



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. 511 to 513/RJT/2024

निर्धारणवर्ष /Assessment Year: 2020-21 to 2022-23

(Hybrid Hearing)

Yagnik Road Highstreet LLP Office No.102, Ornament Arcade, Darbargadh Chowk, Bedinaka Road, Rajkot Rajkot-360001	Vs.	The Deputy Commissioner of Income Tax, Central-1 Income Tax Office, Amruta Estate Building, Near Girnar Cinema, M G Road, Rajkot Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACFY4924F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 684/RJT/2024

निर्धारणवर्ष /Assessment Year: 2021-22

(Hybrid Hearing)

The Deputy Commissioner of Income Tax, Central-1 Income Tax Office, Amruta Estate Building, Near Girnar Cinema, M G Road, Rajkot Rajkot-360001	Vs.	Yagnik Road Highstreet LLP Office No.102, Ornament Arcade, Darbargadh Chowk, Bedinaka Road, Rajkot Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACFY4924F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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

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

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

घोषणा की तारीख/Date of Pronouncement : 12 /03/2026

ORDER



Per, Bench:

Captioned three appeals filed by the assessee, and one appeal filed by the revenue, pertaining to Assessment Years (AYs) 2020-21 to 2022-23, are directed against the orders passed by the Commissioner of Income Tax (Appeals) [(in short “Ld.CIT(A)”)], which in turn arises out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short “the Act”).

2. Since these appeals are based on similar facts and common grounds of appeal, therefore, we are proceeding to dispose of them by this consolidated order for the sake of convenience. For the sake of convenience, the facts narrated in ITA No. 684/Rjt/2024 for A.Y. 2021-22, have been taken into consideration for deciding the above appeals *en masse*.

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

(i) The Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of the order passed u/s 147 of the I.T. Act whereby assessed the total income of Rs.40,66,455/- as against the returned income/loss of (-)Rs. 28,545/-, it is totally wrong, unwarranted, unjustified and bad in law.

(This is ground No.1 in assessee’s appeal in ITA No.511/RJT/2024 for A.Y. 2020-21, Ground No.1 in ITA No. 512/ RJT/ 2024, for A.Y. 2021-22, Ground No.1 in ITA No. 513/ RJT/ 2024, for A.Y. 2022-23)

(ii) Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of alleged ground of estimated the profit @ 16%,



as the appellant is developer of commercial project and tax such income in the year in which income is recognised in books of account, it is unwarranted, unjustified and bad in law. The various Hon'ble High Courts and Hon'ble ITAT, had held that the profit should be taken at the rate of 6 to 8 percent.

(This is Ground No. 2 to 4 in assessee's appeal in ITA No.511/RJT/2024 for A.Y. 2020-21, Ground No. 2 to 4 in ITA No.512/RJT/2024 for A.Y. 2021-22, Ground No. 2 to 4 in ITA No.513/RJT/2024 for A.Y. 2022-23)

(This is also ground no.1 in revenue's appeal in ITA No.684/RJT/2024 for A.Y. 2021-22

4. The facts of the assessee's case which can be stated quite shortly are as follows: The assessee is an LLP engaged in Real Estate business. As per the Income-tax Return for assessment year (AY) 2021-22, filed on 31-12-2021, the total income has been declared at NIL. A Search, Seizure and Survey action was carried out by the office of DDIT (Inv.). Unit-1, Rajkot in the case of leading real estate builders of Rajkot and their key associates on 24.08.2021. Four different groups were covered in the operation including Praful Gangdev Group of Rajkot. All the four groups are in the business of real estate and are mainly concentrated in and around Rajkot. A total of forty-three (43) premises were covered, out of which 32 premises were covered under section 132 of the Income Tax Act 1961 and the other 11 premises were covered u/s 133A of the Income Tax Act 1961. The premises covered were a mix of residential and business premises of their related entities, their family members, key associates and employees. The Gangdev group has completed several Real estate projects in Rajkot. The main person of the group is Shri Praful Gangdev who takes key decisions and is helped by several other partners. The partners vary for each project but Shri Kinjan Faldu, Shri Chandresh Panara, Shri Siddharth Gangdev are the key partners of Shri Praful Gangdev. The Gangdev group has completed projects like The Spire, The Spire-2, Trinity Towers in the city of Rajkot. Important family members, offices, key associates and employees were also covered in the search and survey



operation to get hold of important incriminating evidences. Details of following unaccounted transactions pertaining to project "Highstreet Business bay" developed by the assessee- firm, M/s Yagnik Road Highstreet LLP, have been recovered from the material seized during the search operation, the details of the same are as Under:

(i) Unaccounted expense / investment of Rs. 16,87,50,000/- made in the purchase of land for the project.

(ii) Unaccounted receipts of Rs. 6,55,22,200/- against sale of units of the project.

5. As details regarding unaccounted part of the aforementioned transactions pertaining to the assessee have been gathered from the seized material during the search operation, the case of the assessee has been selected for scrutiny as per the criteria laid down by the ITA-II division of the Central Board of Direct Taxes (CBDT) in this regard vide letters dated 11-05-2022 & 03-06-2022 bearing F. No. 225/81/2022/ITA-II. Notice u/s 143(2) of the Income-tax Act has been issued and served on 23-06-2022, on the e-filing portal of the Assessee. Subsequently, notices u/s 142(1) of the Act, have been issued from time to time seeking primary as well as further details from the assessee for carrying out the assessment. In view of natural justice, the images of original seized material pertaining to the assessee have been supplied and discussed in the notices issued u/s 142(1) of the Act. The assessing officer noticed that the main issues involved during the year is the unaccounted investment in land for the project highstreet business bay. The Project High Street Business Bay is a commercial project and is developed by the assessee LLP i.e. M/s Yagnik Road High Street LLP. The details of partners in the assessee -firm are as under:



Sr. No.	Name of the partner	% stake
1	Jay Mansukhlal Kotak	12.50%
2	Siddharth Harshadbhai Gangdev	18%
3	Praful Narendrabhai Gangdev	17%
4	Shailesh Maganbhai Kansagra	5%
5	Kinjan Parsottambhai Faldu	7%
6	Dipal Parsottambhai Faldu	8%
7	Chandresh Liladharbhai Panara	14%
8	Sudhirkumar Gordhandas Javia	6%
9	Mansukhlal Jamnadas Kotak	12.50%

6. During the search and seizure action at the residence of Shri Siddharth H. Gangdev (main partner of the assessee) incriminating documents were seized and inventoried as Annexure-A1. These pages contain the transactions relating to purchase of land at City Survey Ward No. 15/1, City Survey No. 2403, Rajkot. This is the land on which the project 'High Street Business Bay' constructed by the assessee. As per the above seized page, land under consideration has been purchased for total consideration of Rs. 28,75,50,000/-. Further, it is mentioned that the document of the said land has been registered at Rs. 11,88,00,000/-and remaining amount of Rs. 16,87,50,000/- has been paid in cash. The document amount mentioned on the seized documents is matched exactly with the amount at which purchase deed has been executed. Relevant excerpt of purchase deed is reproduced by the assessing officer in the assessment order. The Page no. 15 of seized Aannexure-A1 shows the details document value for the purchase of land (which is paid by cheque / through bank) and also show the bifurcation of purchase cost (cheque component) among the partners basis on their % stake in developing firm i.e. the assessee and the same is pasted in the assessment order, by the assessing officer. Further, seized documents which shows the distribution of cheque and cash component paid for the purchase of the land and instances of payment (cash as well as cheque) are pasted in the assessment order, by the assessing officer.



7. The assessing officer noticed that from the seized documents, it is crystal clear the land situated at City Survey Ward No. 15/1, City Survey No. 2403, Rajkot on which project High Street Business Bay is developed by the assessee has been purchased by the assessee for total consideration of Rs. 28,75,50,000/-, whereas respective purchase deed has been executed at Rs. 11,88,00,000/- only (same the amount paid by cheque) and the remaining amount of Rs. 16,87,50,000/- which is not recorded in conveyance deed has been paid in cash. It is also seen that cost of above land has been recorded in books of account is Rs. 12,58,09,700/- only (i.e. Rs. 11,88,00,000 (deed value) + stamp duty + registration charge).

Yagnik Road Highstreet LLP
102 - Ornament Arcade, Darbargadh Chowk
Bedinaka Road, Rajkot. - 360001

Trading Account
From 01/04/2020 To 31/03/2021 Page : 1

Credit Particulars		Debit Particulars	
Income		Opening Stock(Trading)	
0.26 Kasar A/c.		28,545.00 Opening Stock	
0.26		28,545.00	
Closing Stock(Trading)		Purchase Account	
14,04,44,836.42 Closing Stock		12,58,09,700.00 Land Construction Work	
14,04,44,836.42		41,98,650.80 Purchase A/c. (GST)	
		13,00,08,350.80	

Accordingly, the assessee, vide show cause notice, issued u/s 142(1) of the Act, was asked to explain the sources of the cash paid over and above the value registered in conveyance deed and also asked to state whether the above cash transactions are recorded in its books or not. However, instead of explaining the source of cash expended towards purchase of land under consideration, the assessee has simply denied the cash payment stating that the documents seized during search action does not have specific information above the land, payers etc.

8. The assessing officer, having gone through the seized material noticed that the transactions recorded in the seized documents are relating to purchase of land



under consideration and payment incidences are also exactly match with payment recorded in respective conveyance deed (no. 2713 dated; 15.06.2020). Further, cash as well as cheque component for the purchase of land for the project are distributed among the partners as per their % holding in assessee firm. In view of the above, vide show cause notice of the assessing officer dated 04/12/2022, the assessee has been asked to show cause as to why cash amount of Rs.16,87,50,000/- paid towards purchase of the land as discussed above should not be treated as income in assessee's hands for the year under consideration under provisions of chapter VI of the Income Tax Act.

9. In response, on 23-12-2022, the assessee has submitted following reply before the assessing officer, along with documentary evidences, which is reproduced below:

- "1. We have purchased the land from Smt. Geeta Kamalbai Parekh at Rs. 11,88,00,000/-. Further, we would like to state that the firm is registered on 12-12-2019 and Highstreet Business Bay is the first project of the firm.*
- 2. In the show cause notice, it is alleged that we have paid on-money of Rs. 16,87,50,000/- during the year for purchase of the land. Further, it is also alleged that we have received total on-money of Rs. 6,55,22,200/- (Rs. 1,05,00,000 in FY 19-20; Rs. 1,20,00,000/- in FY 20-21 and Rs. 4,30,22,200/- in FY 21-22)*
- 3. Thus, as per the notice also, the firm had received on money of Rs. 2,25,00,000/- only till FY 20-21. Then, how it is possible to make on-money payments of Rs. 16,87,50,000/- for purchase of land is not understandable.*
- 4. Moreover, IF it is alleged that the Rs. 16,87,50,000/- is born by the partners. Then, we would like to draw kind attention towards the fact that the partners of the assessee firm are also partners in other firms.*
- 5. As gathered from the partners, these other firms were also covered during the search operation and on-money receipts have been detected in the hands of these firms also. Therefore, we plead that if the income from on-money of other firms detected during the search is added in the hands of the respective other firms then the application of the same could not again be proposed for addition either in the hands of the partners or in the hands of this firm.*
- 6. The details regarding partners of this firm and their respective stake in the other firms are as under-*



Sr no.	Name of the Partner	Share in the assessee firm	Share in other firms
1	Praful Narendrabhai Gangdev	17%	<p>Praful Narendrabhai Gangdev is also a partner in following firms –</p> <ol style="list-style-type: none">1. Buildcon Associates (25%)2. Buildcon Creation LLP (20%)3. Krishna Developers (25%)4. Neelratna Enterprise LLP (13%)5. Buildfolio Realities LLP (15%) <p>As gathered from this partner, details of unaccounted receipts of these firms were also gathered during the search operation.</p>
2	Siddharth Harshadbhai Gangdev	18%	<p>Siddharth Harshadbhai Gangdev is also a partner in following firms –</p> <ol style="list-style-type: none">1. Shiv Enterprise. (35%)2. Buildfolio Realities LLP (5%) <p>It is also submitted that Siddharth Gangdev and Praful Gangdev are family members and covered under the definition of 'relatives' as per the Income-tax Act. Both of them jointly hold 35% stake in the assessee firm.</p>



			<p>Their collective stake in other firms is as under –</p> <ol style="list-style-type: none"> 1. Buildcon Associates (25%) 2. Buildcon Creation LLP (20%) 3. Krishna Developers (25%) 4. Neelratna Enterprise LLP (13%) 5. Buildfolio Realities LLP (20%) 6. Shiv Enterprise (35%) <p>Collectively both of them have had sufficient funds received as on-money on sale of units of these above firms the details of which were also recovered from the same search operation.</p>
3	Kinjan Parsottambhai Faldu	7%	<p>Kinjan Parsottambhai Faldu is also a partner in following firms –</p> <ol style="list-style-type: none"> 1. Krishna Developers (25%) 2. Neelratna Enterprise LLP (13%) <p>As gathered from partners, details of unaccounted receipts of these firms were also gathered during the search operation.</p>
4	Dipal Parsottambhai Faldu	8%	<p>Dipal Parsottambhai Faldu is also a partner in following firms –</p> <ol style="list-style-type: none"> 1. Buildcon Creation LLP (10%) 2. Shiv Enterprise (15%) 3. Buildfolio Realities LLP (8%) <p>As gathered from partners, details of</p>



			<i>unaccounted receipts of these firms were also gathered during the search operation.</i>
5	<i>Chandresh Liladharbhai Panara</i>	14%	<i>Chandresh Liladharbhai Panara is also a partner in following firms – 1. Buildcon Creation LLP (10%) 2. Neelratna Enterprise LLP (8%) 3. Shiv Enterprise (10%) 4. Radhe Developers (20%) 5. Buildfolio Realities LLP (10%) As gathered from partners, details of unaccounted receipts of these firms were also gathered during the search operation.</i>
6	<i>Sudhirkumar Gordhandas Javia</i>	6%	<i>Sudhirkumar Gordhandas Javia is also a partner (4%) in M/s Neelratna Enterprise LLP. As gathered from the partners, details of unaccounted receipts of M/s Neelratna Enterprise LLP were also gathered during the search operation.</i>
7	<i>Shaileshkumar Maganbhai Kansagara</i>	5%	<i>Shaileshkumar Maganbhai Kansagara is also a partner (5%) in M/s Neelratna Enterprise LLP and (5%) in Buildfolio Realities LLP . As gathered from the partners, details of unaccounted receipts of M/s Neelratna Enterprise LLP were also gathered during the search operation.</i>
8	<i>Mansukhlal Jamnadas Kotak</i>	12.50%	<i>Shri Mansukhlal J Kotak is a partner in this firm. His son Jay M. Kotak is also a partner in this firm and was also a partner in M/s Buildfolio Realities LLP (10%). As gathered from the partners, details regarding unaccounted receipts of M/s Buildfolio Realities LLP were also gathered during the search operation.</i>



9	Jay Mansukhlal Kotak	12.50%	Shri Mansukhlal J Kotak is a partner in this firm. His son Jay M. Kotak is also a partner in this firm and was also a partner in M/s Buildfolio Realities LLP (10%). As gathered from the partners, details regarding unaccounted receipts of M/s Buildfolio Realities LLP were also gathered during the search operation.
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7. As elaborated above, all the partners have been deriving profits from other firms also and data of on-money receipts of these other firms are also seized during the same search operation. Therefore, all the partners of this firm collectively plead to grant the benefit of telescoping of the on-money received from the old projects (details are already seized during the search operation) against the unaccounted investment alleged to have been made by this firm with same partners

8. In *PCIT v. Aliasgar Anvarali Varteji* [2018] 96 taxmann.com 231 (Gujarat) it was held that when the unaccounted income, which was found during search, was considered as income then the assessee was entitled to benefit of telescoping of negative cash balance (on account of investment) against the income and no addition could be made on basis of such negative balance in books of account.

9. In *CIT v. KSM Guruswamy Nadar & Sons* [1984] 94 Taxman 533 (Mad.) it was held that where there is an addition on account of suppression of profit as also cash credit, it is open to the assessee to claim telescoping of estimated addition against the unproved cash credits/investments.

10. Further, in *Gopal S. Pandith V. DCIT* [2016] 74 taxmann.com 273 (Banglore-Trib), it was held that when an addition is made on account of unaccounted income, then the benefit of telescoping of the said amount should be given against addition of unexplained investment.

11. Another point for consideration is whether intangible additions pertaining to earlier years and current year have the same concrete existence to be telescoped against other addition resulting in income. It has been held that they are as much a part of real income. This was the observation of the Apex Court in the case of *Anantharam Veerasinghaiah & Co. v. CIT* [1980] 123 ITR 457 (SC)"

10. The response of the assessee has been examined thoroughly, by the assessing officer. It was observed by the assessing officer that the assessee-firm is first contending that since it is incorporated recently and it did not have any apparent sources of income earned from any other sources to pay the unaccounted payment for land as appearing from the seized paper recovered during the search. Even if



this contention is reasonably be correct, the fact as evident from the seized document cannot be disregarded. Further, though there was no any apparent other sources of generation of unaccounted income, the possibility of infusion of unaccounted capital by the partners cannot be ignored. In subsequent part of the response, the assessee-firm is also contending that simultaneous assessments are being pursued in cases of the other firms also where evidences regarding huge amounts of on-money receipts by those firms are gathered during the search operation and since all those firms more or less have the same partners or relatives of partners, if the on money receipts are being taxed in hands of those firms then the benefit of telescoping of the same income should be given to the partners for its application in purchase of land for the present firm. Further, in support of this plea, the assessee-firm has also quoted decisions of respected jurisdictional High Court and Hon'ble Supreme Court of India. Here, the partners of the assessee-firm are passively admitting receipt of on-money by other firms where the assessments are simultaneously in progress at present and further they are asking for benefit of telescoping of the unaccounted receipts from those other firms against the unaccounted payments for land purchased for the assessee-firm. Respectfully following the views of the Hon'ble courts, this contention of the assessee-firm is found reasonable. However, out of 9 partners of the firm, availability of funds in the hands of 3 partners namely Shri Shailesh Kansagara, Shri Jay Mansukhlal Kotak and Shri Mansukhlal Jamnadas Kotak is found insufficient even after considering the on-money receipts detected in the other firms where these two are common partners.



23. In case of **Shri Shailesh Kansagara**, the insufficiency of funds is calculated as under –

Sr No.	Particulars	Amount
1.	On money receipts for FY 2019-20 and earlier detected in various firms where Shri Shailesh Kansagara is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 1,41,11,799 from <i>The Spire-2 Project</i>) (Rs. 5,25,000 from <i>High Street Business Bay Project</i>)	1,46,36,779
2.	On money payments made during FY 2020-21 for purchase of land in the firms where Shri Shailesh Kansagara is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 1,47,55,000 for <i>Business Centrum Project</i>) (Rs. 84,37,500 for <i>High Street Business Bay Project</i>)	2,31,92,500
	Net deficit (2 - 1)	85,55,701
3.	Deficit attributable to Land for the project under consideration i.e. High Street Business Bay (85,55,701 * 84,37,500 / 2,31,92,500)	31,12,589

24. In case of **Shri Jay Mansukhlal Kotak**, the insufficiency of funds is calculated as under –

Sr No.	Particulars	Amount
1.	On money receipts for FY 2019-20 and earlier detected in various firms where Shri Jay M Kotak is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 13,12,500 from <i>High Street Business Bay Project</i>)	13,12,500



2.	On money payments made during FY 2020-21 for purchase of land in the firms where Shri Jay M Kotak is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 2,95,10,000 for Business Centrum Project) (Rs. 2,10,93,750 for High Street Business Bay Project)	5,06,03,750
	Net deficit (2 - 1)	4,92,91,250
3.	Deficit attributable to Land for the project under consideration i.e. High Street Business Bay (4,92,91,250 * 2,10,93,750 / 5,06,03,750)	2,05,46,645

25. In case of **Shri Mansukhlal Jamnadas Kotak**, the insufficiency of funds is calculated asunder –

Sr No.	Particulars	Amount
1.	On money receipts for FY 2019-20 and earlier detected in various firms where Shri Mansukhlal Jamnadas Kotak is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 13,12,500 from High Street Business Bay Project)	13,12,500
2.	On money payments made during FY 2020-21 for purchase of land in the firms where Shri Mansukhlal Jamnadas Kotak is a partner <i>* In proportion of his share of profit in respective projects.</i> (Rs. 2,10,93,750 for High Street Business Bay Project)	2,10,93,750
	Net deficit (2 - 1)	1,97,81,250
3.	Deficit attributable to Land for the project under consideration i.e. High Street Business Bay	1,97,81,250



(1,97,81,250 * 2,10,93,750 / 2,10,93,750)

In view of the above facts, it transpires that there was shortage of funds even in the hands of the above mentioned two partners to the extent of Rs. 4,34,40,484/- . Therefore, the assessee-firm even fails to substantiate the sources of unaccounted capitals from the partners to the extent of Rs. 4,34,40,484/- [19781250 + 20546645 + 3112589]. Therefore, the explanation regarding sources of expenses incurred to the extent of Rs. 4,34,40,484/- towards purchase of land remains unexplained and requires to be treated as deemed income for the year under consideration as per section 69C of the Act.

11. Accordingly, vide show cause notice dated 29-12-2022, the assessee has been asked as to why the addition of Rs. 4,34,40,484/- should not be made in the hands of the firm being unexplained expenditure. In response, the assessee has submitted following reply -

"We have received your show cause notice dated 29-12-2022, proposing to add Rs. 4,34,40,484/- on account of unexplained expenditure u/s 69C of the Act.

In the notice, your honor has stated that even in the hands of the partners the funds were not sufficient to make their respective payments for alleged purchase of the land.

We once again reiterate that complete on-money cannot be added. We also state that there is no specific proof of any kind of unaccounted payments with the department that may have gone for purchase of land.

Reserving out right to challenge the addition, all the partners of the firm, in order to put a quietus to the issue and after consultation with the partners in whose hands the funds are found short, concluded that firm will bear any likely tax liability that may arise on account of the issue for project High Street Business Bay of the firm.

Further, we request to not to take any adverse inference in the hands of the respective three partners as it will result in double addition of the same amount."

12. As regards specific proof of unaccounted payments is concerned, the same has already discussed in detail at the introductory part of the order. Therefore, considering that the assessee is not in position to explain the sources of Rs.



4,34,40,484/-, the same is being added to the income of the assessee within the meaning of section 69C of the Act.

13. The assessing officer also discussed in the assessment order the issue of unaccounted receipts against sale of units of the project, Highstreet Business Bay, and notice has been issued to the assessee, to explain the “on money”.

14. In response, on 23-12-2022, the assessee has submitted following reply to the show cause notice clarifying the issues and raising various contentions.

"Regarding excess money received on sale of shops

1. In the show cause notice, it is also alleged that we have received total on-money of Rs. 6,55,22,200/- (Rs. 1,05,00,000 in FY 19-20; Rs. 1,20,00,000/- in FY 20-21 and Rs. 4,30,22,200/- in FY 21-22). Accordingly, we have been asked to explain why addition of Rs. 1,20,00,000/- should not be made for the on-money received during the year FY 20-21.

*2. Where the seized documents evidencing receipt of on-money by the assessee are not speaking documents because they do not contain any narration or description about the different figures noted therein and when the department has failed to bring on record any material or evidence to corroborate the allegation or receipt of on-money, then a presumption on the basis of the documents could not be raised. This was so held in *Elite Developers v. DCIT [2000] 73 ITD 379 (Nagpur-Trib.)*, *KishanchandSobhrajmal v. ACIT [1992] 41 ITD 97 (Jaipur-Trib.)* and *Agrawal Motors v. ACIT [1999] 68 ITD 407 (Jabalpur-Trib)**

*3. Further, irrespective of the above stand, in *Kishor Mohan LalTelwala v. Asstt. CIT [1999] 107 Taxman 86 (Meg.) (Ahmedabad-Trib.)*, evidence was unearthed about on-money received on sale of flats. The Tribunal held that what could be taxed as undisclosed income was a reasonable amount of profit earned by the assessee out of on-money but not the entire on-money.*

4. Vide above showcause notice, it is stated that the assessee LLP has received total cash of Rs. 6,55,22,200/- for sale of its units sold/booked at project 'High Street Business Bay' and out of which Rs. 1,20,00,000/- has been received during FY 2020-21. Under the circumstances, the completeness and correctness of the accounts of the assessee firm are not established satisfactorily and, hence, the assessment for the year under consideration requires to be finalised as per the provisions of section 145(3) of the Act i.e. in the manner provided u/s 144 of the Act. Further, the assessee is also required to showcause as to why the provisions of section 145(3) of the Act should not be invoked and profits for the year under consideration be enhanced by the amount of Rs. 1,20,00,000/-.

4.1 In this context, it is submitted that, your honour has worked out receipt of total cash aggregating to Rs. 6,55,22,200/- by the assessee LLP for sale of units at project 'High Street Business Bay' on the basis of seized material during the search and seizure actions at premises of persons and business concerns of Gangdev Group and their



partners. Further, alleged unaccounted receipts of Rs. 6,55,22,200/- on sold/booked of units at Project 'High Street Business Bay' has been ascertained on the basis of data seized from the residence of Shri Siddharth H. Gangdev, incriminating documents inventorised as Annexure A-1. These pages contain the transactions relating to purchase of land at City Survey Ward No. 15/1, City Survey No. 2403, Rajkot. However, the alleged figure of total cash arrived at Rs. 6,55,22,200/- is on the basis of preliminary verification/analysis of impounded material/data containing incomplete details/data cannot be accepted to be actual/real. It is established fact that the amount of alleged cash receipt by the assessee LLP aggregating to Rs. 6,55,22,200/- could not be properly computed on the basis of such incomplete evidences/data found and seized the partner of the assessee LLP. The assessee LLP denies to have received the alleged cash aggregating to Rs. 6,55,22,200/- towards sold/booked unit at project 'High Street Business Bay'.

4.2 Without prejudice to the above contention, it is further submitted that the basic issue is whether "on money receipt" (i.e. cash receipt) calculated on the basis of material found during the search and seizure is to be taxed in toto or income is to be determined by applying a specific rate of profit out of this 'on money receipt'.

4.3 and If entire receipt can't be treated as net income then what would be reasonable rate of profit which needs to be applied to the on-money (cash receipt) to determine the income of the assessee LLP towards sold/booked unit at project 'High Street Business Bay' during the year under consideration.

It is thus an established fact that in the case of assessee LLP, incomplete details of unaccounted receipts (on money) have been found towards sold/booked unit at project 'High Street Business Bay' could not be properly computed on the basis of such incomplete evidences/data and in such cases, it is a well established law that the entire undisclosed sales/receipt could not be added as income of the assessee LLP but the addition could be made only to the extent of estimated profit embedded in such unaccounted sales for which a comparable net profit rate needs to be adopted. Even in best judgement assessment assessee cannot be saddled with unjustifiable tax liability and an appellate authority can certainly set right injustice caused to the assessee.

4.4 The aforesaid view of bringing to tax the net profit is duly supported by the following decisions of the jurisdictional Tribunal and High Court, as also various; other courts, as is discussed hereinbelow.

(a) In the case of *Kishor Mohanlal Telwala vs. ACIT* (1999) 64 TTJ (Ahd) 543 the Ahmedabad Bench of the ITAT has held that what can be taxed is undisclosed income and not undisclosed receipt and the AO was not justified in making addition u/s. 158BC of the total undisclosed receipt on account of "on-money" admittedly charged by the assessee without giving deduction for unaccounted payments shown to have been made by the assessee.

(b) Further, in the case of *Abhishek Corporation V. DCIT* (1999) 63 TTJ (Ahd) 651 the Ahmedabad Bench of the I.T.A.T. has held that where the seized documents indicated that assessee was receiving premium/ 'on money' on booking of flats, the entire premium charged by assessee cannot be treated as undisclosed income and only net profit rate can be applied on unaccounted sales/ receipts. The said decision of the I.T.A.T. Ahmedabad has also been upheld by the High Court of Gujarat and the decision of the High Court is cited at (2000) 158 CTR (Gug) 374.



(c) Furthermore, the High Court of Gujarat in the case of CIT vs. Gurubachhan Singh J. Juneja (2008) 302 ITR (63) (Guj) has held that In absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged unaccounted sales, the finding of the Tribunal that only the GP on the said amount can be brought to tax does not call for any interference.

(d) Moreover, in the case of R.K. Corporation, the Ahmedabad Bench of the ITAT in ITA No. 4940/1996 has held that the A.O. was not justified in making addition for the entire on-money and only the profit earned in relation to these receipts as per the profit rate declared in the books of accounts should be treated as undisclosed income of the assessee.

(e) The High Court of Gujarat in the case of CIT vs. President Industries (2002) 258 ITR 654 (Guj) has held that the Tribunal was justified in holding that the entire undisclosed sales could not be added as income of the assessee but the addition could be made only to the extent of estimated profits embedded in sales for which the net profit rate was adopted and hence no referable question of law arises.;

1) Similar view has also been taken by the High Court of Madhya Pradesh in the case of CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 (MP) and the Mumbai Bench of Tribunal in the case of ITO vs. SaiKrupa Construction (2007) 13 SOT 459 (Mumbai).

4.5 In view of the facts of the case and respectfully following the law laid down by the jurisdictional High Court and Tribunal, where there are incomplete evidences of both unaccounted income (on- money) and unaccounted expenditure incurred therefrom, making addition for the entire unaccounted receipts i.e. on-money towards sold/booked units in the project 'High Street Business Bay under consideration is unjustifiable, bad in law and against the rule of natural justice. Further, there was no clinching evidence with the Department to demonstrate that 'on money/ cash receipt calculated out of impounded/seized material found during the course of search and seizure is deserved to be considered as net profit. In other words, it is a cumulative analysis of all the facts at the end of the Assessing Officer to demonstrate that alleged calculation of on money cash receipt aggregating to Rs. 6,55,22,200/-towards sold/booked its unit at project 'High Street Business Bay' was not the income of the assessee LLP.

4.6 Further, it will not be proper to tax entire sum of 'on money/cash receipt aggregating to Rs. 6,55,22,200/- since it is not correct to presume that assessee LLP has not incurred any expenditure out of cash amount. For getting clearance for the project assessee has to incur expenses out of cash amount, it has to incur cash for getting vacant possession of the premises. Cash is also incurred for making labour payments and payment for purchasing raw materials. Most of the expenditure are accounted for and is covered in the net profit applied on cheque amount. Considering the totality of facts and circumstances of the case, it would be logical to apply a reasonable rate of net profit on the cash amount and treat the resultant figure as income of the assessee LLP rather taxing entire sum of 'on money/cash receipt as allegedly calculated at Rs. 6,55,22,200/-

4.7 In view of the fact and circumstances of the case, wherein the seized documents/data enable proper estimation of the unaccounted expenses of the assessee, the estimation of net profit appears to be best method of determining the true of the assessee out of receipt of 'on money' 'cash receipt."



15. The response of the assessee has been examined thoroughly, by the assessing officer. Overall reading of the response gives an idea that in principle the assessee is not objecting the on-money receipts. At some instances, it was contended that incomplete details / data cannot be accepted to be actual / real. Whatever unaccounted receipts are logically deduced from the seized document the same is only proposed for addition in the show cause notice. Further, in most part of the reply, the assessee is seeking to make a point that entire on-money receipts should not be taxed with the help of various judicial decisions from different judicial forums. After considering all the response of the assessee 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 considering the averments made by the assessee in its reply, there is no doubt that the accounts of the assessee, where all the transactions are not reflected cannot be relied upon as they present incomplete and incorrect state of affairs of business of the assessee and requires to be disregarded invoking the provisions of section 145(3) of the Act. Accordingly, provisions of section 145(3) were invoked by the assessing officer and the assessment of total income of the assessee was being made after taking into account all relevant material gathered during the search and the assessment proceedings. 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. Recently, in the case of PCIT v. Ms. Jay Kesar Bhavani Developers Pvt. Ltd. in Tax Appeal no. 267 of 2022, the Hon'ble Guj. High Court has held that only profit element embedded in the gross on-money receipts can be taxed. For this, the Hon'ble court has derived reference from its earlier decision delivered in the case of DCIT Vs. Panna Corporation reported in [2012] 74 DTR 89. Relevant part of the decision is as under -

"it has been consistently held by this court and some other courts have been following the principle that even upon detection of on-money receipt or unaccounted cash receipt,



what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves.

If that were the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation."

Even in those cases where no details regarding unexplained payments /investments are available on records, it has been held by the Hon'ble Guj. High Court that while dealing with addition on account of unaccounted sales, in absence of any material on record to show that there was any unexplained investment / expense made by the assessee, there could be a presumption of such expenditure. In such event also it is held that only profit on suppressed sales could be brought to tax [CIT v. Gurubachhan Singh J Juneja [2008] 171 Taxman 406 (Gujarat)].Hence, in such cases, both the Supreme Court and the Jurisdictional High Court have consistently held that where evidences regarding unaccounted receipts are being assessed it is not reasonable to consider the entire unaccounted receipts for taxation. Rather, only profit element lying therein should be estimated keeping in mind the facts and surrounding circumstances of the case at hand. 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.

(ii) Estimation of rate of profit in by assessing officer.

Details of various projects undertaken by the searched group members and their partners have been recovered from the seized Miracle File. Some projects were in completion stage whereas some were just started. Besides, in respect of some projects, comprehensive details i.e. Land purchase expense, On-money receipts have been recovered from the seized data whereas in other projects very limited details i.e. only "on-money" receipts were recovered during the search operation. Wherever, details of receipts and payments were recoverable form the seized data, it was noticed that the net surplus funds available with these projects were ranged



from (-) 1271% to 35%. Reason for this vast gap between the upper and lower ends of this net surplus range was primarily attributable to the stage in which a particular project has reached since its inception. For example, if any project is just launched then its % of net surplus funds would be lower because most of the funds are spent / applied on inventory and the inflow of on-money has not started in full pace. Due to combined effect of these two aspects the availability of surplus funds remains either on lower side or sometimes in negative state. Thus, it is understood that taking reference from the net surplus / unaccounted profits of such just launched projects would not give true picture of the potential profitability of such projects. In order to estimate a reasonable rate of profit, it is taken that only those projects for which maximum data is available from the seized material should be relied upon. At the same time, it is also ensured that the project that almost reached its final stage (with respect to construction activity and receipt of on-money both) should only be taken as reference for adoption of an appropriate rate of profit. After considering all the above aspects, only one project i.e. The Spire which has been developed by M/s Buildcon Associates has been identified.

(iii). Net receipts of this project (the spire) has been calculated and it is seen that after considering all kind of transactions i.e. Net on-money receipts, Expenses for running the project including the Land purchase there remained average net surplus of 35% in the hands of respective developer/owner. 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. Therefore, 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 35% to 39%. Accordingly, 39% 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. Since the details regarding receipts and payments both have been recovered from the seized material and is available on records, the net unaccounted profit on the unaccounted receipts for the assessee-firm is estimated at the rate of 39%. As far as the profit for the year under consideration i.e. FY 2020-21 is concerned, the same was computed as under -

Sr. No.	Particulars	Amount
1	Gross on-money receipts during the year	1,20,00,000
2	Unaccounted Profit at 39% of 2,04,21,000/-	46,80,000

Thus, addition of Rs. 46,80,000/- being unaccounted profit is made over and above the regular business income reported by the assessee in the Income-tax Return filed for the year under consideration invoking provisions of section 145(3) of the Act.

16. Aggrieved by the various additions made by the assessing officer, the assessee carried the matter in appeal before the learned CIT(A). The learned CIT(A), estimated the profit element on the “on money”, at the rate of 8%, 12%, 16%, 20% etc, in a different assessment years. Therefore, assessee, as well as, revenue, both are in appeal before us. The main contention of the revenue in these appeals are that the addition made by the assessing officer should be confirmed. Whereas, main contention in the assessee’s appeals is that the profit estimation on “on - money”, is on higher side, therefore, it should be reduced to a reasonable extent, by following the judgement of Hon’ble Jurisdictional High Court of Gujarat in various cases such as, in the case of Ms. Jay Kesar Bhavani Developers Pvt. Ltd. in Tax Appeal no. 267 of 2022, wherein 6% addition on “on money, was upheld. In various judgements of jurisdictional ITAT Ahmedabad, (cited by assessee in legal compilation) held the addition on “on money” at the rate of 8% is sufficient



to plug the leakage of the revenue. Therefore, the solitary grievance of the assessee in assessee's appeals are that reasonable estimation may be made in the hands of the assessee. The findings of the learned CIT(A) would be discussed while adjudicating the relevant issue involved in concise and summarised grounds noted above.

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

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

(i) The Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad has erred in confirming the action of the Assessing Officer in respect of the order passed u/s 147 of the I.T. Act whereby assessed the total income of Rs.40,66,455/- as against the returned income/loss of (-)Rs. 28,545/-, it is totally wrong, unwarranted, unjustified and bad in law.

(This is ground No.1 in assessee's appeal in ITA No.511/RJT/2024 for A.Y. 2020-21, Ground No.1 in ITA No. 512/ RJT/ 2024, for A.Y. 2021-22, Ground No.1 in ITA No. 513/ RJT/ 2024, for A.Y. 2022-23)

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

(This is Ground No. 2 to 4 in assessee's appeal in ITA No.511/RJT/2024 for A.Y. 2020-21, Ground No. 2 to 4 in ITA No.512/RJT/2024 for A.Y. 2021-22, Ground No. 2 to 4 in ITA No.513/RJT/2024 for A.Y. 2022-23)

(This is also ground no.1 in revenue's appeal in ITA No.684/RJT/2024 for A.Y. 2021-22)



19. We have heard both the parties. We note that “On-money” receipts are undisclosed receipts, and only the profit element embedded in such receipts can be taxed, not the entire “on-money” amount. However, the rate of profit is always a matter of estimation and must depend on following factors, such as, nature of project, location, type of construction, cost structure, evidence of expenses and past profit margins. We note that in Gangadev Group cases, expenses and cost in every project is higher side, due to locational disadvantage, and the profit element is below 7 %, (average-wise-project) as per the past audited profit and loss accounts and evidences available in search and seizure proceedings. It is settled position of law and we also note that Courts and Tribunals have emphasized that the profit rate must have a reasonable basis in each case, and cannot be arbitrarily fixed. Since “on-money” receipts represent undisclosed sales, only the profit element embedded therein can be taxed; however, the rate of profit estimation depends on the facts of each case. We have examined the seized material and past records and noted that in Gangadev group cases, under consideration, the past profit margin as per audited books of accounts and as per seized material, taking together is 6.5% (average) only, this is because, due to location of the project and moreover, the cost and expenses are more than other similar projects. In these circumstances, we find that profit element embedded in commercial projects and housing projects should be estimated by applying the uniform rate of 10% on “on-money”. Therefore, considering the mandatory judgement of the jurisdictional Hon’ble Gujarat High Court, in the case of M/s. Jay Kesar Bhavani Developers Pvt. Ltd(Supra) and considering the peculiar facts of the assessee’s case, narrated above, we are of the view that profit estimation on, “on money” at the rate of, 10% is fair and reasonable.

20. We also note that issue under consideration is squarely covered in favour of the assessee in the identical and similar group cases, of M/s R.K. Group, in ITA No. 528/RJT/2024 & others in the case of M/s. R K Infralink LLP, by the



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

“14. In this summarised and concise ground, the plea of the assessee is that estimated profit at the rate of 16% on the so called “on money” is on higher side, considering the judgement of the jurisdictional High Court of Gujarat. However, plea of the revenue is that addition made by the assessing officer at the rate of @ 35% should be sustained. Learned Counsel for the assessee submitted that judgements of Hon`ble jurisdictional High Court of Gujarat, in respect of addition on “on-money”, should be followed. The Hon`ble jurisdictional High Court of Gujarat in the following cases held that profit element embedded in the “on-money” should be added in the hands of the assessee and not the entire “on-money”, and estimated addition on “on money” should be at the rate of 6% or at the rate of 8%, may be made, depending upon the facts and circumstances of the case. The relevant judgements of the Hon`ble jurisdictional High Court of Gujarat and Hon`ble ITAT Ahmedabad, are reproduced below:

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

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

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

- (i) Ground No.1 in ITA No.511/RJT/2024 for A.Y. 2020-21,
- (ii) Ground No.1 in ITA No. 512/ RJT/ 2024, for A.Y. 2021-22,
- (iii)Ground No.1 in ITA No. 513/ RJT/ 2024, for A.Y. 2022-23)
- (iv)Ground No. 2 to 4 in ITA No.511/RJT/2024 for A.Y. 2020-21,
- (v) Ground No. 2 to 4 in ITA No.512/RJT/2024 for A.Y. 2021-22,
- (vi)Ground No. 2 to 4 in ITA No.513/RJT/2024 for A.Y. 2022-23.



Whereas, following appeal of the revenue is dismissed:

(i) Ground no.1 in revenue's appeal in ITA No.684/RJT/2024 for A.Y. 2021-22.

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

Order is pronounced in the open court on 12/03/2026

Sd/-
(Dr. Dinesh Mohan Sinha)
Judicial Member *True Copy*

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

Rajkot
Date: 12/03/2026

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot