



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

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

आयकरअपीलसं./ITA No. 528/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2019-20))

M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001	Vs.	The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAXFR9975L		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No. 529/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2020-21))

M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001	Vs.	The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001
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(निर्धारणवर्ष/Assessment Year: (2021-22))

M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001	Vs.	The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001
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आयकरअपीलसं./ITA No. 531/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2022-23))

M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001	Vs.	The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAXFR9975L		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No. 518/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2019-20))

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001	Vs.	M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001 PAN No.: AAXFR9975L
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No. 519/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2020-21))

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001	Vs.	M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001 PAN No.: AAXFR9975L
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No. 520/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2021-22))

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001	Vs.	M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001 PAN No.: AAXFR9975L
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)



आयकरअपीलसं./ITA No. 521/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2022-23))

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot 360001 (अपीलार्थी/Assessee)	Vs.	M/s. R K Infralink LLP R K Empire, Nr. Mavdi Circle, Rajkot 360001 PAN No.: AAXFR9975L (प्रत्यर्थी/Respondent)
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Assessee by : Shri Mehul Ranpura, Ld. AR
Respondent by : Shri Sanjay Punglia, Ld. CIT. DR

Date of Hearing : 05/01/2026
Date of Pronouncement : 24/02/2026

ORDER

Per, Dinesh Mohan Sinha, J.M.:

This is bunch of eight appeals, consisting appeals filed by the assessee and appeals filed by the revenue, pertaining to Assessment Year 2019-20 to 2022-23, all directed against the order passed under section 250 of the Income Tax Act, 1961, by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), vide common order dated 07/06/2024, which in turn arise out of separate orders passed by the Assessing Officer u/s 147 read with section 143(3)/144B of the Act.

2. Appeals filed by the Assessee, and Revenue, contains multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Assessee and Revenue. We find that most of the grounds raised by the Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the Assessee and Revenue. With this background, we summarize and concise the grounds raised by the Assessee and Revenue as follows:



(i) *The Ld. Commissioner of Income-tax(Appeals)-11, Ahmedabad erred on facts as also in law in dismissing ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, the proceedings-initiated u/s. 147 of the Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed.*

(This is ground No.2 raised by the assessee, in ITA No.528/RJT/2024 A.Y.2019-20, Ground No. 2 in ITA No. 529-Rjt-24 A.Y. 2020-21)

(ii) *The Ld. CIT(A)erred on facts as also in law in retaining addition of Rs.2,20,49,673/- by estimating profit at the 16% of so called on money receipt. The addition made and retained is bad in law as also on facts therefore the same may kindly be deleted or alternatively, the addition made by estimating rate of profit is very much on higher side and therefore the same may kindly be directed to be reduced and oblige.*

(This is ground No.3 and 4 raised by the assessee, in ITA No.528/RJT/2024 A.Y.2019-20, Ground No. 3 and 4 in ITA No. 529-Rjt-24 A.Y. 2020-21, Ground No.2 and 3 in ITA No. 530-Rjt-24 A.Y. 2021-22,Ground No.2 and 3 in ITA No. 531-Rjt-24 A.Y. 2022-23)

(The Revenue is in cross appeal and raised ground No.1 in ITA No. 518-Rjt-24 A.Y. 2019-20, Ground No.1 in ITA No. 519-Rjt-24 A.Y. 2020-21,Ground No.1 in ITA No. 520-Rjt-24 A.Y. 2021-22, Ground no.1 in ITA No. 521-Rjt-24 A.Y. 2022-23- in these grounds, plea of the revenue is that addition made by the assessing officer should be sustained)

(iii) *Ground raised by the revenue on ICDS.*

"The Ld.CIT(A) has erred in directing the A.O. to tax the unaccounted profit in the year in which sale deed is executed instead of the year in which the on-money has been received, ignoring that the same is not in accordance with Accounting principles as per ICDS-3 applicable to Real Estate Developers and also not appreciating that the income on account of undisclosed on-money receipt was required to be assessed in the year of receipt."

(This is ground No.2 in Revenue`s appeal in ITA No. 518-Rjt-24 A.Y. 2019-20, Ground No.2 in ITA No. 519-Rjt-24 A.Y. 2020-21,Ground No.2 in ITA No. 520-Rjt-24 A.Y. 2021-22,Ground No.2 in ITA No. 521-Rjt-24 A.Y. 2022-23)

(iv) *Ground raised by the revenue*

"On the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.97,30,000/-u/s.69A r.w.s.115BBE of the I.T.Act on account of unaccounted cash loans given by the assessee."

(This is ground No. 3 in Revenue`s appeal in ITA No. 521-Rjt-24 A.Y. 2022-23).

3. Now, we shall adjudicate above, concise and summarised grounds one by one, as follows.



4. The summarise and concise ground No.1 is reproduced below:

(i) The Ld. Commissioner of Income-tax(Appeals)-11, Ahmedabad erred on facts as also in law in dismissing ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, the proceedings-initiated u/s. 147 of the Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed.

(This is ground No.2 raised by the assessee, in ITA No.528/RJT/2024 A.Y.2019-20, Ground No. 2 in ITA No. 529-Rjt-24 A.Y. 2020-21)

5. Brief facts of the issue in dispute are stated as under. The assessee, a partnership firm, is assessed to tax by the Assistant Commissioner of Income-tax, Central Circle-1, Rajkot (hereinafter referred as to the "assessing officer" It is engaged in the business of construction and has developed project "RK Empire". The assessee maintains its books of account as per generally accepted accounting standards and policies. Return of income for the assessment year under consideration was filed u/s.139(1) of the Income-tax Act, 1961 (hereinafter referred as to the "Act" on 25.07.2019 declaring therein total loss at Rs. 48,098/- Search u/s. 132(1) of the Act was carried out at the premises of R K Group. During the course of search, premises of Shri Girish Vanjani was also covered, who was maintaining the accounts of the R.K. Group (including the unaccounted cash transactions) at the instructions of Shri Sarvanand Sonvani, the main person of the R.K. Group. The assessing officer has also relied upon the statement of Shri Girish Vanjani wherein he has particularly stated that the said entries has been recorded by him on the instructions of Shri Sarvanand Sonvani and the latter in his statement has accepted that Shri Girish Vanjani looks after the accounting and the data entry work of the R.K. Group in accordance with his instructions. This fact proves that the said entries have been recorded by him pursuant to the instructions of Shri Sarvanand Sonvani. While passing the assessment order, the assessing officer has referred to incriminating evidence found during the course of search, data extracted from seized material, the assessee's reply in response to show cause notice and concluded that the assessee has



earned on-money on sale of projects and similar modus-operandi has been adopted by various other projects developed by assessee group.

6. As details regarding an unaccounted part of the above mentioned transactions pertaining to the assessee, have been gathered from the seized material during the search operation. Therefore, the case of the assessee has been reopened under section 147 of the Act, after following the due procedure laid down in the Income tax Act, and after obtaining necessary approval from competent authority specified under section 151 of the Act. Notice under section 148 of the Act has been issued on 22.07.2022. In response to the notice under section 148, the assessee has filed its return of income on 10.08.2022, declaring net loss of Rs.48,098/-. Subsequently, notice under section 143(2) of the Income tax Act has been issued and served on 18.12.2022, on the e-filing portal of the assessee. Subsequent notice under section 142(1) of the Act, have been issued from time to time, seeking primary as well as further details from the assessee for carrying out the assessment.

7. While passing the assessment order, the assessing officer has observed that during the course of search at the premises of Shri Girsh Vanjani, Pen drives, and Hard Disks were recovered. The Forensic Mirror Imaging of the same revealed the accounts of the following:-

- (1). Sale of Units
- (2). Cost of Lands
- (3). Expenses incurred on various projects and miscellaneous transactions made by the R.K. Group members with various counter parties.



The assessing officer observed that 3 files have been found wherein certain unaccounted cash transactions of the R.K. Group were recorded. On perusal of such data, it was observed that the said data relates to the sale and purchase of various kinds of properties/project and the occurrence of such transactions can be verified with the data available in public domains on various government portals. The assessing officer further observed that the digital data contains the details of every project developed by the group in coded form. The project RK Empire has been recorded as "EMP" in such digital data assessing officer has concluded that the assessee has received the on-money cash payment in respect of project R.K. Empire which is evident from the seized data. The assessing officer estimated the net profit rate of 35% for the project undertaken by the assessee. Thus, addition of Rs.4,82,70,755/- being unaccounted profit embedded in the net unaccounted receipts for the project RK Empire is made over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration. Consequently, total business income for the year under consideration is estimated by Rs. 4,82,70,755/- for the year under consideration invoking provisions of section 145(3) of the Act and after considering all the facts and submissions of the assessee.

8. Aggrieved by the order of the assessing officer, the assessee filed an appeal against the order of assessment dated 21.04.2023 before Ld. CIT(A). The Ld. CIT(A), vide order dated 07.06.2024 has reduced the estimated addition on "on-money" to 16% from 35%. The learned CIT(A) has also dismissed the ground of the assessee, pertaining to reassessment proceedings under section 147 of the Act and reassessment proceedings initiated by the assessing officer u/s 147 of the Act, was held, as valid, by the ld CIT(A). Dissatisfied with the findings of learned CIT(A), the assessee, as well as revenue, both are in appeal before us.



9. Learned Counsel for the assessee, argued that reasons recorded by the assessing officer are bad in law, as there is no tangible material to reopen the assessment, therefore, reassessment proceedings may quashed.

10. On the other hand, learned DR for the revenue submitted that there were lot of unaccounted transactions pertaining to the assessee, have been noticed by the assessing officer from the seized material. The seized material clearly state that the income has escaped assessment, hence there were enough tangible material to reopen the assessment. Apart from this, the approval under section 151 of the Act has been taken from the competent authority, hence, reopening of assessment is valid, and it is in accordance with law.

11. We have heard both the parties. We find that in the new regime/ scheme of search assessment, the proceedings for search assessment of search party as well as third-party are made under section 147 of the Act, unlike in the earlier/ old scheme of search assessment, wherein the search assessment of searched party was made under section 153A of the Act, whereas the assessment of third-party, was made under section 153C of the Act. Since, in the present reassessment proceedings, both of the searched party, as well as third party assessments are covered. It is observed that the initiation of reassessment proceedings in the present case is valid in law. While passing the assessment order, the assessing officer also observed that search was carried out at the assessee`s premises on 24.08.2021, and pursuant to the search, notice under section 148 of the Act, was issued in case of the assessee. As search was carried out in the case of the assessee after 01.04.2021, wherein, provisions of section 148 were amended and provides deemed satisfaction for three assessment years prior to the date of search, and even on this ground, the assessing officer has validly issued notice under section 148 of the Act. Hence, there is no defect in the



reassessment proceedings, therefore, we dismiss the ground raised by the assessee and confirm the findings of the learned CIT(A).

12. In the result, ground No.2 raised by the assessee, in ITA No.528/RJT/2024 A.Y.2019-20, and ground No. 2 raised by the assessee, in ITA No. 529-Rjt-24 A.Y. 2020-21, are dismissed.

13. The summarised and concise ground no.(ii), is reproduced below for ready reference:

(ii) The Ld. CIT(A) erred on facts as also in law in retaining addition of Rs.2,20,49,673/- by estimating profit at the 16% of so called on money receipt. The addition made and retained is bad in law as also on facts therefore the same may kindly be deleted or alternatively, the addition made by estimating rate of profit is very much on higher side and therefore the same may kindly be directed to be reduced and oblige.

(This is ground No.3 and 4 raised by the assessee, in ITA No.528/RJT/2024 A.Y.2019-20, Ground No. 3 and 4 in ITA No. 529-Rjt-24 A.Y. 2020-21, Ground No.2 and 3 in ITA No. 530-Rjt-24 A.Y. 2021-22, Ground No.2 and 3 in ITA No. 531-Rjt-24 A.Y. 2022-23)

(The Revenue is in cross appeal and raised ground No.1 in ITA No. 518-Rjt-24 A.Y. 2019-20, Ground No.1 in ITA No. 519-Rjt-24 A.Y. 2020-21, Ground No.1 in ITA No. 520-Rjt-24 A.Y. 2021-22, Ground no.1 in ITA No. 521-Rjt-24 A.Y. 2022-23- in these grounds, plea of the revenue is that addition made by the assessing officer should be sustained)

14. In this summarised and concise ground, the plea of the assessee is that estimated profit at the rate of 16% on the so called “on money” is on higher side, considering the judgement of the jurisdictional High Court of Gujarat. However, plea of the revenue is that addition made by the assessing officer at the rate of @ 35% should be sustained. Learned Counsel for the assessee submitted that judgements of Hon`ble jurisdictional High Court of Gujarat, in respect of addition on “on-money”, should be followed. The Hon`ble jurisdictional High Court of Gujarat in the following cases held that profit element embedded in the “on-money” should be added in the hands of the assessee and not the entire “on-money”, and estimated addition on “on money” should be at the rate of 6% or at the rate of 8%,



may be made, depending upon the facts and circumstances of the case. The relevant judgements of the Hon`ble jurisdictional High Court of Gujarat and Hon`ble ITAT Ahmedabad, are reproduced below:

(i). 2020 (4) TMI 844ITAT AHMEDABAD GREENFIELD REALITY P. LTD. VERSUS ACIT, CENT. CIR. 1 (2) AHMEDABAD AND DOIT, CENT. CIR. 1 (2) AHMEDABAD, VERSUS GREENFIELD REALITY P. LTD.

“Estimation of Income on-money received by the assessee on booking of flats and shops in "VesuProject" Income offered by the assessee at 8% of the alleged gross receipts source of payment of cash for purchase of the land-HELD THAT:- 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 books were also found. This included cash payment for purchase of land. CIT(A) has rightly observed that the gross 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. After going through the well-reasoned order of the Id. CIT(A), and in the light of judgment of Hon'ble jurisdictional High Court in the case of Panna Corporation [2014 (11) TMI 797 GUJARAT HIGH COURT] as well as Koshor Mohanlal Telwala [1998 (9) TMI 106-ITAT AHMEDABAD-AI] we are of the view that only element of income embedded in the on-money received by the assessee for booking of flats/shops in "Vesu Project" is required to be assessed in its hand in all these years. Element of income involved in this on-money assessee is showing income at 8%, AND CIT(A) is estimating it at 20% HELD THAT:- CIT(A) has also not mentioned any attending circumstances for harbouring a belief that 20% could have been earned from this activity. Thus after taking guidance from the judgment of Kishor Mohanlal Telwala [1998 (9) TMI 106-ITAT AHMEDABAD-AI] we deem it proper that the assessee has rightly disclosed the profit element embedded in the gross profit at 8%. Accordingly, we allow the ground of appeal raised by the assessee, and hold that profit which has been directed to be adopted by the Ld. CIT(A) at 20% of the alleged turnover should be taken at 8%.

(ii) Tax appeal No. 267 of 2022 dated 07.07.2022 M/S. JAY KESAR BHAVANI DEVELOPERS PVT. LTD. (Guj-HC)

“Rejection of books of accounts u/s 145(3) On money receipt estimation of income addition on account of entire construction receipts as alleged unrecorded receipts -

HELD THAT: CIT (A) was not justified in confirming the addition of entire on-money receipts amounting to 4,72,02,368. Therefore, only estimated net profit is required to be taxed. We find that the assessee has shown net profit at 4.55.% for the assessment year under consideration and 4.59% for A.Y. 2010-11. Further, the Hon'ble High Court in the case of CIT V. Abhishek Corporation [1998 (8) TMI 110 ITAT AHMEDABAD-C] has upheld the net profit at 1.31% as declared by the assessee in that case. The net profit rate disclosed at 4.55% during the assessment year under consideration by the assessee in books of accounts and considering the facts that the project undertaken by the assessee comes under deduction of section 801B(10) hence, there may not be any intention to disclose the lower rate of profit. Considering these facts, and taking into



account net profit in construction business, it would be reasonable to estimate 6% of net profit on total on-money.

(iii) The Commissioner of Income Tax 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 are 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."

(iv) 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. Kothari (82 ITR 794 (Supreme Court) 23.5 The assessee admitted such profit at Rs. 45,00,000/- and disclosed that on said transactions income in PMGKY, 2016 and paid 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. assessing officer 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 assessee at Rs. 45,00,000/- can only be assessed to tax more so when the assessee 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-l 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 assessee thus gets relief of Rs.3,02,00,000-45,00,000 = Rs. 2,57,00,000/-."

(v) 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 books were also found. This included cash payment for purchase of land. Therefore, the Ld.CIT(A) has rightly observed that the gross 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 Koshor Mohanlal Telwala (supra), we are of the view that only element of income embedded in the on-money received by the assessee for booking of flats/shops in "Vesu Project" is required to be assessed in its hand in all these years.

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 ld. CIT(A) is estimating it at 20%. It is pertinent to observe that section 144 of the Income Tax Act provides discretion in the assessing officer 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 assessing officer 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 material/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 8% 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 flat. Out of 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."

15. We note that the assessee is in appeal before us and praying the Bench that estimated addition is very higher side and it should be reduced, at a reasonable level. However, learned DR for the revenue submitted that addition made by the assessing officer may be confirmed. We note that the estimation of income is based on facts and will vary from business to business and year to year, depending on the business conditions. We note that ld.CIT(A) has estimated the profit on the "on-money" at the rate of 16% but the ld.CIT(A) has failed to bring on record any comparable case in support of his estimation that too @ 16% and in some cases 8% and 12% etc. No doubt estimate of the profit can be resorted to in these types of cases but the estimate and that too at a particular percentage or fraction of percentage which ld CIT(A) has adopted has to be based on sound reasoning in comparison with



the past results as well as comparable cases. Without this the estimation so made cannot be said to be valid estimation. The jurisdictional Hon'ble High Court of Gujarat, in case of estimation of profit element on, "on-money" has taken the view that estimation of profit in these type of cases of "on-money" had been held between range of 6% to 8%.

16. We note that the average profit of the assessee as per audited books of accounts is 7%, therefore, profit estimation done by the learned CIT(A) at the rate of 16% on the "on-money" is higher side. Considering the nature of business and voluminous 'on-money' and taking into account, the fact that there is expenditure made by the assessee to develop the project out of the "on-money", therefore, profit margin in this type of business normally is 10% on "on-money". We proceed to work out the estimation of profit keeping in mind the following facts:

- (i) The estimate is not opened up to be framed in an arbitrary manner.
- (ii) The estimate by rule of thumb is absolutely infirm.
- (iii) The estimation of rate of profit return must necessarily vary with the nature of the business.
- (iv) There cannot be any uniform yardstick.
- (v) An assessment to be best of judgement can only be based on the material available on record and past records and considering the totality of the facts.
- (vi) Only real income and neither notional income nor astronomical income, can be taxed under the I.T. Act, 1961.

Accordingly, we note that estimation the profit element on 'on-money' at the rate of 10%, should be fair, keeping in mind the principle laid down by Hon'ble Supreme Court in the case of H. M. Esufali Abdulali that the method to be adopted must be which is approximately nearer to the truth.



17. Considering the facts and circumstances, narrated above, we find that the estimation done by the assessing officer, and re-estimated addition, sustained by the Ld. CIT(A) @ 16% is very higher side. Therefore, we are of the view that the estimated addition on “on-money” should be @ 10%, which will take care of inconsistency in the undisclosed income of the assessee. Therefore, the assessing officer, is directed to make the addition in the hands of assessee, at the rate of 10%, on “on-money”. Hence, we allow above appeals of these assessee partly and dismiss all the appeals of the revenue.

18. In the result, following appeals of the assessee are allowed partly (ground-wise):

- (i) Ground No.3 and 4 , in ITA No.528/RJT/2024 A.Y.2019-20,
- (ii)Ground No. 3 and 4 in ITA No. 529-Rjt-24 A.Y. 2020-21,
- (iii)Ground No.2 and 3 in ITA No. 530-Rjt-24 A.Y. 2021-22,
- (iv)Ground No.2 and 3 in ITA No. 531-Rjt-24 A.Y. 2022-23.

Whereas, following appeals of the Revenue are dismissed (ground-wise):

- (i)Ground No.1 in ITA No. 518-Rjt-24 A.Y. 2019-20,
- (ii)Ground No.1 in ITA No. 519-Rjt-24 A.Y. 2020-21,
- (iii)Ground No.1 in ITA No. 520-Rjt-24 A.Y. 2021-22,
- (iv)Ground no.1 in ITA No. 521-Rjt-24 A.Y. 2022-23.

19. The summarised and concise ground No.(iii) is reproduced below for ready reference.

(iii) Ground raised by the revenue on ICDS.

"The Ld.CIT(A) has erred in directing the A.O. to tax the unaccounted profit in the year in which sale deed is executed instead of the year in which the on-money has been received, ignoring that



the same is not in accordance with Accounting principles as per ICDS-3 applicable to Real Estate Developers and also not appreciating that the income on account of undisclosed on-money receipt was required to be assessed in the year of receipt."

(This is ground No.2 in Revenue`s appeal in ITA No. 518-Rjt-24 A.Y. 2019-20, Ground No.2 in ITA No. 519-Rjt-24 A.Y. 2020-21, Ground No.2 in ITA No. 520-Rjt-24 A.Y. 2021-22, Ground No.2 in ITA No. 521-Rjt-24 A.Y. 2022-23)

20. Facts of the assessee`s case have already been narrated above, therefore, we do not repeat the same for the sake of brevity. We have heard learned DR for the revenue and learned Counsel for the assessee, about the accounting principles as per ICDS-3.

21. Learned DR for the revenue argued that Ld.CIT(A) ought not to have directed the assessing officer, to tax the unaccounted profit in the year in which sale deed is executed instead of the year in which the “on-money” has been received. The treatment of revenue recognition adopted by the learned CIT(A) is not in accordance with Accounting principles as per ICDS-3, which is applicable to Real Estate Developers. The learned DR, therefore, stated that the income on account of undisclosed “on-money” receipt was required to be assessed in the year of receipt.

22. On the other hand, learned Counsel for the assessee submitted that assessee has been following the accrual basis of accounting and percentage of completion method. Therefore, revenue should be recognised in the year in which the transaction got materialised, that is, in assessee`s case, when the document is registered and executed, then only the revenue is recognised, with certainty. Hence, learned CIT(A) has rightly directed the assessing officer to recognise the revenue in the year in which the transaction/sale of flat is registered.

23. We have considered the submissions of both the parties, and we note that ICDS-3 refers to Income Computation and Disclosure Standard–III, issued by the Central Board of Direct Taxes under section 145(2) of the Income-tax Act, 1961.



It deals with computation of income from construction contracts for tax purposes. It is largely based on the earlier Accounting Standard AS-7 but contains important differences relevant for income tax computation. We note that ICDS–III applies to construction contracts of contractors, however, assessee under consideration is not a contractor, but he is a contractee. A person who undertakes contract to do a job/work for others, is contractor. However, assessee under consideration is not a contractor but a contractee, who gets the work done from contractor and assessee pays the amount to the contractors for services rendered by them to it (assessee), therefore, ICDS-III is not applicable to the assessee under consideration. Hence, we are of the view that ICDS-III applies to Contractors (not contractees). Fundamental Accounting Principle, as per ICDS-III is the Percentage of Completion Method (POCM). The Percentage of Completion Method is mandatory method under ICDS-III. Under ICDS-III the Revenue from variations, claims and incentives shall be recognised only when there is reasonable certainty of its ultimate collection.

24. We note that even if the addition on account of estimated profit on alleged “on-money” cash receipts is made, the same should be made in the year of actual sale when the conveyance deed is executed in the favour of buyer when the significant risk and rewards are transferred. It is observed that the assessee has consistently followed revenue recognition method whereby sale is offered to tax when registered sale deed of particular unit is executed, that is, date on which significant risk and reward has been transferred to buyer. This method of accounting has been followed consistently by assessee on year to year basis and assessing officer has not disturbed such methodology. This method of accounting of recognizing revenue has been accepted by Hon'ble Gujarat High court in the case of Shivalik Buildwell Pvt Ltd. [2013] 40 taxmann.com 219 wherein it is held as under:



"Section 5 of the Income-tax Act, 1961 Income Accrual of [Booking amount received by builder] - Assessee was a builder and developer - He received certain amount as advance from different parties Assessing Officer added said amount to assessee's taxable income Tribunal set aside addition made by Assessing Officer holding that assessee being a developer of project, profit in its case would arise only on transfer of title of property and, therefore, receipt of any advance or booking amount could not be treated as trading receipt of year under consideration Whether on facts, impugned order passed by Tribunal deleting addition was to be upheld - Held, yes [Para 4] [In favour of assessee]"

25. On identical facts, it is relevant to refer to the Decision of Hon'ble ITAT Ahmedabad in the case of M/s D R. Construction Vs. Income Tax Officer in ITA no. 2735/Ahd/2010, wherein Hon'ble ITAT has held as under:-

"Unaccounted expenditure-receipt of 'on money' in the present case assessee is dealing in several immovable property ie, flats and shops which he has constructed. A single flat is a capital asset for the purchaser but for the assessee all the flats together constitute stock-in-trade. HELD THAT:-it is undisputed position that out of this on money assessee has incurred various expenditure/investment. Therefore, 'on money' as such and as a whole cannot be taxed over and above the income accruing on the basis of entries recorded in the books of account on the basis of decision held in E.D, Sassoon & Co. Ltd. & Ors. vs. CIT (1954 (5) TMI 2 SUPREME COURT we hold that advance money received either by way of cheque or by way of cash will partake the character of taxable income when registered sale deed of the flats is executed in subsequent years. As a result, the sum of 10 crores will not taxable in Asst. Year 2008-09. The appeal of assessee is accordingly allowed."

26. On the similar facts, the learned CIT(A) relied on the judgement of the Hon'ble Supreme Court. The Hon'ble Supreme Court upheld the order passed by the Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. Happy Home Corporation [2018] 94 taxmann.com 292 wherein it was held as under:

"Section 145 of the Income-tax Act, 1961 Method of accounting (Project completion method) - Assessee was engaged in construction business - It was subjected to a survey action which was conducted on business. premises - During course of survey, statement of one partner of firm was recorded in which, he admitted of firm having received a sum of Rs.26.05 crores not disclosed in books of account-While doing so, he further stated that same would be subject to registration of sale deeds When assessment was undertaken, assessee contended that firm was following project completion method of accounting and income would be offered to tax as and when final sale deeds were registered Assessee firm thus



offered only a sum of Rs.1 crore during year under consideration Assessing Officer rejected assessee's stand and added entire amount of Rs.26.05 crores as income of assessee during current year Tribunal accepted assessee's contention that since firm was following project completion method for offering income to tax, same would be subjected to tax upon completion of sale, though amount may have been received earlier from buyer Revenue filed instant appeal on ground that in his statement, partner of firm had disclosed entire amount as income of relevant year - Whether in view of fact that while agreeing that sum of Rs. 26.05 crores was undisclosed income of assessee for relevant current year, said partner of firm added a clarification that same would be subject to execution of sale deeds, there was no error in impugned order of Tribunal and, thus, same was to be upheld-Held, yes [Para 5] [in favour of assessee]”

27. In the light of the above judgement of the Hon’ble Supreme Court, in the case of Happy Home Corporation (supra), and Hon’ble jurisdictional High Court of Gujarat in the case of Shivalik Buildwell Pvt Ltd(supra) and decision of Ahmedabad Tribunal, in the case of M/s D R. Construction, we find that unaccounted profit estimated on ‘on-money’ receipt is required to be taxed in the year in which sale deed is executed by assessee or significant risk and rewards is transferred to buyer. As in case in hand, the assessee has been following revenue recognition method on execution of sale deed, only on-money receipt as computed in present case would be taxable in the year in which sale deed is executed and not when ‘on-money’ was received. Besides, we find that ICDS-III is not applicable to the assessee under consideration, therefore, we dismiss the ground raised by the revenue.

28. In the result, following grounds raised by the revenue, are dismissed (appeal-wise):

- (i) Ground No.2 in ITA No. 518-Rjt-24 A.Y. 2019-20,
- (ii)Ground No.2 in ITA No. 519-Rjt-24 A.Y. 2020-21,
- (iii)Ground No.2 in ITA No. 520-Rjt-24 A.Y. 2021-22,
- (iv)Ground No.2 in ITA No. 521-Rjt-24 A.Y. 2022-23.



29. The summarised and concise ground No.4 is reproduced below for ready reference:

“(iv) Ground raised by the revenue.

"On the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs. 97,30,000/-u/s. 69A r.w.s. 115BBE of the I.T.Act on account of unaccounted cash loans given by the assessee."

(This is ground No. 3 in Revenue's appeal in ITA No. 521-Rjt-24 A.Y. 2022-23).

30. The brief facts qua the above summarise ground are that during the assessment proceeding, the assessing officer had found that the promissory notes seized from the premises of Shri Deepak Puruswani reveals that the assessee -firm had advanced cash loan to various persons. In this regard, the assessee- firm had objected the allegation of the assessing officer and denied of advancement of cash loan. However, without prejudice, the assessee had requested to provide benefit of telescoping as the addition had been made on account of alleged profit embedded in the unaccounted transactions from the project "R K Empire". Therefore, if any addition on account of alleged unaccounted income would be made in case of assessee- firm then application of such income in form of alleged unaccounted loans/advances is to consider to avoid duplication of addition. The submission made by the assessee has been reproduced by the assessing officer in para 13 of the assessment order. However, the assessing officer had rejected the contention of the assessee and held that benefit of telescoping cannot be given, as for claiming the benefit of telescoping, the assessee should in first place, accept the intangible addition and then claim the benefits of telescoping. However, as the assessee during the entire proceedings denied and nowhere accepted the addition, benefit of telescoping cannot be given. Therefore, the assessing officer had made addition of Rs 97,30,000/- on account of cash advanced to others, while passing the assessment order.



31. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has deleted the addition made by the assessing officer by giving telescoping benefit to the assessee. Dissatisfied with the order of the learned CIT (A), the revenue is in appeal before us.

32. Learned DR for the revenue argued that Ld.CIT(A) ought not to have deleted the addition which pertains to loan given by the assessee to others, as the assessee is not entitled for telescoping benefit. On the other hand, learned Counsel for the assessee, defended the order passed by the learned CIT (A).

33. We have considered submissions of both the parties. We note that this ground is against the action of the ld.CIT(A), in deleting the addition of Rs.97,30,000/-, by providing telescoping benefit. This addition was made by the assessing officer on account of alleged cash loans/advances on the basis of loose papers seized from the premises of Shri Deepak Purswani at page no. 1 & 2 of Annexure A-4. The assessee, during the appellate proceedings, has relied on the decision of the Hon'ble High Court of Bombay in the case of Commissioner Of Income-Tax, Poona vs Jawanmal Gemaji Gandhi [1983] 15 Taxman 487(Bom), which is on similar and identical facts. The ld.CIT(A) noted that benefit of telescoping, should be provided to the assessee, as the addition had been made on account of alleged profit embedded in the unaccounted transactions from the project "R K Empire" and delete the addition accordingly. The ld.CIT(A) observed that it is undisputed fact revealed from the assessment order that the assessee -firm had received net on-money amounting to Rs.13,11,88,020/- during the year under consideration and the assessing officer had made addition of Rs.4,59,15,807/-, on account of estimation of net profit @35% of total net 'on-money' receipt of Rs. 13,11,88,020/-. Further, while adjudicating the appeal of the assessee, the ld. CIT(A) has confirmed unaccounted profit @ 16% of



total “on-money” receipt. It means that estimated unaccounted profit was more than the cash advanced by the assessee. Therefore, the assessee is entitled to get the benefit of telescoping of confirmed unaccounted profit against the cash advanced of Rs.97,30,000/-. Therefore, considering these facts, the learned CIT(A) deleted the addition. We have gone through the above findings of the learned CIT(A) and noticed that there is no infirmity in the conclusion reached by the learned CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

34. In the result, ground No. 3 in Revenue’s appeal in ITA No. 521-Rjt-24 A.Y. 2022-23, is dismissed.

35. In the combined result, all appeals filed by the revenue are dismissed, whereas appeals filed by the assessee, is partly allowed, to the extent indicated above.

Order is pronounced in the open court on 24/02/2026.

Sd/-
(Dr. Arjun Lal Saini)
Accountant Member

Sd/-
(Dr. Dinesh Mohan Sinha)
Judicial Member

राजकोट/Rajkot

True Copy

दिनांक/ Date: 24/02/2026

Copy of the order forwarded to :

- The assessee
- The Respondent
- CIT
- The CIT(A)
- DR, ITAT, RAJKOT
- Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot