



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**

आयकर अपील सं./ITA Nos. 588 to 594/RJT/2024

निर्धारण वर्ष /Assessment Year: (2015-2016 to 2020-21 & 2024-2025)

M/s. RK Tradelink 101-Surya Arcade, 1-Pancnath Plot, Rajkot - 360001, Gujrat	बनाम Vs.	The Deputy Commissioner of Income Tax, CC -1 Aayakar Bhawan, Amruta Estate Building, MG Road, Rajkot 360001, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR NO. : AAPFR5907E		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, Ld. AR
राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Ld. SR. DR, &
Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाई की तारीख/Date of Hearing : 16/01/2026
घोषणा की तारीख/Date of Pronouncement : 24/02/2026

आदेश /ORDER

Per, Dr. Dinesh Mohan Sinha, JM:

Captioned seven appeals filed by the Assessee, pertaining to assessment year (A.Y.) 2014-15 to 2020-21, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad, (in short 'the Ld. CIT(A)'), which in turn arise out of separate assessment orders passed by the assessing officer, under section 143(3) r.w.s. 147 & 143(3) of the Income Tax Act, 1961 (in short, 'the Act').



2. Summarised and concise grounds of appeals are as follows:

“(i) The Id. 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 in assessee's appeal in ITA No. 588/RJT/2024 for AY 2014-15; This is Ground No. 2 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16; This is Ground No. 2 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17; This is Ground No. 2 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18; This is Ground No. 2 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19; This is Ground No. 2 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20; This is Ground No. 2 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21)

(ii) The Id. CIT(A)erred on facts as also in law in retaining addition of Rs 37,18,718/- 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. 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 & 4 in assessee's appeal in ITA No. 588/RJT/2024 for AY 2014-15; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21)

3. Facts of the case as per lead case in ITA No. 588/RJT/public2024 are as follows. The assessee is a partnership firm engaged in business of construction of commercial /residential buildings. Income Tax Return of the year under consideration i.e. AY 2014-15 was filed on 31.07.2014 declaring therein Rs. Nil Income. A Search, Seizure and Survey action was carried out by the office of DDIT (Inv.), Unit-1, Rajkot in the case of leading real estate builders of Rajkot and their key associates on 24.08.2021. Four different groups were covered in the operation. All the four groups are in the business of real estate and are mainly concentrated in and around Rajkot. A total of forty-three (43) premises were



covered, out of which 32 premises were covered under section 132 of the Income Tax Act 1961 and the other 11 premises were covered u/s 133A of the Income Tax Act 1961. The premises covered were a mix of residential and business premises of their related entities, their family members, key associates and employees. RK Group has developed / is developing multiple projects in the nature of Commercial, Residential and Industrial plotting projects. The Group is headed by Shri Sarvanand Sadharam Sonwani and he is supported by his family members in the management of the business. The Sonwani family is a joint unit for the purpose of business. Important family members, offices, key associates and employees were also covered in the search and survey operation to get hold of important incriminating evidences In the RK Group the main persons/partners were Sonwani family Some projects of RK Group were developed with other groups also. The group was mainly involved in taking on-money/unaccounted cash on selling of units in its projects and giving on money on purchasing of the land. The data of on-money/unaccounted cash was being maintained in a very systematic manner in Miracle software. In Miracle files mainly unaccounted transaction has been entered with some banking transaction as well.. The premise of Shri Girish Vanjani was also covered during the search action. Shri Girish Vanjani is the accountant for the group who has been initiating the accounts of the RK Group (including parallel unaccounted cash transactions). Mr. Girish Vanjani, in his statement recorded one path during search action has stated that he is the accountant of group and has been associated for last 25 years. He further explained that accounting of financial transactions of RK Group has been maintained in two accounting software i.e. tally and Miracle software. The transactions that are reported on regular books of account of group have been maintained in tally software where a miracle software contain both type of transactions i.e. bank transactions that are reported in regular books) and cash transactions (unaccounted transaction, not to be reported in regular books).



4. It can be seen that Shri Girish Vanjani has categorically stated that he does the work of accounting for RK Group as per the instructions of Shri Sarvanand Sonwani and also explained how the transactions are recorded in accounting software. Even Shri Sarvanand Sonwani has accepted (in his statements recorded u/s 131 of The Act at the residential premise of Girish Vanjani on 27.08.2021) that Shri Girish Vanjani does the work of accounting as per his instructions. Thus, Shri Girish Vanjani is a key employee and accountant of the RK Group is an admitted and established fact. During the course of search and seizure action at the residential premise of Shri Girish Vanjani, Pen Drives and Hard Discs were recovered. Forensic Mirror Imaging (Digital Data Backup) of these devices was taken and the same were seized. The backup contained key accounting files (Miracle Files) in which unaccounted transactions and some accounted transactions of the entire group were recorded in a very systematic manner. The accounts of 1) Sale of units 2) Cost of lands 3) Expenses incurred on various projects and other miscellaneous transactions made by RK Group members with various counter parties were maintained in accounting software known as MIRACLE. All the data collected and seized during the search and survey operation has been perused and co-related with the actual transactions made by the group persons and entities. The financial transactions pertaining to sale and purchase of various kinds of properties as seized in the form of Digital Data and in the form of Hard Data were also compared and corroborated with the documentary evidences and responses received from the Sub-registrar office and with the data available in public domains on various government portals like 1) anyror.gujarat.gov.in 2) garvi.gujarat.gov.in and 3) gujrera.gujarat.gov.in. Comparison of the financial transactions entered in the Miracle accounting files seized during the search was also made with those reported on the regular books of various group members and entities. Multiple miracle files have been found from the digital data that has been imaged and seized during the search operation.



Many miracle files found are duplicate copies of each other or either not fully updated. Some Miracle files are more updated than the other. From the plethora of Miracle files that have been found during the post search analysis, 3 files have been isolated which when studied together cover the financial transactions of the group. The details of the three Miracle files as under –

Sr. No.	Name of the file
1	Divaraj& Co (01 08 2009 to 30 06 2016)
2	Divaraj& Co (01 07 2006 to 31 03 2009)
3	R K World (01 04 2009 to ...)

5. Apart from the above, various documents in the form of loose-papers, excel sheets etc. have also been recovered and seized during the search operation from the premises of the group members highlighting various kind of financial transactions accounted as well as unaccounted. Careful perusal and comparative analysis of seized documents have been made. All this comparison and corroboration exercise has revealed following factual aspects about the seized data-

Fact 1	<p>The seized Miracle files recovered during the Search operation contain transactions that took place between RK Group members and 2) various other parties (counter parties). They include the accounts of cash as well as bank transactions.</p> <p>It is seen in most of the ledgers from the seized Miracle file that they contain some Bank transactions which are found recorded on the regular books and some Cash transactions which are normally not recorded on the regular books of the respective Group member. This manner of recording the transactions highlights a fact that one part (mostly in Bank) of every deal was being reported on the regular books and the other part (mostly in cash) of the deal was not being reported on the regular books.</p> <p>Thus, some transactions from the Miracle files were accounted for whereas some were not accounted for in the regular books of the respective group member who owns the transaction.</p>
Fact 2	<p>The data entered in the Miracle software is in coded form -</p> <p>1) The entries have been backdated by 10 years i.e. 01-04-2019 is entered as 01-04-2009 (except the miracle file mentioned at Sr. No.1 at pare no.9 (also</p>



	referred as miracle-1) i.e. DIVYARAJ & CO. (01 08 2009 to 30 06 2016. In this file actual dates of transactions are mentioned)), and 2) the amounts have been divided by 100 i.e. Rs. 2,50,000/- is entered as 2500.00/-
Fact 3	The names of the ledgers of different projects, persons have been written in coded form. It is seen that mostly the names of the projects for which any particular transaction is recorded on the seized file were mentioned with the initials. For example 1) RK Residency is mentioned as RKR. 2) R K Prime is mentioned as RKP, 3) The City Centre is mentioned as TCC, 4) R K Supreme is mentioned as SPM etc.
	All the above factual aspects are discussed with example in the later part of this order.

6. The assessee, M/s RK Residency (RK Tradelink) is a firm of the RK Group members, Complete partnership structure of the firm is as under-

Name of the partner	Share
Brijlal Sadharam Sonwani	50%
Kamal Sadharam Sonwani	50%

7. The assessee firm has developed two residential projects namely "RK Dreamland-2" and "RK Residency" Following unaccounted transactions pertaining to the projects have been recovered from the material seized during the search operation.

Project RK Dreamland-2

- Unaccounted receipts of Rs. 7,34,10,730/- against sale of units of the project and repayments of Rs. 1,24,95,059/ on account of cancellation or excess receipts as culled out from the seized Miracle data.
- Unaccounted expense/investment of Rs. 1,98,65,530/- made in the purchase of land for the project as culled out from the seized Miracle data.



- Unaccounted expenses of Rs. 3,05,49,979/- incurred for the project as culled out from the seized Miracle data.

Project RK Residency

- Unaccounted receipts of Rs. 5,37,54,640/- against sale of units of the project.

Selection for scrutiny:

8. As details regarding unaccounted part of the aforementioned transactions pertaining to the assessee have been gathered from the seized material during the search operation, the case of the assessee has been re-opened u/s 147 of the Act after following the due procedure as per the Act and with prior approval of the specified authority as per section 151 of the Act. A notice under section 148 of the Act has been issued on 28/02/2023. In response to the notice issued under section 148, the assessee has filed its Income tax return on 19.06.2023 declaring net income of Rs. Nil/- (same as original return). Subsequently, notice u/s 143(2) of the Income-tax Act has been issued and served on 09.10.2023 on the e-filing portal of the Assessee. Copy of the re-opening proposal on which approval of the Competent authority has obtained has also attached thereto. Subsequently, notices u/s 142(1) have been issued from time to time seeking primary as well as further details from the assessee for carrying out the assessment. Against the re-opening of the assessment proceedings, the assessee has raised certain objections which were duly disposed off during assessment proceedings vide notice dated 19.12.2023 and further, In view of natural justice copy of satisfactions drawn for the re-opening of the assessment along with its approval from the PCIT have also been provided. Further, the images of original seized material pertaining to the assessee have been supplied and discussed in the notices issued u/s 142(1) of the Act/show cause notice from time to time



Issue Involved:

9. The seized material pertaining to the assessee firm contained details of various kinds of unaccounted transactions (as summarized earlier.) These transactions were not confined only to the year under consideration but were scattered in various financial years. The transactions that specifically pertained to the current year are discussed here under for further clarity. On perusal of the seized material it is noticed that the assessee has received total unaccounted on-money of Rs.7,34,10,730/- for sale of units of project RK Dreamland 2' which spread across the FY 2017-18 to 2020-21/ which is not recorded in the regular books of the expenses for this project have also been noticed. However for assessee. Similarly transactions related to unaccounted payment for land acquisition and other expenses for this project have also been noticed, However, none of transactions are pertain to the current year, therefore, the same are not discussed here.

On-money receipt for the project 'RK Residency':

10. Similar to the project "RK Dreamland transactions pertaining to the project "RK Residency are found recorded in seized miracle files. As discussed earlier, the name of every project developed by the Group is recorded in coded form in the seized Miracle files. The project "R K Residency" is mentioned as "RKR" in the Miracle file. To establish that "RKR" mentioned in miracle ledger denotes the project "R K Residency" and entries contained in the ledger names starting with "RKR" contain genuine and absolutely correct data of transaction of the project "R K Residency", a snap shot of one such Ledger "RKR 102 (ok)" from the Miracle file is pasted and discussed hereunder to explain the correctness of data in the Miracle file and calculate the actual receipt of on-money in cash. From the above, it is crystal clear that the miracle ledger starting with name "RKR" are pertaining to the project "RK Residency". Even the same nomenclature has been given in books of the assessee and sales for the project RK Residency has been



shown as "RKR Sales". Further, even though the actual sale price of the flat no. 102 is Rs. 17,83,000/-, the registered sale deed has been executed at Rs.7,00,000/- only (document no.049 dtd. 05.06.2017) and the same amount has been recorded by the assessee as sale for this particular flat. Which shows that amount of Rs. 10,83,000/- received in cash has been neither recorded in respective conveyance deed nor recognized by the assessee as sales and thus remain untaxed. This corroboration of the banking entries appearing on miracle files with actual nothing but the cash on-money received for sale of the flat/unit and the same has not been correct data and simultaneously that cash receipts appearing on same miracle ledgers are recorded in regular books of the assessee.

11. It can be seen from the above ledger that flat no. 303 of the project has been sold for Rs.24.25,000/- (in coded form it is written as 24250 00). Out of this Rs. 13,50,000/- (Rs 135000 on 01/08/2016 and Rs 12,15,000/- on 12/08/2016) has been received through banking channel and remaining amount has been received in cash Further, it is seen that the conveyance deed for the above flat has been executed for Rs. 13,50,000/- (which is same the amount received through bank) Furthermore, sale for the above flat has been recognized/recorded of Rs. 13,50,000/-only in assessee's regular books of account and the amount received in cash has been neither recorded on respective conveyance deed nor recognized as sale consideration in books of account of the assessee and thus same is remain untaxed. It can be seen from the above ledger that flat no. 305 of the project has been sold for Rs. 17.21,000/- (in coded form it is written as 17210.00) Out of this Rs.4,50,000/- was received through banking channel and remaining amount was received in cash. Further, it is seen that the conveyance deed for the above flat has been executed for Rs 4,50,000/- (which is same the amount received through bank). Furthermore, sale for the above flat has been recognized /recorded at Rs.4,50,000/- only in regular books and the amount received in cash has been



neither recorded on respective conveyance deed nor recognized as sale consideration in books of account of the assessee and thus same is remain untaxed.

12. As per the above ledger, the assessee firm received total amount of Rs 30,77,200/-(in coded form it is written as 30772.00) for the flat no. 104 and out of total receipts amount of Rs. 10,00,000/-(Rs.800000 on 18.12.2014, Rs.80,000/- and Rs 20,000/- on 26/12/2014) and the remaining amount of Rs.20,77,200/- have been received in cash. On perusal of the sale register of the assessee firm, it is noticed that the above flats has been sold by the assessee firm through registered conveyance deed no. 7876 and sale value recorded in books is Rs. 10,00,000/- only i.e. same the amount received through banking channel. From the above, it is clear that the sale consideration received in cash has neither been recorded on respective conveyance deed nor considered by the assessee as sales in its regular books of account. Therefore, the said cash is remain untaxed. From the above discussed ledgers in context to data contained in Miracle Nes, registered conveyance deed and regular books of the assessee M/s RK Tradelink, the following things are established

- First and foremost, it is established beyond doubt that the data recorded in the miracle files are correct and genuine data.
- It is established that the ledgers starting with "RKR" in the miracle files are related to the Project "R K Residency". A project developed by the assessee firm.
- The amount in seized miracle files are mentioned in coded form. The transactions amount is coded by inserting before last two digits of the actual transacted amount. Therefore, to arrive the actual value the same shall be read ignoring. For eg. the amount of Rs. 10000 is written in miracle as Rs. 100.00.



- Similarly, the date of transactions back dated by 10 years, therefore, to actual transactions date the same has to be read 10 years forward. However, in miracle files named as DIVYARAJ & CO. (01.08 2009 to 30 06 2016) actual date of transactions are mentioned.
- The amount received in cash for sale of flat/s is/ are recorded neither on respective conveyance deed nor in regular books of the assessee firm and thus need to be taxed accordingly.

Conclusion of assessing officer:

After considering all the objections of the assessee in its reply to the show cause notice and taking into consideration the facts and material available on records, the assessing officer framed the assessment order, by discussing various issues, as under:

Rejection of books:

13. After thorough examination of the response to show cause notice and dismissing various contentions raised by the assessee in its reply, it has been made clear that the seized digital data in the form of accounting entries on Miracle file is accurate, reliable and self-explanatory. Further, there is also no doubt that the accounts of the assessee where all the transactions are not reflected cannot be relied upon as they present incomplete and incorrect state of affairs of business of the assessee and requires to be disregarded invoking the provisions of section 145(3) of the Act. Accordingly, provisions of section 145(3) are invoked herewith and the assessment of total income of the assessee is being made after taking into account all relevant material gathered during the search and the assessment proceedings. As per the material gathered during the search and submissions



available on records the assessee is found to have indulged in the practice of suppressing both receipts (on account of sale) and payments (on account of purchase) made for the projects undertaken / developed during the year. There is no uniform method that can be employed to compute income when part receipts on account of sale are not included on the books. The method differs from case to case depending upon various factors like type of business, modus operandi of the assessee, sufficiency of data available for estimation etc. In a case where the evidence available on record contains details of corresponding unaccounted payments which are also partly included on the books, such partly recorded payments should also be taken into consideration. Taxing the receipts only has never been the motto of the Income-tax Act. In this regard, the observation of the Supreme Court in CIT v. Williamson Financial Services [2007] 165 Taxman 638 (SC) is reproduced below

"It is important to bear in mind that u/s 4 the levy is on total income of the assessee computed in accordance with and subject to the provisions of the Income Tax Act. What is chargeable to tax under the Income Tax Act is not the gross receipt but the income under the income Tax Act The tax is on income but not on gross receipts."

Where suppression of sales receipts is involved, the question is whether the entire sales or only a percentage of profit should be adopted as income in CIT v. President Industries [2002] 124 Taxman 654 (Gujarat), the Assessing Officer had found evidence of suppression of sales. He adopted the entire receipt (sales) as income but the Hon'ble Jurisdictional High Court has held that the entire undisclosed receipts (sales) cannot constitute income. The sales only represent the price received by the seller of the units for which the seller has already incurred the cost in order to acquire or process the inventory. Therefore, it is the realization of excess consideration over the cost incurred which should be assessed as profit or income. In other words, profit component embedded in the sales could be treated as income. Recently, in the case of PCIT v. Ms. Jay KesarBhavani Developers Pvt. Ltd. in Tax Appeal no. 267 of 2022, the Hon'ble Guj. High Court



has held that only profit element embedded in the gross on-money receipts can be taxed. For this, the Hon'ble court has derived reference from its earlier decision delivered in the case of DCIT Vs. Panna Corporation reported in [2012] 74 DTR 89. Relevant part of the decision is as under -

"It has been consistently held by this court and some other courts have been following the principle that even upon detection of on-money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that were the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation"

Even in those cases where no details regarding unexplained payments / investments are available on records, it has been held by the Hon'ble Guj. High Court that while dealing with addition on account of unaccounted sales, in absence of any material on record to show that there was any unexplained investment / expense made by the assessee, there could be a presumption of such expenditure. In such event also it is held that only profit on suppressed sales could be brought to tax [CIT v. Gurubachhan Singh J Juneja [2008] 171 Taxman 406 (Gujarat)]

Hence, in such cases, both the Supreme Court and the Jurisdictional High Court have consistently held that where evidences regarding unaccounted receipts are being assessed it is not reasonable to consider the entire unaccounted receipts for taxation. Rather, only profit element lying therein should be estimated keeping in mind the facts and surrounding circumstances of the case at hand. Therefore respectfully following the ratio laid down by the Apex Court and the Jurisdictional High Court and in view of the facts of the case it would be fair if reasonable rate of profit is adopted to tax the unaccounted income of the assessee.



0Estimation of rate of profit in Residential projects:

14. Details of 9 residential projects undertaken by the searched group members and their partners have been recovered from the seized Miracle Kile. Some projects were in completion stage whereas some were just started. In respect of some projects comprehensive details like Land purchase, Project expenses, On-money receipts have been recovered from the seized data whereas in other projects very limited details are, only on-money receipts were recovered. Wherever, details of receipts and payments were recoverable from the seized data, it is noticed that the net surplus funds available, with these projects were ranged from 14% to 45%. Reason for this vast gap between the upper and lower ends of this net surplus range was primarily attributable to the stage in which a particular project has reached since its inception. For example, if any project is just launched then its % of net surplus tends to be lower because most of the funds are spent/applied on the ground and the inflow of on-money has not started in full pace. Due to the combined effect of these two aspects the availability of surplus funds remains either on the lower side or sometimes in a negative state. Thus, it is understood that taking reference from the net surplus/ unaccounted profits of such 'just launched' projects would not give a true picture of the potential profitability of such projects. In order to estimate a reasonable rate of profit, it is taken that only those projects for which maximum data is available from the seized material should be relied upon. At the same time it is also ensured that the project that almost reached its final stage (with respect to construction activity and receipt of on-money both) should only be taken as reference for adoption of an appropriate rate of profit. After considering all the above aspects, following two projects have been identified as reference-

Sr. No.	Name of the Project	Name of the developer/owner
1	R K Exotica	Shri Bharat J Sonwani
2	R K Dreamland	M/s R K Dreamland



15. Net receipts of both the projects have been calculated and it is seen that after considering all kind of transactions i.e. Net on-money receipts, Expenses for running the project including the Land purchase there remained average net surplus of 41% in the hands of respective developer/owner:

Sr. No.	Name of the Project	Name of the developer / owner	% of net surplus
1	R K Exotica	Shri Bharat J Sonwani	37%
2	R K Dreamland	M/s R K Dreamland	45%
Average = (37 + 45) / 2 = 41			i.e. 41%

16. Apart from this, it is also necessary to keep in mind violation of various other provisions of the law which are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial precedents as discussed earlier, if all the expenses/payments are disallowed then the ratio laid down by the Hon'ble High Court with regard to not taxing all the receipts would remain on papers only. Thus, with a view to strike a proper balance between the factual vis-à-vis the legal aspects. it is decided to further enhance the aforementioned average net profit rate from 41% to 45% Accordingly, 45% has been set as benchmark rate for the projects where details of unaccounted receipts as well as unaccounted expenses have been recovered from same set of the seized material. In respect of the project under consideration to R K Residency the material gathered during search operation indicated on-money receipts only. Under these circumstances, it would not be fair if the same benchmark rates adopted for other projects where receipts and payment both kinds of transactions are available are also applied to the project where only on-money receipts are available. At the same time considering that the assessee is also in the same line of business with the same group of persons, the possibility of having incurred unaccounted expenses cannot be ruled out completely (No data is recovered during search does not necessarily mean no



unaccounted expenses incurred) Further, various judgments discussed earlier also endorse the same preposition that only profit embedded in the gross unaccounted receipts should be taxed and not the entire unaccounted receipts. Apart from this, it is also necessary to keep in mind violation of various other provisions of the law which are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial precedents as discussed earlier if all the expenses / payments are disallowed than the ratio laid down by the Hon'ble High Court regarding not taxing all the receipts would remain in papers only Thus, with a view to strike a proper balance between the factual vis-à-vis the legal aspects it is decided to further enhance the average net profit rate to 50%. Accordingly, considering complete facts of the case under consideration it is felt reasonable to adopt a higher rate of 50% as profit earned on the gross unaccounted receipts of this project. Accordingly, the net unaccounted profit for this particular project is estimated at the rate of 50% and the profit for the year under consideration i.e. FY 2013-14 is computed as under-

Sr.No	Particulars	Amount (Rs.)
A	Net On – money receipts for the year	2,32,41,990/-
B	Unaccounted profit estimated (50% of A)	1,16,20,995/-

Thus, addition of Rs 1,16,20,995/-being unaccounted profit embedded in the gross unaccounted receipts 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 enhanced by Rs 1,16,20,995/- 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.



17. Aggrieved by the various additions made by the assessing officer, the assessee carried the matter in appeal before the learned CIT(A). The learned CIT(A) dismissed the technical grounds raised by the assessee, challenging reopening of assessment under section 147/148 of the Act. On merit, learned CIT(A), estimated the profit element on the “on money”, at the rate of 8%, 12%, 16% etc, in a different assessment years. Therefore, assessee, as well as, revenue, both are in appeal before us. The main contention of the revenue in these appeals, are that the addition made by the assessing officer should be confirmed. Whereas, main contention in the assessee’s appeals is that the profit estimation on “on -money”, is on higher side, therefore, it should be reduced to a reasonable extent, by following the Hon’ble Jurisdictional High Court of Gujarat in various cases such as, in the case of Ms. Jay Kesar Bhavani Developers Pvt. Ltd. in Tax Appeal no. 267 of 2022, wherein 6% addition on “on money, was upheld. In various judgements of jurisdictional ITAT Ahmedabad, (cited by assessee in legal compilation) held that the addition on “on money” at the rate of 8% is sufficient to plug the leakage of the revenue. Therefore, the solitary grievance of the assessee in assessee’s appeals are that reasonable estimation may be made in the hands of the assessee. The findings of the learned CIT(A) would be discussed while adjudicating the relevant issue involved in concise and summarised grounds noted above.

18. Now, we shall adjudicate, summarised and concise grounds of appeal, one by one, as follows:

19. Summarized and concise ground No.(i), is reproduced below for ready reference:

“(i) The Id. 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.



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This is Ground No. 2 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16;
This is Ground No. 2 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17;
This is Ground No. 2 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18;
This is Ground No. 2 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19;
This is Ground No. 2 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20;
This is Ground No. 2 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21)*

20. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We have carefully considered the submission of the Learned Counsel for the assessee and Id DR for the Revenue and evidences on record. We note that issue under consideration is squarely covered against the assessee in the assessee's own group cases, M/s R.K. Group, in ITA No. 528/RJT/2024 & others in the case of M/s. R K Infralink LLP, by the Coordinate Bench of ITAT Rajkot. The findings of the Co-ordinate Bench of ITAT Rajkot are reproduced below:

“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).”



21. Respectfully following the above findings in assessee's own case, we dismiss the assessee's appeals.

22. In the result, following grounds of appeal of assessee, are dismissed:

- (i) This is Ground No. 2 in assessee's appeal in ITA No. 588/RJT/2024 for AY 2014-15;
- (ii) This is Ground No. 2 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16;
- (iii) This is Ground No. 2 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17;
- (iv) This is Ground No. 2 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18;
- (v) This is Ground No. 2 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19;
- (vi) This is Ground No. 2 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20;
- (vii) This is Ground No. 2 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21.

23. Summarized 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 37,18,718/- 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. 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 obliterated.

(This is Ground No. 3 & 4 in assessee's appeal in ITA No. 588/RJT/2024 for AY 2014-15; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20; This is Ground No. 3 & 4 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21)

24. We have heard both the parties. Facts of the case have already been narrated above, therefore we do not repeat the same for the sake of brevity. We note that issue under consideration is squarely covered in favour of the assessee in the assessee's own group cases, M/s R.K. Group, in ITA No. 528/RJT/2024 & others in the case of M/s. R K Infralink LLP, by the decision of Coordinate Bench of



ITAT Rajkot. The findings of the Co-ordinate Bench of ITAT Rajkot is reproduced below:

“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 Kishor 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) TIMI 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 199-1 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 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.”*



25. Therefore, respectfully following the binding judgement of the Co-ordinate Bench of ITAT Rajkot in assessee's own case (Supra) we partly allow the following appeals of the assessee:

- i. Ground No. 3 & 4 in assessee's appeal in ITA No. 588/RJT/2024 for AY 2014-15;
- ii. Ground No. 3 & 4 in assessee's appeal in ITA No. 589/RJT/2024 for AY 2015-16;
- iii. Ground No. 3 & 4 in assessee's appeal in ITA No. 590/RJT/2024 for AY 2016-17;
- iv. Ground No. 3 & 4 in assessee's appeal in ITA No. 591/RJT/2024 for AY 2017-18;
- v. Ground No. 3 & 4 in assessee's appeal in ITA No. 592/RJT/2024 for AY 2018-19;
- vi. Ground No. 3 & 4 in assessee's appeal in ITA No. 593/RJT/2024 for AY 2019-20;
- vii. Ground No. 3 & 4 in assessee's appeal in ITA No. 594/RJT/2024 for AY 2020-21

26. In the combined result, appeals filed by the assessee, are partly allowed to the extent indicated above.

Order pronounced in the open court on 24-02-2026.

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

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

Rajkot

दिनांक/ Date: 24/02/2026

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

//True Copy//

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot