transactions mentioned in the rough notings of a third party were not recorded by the appellant. The alleged transaction vilas not corroborated from the material found at survey in the appellant own case. It is well settled in law that the loose papers and documents cannot possibly be construed as books of account regularly kept in the course of business. Therefore, the AO would not be justified in resting its case on the loose papers, diary and documents found from third party if such documents contained narrations of transactions with the assessee as decided by the Hon’ble Supreme Court in the case of Central Bureau of Investigation Vs VC Shukla.

19. I find that a survey action was conducted in the appellant’s own case on 31.01.2020 i.e. one year after the survey on M/s Ganraj Homes LLP. However, there is no mention in the order of assessment of any Incriminating evidence having being found at the premise of the appellant. It is also imperative that the presumption u/s 132(4A) of the Act is applicable to the person from whose possession or control the incriminating material is found & seized. Based on the incriminating material found from, third party search but not belonging to the appellant, this presumption will not be applicable unless corroborated by other evidence. Presumption available under section 132(44) can be drawn against the person in whose case search is authorized and from whose possession or control books of account, diary or documents are found in the course of search. Presumptions regarding correctness of contents of books of account etc, cannot be raised against the third party.



20. Further, even if the loose sheets are considered to be admissible as evidence, the AO has failed to bring on record that the proceeds of on-money was shared with the appellant. In absence of any such evidence, the addition of on-money in the hands of the appellant cannot be accepted. It is a settled law that the impounded documents have to be considered as it is and nothing can be altered or supplied therein. In the present case, the impounded documents by itself are incapable of testifying the stand of the AO that the appellant had received any on-money.

21. In view of the facts, I find that the AO has erred in appreciating the material on record correctly. Firstly, the validity of loose papers / diary notings found in the course of search as well as the statement recorded in survey cannot be accepted. The vital link between the material whatsoever found during the survey on M/s Ganraj Homes LLP and the appellant was missing. It has resulted in the addition being made on the basis of the suspicion that the appellant might have received his share of on-money without there being any single piece of evidence for the same. In this regard, I find that the Hon'ble Apex Court has, in plethora of cases, advised against the use of suspicion however strong, for the purpose of making addition as under:

Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC)

Whether though ITO is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence on account of law, but in making assessment under section 23(3) of 1922 Act he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all - Held, yes.

Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC)

In this case, Hon'ble Supreme Court observed that both ITO and ITAT arriving in their conclusions had indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained or finding was perverse which could not be sustained and therefore Supreme Court was entitled to interfere with such finding and the addition made was liable to be deleted.

Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC)

"Taking into consideration the entire circumstances of the case, we are satisfied that there was no material on which the Income-tax Officer could come to the conclusion that the firm was not genuine. There are many surmises and conjectures, and the conclusion is the result of suspicion which cannot take the place of proof in these matters.

Omar Salay Mohamed Salt v. CIT (1959) 37 ITR 151 (SC)



“...On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court.”

22. *Therefore, I am of considered view that addition made of Rs. 13,95,000/- cannot be sustained hence deleted”*

8.5. *In view of the above, the AO is directed to delete the addition of Rs.7,17,10,866/- made on account of on-money receipt. Accordingly, the grounds of appeal no. 5 & 6 raised by the appellant are allowed.”*

34. Thus, a perusal of the order of the Ld. CIT(A) in case of other partner in the joint venture namely M/s Kalyanee Fortune Constructions shows that the Ld. CIT(A) has deleted the additions for assessment years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. However, it was not brought to our notice by either side as to what has happened before the Tribunal in the case of M/s. Kalyanee Fortunate Constructions.

35. We find the Hon’ble Madras High Court in the case of CIT vs. S. Khader Khan Son (supra) has held that section 133A of the Act does not empower any ITO to examine any person on oath. Therefore, the statement recorded u/s 133A of the Act has no evidentiary value and any admission made in such statement cannot be made the basis for admission.

36. We find the Hon’ble Kerala High Court in the case of Paul Mathews & Son vs. CIT (2003) 263 ITR 101 (Kar) has held that the provisions of section 133A of the Act does not empower any ITO to examine any person on oath and the statement recorded u/s 133A of the Act has no evidentiary value.

37. We find the Hon’ble Madras High Court in the case of CIT vs. P. Balasubramanian (2013) 354 ITR 116 (Mad) has held that the addition can be made on the basis of assessee’s statement in survey only if it is supported by the relevant material to substantiate the same.

38. We find the Mumbai Bench of the Tribunal in the case of Smt. Madhu Gupta vs. DCIT (2006) 8 SOT 691 (Mum), has held that the statements which are not confronted to any of the partners of the assessee should not be considered as the basis for making addition.

39. So far as various decisions relied on by the Assessing Officer as well as the Ld. CIT(A) are concerned, the same, in our opinion, are not applicable to the facts of the present case. In the case of Surendra M. Khandhar (supra), the Hon’ble Bombay High Court has held that where Xerox copy of document seized from the assessee was not



denied the same showed advancement of certain sums to one 'C' and two signatories of said document were also not denied by the assessee and as the document was seized from assessee's control, presumption under section 132(4A) and 292C was clearly applicable. However, in the present case, the managing partner of the assessee firm has denied to have received any such on-money and no further questions were asked either to the managing partner or to any of the customers to whom the flats / shops have been sold and who were identifiable.

40. We find in the case of CIT Vs. Naresh Kumar Aggarwala (supra), the Hon'ble Delhi High Court has held that, there was a presumption raised under section 132(4A) on seizure of fax message and it was upon assessee to rebut that presumption by offering a plausible explanation. However, as mentioned earlier, the statements of the employees in the instant case were recorded u/s 131 of the Act and not u/s 132(4A) of the Act. Further, the managing partner of the assessee firm has completely denied to have received any on-money and neither he was confronted subsequently nor any of the customers who are identifiable were examined either by the Investigation Wing during the course of search or post-search enquiries or by the Assessing Officer at the time of assessment proceedings. So far as the decision of Hon'ble Bombay High Court in the case of Harish Textile Engrs. Ltd. vs. DCIT (supra) relied on by the Ld. CIT-DR is concerned, we find in that case the extrapolation on the basis of loose papers found during the course of search was upheld by the Hon'ble Bombay High Court. However, it is seen that the assessee in that case has accepted that it has received on-money whereas in the instant case the director / partner of the assessee firm has completely denied to have received any such on-money. Further, neither he was confronted subsequently nor any of the buyers/customers who are identifiable were examined/confronted either by the Investigation Wing during the course of search or post-search enquiries or by the Assessing Officer at the time of assessment proceedings. So far as the decision of Hon'ble Supreme Court in the case of Pooran Mal vs. Director of Inspection (supra) is concerned, there is absolutely no dispute to the fact that evidences can be used but the same has to be corroborated.

41. In view of the above discussion and in view of the decisions cited (supra), we are of the considered opinion that extrapolation cannot be made on account of receipt of on-money for sale of shops in respect of which no evidence was found during the course of search and no enquiry or investigation was conducted either by the search party during the course of search or post-search enquiries or by the Assessing Officer during the course of assessment proceedings.

42. Since in the instant case, admittedly, not a single question was put to Mr. Subhash Goel about the statements of the employees and the incriminating documents which relate to the sale of penth house has actually not been sold, most of the flats were sold to the persons other than the persons whose names were



appearing in the loose sheets towards sale of the said very flats and the buyers are unrelated parties and since the Ld. CIT(A) in the case of other partner of the joint venture has already deleted the addition on account of such on-money received on sale of flats in the project Ganga Acropolis, we are of the considered opinion that no addition is called for in the hands of the assessee. Accordingly, the addition of Rs.2,42,12,902/- made by the Assessing Officer for assessment year 2017-18 being share of the assessee on account of extrapolation is deleted. The grounds raised by the assessee are accordingly allowed.

43. Since the grounds raised by the assessee in the other two years are identical to grounds of appeal in assessment year 2017-18, therefore, following similar reasonings, **we hold that neither any addition on account of any on-money received nor on account of extrapolation can be added.** The grounds raised by the assessee are accordingly allowed.”

6. The hon’ble ITAT, Pune bench in the above order has categorically held that in the case of GHL, the Joint Development partner of the assessee **that neither any addition on account of any on-money received nor on account of extrapolation can be added.** Since the outcome of this appeal in the case of GHL has direct bearing to the facts of the instant appeals which are inextricably linked to each other, respectfully following the above decision of the hon’ble ITAT(supra), we hold that no addition could be justified either on on-money issue or extrapolation on the facts and the circumstances of case. Accordingly, the impugned appellate order is upheld and the grounds of appeal of the Revenue are dismissed.

7. In the result, **appeal of the Revenue stands dismissed.**

8. **ITA No. 4448/MUM/2024 (A.Y. – 2017-18)**

1. *“On the facts and in the circumstances of the case and in law the Ld CIT(A) allowed the appeal of the assessee as alleged “on money” received without considering that*



the incriminating materials proves that there is involvement of cash in the sale of flats and the same has not been accounted in the assessee's books of accounts?"

9. The decision rendered by us in para 6/7 above would apply *mutatis mutandis* to the instant appeal as well. Accordingly, ground of appeal and the appeal are **dismissed**.

10. ITA No. 5779/MUM/2024 (A.Y. – 2019-20)

1. *"Whether on the facts and circumstances and in law the Ld. CIT(A) erred in disregarding evidence of undisclosed cash receipts found on Party B's premises, which directly impacts the profit-sharing rights of the assessee under a Joint Development Agreement, as held in Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC), where the Supreme Court ruled that tax authorities are entitled to consider the surrounding circumstances and inherent probabilities when assessing the nature of unexplained income?"*
2. *"Whether on the facts and circumstances and in law the Ld. CIT(A) misapplied the law by placing the entire onus on the assessing officer to prove the direct receipt of cash by the assessee despite circumstantial evidence suggesting cash transactions, as guided by CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC), which establishes that the burden of proof may shift to the assessee once prima facie evidence is presented linking undisclosed income to the parties involved in financial arrangements?"*
3. *"Whether on the facts and circumstances and in law the Ld. CIT(A) was justified in rejecting proportional additions to the assessee's income without direct proof of cash receipts in light of the CIT us. N.K. Proteins Ltd. (2017) 250 Taxman 22 (SC), where the Supreme Court upheld proportionate additions based on circumstantial evidence of undisclosed income, especially in sectors where cash dealings are prevalent?"*
4. *"Whether on the facts and circumstances and in law the Ld. CIT(A) overlooked the doctrine of preponderance of probability by dismissing the possibility that the assessee received a share of undisclosed cash income in a joint real estate venture, is laid out in CIT us. P. Mohanakala (2007) 291 ITR 278 (SC), where the Supreme Court emphasized that in the absence of concrete rebuttal by the assessee, circumstantial evidence holds significant weight?"*
5. *"Whether on the facts and circumstances and in law the Ld. CIT(A) erred in deleting the addition of Rs.7,17,10,866/ made on account of "On Money" received, which is not disclosed in books of accounts?"*



11. Ground no.1 to 4 are dismissed as the citations relied upon are distinguishable on the facts and the circumstances of case. In respect of ground no.5, the decision rendered by us in para 6/7 above would apply *mutatis mutandis* to the instant appeal as well. Accordingly, all above grounds of appeal and the appeal are **dismissed**.

12. ITA No. 4444/MUM/2024 (A.Y. – 2020-21)

1. *“On the facts and in the circumstances of the case and in law the Ld.CIT(A) allowed the appeal of the assessee as alleged “on money” received without considering that the incriminating materials proves that there is involvement of cash in the sale of flats and the same has not been accounted in the assessee’s books of accounts?”*

13. The decision rendered by us in para 6/7 above would apply *mutatis mutandis* to the instant appeal as well. Accordingly, ground of appeal and the appeal are **dismissed**.

14. In the result, all the above appeals in **ITA Nos. 4444, 4445, 4448 and 5779/Mum/2024** filed by the Revenue are **dismissed**.

Order pronounced in the open court on 23/12/2025.

Sd/-

NARENDER KUMAR CHOUDHRY
 (न्यायिक सदस्य / JUDICIALMEMBER)

Sd/-

PRABHASH SHANKAR
 (लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai



दिनांक /Date 23.12.2025
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.

