



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. 535 to 538/RJT/2024

(Assessment Year: 2019-20 to 2022-23)

(Hybrid Hearing)

Neelratna Enterprise LLP The Spire-2, 150 Feet Ring Road, Rajkot, Gujarat - 360005	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1, Rajkot
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AAPFN6013P		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

आयकर अपील सं./ITA Nos. 680 to 682/RJT/2024

(Assessment Year: 2019-20 to 2021-22)

(Hybrid Hearing)

The DCIT, Central Circle - 1, Rajkot	Vs.	Neelratna Enterprise LLP The Spire-2, 150 Feet Ring Road, Rajkot, Gujarat - 360005
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AAPFN6013P		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

निर्धारितकीओर से/Assessee by : Shri D.M. Rindani / Ms. Devina Patel, Ld. AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, CIT-DR

सुनवाईकीतारीख/ Date of Hearing : 07/01/2026

घोषणाकीतारीख/Date of Pronouncement : 27/02/2026



आदेश/ORDER

Per, Dr. A. L. Saini, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to assessment years, (A.Ys.) 2019-20 to 2022-23, are directed against the common order 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. Since, the issues involved in all the appeals are common and identical, therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the facts narrated in ITA No.680/RJT/2024, for assessment Year 2019-20, have been taken into consideration for deciding the above appeals *en masse*.

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



(i) The Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of the order passed u/s 147 of the IT Act whereby assessed the total income of Rs.7,37,53,649 /- as against the returned income of Rs. Nil. It is totally wrong, unwarranted, unjustified and bad in law.

(This is ground No.1 in assessee's appeal in ITA No.535/RJT/2024 for A.Y. 2019-20, Ground No.1 in ITA No. 536/ RJT/ 2024, for A.Y. 2020-21, Ground No.1 in ITA No. 537/ RJT/ 2024, for A.Y. 2021-22, Ground No.1 in ITA No. 538/ RJT/ 2024, for A.Y. 2022-23)

(ii) Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of alleged ground of estimated the profit @ 16%, as the appellant is developer of commercial project and tax such income in the year in which income is recognised in books of account, it is unwarranted, unjustified and bad in law. The various Hon'ble High Courts and Hon'ble ITAT, had held that the profit should be taken at the rate of 6 to 8 percent.

(This is Ground No. 2 to 4 in assessee's appeal in ITA No.535/RJT/2024 for A.Y. 2019-20, Ground No. 2 to 4 in ITA No.536/RJT/2024 for A.Y. 2020-21, Ground No. 2 to 4 in ITA No.537/RJT/2024 for A.Y. 2021-22, Ground No. 2 to 4 in ITA No.538/RJT/2024 for A.Y. 2022-23).

(This is also Revenue's ground No.1 in ITA 680/ RJT/ 2024, for A.Y. 2019-20, Ground No.1 in ITA 681/ RJT/ 2024, for A.Y. 2020-21, Ground No.1 in ITA 682/ RJT/ 2024, for A.Y. 2021-22)

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

(This is Revenue's ground No.2 in ITA 680/ RJT/ 2024, for A.Y. 2019-20, Ground No.2 in ITA 681/ RJT/ 2024, for A.Y. 2020-21, Ground No.2 in ITA 682/ RJT/ 2024, for A.Y. 2021-22)

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee is an LLP engaged in Real Estate business. As per the Income-tax Return for AY 2019-20 filed on 17-08-2019, the total income has been declared at NIL. 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 including Praful Gangdev Group of Rajkot. 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. Gangdev group has completed several Real estate projects in Rajkot. The main person of the group is Shri Praful Gangdev who takes key decisions and is helped by several other partners. The partners vary for each project but Shri Kinjan Faldu, Shri Chandresh Panara, Shri Siddharth Gangdev are the key partners of Shri Praful Gangdev. The Gangdev group has completed projects like The Spire, The Spire-2, Trinity Towers in the city of Rajkot. Important family members, offices, key associates and employees were also covered in the search and survey operation to get hold of important incriminating evidences. Details of following unaccounted transactions pertaining to project "The Spire-2" developed by the assessee -firm M/s Neelratna Enterprise LLP have been recovered from the material seized during the search operation. Unaccounted receipts of Rs. 42,74,25,284/- against sale of units of the project of which Rs. 73,91,551/- have been returned on account of cancellation or excess receipt. As details regarding unaccounted part of the aforementioned transactions pertaining to the assessee have been gathered from the seized material during the search operation, a notice under section 148 of the Act has been issued on 22-07-2022 to the assessee after



following due procedure as per the Act and with prior approval of the specified authority as per section 151 of the Act. In response to the notice issued under section 148, the assessee has filed an income tax return on 10-08-2022 declaring total income at NIL. Subsequently, a notice u/s 143(2) of the Income-tax Act has been issued and served on 02-09-2022 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.

5. In respect of unaccounted receipts against sale of units of the project, "The Spire – 2," the AO observed that "The Spire 2" is a fully commercial project developed by M/s Neelratna Enterprise LLP. During the course of recording of the statement of Shri Praful Gangdev at his residential premises under section 132(4) of the Income-tax Act, 1961, he categorically accepted taking on-money in cash for the sale of real estate property. During the course of search at the residence of Shri Praful Narendrabhai Gangdev; 3 iPhones, 5 Pen drives and 2 laptops were found and mirror imaging of the same along with e-mails, Google drive was taken, which was subsequently seized in hard drive inventoried as per Annexure A as A-11, A-12 & A-13. During the analysis of the digital data of the above mentioned devices, one excel file named "THE SPIRE 2 INSTALLMENT AMOUNT SHEET" from Google drive was found. Excel Sheet named "Sheet1" of this excel file contains data of month-wise instalments of showrooms/shops/offices & total of the individual entries of each row is entered in the last column of the



excel sheet. The amount maintained in the excel sheet named Sheet1 of the excel file named "THE SPIRE 2 INSTALLMENT AMOUNT SHEET" represent the on money received from the buyers in lieu of Showrooms/shops/offices of project The Spire 2. The sale considerations have been received in instalments. The screen shots of the starting rows & columns and last rows & columns of the excel sheet named Sheet1 of the excel file named THE SPIRE 2 INSTALLMENT AMOUNT found at the residential premises of Shri Praful N. Gangdev. Screen shots of starting rows & columns of the excel sheet named Sheet 1 of the excel file named THE SPIRE 2 INSTALLMENT AMOUNT, screen shots of last rows & columns of the excel sheet named Sheet1 of the excel file named THE SPIRE 2 INSTALLMENT AMOUNT and screen shots of last rows & columns of the excel sheet named Sheet1 of the excel file named THE SPIRE 2 INSTALLMENT AMOUNT are pasted in the assessment order. As per the above screen shots of excel sheet named Sheet1, it is clear that details of unit wise on money receipts for the project The Spire 2 are maintained in this excel sheet. Furthermore, some images of diaries as recovered from the digital devices of persons of Gangdev group covered in the search and seizure action also establish the absolute correctness of data in the excel file "THE SPIRE 2 INSTALLMENT AMOUNT SHEET" found from residence of Shri Praful Gangdev. The images of pages of diaries extracted from the digital data seized from the residential premises of Shri Praful N. Gangdev, Shailesh Kansagra and Shri Shiddharth Harshadbhai Gangdev shows that unit-wise details are also recorded in diaries. The pages of these diaries contain unit-wise details i.e. unit number, name of purchaser, on money received in cash, date of receipt of on money, document value etc. It is



pertinent to highlight here the amount noted in the diaries for receipt of on money in cash is in coded form i.e. the sign of '=' or "" or "/" is inserted before the last two digit of actual amount. For example, the amount written as "1000=00" is in coded form. The interpretation of the entries as recorded in diaries can be understood from the statement recorded at the residential premises of Shri Praful Gangdev, where he stated that amount "1000=00" written on page number 4 of the diary (diary of flat No. C-1103 found and seized as A5 of Annexure-A) represents Rs 1,00,000/- received in cash and other amounts are similarly noted. Scanned copy of the relevant portion of that statement recorded at the residential premises of Shri Praful Gangdev is pasted by the assessing officer, in the assessment order.

6. Assessing officer noticed that facts as stated by Shri Praful N Gangdev is squarely applicable to the diaries found related to the project The Spire 2. To establish what has been discussed above, snapshot of image of the office No. 1029 extracted from the digital data seized from the residential premises of Shri Shailesh Kansagra along with screen shot of relevant portion of excel sheet from the file "THE SPIRE 2 INSTALLMENT AMOUNT SHEET" is pasted. File path is working copy \hdd 2\Extracted working data\Shailesh_vivo 1713\Whatsapp messenger.files\. It is apparent from the above snapshot that Shri Mayankbhai Chauhan has booked office No. 1029 of the project The Spire 2 at the sale consideration of Rs 21,96,000/- (305*7200) out of which document value is Rs 12,70,000/-only and the remaining amount i.e. Rs.19,26,000/- is on money in cash. Shri Mayankbhai Chauhan has paid total on money of Rs.9,26,000/- on various dates as per the above snap shot.



The same is tabulated in the assessment order. Entries of the above tabulated on money receipts are found in the excel sheet named Sheet1 of excel file named THE SPIRE 2 INSTALLMENT AMOUNT at Cell number M246, N246, P246 & R246. Screen shot of the relevant portion of the excel sheet is pasted in the assessment order. Moreover, as per the snapshot of image of the office No. 1029 pasted above, document value of the office No. 1029 is mentioned as 12,70,000/-. On perusal of the details received from the sub-registrar office, it was found that the document price of this office is 12,70,000/- which is exactly same to the amount mentioned in the image of diary. Screenshot of relevant portion of agreement to sale is pasted in the assessment order. To further establish the correctness of the excel file "THE SPIRE 2 INSTALLMENT AMOUNT SHEET", snapshots of few other images extracted from the digital data of different persons of Gangdev group and Snapshots from the digital devices of Shri Praful Gangdev are pasted in the assessment order. This way, the assessing officer has identified the “on money” on other projects also.

7. Therefore, assessing officer issued a show cause notice to the assessee to explain the on money. The assessee submitted its reply before the assessing officer with documentary evidences. The assessee submitted, that seized documents are dump documents, as they do not contain the signature of the assessee and other party. Therefore, based on these dump documents, no addition should be made in the hands of the assessee. The assessee also submitted that entire sale proceeds cannot be regarded as net profit of the assessee and only profit element is to be taxed. That is, profit element on “on-money” should be taxed in the hands of the assessee. These profit



estimation on different project, should be done in accordance with judgement of the jurisdictional High Court of Gujarat in the case of PCIT v. Ms. Jay Kesar Bhavani Developers Pvt. Ltd. in Tax Appeal no. 267 of 2022, in this judgement, the Hon'ble Gujarat High Court has held that only profit element embedded in the gross “on-money” receipts at the rate of 6% can be taxed. The assessee also relied on various judgements of jurisdictional ITAT, Ahmedabad, where the Tribunal, estimated the profit element on the “on-money” at the rate of 8%.

8. The response of the assessee has been examined thoroughly by the assessing officer. Overall reading of the response gives an idea that at some instances, it is contended by the assessee that incomplete details / data cannot be accepted to be actual / real. The assessing officer, however, noted that this contention is not relevant as there is no any extrapolation which is being made here. Whatever unaccounted receipts are logically deductible from the seized document, the same is only proposed for addition in the show cause notice. Further, it requires to be made clear that the addition proposed in the show cause notice is not solely based on the statement of Shri Praful Gangdev rather the data seized. Further, in most part of the reply, the assessee is seeking to make a point that entire on-money receipts should not be taxed with the help of various judicial decisions from different judicial forums. After thorough examination of the response to show cause notice and considering the averments made by the assessee in its reply, the assessing officer noted that there is 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 by the assessing officer and the assessment of total income of the assessee was made after taking into account all relevant material gathered during the search and the assessment proceedings. 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. In this regard, assessing officer relied on the observation of the Supreme Court in CIT v. Williamson Financial Services [2007] 165 Taxman 638 (SC), which 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."

9. The assessing officer noted that 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. 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.

10. Estimation of rate of profit by the assessing officer

The assessing officer noted that details of various projects undertaken by the searched group members and their partners have been recovered from the seized Miracle File. Some projects were in completion stage whereas some were just started. Besides, in respect of some projects comprehensive details i.e. Land purchase expense. On-money receipts have been recovered from the seized data whereas in other projects very limited details i.e. only on-money receipts were recovered during the search operation. Wherever, details of receipts and payments were recoverable from the seized data, it was noticed by the assessing officer that the net surplus funds available with these projects were ranged from (-) 1271% to 35%. 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 inventory 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 sometimes in negative state. Thus, it is



understood that taking reference from the net surplus / unaccounted profits of such just launched projects would not give 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, only one project i.e. The Spire which has been developed by M/s. Buildcon Associates has been identified. Net receipts of this project (The Spire) has 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 35% in the hands of respective developer/owner. 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 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.



11. The assessing officer also noted that 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 net taxing all the receipts would remain papers only. Thus, with a view to strike a proper balance between the factual vis-a-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. As far as the profit on unaccounted receipts for the year under consideration is concerned, the assessing officer computed the same, as under-

Sr No	Particulars	Amount
1	Gross on-money receipts during the year	14,75,07,297
2	Unaccounted profit at 50% of 14,75,07,297/-	7,37,53,649

Thus, addition of Rs.7,37,53,643/- being unaccounted profit is made over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration, invoking provisions of section 145(3) of the Act.

12. 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), estimated the profit element on the "on money", at the rate of 8%,



12%, 16%, 20% 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 judgement of 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.

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

14. Summarized and Concise grounds pertaining to estimation of profit element, are reproduced below for ready reference:

(i) The Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of the order passed u/s 147 of the IT Act whereby assessed the total income of Rs.7,37,53,649 /- as against the returned income of Rs. Nil. It is totally wrong, unwarranted, unjustified and bad in law.

(This is ground No.1 in assessee's appeal in ITA No.535/RJT/2024 for A.Y. 2019-20, Ground No.1 in ITA No. 536/ RJT/ 2024, for A.Y. 2020-21, Ground No.1 in ITA No.



537/ RJT/ 2024, for A.Y. 2021-22, Ground No.1 in ITA No. 538/ RJT/ 2024, for A.Y. 2022-23)

(ii) Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of alleged ground of estimated the profit @ 16%, as the appellant is developer of commercial project and tax such income in the year in which income is recognised in books of account, it is unwarranted, unjustified and bad in law. The various Hon'ble High Courts and Hon'ble ITAT, had held that the profit should be taken at the rate of 6 to 8 percent.

(This is Ground No. 2 to 4 in assessee's appeal in ITA No.535/RJT/2024 for A.Y. 2019-20, Ground No. 2 to 4 in ITA No.536/RJT/2024 for A.Y. 2020-21, Ground No. 2 to 4 in ITA No.537/RJT/2024 for A.Y. 2021-22, Ground No. 2 to 4 in ITA No.538/RJT/2024 for A.Y. 2022-23).

(This is also Revenue's ground No.1 in ITA 680/ RJT/ 2024, for A.Y. 2019-20, Ground No.1 in ITA 681/ RJT/ 2024, for A.Y. 2020-21, Ground No.1 in ITA 682/ RJT/ 2024, for A.Y. 2021-22)

15. We have heard both the parties. We note that “On-money” receipts are undisclosed receipts, and only the profit element embedded in such receipts can be taxed, not the entire “on-money” amount. However, the rate of profit is always a matter of estimation and must depend on following factors, such as, nature of project, location, type of construction, cost structure, evidence of expenses and past profit margins. We note that in Gangadev Group cases, expenses and cost in every project is higher side, due to locational disadvantage, and the profit element is below 10%, as per the past audited profit and loss accounts and evidences available in search and seizure proceedings. It is settled position of law and we also note that Courts and Tribunals have emphasized that the profit rate must have a reasonable basis in each case, and cannot be arbitrarily fixed. Since “on-money” receipts represent undisclosed sales, only the profit element embedded therein can be taxed; however, the rate of profit estimation depends on the facts of each case. We have examined the seized material and past records and noted that



in Gangadev group cases, under consideration, the past profit margin as per audited books of accounts and as per seized material is 6.5% (average) only, this is because, due to location of the project and moreover, the cost and expenses are more than other similar projects. In these circumstances, we find that profit element embedded in commercial projects and housing projects should be estimated by applying the uniform rate of 10% on “on-money”. Therefore, considering the mandatory judgement of the jurisdictional Hon’ble Gujarat High Court, in the case of Ms. Jay Kesar Bhavani Developers Pvt. Ltd(Supra) and considering the peculiar facts of the assessee’s case, narrated above, we are of the view that profit estimation on, “on money” at the rate of, 10% is fair and reasonable. We note that issue under consideration is squarely covered in favour of the assessee in the identical and similar 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 Coordinate Bench of ITAT Rajkot are 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) 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 80IB(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 Id. CIT(A) is estimating it at 20%. It is pertinent to observe that section 144 of the Income Tax Act provides discretion in the 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 Id.CIT(A) has estimated the profit on the "on-money" at the rate of 16% but the Id.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 Id 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.”

16. Therefore, respectfully following the binding judgement of the Co-ordinate Bench of ITAT Rajkot in identical and similar group case (Supra), we direct the assessing officer to tax the “on money” at the rate of 10%, hence, we partly allow the following appeals of the assessee:

- (i) Ground No.1 in ITA No.535/RJT/2024 for A.Y. 2019-20,
- (ii) Ground No.1 in ITA No. 536/ RJT/ 2024, for A.Y. 2020-21,
- (iii) Ground No.1 in ITA No. 537/ RJT/ 2024, for A.Y. 2021-22,
- (iv) Ground No.1 in ITA No. 538/ RJT/ 2024, for A.Y. 2022-23
- (v) Ground No. 2 to 4 in ITA No.535/RJT/2024 for A.Y. 2019-20,
- (vi) Ground No. 2 to 4 in ITA No.536/RJT/2024 for A.Y. 2020-21,
- (vii) Ground No. 2 to 4 in ITA No.537/RJT/2024 for A.Y. 2021-22,
- (viii) Ground No. 2 to 4 in ITA No.538/RJT/2024 for A.Y. 2022-23).



Whereas following grounds of the revenue are dismissed:

- (i) Ground No.1 in ITA 680/ RJT/ 2024, for A.Y. 2019-20,
- (ii) Ground No.1 in ITA 681/ RJT/ 2024, for A.Y. 2020-21,
- (iii) Ground No.1 in ITA 682/ RJT/ 2024, for A.Y. 2021-22.

17. Summarized and concise ground No.(iii) is reproduced below for ready reference:

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

(This is Revenue's ground No.2 in ITA 680/ RJT/ 2024, for A.Y. 2019-20, Ground No.2 in ITA 681/ RJT/ 2024, for A.Y. 2020-21, Ground No.2 in ITA 682/ RJT/ 2024, for A.Y. 2021-22)

18. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We have heard learned DR for the revenue in detail and learned Counsel for the assessee also. In our considered view, it was wholly erroneous on the part of the authorities below to apply the accounting principles of ICDS-III, as it is not applicable to the assessee, under consideration. We note that issue under consideration is squarely covered in favour of the assessee on identical and similar group cases, of 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.”*

19. 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 ITA 680/ RJT/ 2024, for A.Y. 2019-20,
- (ii)Ground No.2 in ITA 681/ RJT/ 2024, for A.Y. 2020-21,
- (iii)Ground No.2 in ITA 682/ RJT/ 2024, for A.Y. 2021-22.

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

Order pronounced in the open court on 27-02-2026

Sd/-
(Dr. DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

True Copy



Dated: 27/02/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

By order/आदेश से,

Assistant Registrar / Sr. PS / PS
ITAT, Rajkot