



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.522 to 527/RJT/2024

निर्धारण वर्ष /Assessment Year: (2017-2018 to 2022-23)

Naresh Organisers Private Limited Officer No. 702 R K Prime, 150 feet Ring Road Next to Silver Heights, Nava Mava Circle, Rajkot 360005, Gujrat	बनाम Vs.	The DCIT, CC-1 Rajkot “Amruta Estate,” 2 <sup>nd</sup> Floor, MG Road, Rajkot 360001, Gujrat
स्थायी लेखासं/. जी आइ आर सं/. PAN NO. : AACCN1282A		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.503, 515 to 517/RJT/2024

निर्धारण वर्ष /Assessment Year: (2018-19 to 2021-22)

The DCIT, CC-1 Rajkot “Amruta Estate,” 2 <sup>nd</sup> Floor, MG Road, Rajkot 360001, Gujrat	बनाम Vs.	Naresh Organisers Private Limited Officer No. 702 R K Prime, 150 feet Ring Road Next to Silver Heights, Nava Mava Circle, Rajkot 360005, Gujrat
स्थायी लेखासं/. जी आइ आर सं/. PAN NO. : AACCN1282A		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranapura, Ld. AR  
राजस्व की ओर से/Revenue by : Shri Sanjay Pungulia, Ld. CIT (DR)

सुनवाई की तारीख/Date of Hearing : 06/01/2026  
घोषणा की तारीख/Date of Pronouncement : 09/03/2026

**आदेश/ORDER**

**Per, Bench:**

Captioned appeals filed by the Assessee and Revenue, pertaining to Assessment Years 2017-18 to 2022-23, are 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.

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.*

*(This is assessee's ground No. 2 in ITA No. 522/RJT/2024 for AY 2017-18, This is assessee's ground No. 2 in ITA No. 523/RJT/2024 for AY 2018-19, This is assessee's ground No. 2 in ITA No. 524/RJT/2024 for AY 2019-20 and, This is assessee's ground No. 2 in ITA No. 525/RJT/2024 for AY 2020-21)*

*(ii) The Id. CIT(A) erred on facts as also in law in retaining addition of Rs. 4,98,910/- by estimating profit at 16% of so called on money receipt. The addition made 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 No. 3 & 4 in ITA No. 522/RJT/2024 for AY 2017-18, This is assessee's ground No. 3 & 4 in ITA No. 523/RJT/2024 for AY 2018-19, This is assessee's ground No. 3, 4 & 5 in ITA No. 524/RJT/2024 for AY 2019-20, This is assessee's ground*



*No. 3, 4 & 5 in ITA No. 525/RJT/2024 for AY 2020-21, This is assessee's ground No. 2, 3 & 4 in ITA No. 526/RJT/2024 for AY 2021-22 and This is assessee's ground No. 2, 3 & 4 in ITA No. 527/RJT/2024 for AY 2022-23)*

*&*

*(This is also revenue's ground no. 1 in ITA No. 503/RJT/2024 for AY 2018-19, This is revenue's ground no. 1 in ITA No. 515/RJT/2024 for AY 2019-20, This is revenue's ground no. 1 in ITA No.516/RJT/2024 for AY 2020-21 and, This is revenue's ground no. 1 in ITA No.517/RJT/2024 for AY 2021-22)*

*(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. 2 in ITA No. 503/RJT/2024 for AY 2018-19, this is revenue's ground no. 2 in ITA No.515/RJT/2024 for AY 2019-20, this is revenue's ground no. 2 in ITA No.516/RJT/2024 for AY 2020-21 and, this is revenue's ground no. 2 in ITA No. 517/RJT/2024 for AY 2021-22)"*

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee is a Company engaged in Building completion. As per the Income-tax Return for AY 2018-19 filed on 22-09-2018, declaring total income of Rs. 1,12,41,560/-. 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 the RK 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. RK Group is developing multiple projects in the nature of Commercial Residential and Industrial plotting projects. The Group is headed by Shri Sarvanand Sadharam Sonwani and he is supported by his family members in the management of the



business. The Sonwani family is a joint unit for the purpose of business. Important family members, offices, key associates and employees were also covered in the search and survey operation to get hold of important incriminating evidences. In the RK Group the main persons/partners were Sonwani family. Some projects of RK Group were developed with other groups also. The group was mainly involved in taking on-money/unaccounted cash on selling of units in its projects and giving on money on purchasing of the land. The data of on-money/unaccounted cash was being maintained in a very systematic manner in Miracle file. In Miracle files mainly unaccounted transaction has been entered with some banking transaction as well. The premise of Shri Girish Vanjani was also covered during the search action. Shri Girish Vanjani was maintaining the accounts of the R K Group (including parallel unaccounted cash transactions) at the instruction of Shri Sarvanand Sonwani. It can be seen that Shri Girish Vanjani has categorically stated that he does the work of accounting as per the instructions of Shri Sarvanand Sonwani. Even Shri Sarvanand Sonwani has accepted (in his statements recorded u/s 131 of The Act at the residential premise of Girish Vanjani on 27.08.2021) that Shri Girish Vanjani does the work of accounting as per his instructions. Thus, Shri Girish Vanjani is a key employee and accountant of the R K Group is an admitted and confirmed fact. During the course of search and seizure action at the residential premise of Shri Girish Vanjani, Pen Drives and Hard Discs were recovered. Forensic Mirror Imaging (Digital Data Backup) of these devices was taken and the same were Seized. The backup contained key accounting files of the entire group in a very systematic manner. The accounts of 1) Sale of units 2) Cost of lands 3) Expenses incurred on various projects and other miscellaneous transactions made by 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 Girish Vanjani. Multiple miracle files have been found from the digital data that has been imaged and seized during the search operation. Many



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

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

5. Apart from the above, various documents in the form of loose-papers excel sheets etc, have also been recovered and seized during the search operation from the premises of the group members highlighting various kind of financial transactions accounted as well as unaccounted. 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	<p>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.</p> <p>It is seen in most of the ledgers from the seized Miracle file that they contain some Bank transactions which are found recorded on the regular books and some Cash transactions</p>
--------	---



	<p>which are normally not recorded on the regular books of the respective Group member. This manner of recording the transactions highlights a fact that one part (mostly in Bank) of every deal was being reported on the regular books and the other part (mostly in cash) of the deal was not being reported on the regular books.</p> <p>Thus, some transactions from the Miracle files were accounted for whereas some were not accounted for in the regular books of the respective group member who owns the transaction.</p>
Fact 2	<p>The data entered in the Miracle software is in coded form -</p> <p>(1) the entries have been backdated by 10 years i.e. 01-04-2019 is entered as 01-04-2009, and</p> <p>2) the amounts have been divided by 100 i.e. Rs. 2,50,000/- is entered as 2500.00/-</p>
Fact 3	<p>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.</p> <p>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.</p>

6. The assessee has developed two projects - RK Prime and RK Prime Plus. Details of following unaccounted transactions pertaining to projects have been recovered from the material seized during the search operation -

**(i) For project 'R K Prime'**

- Unaccounted receipts of Rs. 1,12,23,54,090/- against sale of units of the project and repayments of Rs. 20,63,06,162/- on account of cancellation or excess receipts as culled out from the seized Miracle data.
- Unaccounted expense/investment of Rs. 47,29,98,610/- made in the purchase of land for the project as culled out from the seized Miracle data.
- Unaccounted expenses of Rs. 11,06,39,370/- incurred for the project as culled out from the seized Miracle data.

**(ii) For project 'R K Prime Plus'**

- Unaccounted receipts of Rs 20,63,17,320/- against sale of units of the project and repayments of Rs. 1,03,99,740/- on account of cancellation or excess receipts as culled out from the seized Miracle data.



- Unaccounted expense/investment of Rs. 9,11,68,900/- made in the purchase of land for the project as culled out from the seized Miracle data.
- Unaccounted expenses of Rs. 1,62,34,220/- incurred for the project as culled out from the seized Miracle data
- Unaccounted payments of Rs. 1,10,00,000/- made to the contractor as per one excel sheet named "Bharatbhai Solanki RKP Plus" seized from the office premise of the RK Group.

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, a notice under section 148 of the Act has been issued on 21-11-2022 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 22-12-2022, declaring income of Rs. 1,12,41,560/-. Subsequently, a notice u/s 143(2) of the Income-tax Act has been issued and served on 27-12-2022 on the e-filing portal of the Assessee. Subsequently, notices u/s 142(1) have been issued from time to time seeking primary as well as further details from the assessee for carrying out the assessment. In view of natural justice, the objections raised by the assessee against initiation of proceedings u/s 148 of the Act have been disposed of and the images of original seized material pertaining to the assessee have been supplied and discussed in the notices issued u/s 142(1) of the Act from time to time. Since, the unaccounted transactions pertaining to project RK Prime only pertained to the year under consideration, therefore, assessing officer discussed the same in the assessment order.

8. The assessing officer noticed that there is "on money" receipts for - RK Prime project. As discussed earlier, data of receipt of on money related to project "R K



Prime" is found maintained in Miracle Software. The cash receipts appearing on the Miracle file were not accounted for in the regular books of account of the assessee-company. The name of every project developed by the Assessee- Group is in coded form in the Miracle files, The project "RK Prime" is mentioned as "RKP in the seized Miracle file. For better understanding of the ledgers related to RK Prime. Perusal of the data seized during the search operation revealed that the receipts against bookings of units of project RK Prime are spread in FYs 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22 till the date of the search Separate ledgers for each and every unit that has been booked are also recorded very systematically in the seized Miracle file. From the above ledgers, it can be seen that the unit has been booked at Rs. 82,96,200/-. For this booking, Rs. 66,00,000/- has been received in cash and Rs. 16,53,000/- through bank whereas on documents (Doc no. 2830 dated 04-08-2020) sale of Rs. 16,53,000/- only has been offered for sale of this unit. This proves the authenticity of the data of the Miracle ledger. It was noticed that only bank receipts appearing on this ledger were recorded on the regular books of the assessee. An excerpt from the bank account no. 4711873168 held by the assessee with Kotak Mahindra Bars is reproduced in the assessment order. It can be seen the same Bank receipt dated 21/07/2010 of Rs. 16530.00 appearing on the seized Miracle ledger also appear on the Kotak Mahindra Bank account of the Assessee- company on 23/07/2021 at Rs. 16,53,000/-. During the course of assessment proceedings, details of flats sold for the project have been called for in submission, and the assessee has submitted the details where it is noted that this office no. 208 is slod and registered in the name of Shri Sneh Shailesh Trivedi and recorded on the books of the assessee only at a value of Rs. 16,53,000/- only. However, the simultaneous cash receipts as appearing on the seized Miracle ledger do not find place on the books of the assessee. The assessing officer noticed that all the above discussed facts clearly indicate that the correctness and completeness of the books maintained by the assessee for reporting the same for income-tax purpose are not reliable /



satisfactory. Hence, vide notice dated 23-01-2023, the assessee had been asked to show cause as to why the provisions of section 145(3) of the Act should not be invoked in this case and the total income for the respective years be enhanced by the amount of profits elements embedded in the unaccounted transactions for the respective years.

9. Therefore, assessing officer asked the assessee, by issuing the show-cause notice, to explain the “on -money” transaction. In a response, on 27-01-2023, the assessee has submitted comprehensive response to the show- cause notice clarifying the issues and raising various contentions, which are reproduced below:

*"(i) We have been served with above stated notice requiring us to show-cause as to why the provisions of section 145(3) of the income-tax Act, 1961 (hereinafter referred as "Act") should not be invoked and the profit element embedded in the unaccounted transactions should be estimated and added to the total income of the company. In this connection, following may kindly be considered. At the outset, it is reiterated that assessment proceeding initiated u/s 147 of the Act is bad n law and thus, impugned SCN issued on such invalid proceeding is deserved to be dropped its also submitted that rebuttal/rejection of the objections raised against validity of assess proceeding in the impugned SCN is totally misplaced and we strongly object such rebuttal/rejection. Therefore, reply to the SCN is made in protest and by reserving our right to challenge the validity of assessment proceeding in higher forum. As regard to the various issues discussed in the show-cause notice, i.e., (i) alleged unaccounted (on-money) receipts of sale of units in project "RK Prime" and "RK Prime +", (ii) unaccounted payment for purchase of land for project "RK Prime" and "RK Prime +", (iii) alleged refund of on-money on cancellation of booking, (iv) unaccounted expenses for both projects, it is submitted that we vehemently deny each and every allegation in the show-cause notice and deny carrying out any unaccounted transactions, which has been worked out on the basis of so-called account data (Miracle File) seized from the possession of one Shri Girish Vanjani. We also rely on all the earlier replies filed from time to time in the assessment proceeding for AY 2021-22. Therefore, it is requested to consider the replies/submissions/ objections already made in the assessment proceeding for AY 2021-22 on same or similar issue and on this ground, addition proposed in the show-cause notice is strongly objected. Furthermore, we in our letter dated 17.01.2023 had furnished objections on the legal sanctity of disputed data (Miracle File) seized from the possession of Shri Girish Vanjani and any inference to be drawn from such disputed data. Further, we had also objected the adverse inference in case of the company solely on the basis of such data and statement recorded from Shri Girish Vanjani especially where the deponent himself had (immediately after the search) clarified that entries recorded in seized data (Miracle File) is not reliable, correct and complete. Request is also made to provide all the documents/entire Miracle data relied upon by the department, since in absence of the same we are unable to check verify the allegations made in the notices. Therefore, it is reiterated that data/documents stated to have been recovered from third party is not binding on the assessee company and any addition proposed on the basis of such data is strongly objected.*



(ii) Without prejudice to the above, it is submitted that we have not received any unaccounted receipts against booking/sale of units in the projects "RK Prime" and "RK Prime+". During the year under consideration, there is a sale of Rs. 25,64,34,016 by the assessee company on account of registration of sale deeds in project "RK Prime", which is duly recorded in the books of account. We have not received anything extra i.e., over and above the document price and therefore, your observation as to receipt of unaccounted cash receipts on the basis of disputed digital data is not at all acceptable and hence, the same is strongly objected. Similarly, we have not made any unaccounted payment for purchase of land for the project or incurred any unaccounted expenses. Purchase of land as per the registered conveyance deed and construction expenses incurred are duly accounted for in the regular books of account, which is correct and at par or higher compared to Fair Market Value determined by stamp valuation authority and per square meter construction cost as per books of account is in concurrence with the standard valuation norms. Therefore, any doubt in the matter of valuation can be resolved from valuation cell. It is also submitted that entries in the Miracle File stated to have been seized during the course of search at the residential premises of Shri Girish Vanjani are not correct and complete. The authenticity of such data has been doubted by Shri Girish Vanjani as well as Shri Sarvanand Sonvani, a founder/promoter of RK Group. Therefore, cognizance taken on such disputed data is completely misplaced. Furthermore, during the course of search at the premises of the company and also at the premises of the directors of the company, no cogent or corroborative evidence was found which substantiate the entries in the Miracle File as correct/complete. Further, when the creator of such records has accepted that the entries in the data are unreliable, there is no question of taking cognizance on such data in the case of third party. As per the provision of section 132(4A) and 292C of the Act, the department cannot apply the income emerging from the alleged unaccounted transactions recovered from the non-related /third party in the hands of the assessee in absence of any other independent and concrete evidence. Matching of unit number in the projects and bank receipts from customers cannot ipso facto confirm that other entries in such data are fully correct. Further, the allegations in the above stated notice have made without there being any counter party confirmations. Since, no unaccounted transactions were ever made, in case required, we will furnish confirmations from the customers/buyers and landlord. Thus, the allegation levelled on the basis of standalone data, of which legal sanctity is no more, is strongly objected. Considering the above, proposed addition of profit element on alleged ground of unaccounted transactions on the basis of various lodger accounts in the seized data (Miracle File) recovered from the premises of Shri Girish Vanjani is Vanjani is strongly objected.

(iii) Having regards to the fact that the assessee company has not received any unaccounted receipts (on-money) against sale/booking of units in the project or made any unaccounted payment for purchase of land or other expenses, any action on the basis of digital data found from the domain of third party would be based on the assumption, surmises and conjectures, for which we rely on the following decisions:

Hon'ble Supreme Court of India in the case of UOI vs. Playworld Electronics Pvt Ltd. & Ors 1990 AIR 202, wherein, it is observed that "... Even a great deal of suspicion, not possible to hold otherwise without an evidence"

Hon'ble Supreme Court of India in the case of Raj Kumar Singh vs. State of Rajasthan in the Criminal Appeal No. 931-932 of 2009 observed:

"Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved and "will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between may be and must be is quite large and divides vague conjectures from sure conclusions. The large distance between may be true and must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is



*condemned as a convict and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between may be true and must be true, the court must maintain the vital distance between touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense"*

*Reference is also drawn to the Gujarat High Court decision in the case of DCIT vs. Prarthana Construction Pvt Limited Tax Appeal No 79 of 2000 where it has been held that the Revenue would not be justified in resting its case on the loose papers and documents found from the even if such documents contain narration of transaction with the residence of third PINCOME TAX DEPARTMEN assessee.*

*It is also reiterated that the person from whose possession the impugned data has been recovered i.e., Shri Girish Vanjani and the founder/promoter of RK Group Shri Sarvanand Sonvani both have categorically confirmed that the data seized is not correct and complete as such no conclusion can be drawn on the basis of such data. Therefore, impugned show-cause notice contains nothing new but merely reiterating the previous allegation and hence, addition proposed in the SCN is in absence of any other cogent corroborative evidence.*

*It is further submitted that on perusal of the impugned data as well as excel sheets stated to have been containing noting of unaccounted expenses over and above the entries in Miracle Data, it is seen that there is no systematic and project-wise noting in any data or documents provided. Therefore, chances of duplications/overlapping/mistakes/errors of omission and commission could not be ruled out. Further, data of those excel files referred to in the notice has not been provide fully, therefore, no verification could be made in this regard. It appears that figures found in impugned data are lower as compared to that mentioned in the notice, however it is stated that same are in coded for and back dated. This finding of the department seems based on suspicion, without having any corroborative evidence on record. Therefore, working out the correct and real income attributable to the projects "R K Prime" and "R K Prime+" on the basis of impugned data / excel sheet is impossible especially where Shri Sarvanand Sonvani in his reply also raised various probabilities/possibilities about the entries in seized data. Thus, profit element in such transactions will be difficult to determine. Further, if there be any unaccounted profit, it would pertain to Shri Sarvanand Sonvani only and not the company.*

*Though, it is the primary contention that no on money in cash/whatsoever has been received or paid, however, without prejudice, it is submitted that on prima facie verification of impugned data, we understood that there are cash credits and debits, and transactions were done at the behest of Shri Sarvanand Sonwani. Therefore, first probability is that if there are cash receipts by said third party, it might have been received by him for granting usage of parking area of the project, reimbursement of charges, extra fees for personal interior extra construction work, deposits for electricity stamping expenses etc. If such receipts partake the character of business income of termed as on money and such receipts are the sources of cash expenses incurred for the purpose of business and department wants to fax it, then net income is to be taxed in the hands of Sarvanand Sonwani alone.*

*(iv) Another probability or possibility would be that Sarvanand Sonwani and others might have provided additional construction services at extra cost in units sold or booked, by undertaking contract work from the buyers of the Units/offices/shops in respect of execution of customized work, which are not part of the sale proceeds of the Units booked. The cost of such extra work services would not be included in sale deed to be executed while transferring ownership of the*



*Unit to buyer. Therefore, there may be the possibility that Sarvanand Sonwani might have managed his own unaccounted transactions in the Miracle data regarding extra work income and expenses. However, in order to put a quietus to the issue, all the other directors of the company have, after consultation with Shri Sarvanand Sonwani, concluded that company will pay the tax on the real income that has been worked out by Shri Sarvanand Sonwani from R K Prime and RK Prime+ projects of the company as admitted by him in his affidavit based on the entries in Miracle software subject to condition that no penalty and other harsh provisions of the Act shall be initiated/applied by the Income tax Department on the company. It is given to understand by Shri Sarvanand Sonivani that as on the date of search both of the projects were completed, there were no further income or expenses which were to be incurred in respect of additional work sought for by the buyers in respect of the aforesaid receipts and as such work was carried out on cost-to-cost basis, almost all the cash received for additional work on behalf of the agencies and suppliers, has been spent there is hardly any profit or retention. Considering the above, he has considered income of Rs. 1.06 Crores in his total ad-hoc disclosure of Rs. 10 Crores, which has been worked out @ 1% of the Net Receipts i.e. Rs. 106.22 Crores. Therefore, the assessee company is having no objection if the income to the extent of Rs. 106.22 Lacs/1.06 Crores would be assessed in its case in proportion to the sales as per sale deeds executed in the respective assessment years subject to the condition that no penalty or any other harsh action shall be initiated on such voluntary admission on ad-hoc basis. It is also submitted that the amount mentioned in the notices issued is on the basis of incomplete / erroneous data and documents. In this context, it is submitted that show cause notice itself contains details of certain expenses (not admitted), which are found in separate excel sheet and not in the seized MIRACLE data. Therefore, there is no any single source of information/ data from which one can readily determine the exact quantum of taxable income. Hence, determination of profit embedded in unaccounted transactions is difficult and addition cannot be made on such basis.*

*(v) Also, Shri Sarvanand Sonwani in his submission before the department stated that nomenclature/grouping/mapping of entries in the seized data are not correct. He had also stated that various ledger accounts created in such data are with the coded name, but such coded names are not reconcilable with any actual transaction, event, person or project Therefore, it is almost impossible to derive readymade conclusion or result on the basis of such ambiguous, vague and incorrect data. In view of the above, your proposal to estimate the unaccounted transactions in line with the assessment order passed for AY 2021-22 is strongly unaccounted profit from the alleged objected. Further, as regard the estimation of unaccounted receipts of Rs. 26,64,26,760/- being the on-money that would have been paid by Shree Rakshit J. Shah and his family members against purchase of various shops / offices in the project "R K Prime", which is stated to have been adjusted against the on-money that would have been paid by the assessee company against purchase of land from said family, it is submitted that said allegation and assumptions is totally based on the disputed data, which is unreliable and unsubstantiated. Therefore, we strongly deny the assumptions of on-money receipt and payment on the basis of journal entries passed in such data. Even otherwise, there is no evidence of actual receipt of on-money as alleged in the digital data seized and therefore, alleged unaccounted receipts determined on the basis of assumptions and probabilities is strongly objected. It is submitted that the assessment proceeding for AY 2021-22 had been completed u/s. 143(3) of the Act dated 29.12.2022, wherein, your good self after considering all the above issues and contentions raised by the assessee company had estimated the unaccounted profit at the rate of 38% of alleged unaccounted receipts from the R K Prime project and estimated the unaccounted profit at the rate of 42% of alleged unaccounted receipts from the R K Prime+ project. In this connection, it is submitted that estimation of profit at such high-pitched rate is completely arbitrary, imaginary and without considering the overall scenario and complete data /documents/excel sheets etc. Further, without accepting any of the allegations and figures in the show-cause notice as well as previous notices issued, it is submitted that if we simply put such allegations and figures in one table then following result would emerge:*



*Though we are not at all accepting the aforesaid surplus / income, here, what we would like to convey is that the proposal for estimating unaccounted profit from the unaccounted transaction at the rate of 38% and 42% in line with the assessment order passed for AY 2021-22, is more than the simple mathematical surplus arrived from the notices itself. Therefore, such high pitched rate of 38% and 42% is unjustified and uncalled for. Hence, on this ground also, addition proposed in high-pitched manner is strongly objected and it is requested to take most holistic approach and consider the case of the assessee in most sympathetic.*

*It also needs to mention that in the various assessment proceeding in Central Charge, the assessing officer has determined the assessable income by estimating the net profit at 6%, 8%, 12% 15% 20% on unaccounted receipts as the case may be in the case of builders /developers. Even, the scheme of offering an income on estimate basis at the rate of 8%/6% is also available in the Income-tax Act Le, Section 44AD of the Act. Therefore, case under consideration is not a new case and hence, departure from the settled proposition of law unsettling the settled issues) is not the right spint of conducting assessment proceeding and the same is against the principle of natural justice.*

**(vi) 2020 (4) TMI 844 - ITAT AHMEDABAD - GREENFIELD REALITY P. LTD. VERSUS ACIT, CENT. CIR. 1 (2) AHMEDABAD AND DCIT, 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 "Vesu Project"*

*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-A] 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 also not mentioned any attending circumstances for harbouring a belief that income at 8% AND CITIA) is estimating it at 20%-HELD THAT CIT(A) has from the judgment of Kishor Mohanlal Telwala 11998 (9) TM) 106- ITAT 20% could have been earned from this activity. Thus after taking guidance the profit element embedded in the gross profit at 8% Accordingly, we allow AHMEDABAD-AI we deem it proper that the assessee has rightly disclosed the ground of appeal raised by the assessee, and hold that profit which has been directed to be adopted by the Id. CIT(A) of 20% of the alleged turnover should be taken at 8% The income of the assessee is to be computed thereafter.*

**(vii) 2022 (5) TMI 459-ITAT AHMEDABAD ASSISTANT COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-1(4) AHMEDABAD VERSUS M/S. SHOPPERS BUILDCON PRIVATE LTD.**



*Addition made on account of on-money received by the assessee*

*on-money was received by the assessee in the year under consideration as found from the relevant documents seized during the course of search, it is observed that the said on-money was received by the assessee in respect of flats sold not in the year under consideration but in other years HELD THAT:- Entire receipts or on-money representing undisclosed sales proceeds of the flats cannot be the income of the assessee and only the income embedded in such on-money can be taxed as the undisclosed income of the assessee. He also relied on the observations made by the AO himself that it was difficult to comprehend how the assessee could meet the cost of construction when he was selling flats on huge discounts, meaning thereby that the construction cost was met by the assessee even from the on-money representing unaccounted sales proceeds of the flats*

*Profit element embedded in the on-money-As regards the net profit rate of 20% adopted by the learned CIT(A) to estimate the profit element embedded in the on-money, it is observed that the same was arrived at by the learned CIT(A) by relying on the decision of Hon'ble Gujarat High Court in the case of Jay Builder[2012 (12) TMI 1194-GUJARAT HIGH COURT) wherein the decision of ITAT adopting the net profit rate of 15% to estimate the income embedded in on-money was upheld by their Lordships. Keeping in view the said decision of the Hon'ble jurisdictional High Court and having regard to all the facts of the case, we are of the view that the net profit rate of 20% adopted by the learned CIT(A) to estimate the income of the assessee embedded in on-money of Rs.3,03,50,000/- is fair & reasonable and there is nothing brought on record by the learned DR to dispute the same We, therefore, find no infirmity in the order of the learned CIT(A) restricting the addition of Rs 3,03,50,000/- made by the Assessing Officer on account of on-money to Rs. 60,70,000/- and upholding the same, we dismiss Ground No. 1 of the Revenue's appeal.*

**(viii)2020 (2) TMI 884-ITAT AHMEDABAD M/S. JAY KESAR BHAVANI DEVELOPERS PVT. LTD. VERSUS INCOME TAX OFFICER, WARD-1 (3) SURAT**

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

*HELD THAT: CIT (A) was not justified in confirming the addition of entire on-money receipts amounting to 4,72,02,368. Therefore, only estimated net profit is required to be taxed. We find that the assessee has shown net profit at 4.55% for the assessment year under consideration and 4.59% for A.Y. 2010-11. Further, the Hon'ble High Court in the case of CIT V. Abhishek Corporation [1998 (8) TMI 110-ITAT AHMEDABAD-C) has upheld the net profit at 1.31% as declared by the assessee in that case. The net profit rate disclosed at 4.55% during the assessment year under consideration by the assessee in books of accounts and considering the facts that the project undertaken by the assessee comes under deduction of section 80IB(10) hence, there may not be any intention to disclose the lower rate of profit Considering these facts, and taking into account not profit in construction business, it would be reasonable to estimate 6% of net profit on total on-money receipts - Appeal of the assessee is partly allowed.*

**(ix)2022 (2) TMI 815 ITAT CHENNAI SHRI T.R. SHANMUGASUNDARAM VERSUS DCIT CENTRAL CIRCLE-1, CBE COIMBATORE. AND (VICE-VERSA)**

*Addition on account of unaccounted/suppressed sales-*



*The sale figures could not be said to be the income of the assessee. It is trite law that only the real income earned by the assessee could be brought to tax. It is the finding that the assessee has sold developed sites during these years which would entail incurring of expenditure on the part of the assessee. Therefore, it would be in the fitness of things to estimate profit element embedded in unaccounted sale transactions since entire sales figures could not be held to be the income of the assessee. As per statutory mandate, a presumptive rate of 8% is applicable on civil construction business. Taking cue from the same, we apply the same rate to the unaccounted sales as computed by Ld. AO. Accordingly, Ld. AO is directed to estimate profit rate of 8% on unaccounted sales*

*Unaccounted investment in Land - HELD THAT- To presume that the assessee would have paid 5 times of the registered sale deed value would not be correct particularly when there was no adverse material on record. The value of land would depend upon various factor such as location of site extant market conditions, position of the parties, nature of sale etc. and all these relevant factors could not be brushed aside. Moreover, it was incumbent on Ld. AO to prove that extra money was paid by the assessee There was no such finding on record. The extrapolation done by Ld. AO had no basis and the action of Ld. AO in estimating the additions could not be upheld. The action of Ld. AO was totally untenable and devoid of any merits for it was based on conjectures and surmises. Therefore, the addition made in all these three years was deleted. We find that the revenue has accepted the findings of Ld. CIT(A) for all the three years and the issue has thus, attained finality.*

*(x) As regard the proposal to reject book results by invoking provision of Section 145(3) of the Act, it is submitted that books of account are duly audited under the provisions of Companies Act as well as u/s. 44AB of the Income-tax Act, 1961 Further, transactions of land purchase and sale of units have been carried out through banking channel and at the value or higher than the value prescribed by stamp valuation authority of state Also, cost of project and its revenue as per the books of account has been submitted before RERA, Gujarat from time to time and the same has been accepted. Therefore, there are no defects, discrepancies or any doubts in the completeness or correctness of accounts and hence, proposal to invoke provision of Section 145(3) of the Act and to disturb the book results is strongly objected. Furthermore, for the argument purpose only, it is also submitted that 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. Therefore, working of year-wise alleged unaccounted receipts proposed to be taxed is against the principle of real income as well as binding judicial precedents. It is submitted that, the amount which has been received on booking of the units will partake the character of income when the registry of conveyance deed is done. Reliance is placed on following authorities:*

- *Hon'ble High Court of Gujarat in the case of CIT v. Shivalik Buildwell (P.) Ltd. (2014) 220 Taxman 3 (Gujarat) (MAG)*
- *Hon'ble High Court of Gujarat in the case of CIT v. Ashaland Corporation (1982) 133 ITR 55 (Gujarat)*

## **Conclusion of assessing officer**

10. However, assessing officer accepted the above submissions of the assessee partly and 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) 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. 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 observation of the Supreme Court in CIT v. Williamson Financial Services [2007] 165 Taxman 638 (SC) is reproduced below



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

Where suppression of sales receipts is involved, the question is whether the entire sales or only a percentage of profit should be adopted as income. In CIT v. President Industries [2002] 124 Taxman 654 (Gujarat), the Assessing Officer had found evidence of suppression of sales. He adopted the entire receipt (sales) as income but the Hon'ble Jurisdictional High Court has held that the entire undisclosed receipts (sales) cannot constitute income. The sales only represent the price received by the seller of the units for which the seller has already incurred the cost in order to acquire or process the inventory. Therefore, it is the realization of excess consideration over the cost incurred which should be assessed as profit or income. In other words, profit component embedded in the sales could be treated as income.

(ii) 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 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. There for respectfully following the ratio laid down by the Apex Court and the Jurisdictional High Court and in view of the facts of the case it would be fair if reasonable rate of profit is adopted to tax the unaccounted income of the assessee.

(iii) Estimation of rate of profit in Commercial Projects, by assessing officer.

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 from 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, by the assessing officer –

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	RK Prime	M/s Naresh Organisers Pvt Ltd
4	RK Prime +	M/s Naresh Organisers Pvt Ltd
	RK Prime 2	M/s RK Infraspace LLP

Net receipts of all these 5 projects have been calculated and it is seen that after considering all kind of transactions i.e. Net on-money receipts, Expenses for running the project including the Land purchase there remained average net surplus of 31% in the hands of respective developer / owner

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%
<b>Average = (27 + 37 + 36 + 40 + 14)/5 = 30.8 i.e 31%</b>			



Apart from this, it is also important to keep in mind violation of various other provisions of the law which are in place to discourage the practice of indulging in such unaccounted transactions. Having said that and considering the facts of the present case and binding judicial precedents as discussed earlier, if all the expenses / payments are disallowed then the ratio laid down by the Hon'ble High Court with regard to not taxing all the receipts would remain on papers only. Thus, with a view to strike a proper balance between the factual vis-à-vis the legal aspects, it is decided to further enhance the aforementioned average net profit rate from 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. Moreover, while giving paragraph-wise remarks to the response of the assessee, it is seen that the net surplus rate remaining in the hands of the assessee, for both the projects is higher than the benchmark rate of 35%. The calculation made earlier is again being reproduced herewith for reference –

For R K Prime -		
Particulars	Receipts	Payment
On-money receipts as per Miracle	1,12,23,54,090	
Refund of on-money receipts on cancellation of booking		(-)20,63,06,162
<b>Net On-money receipts</b>	<b>91,60,47,928</b>	
Unaccounted payment for purchase of lands		(-) 47,29,98,610
Unaccounted expenses		(-) 11,06,23,370
Unaccounted construction expenses as per excel sheet		-
<b>Net Surplus</b>		<b>33,24,25,948</b>
<b>Net Surplus (%)</b>		<b>36%</b>

As can be seen from this table, the net surpluses in the hands of the assessee-company are 36% for RK Prime project which is higher than the benchmark of 35%. Hence, it would be appropriate to adopt a higher rate of profit in view of the specific facts of this particular case. Accordingly, the net unaccounted profit is estimated at the rate of 38% for R K Prime project. As far as the profit for the



year under consideration is concerned, the same was computed by the assessing officer as under-

Sr No	Particulars	Amount
<b>For R K Prime</b>		
1	On-money receipts net of repayments (47,32,23,843 – 53,26,000)	46,78,97,843
2	Unaccounted profit for project R K Prime (38% of 46,78,97,843)	17,78,01,180

Thus, addition of Rs. 17,78,01,180/- being unaccounted profit embedded in the gross unaccounted receipts is made over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration 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 ld. 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. 522/RJT/2024 for AY 2017-18, This is assessee's ground No. 2 in ITA No. 523/RJT/2024 for AY 2018-19, This is assessee's ground No. 2 in ITA No. 524/RJT/2024 for AY 2019-20 and, This is assessee's ground No. 2 in ITA No. 525/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 group case, we dismiss the following grounds in assessee’s appeals.

- (i) Ground No. 2 in ITA No. 522/RJT/2024 for AY 2017-18
- (ii) Ground No. 2 in ITA No. 523/RJT/2024 for AY 2018-19
- (iii) Ground No. 2 in ITA No. 524/RJT/2024 for AY 2019-20
- (iv) Ground No. 2 in ITA No. 525/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.4,98,910/- by estimating profit at 16% of so called on money receipt. The addition made 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 No. 3 & 4 in ITA No. 522/RJT/2024 for AY 2017-18, This is assessee's ground No. 3 & 4 in ITA No. 523/RJT/2024 for AY 2018-19, This is assessee's ground No. 3, 4 & 5 in ITA No. 524/RJT/2024 for AY 2019-20, This is assessee's ground No. 3, 4 & 5 in ITA No. 525/RJT/2024 for AY 2020-21, This is assessee's ground No. 2, 3 & 4 in ITA No. 526/RJT/2024 for AY 2021-22 and This is assessee's ground No. 2, 3 & 4 in ITA No. 527/RJT/2024 for AY 2022-23)*

&



*(This is revenue's ground no. 1 in ITA No. 503/RJT/2024 for AY 2018-19, This is revenue's ground no. 1 in ITA No. 515/RJT/2024 for AY 2019-20, This is revenue's ground no. 1 in ITA No.516/RJT/2024 for AY 2020-21 and, This is revenue's ground no. 1 in ITA No.517/RJT/2024 for AY 2021-22)*

17. We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and Id 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 Id 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 Hon`ble ITAT Ahmedabad, are reproduced below:*

*(i). 2020 (4) TMI 844ITAT AHMEDABAD GREENFIELD REALITY P. LTD. VERSUS ACIT, CENT. CIR. 1 (2) AHMEDABAD AND DOIT, CENT. CIR. 1 (2) AHMEDABAD, VERSUS GREENFIELD REALITY P. LTD.*

*“Estimation of Income on-money received by the assessee on booking of flats and shops in "VesuProject" Income offered by the assessee at 8% of the alleged gross receipts*



*source of payment of cash for purchase of the land-HELD THAT:- On an analysis of the record, it would reveal that during the course of search not only details of on-money received by the assessee on booking of flats and shops in "Vesu Project" was found, but details of certain expenditure, which are not recorded in the books were also found. This included cash payment for purchase of land. CIT(A) has rightly observed that the gross on-money noticed on the seized paper cannot be considered as income of the assessee. There are certain expenditures which were not recorded in the books. Those expenditure must have been made from this on-money. After going through the well-reasoned order of the Id. CIT(A), and in the light of judgment of Hon'ble jurisdictional High Court in the case of Panna Corporation [2014 (11) TMI 797 GUJARAT HIGH COURT] as well as Koshor Mohanlal Telwala [1998 (9) TMI 106-ITAT AHMEDABAD-AI] we are of the view that only element of income embedded in the on-money received by the assessee for booking of flats/shops in "Vesu Project" is required to be assessed in its hand in all these years. Element of income involved in this on-money assessee is showing income at 8%, AND CIT(A) is estimating it at 20% HELD THAT:- CIT(A) has also not mentioned any attending circumstances for harbouring a belief that 20% could have been earned from this activity. Thus after taking guidance from the judgment of Kishor Mohanlal Telwala [1998 (9) TMI 106-ITAT AHMEDABAD-AI] we deem it proper that the assessee has rightly disclosed the profit element embedded in the gross profit at 8%. Accordingly, we allow the ground of appeal raised by the assessee, and hold that profit which has been directed to be adopted by the Ld. CIT(A) at 20% of the alleged turnover should be taken at 8%.*

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

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

*HELD THAT: CIT (A) was not justified in confirming the addition of entire on-money receipts amounting to 4,72,02,368. Therefore, only estimated net profit is required to be taxed. We find that the assessee has shown net profit at 4.55% for the assessment year under consideration and 4.59% for A.Y. 2010-11. Further, the Hon'ble High Court in the case of CIT V. Abhishek Corporation [1998 (8) TMI 110 ITAT AHMEDABAD-C] has upheld the net profit at 1.31% as declared by the assessee in that case. The net profit rate disclosed at 4.55% during the assessment year under consideration by the assessee in books of accounts and considering the facts that the project undertaken by the assessee comes under deduction of section 80IB(10) hence, there may not be any intention to disclose the lower rate of profit. Considering these facts, and taking into account net profit in construction business, it would be reasonable to estimate 6% of net profit on total on-money.*

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

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



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

*"23.4 It is settled law that not only from the illegal business but also the unaccounted transaction of purchase and sale only profit/ income on sales could be assessed as undisclosed income and could be subjected to tax. Case laws to the point are as under: 1. Dr. T.A. Quereshi (157 taxmann.com 514) (Supreme Court) 2. Piara Singh (124 ITR 40) (Supreme Court) 3. S.C. Kothari (82 ITR 794 (Supreme Court) 23.5 The assessee admitted such profit at Rs. 45,00,000/- and disclosed that on said transactions income in PMGKY, 2016 and paid due tax thereon. The copy of certificate issued by PCIT is placed on record. Thus when that transactions are of unrecorded purchase and sale of gold, which Ld. assessing officer also admits in assessment order, then simply that name & address of purchasers are not provided the entire amount of sale cannot in law be treated as undisclosed income, only profit earned from said transactions which has been admitted by assessee at Rs. 45,00,000/- can only be assessed to tax more so when the assessee has disclosed in PMGKY the said undisclosed income of Rs.45,00,000/- and paid tax in accordance with scheme and received certificate there for from Pr. Commissioner of Income Tax, hence the same disclosed income cannot be included as income is assessment as per Section 199-l of PMKGY. However Ld. A.O. has allowed credit of amount of disclosed income in PMKGY from total income as so the addition on this account is restricted to Rs.45,00,000/- and balance is deleted. The assessee thus gets relief of Rs.3,02,00,000-45,00,000 = Rs. 2,57,00,000/-."*

(v) *Greenfield Reality P. Ltd IT(SS) A No. 320,321 and 322/Ahd/2018 & 329/Ahd/2018:*

*"16. We have duly considered rival submissions and gone through the record carefully. On an analysis of the record, it would reveal that during the course of search not only details of on-money received by the assessee on booking of flats and shops in "Vesu Project" was found, but details of certain expenditure, which are not recorded in the books were also found. This included cash payment for purchase of land. Therefore, the Ld.CIT(A) has rightly observed that the gross on-money noticed on the seized paper cannot be considered as income of the assessee. There are certain expenditures which were not recorded in the books. Those expenditure must have been made from this on-money. Therefore, after going through the well-reasoned order of the Ld.CIT(A), IT(SS)A No.289 Ahd/2018 (7 Others) Greenfield Reality P. 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.”*

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 No. 3 & 4 in ITA No. 522/RJT/2024 for AY 2017-18
- (ii) Ground No. 3, & 4 in ITA No. 523/RJT/2024 for AY 2018-19
- (iii) Ground No. 3, 4 & 5 in ITA No. 524/RJT/2024 for AY 2019-20
- (iv) Ground No. 3, 4 & 5 in ITA No. 525/RJT/2024 for AY 2020-21
- (v) Ground No. 2, 3 & 4 in ITA No. 526/RJT/2024 for AY 2021-22
- (vi) Ground No. 2, 3 & 4 in ITA No. 527/RJT/2024 for AY 2022-23

Whereas following appeals of the revenue, are dismissed:

- (i) Ground no. 1 in ITA No. 503/RJT/2024 for AY 2018-19
- (ii) Ground No.1 in ITA No. 515/RJT/2024 for AY 2019-20
- (iii) Ground No. 1 in ITA No. 516/RJT/2024 for AY 2020-21
- (iv) Ground No. 1 in ITA No. 517/RJT/2024 for AY 2021-22

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

*(iii) The Ld CIT(A) has erred in deleting 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. 2 in ITA No. 503/RJT/2024 for AY 2018-19, This is revenue's ground no. 2 in ITA No.515/RJT/2024 for AY 2019-20, This is revenue's ground no. 2 in ITA No.516/RJT/2024 for AY 2020-21 and, This is revenue's ground no. 2 in ITA No. 517/RJT/2024 for AY 2021-22)*

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 Coordinate 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. 2 in ITA No. 503/RJT/2024 for AY 2018-19
- (ii) Ground no. 2 in ITA No. 515/RJT/2024 for AY 2019-20
- (iii) Ground no. 2 in ITA No. 516/RJT/2024 for AY 2020-21
- (iv) Ground no. 2 in ITA No. 517/RJT/2024 for AY 2021-22



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/-**

**(Dr. Arjun Lal Saini)**

**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