



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. 561 and 562/RJT/2024  
निर्धारण वर्ष / Assessment Years: 2021-22 & 2022-23

M/s. Vivan Commercial LLP R K World Tower, Sheetal Park, 150 Ft Ring Road, Rajkot - 360001	बनाम/ <b>Vs.</b>	The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AASFV2565P</b>		
अपीलार्थी/ <b>Appellant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

आयकर अपील सं./ITA No. 738/RJT/2024  
निर्धारण वर्ष /Assessment Year: 2021-22

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot - 360001	बनाम/ <b>Vs.</b>	Vivan Commercial LLP 1 Pearl Plaza, 150 Ft Ring Road, Near G T School, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AASFV2565P</b>		
अपीलार्थी/ <b>Appellant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

आयकर अपील सं./IT(SS)A No. 18/RJT/2024  
निर्धारण वर्ष /Assessment Year: 2022-23

The DCIT, CC-1, Aayakar Bhavan, Amruta Estate, M G Road, Rajkot - 360001	बनाम/ <b>Vs.</b>	Vivan Commercial LLP 1 Pearl Plaza, 150 Ft Ring Road, Near G T School, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AASFV2565P</b>		
अपीलार्थी/ <b>Appellant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

निर्धारित की ओर से/Assessee by : Shri Mehul Ranpura, Ld.AR  
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld.CIT-DR

सुनवाई की तारीख/Date of Hearing : 06/01/2026  
घोषणा की तारीख/Date of Pronouncement : 23/02/2026



## आदेश /ORDER

**Per, Dr. Dinesh Mohan Sinha, JM:**

Captioned appeals filed by the Assessee and the Revenue pertaining to Assessment Year 2021-22 & 2022-23 are directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Rajkot (in short 'the Ld. CIT(A)'), which in turn arises separate assessment orders passed by the assessing officer under section 143(3) of the Income-tax Act, 1961.

2. Concise and summarized grounds of appeal, are reproduced below:

*(i) The ld. CIT(A) erred on facts as also in law in retaining addition of Rs.2, 16,41,762/- 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. 2 & 3 in assessee's appeal in ITA No. 561/Rjt/2024 for AY 2021-22, and Ground No.2 & 3 in ITA No. 562/RJT/2024 for AY 2022-23)*

*(This is Ground No. 1 in Revenue's appeal in ITA No. 738/RJT/2024 for AY 2021-22 and Ground No.1 in IT(SS)A No. 18/RJT/2024 for AY 2022-23)*

*(ii) The Ld CIT(A) has erred in directing the AO 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. 738/RJT/2024 for AY 2021-22 and Ground No.2 IT(SS)A No. 18/RJT/2024 for AY 2022-23)*

3. Since the issue involved in all the appeals are common and identical, therefore we narrate the facts by taking the lead case in ITA NO. 738/Rjt/2024.



4. Brief facts qua the issue are that the assessee is a Firm engaged in Building completion. As per the Income-tax Return for AY 2021-22 filed on 28-12-2021 showing thereby net business loss of Rs. (-)79,505/-. 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 is developing multiple projects in the nature of Commercial, Residential and Industrial plotting projects. The Group is headed by Shri Sarvanand Sadhram 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 member 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 file. 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 was maintaining the accounts of the R K Group (including parallel unaccounted cash transactions) at the instruction of Shri Sarvanand Sonwani.



5. It can be seen that Shri Girish Vanjani has categorically stated that he does the work of accounting as per the instructions of Shri Sarvanand Sonwani. 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 R K Group is an admitted and confirmed 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 of the entire group 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 R K Group members with various counter parties were maintained in accounting software known as MIRACLE. Details of sale of units maintained in various excel sheets were also found and seized from the premise of Shri Girish Vanjani. 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	Divyaraj & Co. (01-08-2009 to 30-06-2016
2	Divyaraj & Co (01-07-2006 to 31-03-2009)
3	R K World (01-04-2009 to...)



6. 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. 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 portal like - 1) anyror.gujarat.gov.in 2) garvi.gujarat.gov.in and 3) portals like 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. All this comparison and corroboration exercise has revealed following factual aspects about the seized data –

#### Fact 1

The seized Miracle files recovered during the search operation contain transactions that took place between 1) R K Group members and 2) various other parties (counter parties). They include the accounts of cash as well as bank transactions. 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. 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.

Fact 2.

The data entered in the Miracle software is in coded form -

- 1) the entries have been backdated by 10 years i.e. 01-04-2019 is entered as 01-04-2009, 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) R K Residency is mentioned as RKR,
- 2) RK Prime is mentioned as RKP,
- 3) The City Centre is mentioned as TCC,
- 4) R K Supreme is mentioned as SPM etc.

7. The assessee, M/s Vivan Commercial LLP is a firm of the RK members (Sonwani Family have 36% stake). Complete partnership structure of the firm is as under –

Sr. No.	Share Name	Stake
1	Sarvanand Sadhuram Sonwani	20%
2	Vishal Brijal Sonwani	10%
3	Naresh Organisers Pvt. Ltd	6%
4	Hareshbhai M Zinzuwadia	20%
5	Harish J Lakhani	12%
6	Jagjivan R Sakhiya	7.5%
7	Mitul J Sakhiya	7.5%



8	Harshit Ashok Satikunwar	17%
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8. The firm has developed RK ICONIC & R K PARK VIEW projects. Details of following unaccounted transactions pertaining to the project have been recovered from the material seized during the search operation –

- Unaccounted receipts of Rs. 39,86,82,150/- against sale of units of the project.
- Unaccounted expenses of Rs. 4,57,42,840/- & 30,12,900/- incurred for the project as culled out from the seized Miracle data.

9. 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 selected for scrutiny as per the criteria laid down by the ITA-II division of the Central Board of Direct Taxes (CBDT) in this regard vide letters dated 11-05-2022 & 03-06-2022 bearing F. No. 225/81/2022 / ITA-II. Notice u/s 143(2) of the Income-tax Act has been issued and served on 30-06-2022 on the e-filing portal of the Assessee. 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. In view of natural justice, 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 from time to time.

10. 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 name of every project developed by the Group is in coded form in the seized Miracle files. The project "R K Iconic" is



mentioned as "ICO" and project R K Park View is mentioned as "PV" in the Miracle file. Whenever any unit/shop of the project was booked for sale, the relevant entry had been made in miracle software with the amount received against that unit. The transactions that specifically pertained to the current year a discussed here under for further clarity. Separate ledgers for each and every unit that has been booked are recovery systematically in the seized Miracle file. The above ledger "ICO 0003" contain the details of payment received for the sale of Shop / showrooms No. 3 of the project R K Iconic. Here 'Ico' is a coded form which refer the project "R K Iconic" and '0003' refer the shop/showroom no. 3. It is understood the assessee LLP has received total cash of Rs. 2,53,01,000/- till the date of seizure of miracle file for the sale of the unit no. 3 of the project RK Iconic. Further Girish Vanjani, the mirror imaging of digital drives was taken and inventoried as Annexure A-16. On analysis of these digital data, multiple excel files were found. These Excel files contain the details like name wise booking, cash and bank receipts of the project, mobile number of the persons booking the unit.

11. The details of shop no. 3 as found in the Miracle file-3 has been compared vis a vis the details recorded in excel file 'RK Iconic Tower'. According to the excel file, total sale amount of the Shop-3 is Rs. 2,71,98,180/- (in coded form, it is shown as 271981.80) and the total cash received till date of search & seizure is Rs.2,53,01,000/-. The entries recorded in the excel file for shop-3 match exactly with the entries recorded in the Miracle files. The actual amount in the Miracle file and excel file is to be read after multiplication with 100 and adding 10 years to the date mentioned therein. Therefore, entries recorded in the ledger names starting with "ICO" contain genuine and absolutely correct data of on-money received in the project "R K Iconic". To establish that "ICO" is the project "Iconic Park" and entries contained in the ledger names starting with "ICO" contain



genuine and absolutely correct data of transaction of the project "Iconic Park". On perusal of the bank book of the assessee for year under consideration it is seen that data entered -date and amount in the miracle (marked in the box) matched exactly with the entry of bank book of the assessee. From the above discussion, the following things are firmly established:

1. First and foremost, it is established beyond doubt that the ledgers starting with " ICO" & "PV" in the miracle database file are related to the Project "R K Iconic" & "R K Park View".
2. The LLP has not accounted the cash receipts in the regular books of account and thus need to be taxed accordingly.
3. The amount recorded in miracle file is in coded form where the actual amount exact amount is calculated by multiplying the recorded entry by 100. For eg. the amount of 10000 is written as 100.00.
4. The date recorded in Miracle file has been purposely back dated by 10 years.

12. Similarly, data of on-money receipts in cash for the other units of "R K Iconic" have also been found in the Miracle files. On the basis of the details available in the Miracle file related to the project "R K Iconic" and its re-conciliation with other seized documents during the search action, the quantum of year wise on-money in cash has been derived.

### **13. 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 following conclusion has been drawn –



#### **14.Rejection of books & Estimation of profit, by assessing officer**

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 / impounded data 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 i.e. 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.

15. 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 Kesar Bhavani 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. Gurbachan Singh J Juneja [2008] 171 Taxman 406 (Gujarat)]

16. 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. There for 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. Details of various kinds of projects developed by different persons have been gathered during the search. Material gathered during the search revealed mainly 3 types of data - First type in which all details related to the projects have been recovered i.e. On-money receipts, Unaccounted expense for land purchase, Unaccounted expense for construction and other project related activities. Second type of data contained part details of the projects i.e. on-money receipts and project related expenses only. Third type of data in which only on-money details were unearthed. On taking a wholistic view of the group and all the related searched builders, it is noted that unaccounted receipt and unaccounted expense both are inevitable parts of this business. Wherever, details of receipts and payments were recovered from the seized data, it is noticed that the net surplus funds available with these projects were ranged from -237% to 51%. 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 funds would be lower because most of the funds are spent / applied on inventories



and the inflow of on-money has not started in full pace. Due to combined effect of these two aspects, the availability of surplus funds remains either on lower side or sometime in negative state. Thus, it is understood that taking reference from the net surplus / unaccounted profit of such 'just launched' project would not give true picture of the potential profitability of such projects.

17. In order to estimate a reasonable rate of profit, it is taken that only those projects for which sufficient data is available from the seized material should be relied upon. At the same time, it is also ensured that the projects 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, the reasonable rates of profits have been arrived in a range of 35% to 45% for different category of projects i.e. Commercial and Residential respectively. The assessee relates to the same group of searched people / entities which were covered in a same search operation. Therefore, applying the rule of similarity the same rates of profits can be adopted across all the projects the data of which has been recovered from the same search operation. Moreover, in respect of the project under consideration 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 judgements discussed earlier also endorse the same proposition that only profit



embedded in the gross unaccounted receipts should be taxed and not the entire unaccounted receipts.

18. 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%. As far as the profit for the year under consideration i.e. FY 2020-21 is concerned, the same can be computed as under-

Sr. No.	Particulars	Amount
A	On-money receipts	12,42,22,750
B	Unaccounted profit estimated (50% of A)	6,21,11,375

Thus, addition of Rs. 6,21,11,375/- 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. 6,21,11,375/- 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.



19. 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 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.

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

21. Summarised and concise ground number No.(i) is reproduced below for ready reference, as follows:

*(i) The ld. CIT(A) erred on facts as also in law in retaining addition of Rs. 2, 16, 41, 762/- 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. 2 & 3 in assessee's appeal in ITA No. 561/Rjt/2024 for AY 2021-22, and Ground No.2 & 3 in ITA No. 562/RJT/2024 for AY 2022-23)*

*(This is Ground No. 1 in Revenue's appeal in ITA No. 738/RJT/2024 for AY 2021-22 and Ground No.1 in IT(SS)A No. 18/RJT/2024 for AY 2022-23)*

22. 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 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."*

23. 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. 2 & 3 in assessee's appeal in ITA No. 561/Rjt/2024 for AY 2021-22,
- (ii) Ground No.2 & 3 in ITA No. 562/RJT/2024 for AY 2022-23.

Whereas, following grounds raised by the revenue are dismissed:

- (i) Ground No. 1 in Revenue's appeal in ITA No. 738/RJT/2024 for AY 2021-22, and
- (ii) Ground No.1 in IT(SS)A No. 18/RJT/2024 for AY 2022-23

24. Summarised and concise ground number No.(ii) is reproduced below for ready reference, as follows:

*(ii) The Ld CIT(A) has erred in directing the AO 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. 738/RJT/2024 for AY 2021-22 and Ground No.2 IT(SS)A No. 18/RJT/2024 for AY 2022-23)*

25. 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:

*“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."*

26. Respectfully following the binding judgement of the ITAT Rajkot in the assessee's, own case (Supra), we dismiss the following grounds raised by the revenue.

- (i) Ground no. 2 in Revenue's appeal in ITA No. 738/RJT/2024 for AY 2021-22 and
- (ii) Ground No.2 IT(SS)A No. 18/RJT/2024 for AY 2022-23



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

**Order is pronounced in the open court on 23/02/2026**

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

राजकोट/Rajkot

दिनांक/ Date: 23/02/2026

**Copy of the order forwarded to :**

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

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

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot

//True Copy//