

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 No. 549 & 550/RJT/2024

निर्धारणवर्ष /Assessment Year: 2017-18 & 2018-19

(Hybrid Hearing)

Radhe Developers Office No. 47, Ankur Commercial Center, Opp. Swaminarayan Gurukul, Gondal Road, Rajkot Rajkot-360001	Vs .	The Deputy Commissioner of Income Tax, Central-1  Income Tax Office, Amruta Estate Building, Near Girnar Cinema, M G Road, Rajkot  Rajkot-360001
स्थायीलेखासं. / जीआइआरसं./PAN/GIR No.: AATFR3387E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 687/RJT/2024

निर्धारणवर्ष /Assessment Year: 2017-18

(Hybrid Hearing)

The Deputy Commissioner of Income Tax, Central-1  Income Tax Office, Amruta Estate Building, Near Girnar Cinema, M G Road, Rajkot  Rajkot-360001	Vs .	Radhe Developers  Office No. 47, Ankur Commercial Center, Opp. Swaminarayan Gurukul, Gondal Road, Rajkot  Rajkot-360001
स्थायीलेखासं. / जीआइआरसं./PAN/GIR No.: AATFR3387E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri D.M. Rindani, Ld.AR



राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाई की तारीख/Date of Hearing : 20/01/2026

घोषणा की तारीख/Date of Pronouncement : 10/03/2026

## **ORDER**

### **Per, Bench:**

Captioned two appeals filed by the assessee for Asst. Year 2017-18 & 2018-19, and one appeal filed by the revenue for Asst. Year 2017-18, are directed against the orders passed by the Commissioner of Income Tax [(in short “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 of the Income Tax Act, 1961 (in short “the Act”).

2. Since these appeals are based on similar facts and common grounds of appeal, therefore, we are proceeding to dispose of them by this consolidated order for the sake of convenience. For the sake of convenience, the facts narrated in ITA No. 687/Rjt/2024 for A.Y. 2017-18, 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.5,68,78,510/- as against the returned income of Rs.72,73,510/-, it is totally wrong, unwarranted, unjustified and bad in law.*

*(This is ground No.1 in assessee's appeal in ITA No.549/RJT/2024 for A.Y. 2017-18, Ground No.1 in ITA No. 550/ RJT/ 2024, for A.Y. 2018-19)*

*(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 @ 30%, 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.549/RJT/2024 for A.Y. 2017-18, Ground No. 2 to 4 in ITA No.550/RJT/2024 for A.Y. 2018-19)*

*( This is also ground no.1 in revenue's appeal in ITA No.687/RJT/2024 for A.Y. 2017-18)*

4. The facts of the assessee's case which can be stated quite shortly are as follows: The assessee is a partnership- firm engaged in Real Estate business. As per the Income-tax Return for the year under consideration, filed on 09/08/2017, the total income has been declared at Rs. 72,73,510/-. 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 "Business Corner" developed by the assessee -firm, M/s Radhe Developers have been recovered from the material seized during the search operation -

(i) Unaccounted (on-money) receipts against sale of units of the project "Business Corner

5. 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 19/11/2022 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 23/11/2022, declaring total income of Rs. 72,73,510/-. Subsequently, a notice u/s 143(2) of the Income-tax Act has been issued and served on 18/12/2022, on the e-filing portal of the assessee. Subsequently, notices u/s 142(1) of the Act, have been issued from time to time seeking primary as well as further details from the assessee for carrying out the assessment. 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. The assessing officer observed that issues involved during the year is that unaccounted (on-money)



receipts against sale of units of the project Business Corner. During the course of search action at the residence of Shri Siddharth H. Gangdev, backup of 2 iPhones, 1 One plus, 1 Lenovo all in one, 1 Laptop, one drive cloud, i-cloud, e-mails, one 2TB external HDD and one 1TB external HDD was taken, which was subsequently seized in hard drive inventoried as A-2, A-3, A-4 & A-5 of Annexure A. During the analysis of the digital data of the above mentioned devices, one excel file named "INDIRACICLE & BUISNESS PARK" was found from the i-phone 11 of Ronak Gangdev. This excel file contains the excel sheet named "BUISNESS PARK" & "INDIRA CIRCLE. The excel sheet named "INDIRA CIRCLE" contains the columns named OFFICE NO., NAME, SQFT, RATE, AMOUNT, A and B. The screen shots of the excel sheet named "INDIRA CIRCLE" of the excel file "INDIRACICLE & BUISNESS PARK" are pasted in the assessment order, by the assessing officer. It is pertinent to mention here that in this excel file column A & B are blank. However, the column E i.e. AMOUNT contains the total amount of sale consideration including "on money" in cash and the receipts through bank.

6. The assessing officer noted that under these circumstances, the completeness and correctness of the accounts of the assessee-firm are not established satisfactorily and therefore, vide notice dated 21-01-2023, the assessee-firm has been asked to show cause as to why provisions of section 145(3) of the Act should not be invoked for the year under consideration and profits element embedded in the unaccounted transactions for respective years be estimated keeping in mind the material available on records.

7. In response, the assessee has submitted reply to the show cause notice clarifying the issues and raising various contentions. The reply of the assessee, alongwith documentary evidences, is reproduced below:

*"Further, vide above show cause notice your honour has proposed to make addition of entire amount of Rs 9,92,09,270/- on account of alleged "on money" received during the assessment year under consideration i.e. AY 2017-18. In this context, it is humbly submitted that the entire*



*sales proceeds (on money) of Rs. 9,92,09,270/- cannot be treated as unexplained. It settled principle that entire amount of sale proceeds cannot be regarded as profit of the assessee, the net profit rate had to be adopted for the purpose of addition. It is further submitted that the entire amount of sale proceeds cannot be regarded as profit of the assessee, the net profit rate had to be adopted for the purpose of addition. In such circumstances, an estimate of the probable profit has to be made having regard to the surrounding circumstances, ground realities, corroborative evidence in the form of profits shown in comparative cases and other factors that are relevant to determine the real income of the appellant.*

*In case of CIT v. President Industries (2002) 258 ITR 654 (Guj), Honble Gujarat High Court held that where unaccounted sales were revealed during course of survey, entire sale proceeds cannot be added as undisclosed income of the assessee, but addition could only be to the extent of profit embedded in sales. It was further observed by Honble High Court that entire amount of sales could not represent the income of the assessee, who had not disclosed the sales. CIT v. Gurubachhan Singh J. Juneja-215 CTR 0509(Gujarat-HC): Head note from Tax publishers is reproduced as under. "Addition under section 69--Alleged unaccounted sales--During search proceedings under section 132 various books of accounts and documents were seized from the residential and business premises of assessee. It was found that the amount of certain sales was not accounted for in books of accounts. AO made addition being the value of unaccounted sales. However, the finding of Tribunal was that assessee could not be taxed the entire amount but was liable to be taxed only on earned on the said sales, thereby deleted addition. Revenue had not proved by bringing any material on record that assessee had made any investment to make alleged unaccounted sales. Held: In the absence of any material on record to show that there was any unexplained investment made by assessee which was reflected by alleged unaccounted sales, the finding of Tribunal that only GP on the said amount could be brought to tax did not call for any interference.*

*ITO Vs M/s. Karthik Poultry Farm - ITA No.11 06(8)/2004- "It is well settled law that the entire amount of sale does not represent income of the assessee. It is only a price received by the seller of the goods and only the realization over cost that can be the profit. In case of CIT v. BalchandAjit Kumar (2003) 263 ITR 610 (MP), held that entire amount of sale proceeds cannot be regarded as profit of the assessee, the net profit rate had to be adopted for the purpose of addition.*

*Similarly, Honble Gujarat High Court in the case of CIT v. Saint Synthetics Mill (2010) 326 ITR 410 (Guj), held that addition was to be made not in respect of sale consideration but only in respect of the profits. Further, the Court observed that: It can thus, be seen that consistently, this Court and some other Courts have been following the principle that even upon detection of on-money receipts or unaccounted cash receipts, what can be brought to tax is the profit embedded in such receipts and not the entire receipts, themselves. If that be the legal position, what should be estimated as a reasonable profit out of such receipt must bear an element of estimation. In view of the legal position that not the entire receipts, but the profit element embedded in such receipts, can be brought to tax.*

*Hence, adding entire amount of sale consideration received in cash will not serve the end of justice. Sale proceeds comprise of cost, expenses (as tabulated above) and profits. Out of entire sale proceeds, only profit element is liable to tax. When the appellant is found to have not incorporated entire sale proceeds in the regular books of account and the assessing officer is not satisfied about the correctness and completeness of the accounts of assessee, the same are*



*liable to be rejected. Under these circumstances estimation of profit is to be made in respect of sale proceeds not accounted for. Accordingly, profit element in the unaccounted sale proceeds received in cash is to be brought to tax net.”*

8. However, assessing officer accepted the above reply of the assessee, partly and noted that at some instances, it was contended by the assessee that incomplete details / data cannot be accepted to be actual / real data. However, assessing officer noted that whatever unaccounted receipts are logically deduced from the seized document, the same is only proposed for addition in the show cause notice. 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, 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) were invoked by the assessing officer and the assessment of total income of the assessee was being 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, 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."*

9. The assessing officer noticed 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**

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 was 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 apart from above facts, it is also necessary to keep in mind violation of various other provisions of the law which



are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial precedents as discussed earlier if all the expenses/payments are disallowed then the ratio laid down by the Hon'ble High Court 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%. Considering complete facts of the case under consideration it was felt reasonable to adopt a higher rate of 50% as profit earned on the gross unaccounted receipts of this project. Accordingly, the profit for respective years is computed as under-

Sr No	Particulars	FY 2016-17 (AY 2017-18)	FY 2017-18 (AY 2018-19)
1	Gross on-money receipts	9,92,09,270	1,71,86,145
2	Unaccounted profit at 50%	<b>4,96,04,635</b>	<b>85,93,073</b>

Thus, additions of Rs. 4,96,04,635/- being unaccounted profit for assessment year (AY) 2017-18 and of Rs. 85,93,073/- being unaccounted profit for AY 2018-19 were made by the assessing officer over and above the regular business income reported by the assessee in the Income-tax Return filed for the respective years 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.5,68,78,510/- as against the returned income of Rs.72,73,510/-, it is totally wrong, unwarranted, unjustified and bad in law.*

*(This is ground No.1 in assessee’s appeal in ITA No.549/RJT/2024 for A.Y. 2017-18, Ground No.1 in ITA No. 550/ RJT/ 2024, for A.Y. 2018-19)*

*(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 @ 30%, 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.549/RJT/2024 for A.Y. 2017-18, Ground No. 2 to 4 in ITA No.550/RJT/2024 for A.Y. 2018-19)*

*( This is also ground no.1 in revenue's appeal in ITA No.687/RJT/2024 for A.Y. 2017-18)*

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 7 %, ( average-wise-project) 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, taking together 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 M/s. 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.



16. We also note that issue under consideration is squarely covered in favour of the assessee in the 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 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 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-Al we deem it proper that the assessee has rightly disclosed the profit element embedded in the gross profit at 8%. Accordingly, we allow the ground of appeal raised by the assessee, and hold that profit which has been directed to be adopted by the Ld.CIT(A) at 20% of the alleged turnover should be taken at 8%.*

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

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

*HELD THAT: CIT (A) was not justified in confirming the addition of entire on-money receipts amounting to 4,72,02,368. Therefore, only estimated net profit is required to be taxed. We find that the assessee has shown net profit at 4.55.% for the assessment year under consideration and 4.59% for A.Y. 2010-11. Further, the Hon'ble High Court in the case of CIT V. Abhishek Corporation [1998 (8) TIMI 110 ITAT AHMEDABAD-C) has upheld the net profit at 1.31% as declared by the assessee in that case. The net profit rate disclosed at 4,55% during the assessment year under consideration by the assessee in books of accounts and considering the facts that the project undertaken by the assessee comes under deduction of section 801B(10) hence, there may not be any intention to disclose the lower rate of profit. Considering these facts, and taking into account net profit in construction business, it would be reasonable to estimate 6% of net profit on total on-money.*

*(iii) The Commissioner of Income Tax vs. Shri Hariram Bhambhani INCOME TAX APPEAL NO.313 OF 2013 (BOM)(HC):*

*“In any view of the matter, the CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Thus, in the above view, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. The view taken by the authorities is a reasonable and a possible view. Thus, no substantial question of law arises for our consideration.”*

*(iv) The ACIT Central Circle - 3, Jaipur Vs Shri Nawal Kishore Soni : ITA No. 1256, 1257, & 1258/JP/2019 [ITAT] [Jaipur]:*



"23.4 It is settled law that not only from the illegal business but also the unaccounted transaction of purchase and sale only profit/ income on sales could be assessed as undisclosed income and could be subjected to tax. Case laws to the point are as under: 1. Dr. T.A. Quereshi (157 taxmann.com 514) (Supreme Court) 2. Piara Singh (124 ITR 40) (Supreme Court) 3. S.C. Kothari (82 ITR 794 (Supreme Court) 23.5 The assessee admitted such profit at Rs. 45,00,000/- and disclosed that on said transactions income in PMGKY, 2016 and paid due tax thereon. The copy of certificate issued by PCIT is placed on record. Thus when that transactions are of unrecorded purchase and sale of gold, which Ld. assessing officer also admits in assessment order, then simply that name & address of purchasers are not provided the entire amount of sale cannot in law be treated as undisclosed income, only profit earned from said transactions which has been admitted by assessee at Rs. 45,00,000/- can only be assessed to tax more so when the assessee has disclosed in PMGKY the said undisclosed income of Rs.45,00,000/- and paid tax in accordance with scheme and received certificate there for from Pr. Commissioner of Income Tax, hence the same disclosed income cannot be included as income is assessment as per Section 199-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. Ltd. 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.”

17. 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.549/RJT/2024 for A.Y. 2017-18,



- (ii) Ground No.1 in ITA No. 550/ RJT/ 2024, for A.Y. 2018-19  
(iii) Ground No. 2 to 4 in ITA No.549/RJT/2024 for A.Y. 2017-18,  
(iv) Ground No. 2 to 4 in ITA No.550/RJT/2024 for A.Y. 2018-19

Whereas, following appeal of revenue is dismissed:

- ( i) Ground no.1 in revenue`s appeal in ITA No.687/RJT/2024 for A.Y. 2017-18.

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

**Order is pronounced in the open court on 10/03/2026.**

**Sd/-**

**(Dr. Arjun Lal Saini)** *True Copy*

लेखा सदस्य/**Accountant Member**

Rajkot

Date: 10/03/2026.

**आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :**

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूत/ DR, ITAT, Rajkot
- गार्ड फाईल/ Guard File

**Sd/-**

**(Dr. Dinesh Mohan Sinha)**

न्यायिक सदस्य/**Judicial Member**

By order,

Assistant Registrar/Sr.PS/PS  
ITAT, Rajkot