आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

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

आयकर अपील सं/.ITA Nos. 551 to 554/RJT/2024

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

(Hybrid Hearing)

M/s. R.K. Infraspace LLP 1st Floor, Navkar Complex, Dhebar Road One Way, Nr. Syndicate Bank, Rajkot-360001	**Vs.**	The DCIT, CC-1 Aaykar Bhawan, Amruta Estate, M G Road, Rajkot-360001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: **AAYFR0338L**		
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

आयकर अपील सं/.ITA Nos. 532 & 533/RJT/2024

(Assessment Year: 2019-20 to 2020-21)

The DCIT, CC-1 Aaykar Bhawan, Amruta Estate, M G Road, Rajkot Rajkot-360001	**Vs.**	M/s. R.K. Infraspace LLP 1st Floor, Navkar Complex, Dhebar Road One Way, Nr. Syndicate Bank, Rajkot-360001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: **AAYFR0338L**		
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

निर्धारितीकीओरसे/Assessee by : Shri Mehul Ranpura, Ld. AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाईकीतारीख /Date of Hearing : 16/01/2026

घोषणाकीतारीख/Date of Pronouncement : 09/03/2026

आदेश/ORDER

Per, Bench:

Captioned appeals filed by the Assessee and Revenue, pertaining to Assessment Years 2019-20 to 2022-23, is directed against the orders passed under

section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing Officer, u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961.

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.532/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 Id. Commissioner of Income-tax (Appeals)-11, Ahmedabad erred on facts as also in law in dismissing ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, the proceedings-initiated u/s 147 of the Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed."*
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> (This is assessee's ground No. 2 in ITA No. 551/RJT/2024 for AY 2019-20, and Ground No. 2 in ITA No. 552/RJT/2024 for AY 2020-21)
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> *(ii).The Id. CIT(A) erred on facts as also in law in retaining addition of Rs. 1,01,38,593/-, by estimating profit at the 16% of so called 'on- money' receipt. The addition made and retained is bad in law as also on facts therefore the same may kindly be deleted. Alternatively, the addition made by estimating rate of profit is very much on higher side and therefore the same may kindly be directed to be reduced and oblige.*

(This is Assessee's ground Nos. 3 & 4 in ITA No. 551/RJT/2024 for AY 2019-20, Ground No. 3 and 4 in ITA No. 552/RJT/2024 for AY 2020-21, Ground no.2, 3 & 4 in ITA No. 553/RJT/2024 for AY 2021-22 and Ground no.2, 3 & 4 in ITA No. 554/RJT/2024 for AY 2022-23)

(This is also Revenue's ground no. 1 in ITA No. 532/RJT/2024 for AY 2019-20 and Ground No.1 in ITA No. 533/RJT/2024 for AY 2020-21)

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

(This is Revenue's ground no. 1 in ITA No. 532/RJT/2024 for AY 2019-20 and Ground No.1 in ITANo.533/RJT/2024 for AY 2020-21)

4.The relevant material facts, as culled out from the material on record, are as follows. The assessee is a firm LLP and engaged in construction commercial / residential buildings. The Income-Tax Return (ITR) for assessment year (AY) 2019-20, was filed by the assessee, on 25/07/2019, declaring net loss of (-) Rs. 16,208/-. 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 R K Group. 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.The RK Group is developing multiple projects in the nature of Commercial, Residential and Industrial plotting projects. The Group is headed by Shri Sarvanand Sadhuram Sonwani and he is supported by his family members in the management of the business. The Sonwani family is a joint unit for the purpose of business.Important family members, offices, key associates and employees were also covered in the search and survey operation to get hold of

important incriminating evidences.The premise of Shri Girish Vanjani was also covered during the search action. Shri Girish Vanjani was maintaining the accounts of the R K Group (including parallel unaccounted cash transactions) at the instruction of Shri Sarvanand Sonwani. Relevant part of his statement is reproduced by the assessing officer on page number 2 of the assessment order.It can be seen that Shri Girish Vanjani has categorically stated that he does the work of accounting as per the instructions of Shri Sarvanand Sonwani. Even Shri Sarvanand Sonwani has accepted (in his statements recorded u/s 131 of the Act at the residential premise of Girish Vanjani on 27.08.2021) that Shri Girish Vanjani does the accounting work of R K Group as per his instructions. A snapshot of the relevant portion of statement of Shri Sarvanand Sonwani is pasted in the assessment order, page number 3.

5. Thus, Shri Girish Vanjani, is a key employee and accountant of the R K Group is an admitted and confirmed fact. During the course of search and seizure action at the residential premise of Shri GirishVanjani, Pen Drives and Hard Discs were recovered. Forensic Mirror Imaging (Digital Data Backup) of these devices was taken and the same were seized. The backup contained key accounting files of the entire group in a very systematic manner. The accounts of (1) Sale of units (2) Cost of lands (3) Expenses incurred in various projects and other miscellaneous transactions made by RK Group members with various counter parties were maintained in accounting software known as MIRACLE. Details of sale of units maintained in various excel sheets were also found and seized from the premise of Shri GirishVanjani. Multiple miracle files have been found from the digital data that has been imaged and seized during the search operation. Many miracle files found are duplicate copies of each other or either not fully updated. Some Miracle files are more updated than the other. From the plethora of Miracle files that have been found during the post search analysis, three (3) files have

been isolated which when studied together cover the financial transactions of the group. The details of the three Miracle files are as under –

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

Apart from the above, various documents in the form of loose-papers, excel sheets etc, have also been recovered and seized during the search operation from the premises of the group members highlighting various kind of financial transactions accounted as well as unaccounted.

6.All the data collected and seized during the search and survey operation has been perused and co-related with the actual transactions made by the group persons and entities. The financial transactions pertaining to sale and purchase of various kinds of properties as seized in the form of Digital Data and in the form of Hard Data were also compared and corroborated with the documentary evidences and responses received from the Sub-registrar office and with the data available in public domains on various government portals like, (1) anyror.gujarat.gov.in (2) garvi.gujarat.gov.in and (3) gujrera.gujarat.gov.in. Comparison of the financial transactions entered in the Miracle accounting files seized during the search was also made with those reported on the regular books of various group members and entities.All this comparison and corroboration exercise has revealed following factual aspects about the seized data –

Fact 1	The seized Miracle files recovered during the search operation contain transactions that took place between (1) R K Group members and (2) various other parties (counter parties). They include the accounts of cash as well as bank transactions. It is seen in most of the ledgers from the seized Miracle file that they contain some Bank transactions which are found recorded on the regular books and some Cash transactions which are normally not recorded on the regular books of the respective Group member. This manner of recording the transactions highlights a fact that

	one part (mostly in Bank) of every deal was being reported on the regular books and the other part (mostly in cash) of the deal was not being reported on the regular books. Thus, some transactions from the Miracle files were accounted for whereas some were not accounted for in the regular books of the respective group member who owns the transaction.
Fact 2	The data entered in the Miracle software is in coded form - (1) the entries have been backdated by 10 years i.e. 01-04-2019 is entered as 01-04-2009, and 2) the amounts have been divided by 100 i.e. Rs. 2,50,000/- is entered as 2500.00/-
Fact 3	The names of the ledgers of different projects, persons have been written in coded form. It is seen that mostly the names of the projects for which any particular transaction is recorded on the seized file were mentioned with the initials. For example-(1) R K Residency is mentioned as RKR,(2) R K Prime is mentioned as RKP, (3) The City Centre is mentioned as TCC, (4) R K Supreme is mentioned as SPM etc.

The assessee, M/s R K Infraspace LLP is a firm where the R K Group members (Sonwani Family) and their associated concern are partners. Complete partnership structure of the firm is as under-

Name of the Partner	Share
Sarvanand S. Sonwani	42.5%
Gourav Sobhraj Sonwani	42.5%
M/s Love Shoppers Ltd.	15%

The firm-LLP has developed two projects namely, RK Prime-2 and Sagar Industrial Park. The RK Prime 2 is commercial project whereas Sagar Industrial Park, is an industrial plotting project. Details of following unaccounted transactions pertaining to these projects have been recovered from the material seized during the search operation -

(i)Unaccounted transactions for the project RK Prime -2

- Unaccounted receipts of Rs. 28,22,09,330/- against sale of units of the project and repayments of Rs. 4,84,84,668/- on account of cancellation or excess receipts as culled out from the seized Miracle data.

- Unaccounted expense / investment of Rs. 17,93,34,000/- made in the purchase of land for the project as culled out from the seized Miracle data.

- Unaccounted expenses of Rs. 2,25,29,820/- incurred for the project as culled out from the seized Miracle data.

- Unaccounted expenses of Rs. 1,08,50,000/- made to the contractor as per one excel sheet named "Bharatbhai RKP2" seized from the office premise of the RK Group.

(ii)Unaccounted transactions for the Sagar Industrial park

- Unaccounted receipts of Rs.10,44,31,000/- against sale of units of the project and repayments of Rs.51,02,110/-, on account of cancellation or excess receipts as culled out from the seized Miracle data.

- Unaccounted expense/investment of Rs. 9,10,50,000/- made in the purchase of land for the project as culled out from the seized Miracle data

7. As details regarding unaccounted part of the aforementioned transactions pertaining to the assessee have been gathered from the seized material during the search operation, therefore, the case of the assessee has been reopened u/s 147 of the Act, after following the due procedure laid down in Income Tax Act and after obtaining necessary approval from competent authority specified u/s 151 of the Act. Notice under section 148 of the Act has been issued on 22/07/2022. In response to the notice issued under section 148 of the Act, the assessee has filed its Income tax return on 10/08/2022, declaring net loss of Rs. 16,208/-. Subsequently, 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. Subsequent 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 satisfactions drawn for the re-opening of the assessment along with 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.

8. The main issues involved in the assessee`s case is that the seized material pertaining to the assessee-firm, contained details of various kinds of unaccounted transactions (as summarized earlier). These transactions were not confined only to the year under consideration but were scattered in various financial years.As mentioned earlier that the assessee- firm has developed two projects (RK Prime - 2 and Sagar Industrial Park). The project wise transactions that specifically pertained to the current year were discussed by the assessing officer in the assessment order. Thereafter, assessing officer issued a show cause notice to the assessee to explain the "on money" transactions in Projects.

9. In response, the assessee submitted detailed reply before the assessing officer alongwith documentary evidences. The sum and substance of the reply of the assessee are as follows:

(i) No unaccounted transactions took place.
(ii) Addition can not be made solely based on the statement of Shri GirishVanjani
(iii) if the department uses any material recovered or statement recorded from third party opportunity of cross - examination to other partners to be provided.
(iv) The sale value has been recorded in the books as per stamp duty value / fair market value any doubt in the matter of valuation can be resolved from valuation cell.

(v) Adverse inference cannot be taken relying on data recovered from third party i.e. Shri GirishVanjani.

(vi) Shri GirishVanjani, Shri Sarvanand Sonwani and other partners of the firm have denied the unaccounted transactions.

(vii) The allegation leveled on the assessee has no legal sanctity. In case, confirmation from the customers / buyers required. The same can be furnished.

(viii) The data in Miracle is not complete and correct.

(ix) Addition, if any, should be made in the hands of Shri SarvanandSonwani

(x) The income of the real estate builder is taxable at the time of transfer of title & possession of property in favour of customer and not at the time of booking of unit by customer.

10. However, the assessing officer partly accepted the above submissions of the assessee. After considering all the objections of the assessee in its reply to the show cause notice and taking into consideration the facts and material available on records following conclusion has been drawn by the assessing officer:

(i) Rejection of books of accounts by the assessing officer

After thorough examination of the response to show cause notice and dismissing various contentions raised by the assessee in its reply, it has been made clear that the seized digital data in the form of accounting entries on Miracle file is accurate, reliable and self-explanatory. Further, there is also no doubt that the accounts of the assessee where all the transactions are not reflected cannot be relied upon as they present incomplete and incorrect state of affairs of business of the assessee and requires to be disregarded invoking the provisions of section 145(3) of the Act. Accordingly, provisions of section 145(3) of the Act, were 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. As per the material gathered during the search and submissions available on records the assessee is found to have indulged in the practice of suppressing both receipts (on account of sale) and payments (on account of purchase) made for the projects undertaken / developed during the year. There is no uniform method that can be employed to compute income when part receipts on account of sale are not included on the books. The method differs from case to case depending upon various factors i.e. type of business, modus operandi of the assessee, sufficiency of data available for estimation etc. In a case where the evidence available on record contains details of corresponding unaccounted payments which are also partly included on the books, such partly recorded payments should also be taken into consideration. Taxing the receipts only has never been the motto of the Income-tax Act. In this regard, the assessing officer relied on 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."*

(ii) Therefore, 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 Gujarat 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 Gujarat 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.

(iii)Estimation of Profit, by the assessing officer

The assessing officer noted that the project "RK PRIME-2" is a commercial project. Details of 8 commercial 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, Project expenses, 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.Wherever, details of receipts and payments were recoverable form the seized data, it is noticed that the net surplus funds available with these projects were ranged from -150% to 43%. 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, following five projects have been identified as reference –

Sr. No.	Name of the Project	Name of the developer / owner
1	The Imperia	M/s Imperia Enterprise
2	The City Centre	M/s Titanium Buildcon LLP
3	R K Prime	M/s NareshOrganisersPvt Ltd
4	R K Prime +	M/s NareshOrganisersPvt Ltd
5	R K Prime 2	M/s R K Infraspace LLP

(iv)Net receipts of all these 5 projects have been calculated and it was seen by the assessing officer that after considering all kind of transactions, that is, Net on-money receipts, Expenses for running the project including the Land purchase there remained average net surplus of 31% in the hands of respective developer / owner. The relevant chart is reproduced below:

Sr. No.	Name of the Project	Name of the developer / owner	% of net surplus
1	The Imperia	M/s Imperia Enterprise	27%
2	The City Centre	M/s Titanium Buildcon LLP	37%
3	R K Prime	M/s Naresh Organisers Pvt Ltd	36%
4	R K Prime Plus	M/s Naresh Organisers Pvt Ltd	40%
5	R K Prime 2	M/s R K Infraspace LLP	14%
Average = (27 + 37 + 36 + 40 + 14)/5 = 30.8			i.e 31%

Apart from this, the assessing officer observed that it is also important to keep in mind, the violation of various other provisions of the law which are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial precedents as discussed earlier, if all the expenses / payments are disallowed then the ratio laid down by the Hon'ble High Court with regard to not taxing all the receipts would remain on papers only.Thus, with a view to strike a proper balance between the factual vis-à-vis the legal aspects, it is decided to further enhance the aforementioned average net profit rate from 31% to 35%. Accordingly, 35% has been set as benchmark rate for the projects where details of unaccounted receipts as well as unaccounted expenses have been recovered from same set of the seized

material. It is pertinent to mention that actual net surplus for the project "RK Prime-2" comes at 14%. It would not be appropriate to consider it as it is because that project under consideration is in its initial stage, that is, this is 'just launched'. The reasons for not considering the net surplus rates of such 'just launched' projects is already discussed earlier. 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.

(v) In view of the above, the rate of profit for commercial project undertaken by the assessee i.e. RK Prime-2, was taken at 35% of net unaccounted receipts by the assessing officer and accordingly, the net profit embedded in unaccounted on money receipts for the FY 2018-19 (AY 2019-20) is computed by the assessing officer, as follows:

Project RK Prime-2 (Commercial Project)

Particulars	*Receipts*	*Payment*
On-money receipts as per Miracle	*6,45,66,210*	
Refund of on-money receipts on cancellation of booking		*12,00,000*
Net On money / unaccounted receipts	*6,33,66,210*	
Estimation of profit @ 35% of Net unaccounted receipts	***2,21,78,174***	

Thus, addition of Rs. 2,21,78,174/- being unaccounted profit embedded in the net unaccounted receipts for the project RK Prime-2 was made over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration. Consequently, total business income for the year under consideration is enhanced by Rs. 2,21,78,174/- for the year under consideration invoking provisions of section 145(3) of the Act.

11.Aggrieved by the various additions made by the assessing officer, the assessee carried the matter in appeal before the learned CIT(A) The learned CIT(A) dismissed the technical grounds raised by the assessee, challenging reopening of assessment under section 147/148 of the Act. On merit, learned CIT(A), estimated the profit element on the "on money", at the rate of 8%, 12%, 16% etc, in a different assessment years. Therefore, assessee, as well as, revenue, both are in appeal before us. The main contention of the revenue in these appeals are that the addition made by the assessing officer should be confirmed. Whereas, main contention in the assessee's appeals is that the profit estimation on "on -money", is on higher side, therefore, it should be reduced to a reasonable extent, by following the 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 that the addition on "on money" at the rate of 8% is sufficient to plug the leakage of the revenue. Therefore, the solitary grievance of the assessee in assessee's appeals are that reasonable estimation may be made in the hands of the assessee. The findings of the learned CIT(A) would be discussed while adjudicating the relevant issue involved in concise and summarised grounds noted above.

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

13. Summarized and Concise ground No.(i) is reproduced below for ready reference:

> *"(i)The Id. Commissioner of Income-tax (Appeals)-11, Ahmedabad erred on facts as also in law in dismissing ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, the proceedings-initiated u/s 147 of the Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed."*
>
> *(This is assessee's ground No. 2 in ITA No. 551/RJT/2024 for AY 2019-20, and Ground No. 2 in ITA No. 552/RJT/2024 for AY 2020-21)*

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

> *"11. We have heard both the parties. We find that in the new regime/ scheme of search assessment, the proceedings for search assessment of search party as well as third-party are made under section 147 of the Act, unlike in the earlier/ old scheme of search assessment, wherein the search assessment of searched party was made under section 153A of the Act, whereas the assessment of third-party, was made under section 153C of the Act. Since, in the present reassessment proceedings, both of the searched party, as well as third party assessments are covered. It is observed that the initiation of reassessment proceedings in the present case is valid in law. While passing the assessment order, the assessing officer also observed that search was carried out at the assessee`s premises on 24.08.2021, and pursuant to the search, notice under section 148 of the Act, was issued in case of the assessee. As search was carried out in the case of the assessee after 01.04.2021, wherein, provisions of section 148 were amended*

and provides deemed satisfaction for three assessment years prior to the date of search, and even on this ground, the assessing officer has validly issued notice under section 148 of the Act. Hence, there is no defect in the reassessment proceedings, therefore, we dismiss the ground raised by the assessee and confirm the findings of the learned CIT(A).”

15.Respectfully following the above findings in assessee’s own case, we dismiss the following grounds in assessee’s appeals.

(i) Ground No. 2 in ITA No. 551/RJT/2024 for AY 2019-20,

(ii) Ground No. 2 in ITA No. 552/RJT/2024 for AY 2020-21.

16. Summarized and Concise ground No.(ii) is reproduced below for ready reference:

(ii).The Id. CIT(A) erred on facts as also in law in retaining addition of Rs. 1,01,38,593/-, by estimating profit at the 16% of so called ‘on- money’ receipt. The addition made and retained is bad in law as also on facts therefore the same may kindly be deleted. Alternatively, the addition made by estimating rate of profit is very much on higher side and therefore the same may kindly be directed to be reduced and oblige.

(This is Assessee’s ground Nos. 3 & 4 in ITA No. 551/RJT/2024 for AY 2019-20, Ground No. 3 and 4 in ITA No. 552/RJT/2024 for AY 2020-21, Ground no.2, 3 & 4 in ITA No. 553/RJT/2024 for AY 2021-22 and Ground no.2, 3 & 4 in ITA No. 554/RJT/2024 for AY 2022-23)

(This is also Revenue's ground no. 1 in ITA No. 532/RJT/2024 for AY 2019-20 and Ground No.1 in ITA No. 533/RJT/2024 for AY 2020-21)

17. We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and ld DR for the Revenue and evidences on record. We note that assessing officer did not reach on right conclusion, based on seized material and the profit estimation sustained by the learned CIT(A), on “on money”, is on very higher side, and we note that both the lower authorities, did not follow the mandatory judgement of Hon’ble Jurisdictional High Court of Gujarat (Supra) wherein, 6% addition was made on the “on-money”. In all the projects of M/s R.K. Group, on the “on-money” different estimation of profit element have been made by ld CIT(A), which are, at the rate of 8%, 12%, 12.5%,

16% and 20% etc. After all, it is "on money", therefore, a uniform profit estimation on account of profit element on "on money" should be made.

18. 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 R.K. 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 RK group cases, under consideration, the past profit margin as per audited books of accounts and as per seized material is 7% (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.

19. We note that issue under consideration is squarely covered in favour of the assessee in the assessee's own group cases, M/s R.K. Group, in ITA No. 528/RJT/2024 & others in the case of M/s. R K Infralink LLP, by the decision of Coordinate Bench of ITAT Rajkot. The findings of the Co-ordinate Bench of ITAT Rajkot is reproduced below:

> *"14. In this summarised and concise ground, the plea of the assessee is that estimated profit at the rate of 16% on the so called "on money" is on higher side, considering the judgement of the jurisdictional High Court of Gujarat. However, plea of the revenue is that addition made by the assessing officer at the rate of @ 35% should be sustained. Learned Counsel for the assessee submitted that judgements of Hon`ble jurisdictional High Court of Gujarat, in respect of addition on "on-money", should be followed. The Hon`ble jurisdictional High Court of Gujarat in the following cases held that profit element embedded in the "on-money" should be added in the hands of the assessee and not the entire "on-money", and estimated addition on "on money" should be at the rate of 6% or at the rate of 8%, may be made, depending upon the facts and circumstances of the case. The relevant judgements of the Hon`ble jurisdictional High Court of Gujarat and Hob`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 jurisdictiona' High Court in the case of Panna Corporation [2014 (11) TMI 797 GUJARAT HIGH COURTI 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. Ld. Vs. DCIT and in the light of judgment of Hon'ble jurisdictional High Court in the case of Panna Corporation (supra) as well as Koshor Mohanlal Telwala (supra), we are of the view that only element of income embedded in the on-money received by the assessee for booking of flats/shops in "Vesu Project" is required to be assessed in its hand in all these years.

17. Next question arose, what is the element of income involved in this on-money. On one hand, the assessee is showing income at 8%, on the other hand, the ld. CIT(A) is estimating it at 20%. It is pertinent to observe that section 144 of the Income Tax Act provides discretion in the assessing officer to pass best judgment when an assessee failed to appear before him, and to submit requisite details. In other words, it provides power in the assessing officer to estimate an income of the assessee. We deem it appropriate to take note the relevant part of this section. It reads as under:..

"24. We have considered rival submissions and gone through the record carefully. There is no dispute that during the course of search certain material/loose papers were found exhibiting the fact that the assessee has received cash, over and above, the amounts stated in the booking register. This cash was not accounted for in the books. It has been treated as on-money for sale of flats/shops. Simultaneously certain loose papers were found disclosing the fact that the expenditure were incurred in cash and accounted in the books. The Ld.CIT(A) made an analysis of this, and then held that the moment assessee's income is being assessed at 8% of the gross on-money, then the remaining amount 92% could take care of unexplained expenditure. It can be explained by a simple, viz. an assessee has received Rs.100/- in cash for sale of flat. Out of that, element of income embedded in this Rs. 100/-has been determined by us at Rs.8/-. Remaining Rs.92/- must have been incurred by the assessee for developing that flat. Thus, in other words, the expenditure whose details were found being incurred in cash could be construed as coming out of these Rs.92/-. Thus, there cannot be any separate addition of unexplained expenditure. The Ld.CIT(A) has rightly deleted the addition."

15. We note that the assessee is in appeal before us and praying the Bench that estimated addition is very higher side and it should be reduced, at a reasonable level. However, learned DR for the revenue submitted that addition made by the assessing officer may be confirmed. We note that the estimation of income is based on facts and will vary from business to business and year to year, depending on the business conditions. We note that ld.CIT(A) has estimated the profit on the "on-money" at the rate of 16% but the ld.CIT(A) has failed to bring on record any comparable case in support of his estimation that too @ 16% and in some cases 8% and 12% etc. No doubt estimate of the profit can be resorted to in these types of cases but the estimate and that too at a particular percentage or fraction of percentage which ld CIT(A) has adopted has to be based on sound reasoning in comparison with the past results as well as comparable cases. Without this the estimation so made cannot be said to be valid estimation. The jurisdictional Hon'ble High Court of Gujarat, in case of estimation of profit element on, "on-money" has taken the view that estimation of profit in these type of cases of "on-money" had been held between range of 6% to 8%.

16. We note that the average profit of the assessee as per audited books of accounts is 7%, therefore, profit estimation done by the learned CIT(A) at the rate of 16% on the "on-money" is higher side. Considering the nature of business and voluminous 'on-money' and taking into account, the fact that there is expenditure made by the assessee to develop the project out of the "on-money", therefore, profit margin in this type of business normally is 10% on "on-money". We proceed to work out the estimation of profit keeping in mind the following facts:
(i)The estimate is not opened up to be framed in an arbitrary manner.
(ii) The estimate by rule of thumb is absolutely infirm.
(iii)The estimation of rate of profit return must necessarily vary with the nature of the business.
(iv)There cannot be any uniform yardstick.
(v)An assessment to be best of judgement can only be based on the material available on record and past records and considering the totality of the facts.
(vi) Only real income and neither notional income nor astronomical income, can be taxed under the I.T. Act, 1961.
Accordingly, we note that estimation the profit element on 'on-money' at the rate of 10%, should be fair, keeping in mind the principle laid down by Hon'ble Supreme Court in the case of H. M. Esufali Abdulali that the method to be adopted must be which is approximately nearer to the truth.

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

20. Therefore, respectfully following the binding judgement of the Co-ordinate Bench of ITAT Rajkot in assessee's own case (Supra), we direct the assessing

officer to tax "on-money" at the rate of 10%, therefore, we partly allow the following appeals of the assessee:

(i) Ground Nos. 3 & 4 in ITA No. 551/RJT/2024 for AY 2019-20,
(ii) Ground No. 3 and 4 in ITA No. 552/RJT/2024 for AY 2020-21,
(iii) Ground no.2, 3 & 4 in ITA No. 553/RJT/2024 for AY 2021-22,
(iv) Ground no.2, 3 & 4 in ITA No. 554/RJT/2024 for AY 2022-23.

Whereas following appeals of the revenue, are dismissed:

(i) Ground no. 1 in ITA No. 532/RJT/2024 for AY 2019-20 and
(ii) Ground No.1 in ITA No. 533/RJT/2024 for AY 2020-21.

21. Summarized and Concise ground No.(iii) is reproduced below for ready reference:

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

(This is Revenue's ground no. 1 in ITA No. 532/RJT/2024 for AY 2019-20 and Ground No.1 in ITANo.533/RJT/2024 for AY 2020-21)

22. 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 in the assessee's own group cases, M/s R.K. Group, in ITA No. 528/RJT/2024 & others in the case of M/s. R K Infralink LLP,

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

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

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

23. We have considered the submissions of both the parties, and we note that ICDS-3 refers to Income Computation and Disclosure Standard–III, issued by the Central Board of Direct Taxes under section 145(2) of the Income-tax Act, 1961. It deals with computation of income from construction contracts for tax purposes. It is largely based on the earlier Accounting Standard AS-7 but contains important differences relevant for income tax computation. We note that ICDS–III applies to construction contracts of contractors, however, assessee under consideration is not a contractor, but he is a contractee. A person who undertakes contract to do a job/work for others, is contractor. However, assessee under consideration is not a contractor but a contractee, who gets the work done from contractor and assessee pays the amount to the contractors for services rendered by them to it (assessee), therefore, ICDS-III is not applicable to the assessee under consideration. Hence, we are of the view that ICDS-III applies to Contractors (not contractees). Fundamental Accounting Principle, as per ICDS-III is the Percentage of Completion Method (POCM). The Percentage of Completion Method is mandatory method under ICDS-III. Under ICDS-III the Revenue from variations, claims and incentives shall be recognised only when there is reasonable certainty of its ultimate collection.

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

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

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

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

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

> *"Section 145 of the Income-tax Act, 1961 Method of accounting (Project completion method) - Assessee was engaged in construction business - It was subjected to a survey action which was conducted on business. premises - During course of survey, statement of one partner of firm was recorded in which, he admitted of firm having received a sum of Rs.26.05 crores not disclosed in books of account-While doing so, he further stated that same would be subject to registration of sale deeds When assessment was undertaken, assessee contended that firm was following project completion method of accounting and income would be offered to tax as and when final sale deeds were registered Assessee firm thus offered only a sum of Rs.1 crore during year under consideration Assessing Officer rejected assessee's stand and added entire amount of Rs.26.05 crores as income of assessee during current year Tribunal accepted assessee's contention that since firm was following project completion method for offering income to tax, same*

would be subjected to tax upon completion of sale, though amount may have been received earlier from buyer Revenue filed instant appeal on ground that in his statement, partner of firm had disclosed entire amount as income of relevant year - Whether in view of fact that while agreeing that sum of Rs. 26.05 crores was undisclosed income of assessee for relevant current year, said partner of firm added a clarification that same would be subject to execution of sale deeds, there was no error in impugned order of Tribunal and, thus, same was to be upheld-Held, yes [Para 5] [in favour of assessee]"

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

23. 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. 1 in ITA No. 532/RJT/2024 for AY 2019-20

(ii) Ground No.1 in ITANo.533/RJT/2024 for AY 2020-21

24. In the combined result, appeals filed by the assessee, are partly allowed to the extent indicated above (appeal-wise), whereas all appeals filed by the Revenue, are dismissed.

Order pronounced in the open court on 09-03-2026

Sd/-	**Sd/-**
(Dr. Dinesh Mohan Sinha)	**(Dr. Arjun Lal Saini)**
न्यायिक सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

राजकोट /Rajkot

दिनांक/Date: 09/03/2026

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, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

//True Copy//

सहायक पंजीकार
आयकर अपीलीय अधिकरण ,राजकोट